

AMENDED IN SENATE AUGUST 19, 2014

AMENDED IN SENATE JULY 2, 2014

AMENDED IN ASSEMBLY MAY 6, 2014

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, *repeal, and add* Sections 6608 and 6608.5 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. Existing law requires a person who is conditionally released pursuant these provisions to be placed in the

county of the domicile of the person prior to the person's incarceration, unless the court finds that extraordinary circumstances require placement outside the county of domicile.

This bill would, *commencing January 1, 2016*, recast these provisions to require the court, if it determines that the petition is not frivolous, to give notice of the court's intention to conduct a conditional release hearing. The bill would require the person petitioning for conditional release, the Director of State Hospitals, and the designated attorney of the county of commitment to notify the court within 30 court days of receipt of this notice if it appears that a county other than the county of commitment may be the county of domicile. The bill would provide that the court's determination of the county of domicile would govern the current petition for conditional release, and would apply to any subsequent petitions for conditional release. The bill would require that after determining the county of domicile, the court set a date for the conditional release hearing and provide notice, as specified. The bill would authorize the designated attorney for the county of domicile and the designated attorney for the county of commitment, as defined, to mutually agree that the designated attorney for the county of domicile will represent the state at the conditional release hearing if the county of domicile is different than the county of commitment. If the designated attorneys do not make that agreement, the bill would provide that the designated attorney for the county of commitment will represent the state at the conditional release hearing, as specified. The bill would provide that if the committed person has been conditionally released in a county other than the county of commitment, the jurisdiction of the person would, upon request of the designated attorney of the county of placement, be transferred to the court of the county of placement. The bill would additionally require that a person who is conditionally released pursuant to these provisions be placed in the county of the domicile of the person prior to the person's incarceration, unless the designated county of placement was given prior notice and an opportunity to comment on the proposed placement of the committed person in the county, as specified.

By imposing additional duties on counties in regard to conditional releases of committed persons, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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 shall be permitted to petition the court for~~
5 ~~conditional release with or without the recommendation or~~
6 ~~concurrence of the Director of State Hospitals. If a person has~~
7 ~~previously filed a petition for conditional release without the~~
8 ~~concurrence of the director and the court determined, either upon~~
9 ~~review of the petition or following a hearing, that the petition was~~
10 ~~frivolous or that the committed person's condition had not so~~
11 ~~changed that he or she would not be a danger to others in that it is~~
12 ~~not likely that he or she will engage in sexually violent criminal~~
13 ~~behavior if placed under supervision and treatment in the~~
14 ~~community, the court shall deny the subsequent petition unless it~~
15 ~~contains facts upon which a court could find that the condition of~~
16 ~~the committed person had so changed that a hearing was warranted.~~
17 ~~Upon receipt of a first or subsequent petition from a committed~~
18 ~~person without the concurrence of the director, the court shall~~
19 ~~endeavor whenever possible to review the petition and determine~~
20 ~~if it is based upon frivolous grounds and, if so, shall deny the~~
21 ~~petition without a hearing. The person petitioning for conditional~~
22 ~~release under this subdivision shall be entitled to assistance of~~
23 ~~counsel in all hearings under this section. The person petitioning~~
24 ~~for conditional release shall serve a copy of the petition on the~~
25 ~~State Department of State Hospitals at the time the petition is filed~~
26 ~~with the court.~~

27 ~~(b) The procedure for a conditional release hearing in a case~~
28 ~~where the county of domicile has not yet been determined shall~~
29 ~~be as follows:~~

30 ~~(1) If the court deems the petition not frivolous pursuant to~~
31 ~~subdivision (a), the court shall give notice to the attorney~~

1 ~~designated in subdivision (i) of Section 6601, the retained or~~
2 ~~appointed attorney for the committed person, and the Director of~~
3 ~~State Hospitals of its intention to set a conditional release hearing.~~
4 ~~The person petitioning for conditional release, the Director of State~~
5 ~~Hospitals, and the designated attorney of the county of commitment~~
6 ~~shall notify the court within 30 court days of receipt of this notice~~
7 ~~if it appears that a county other than the county of commitment~~
8 ~~may be the county of domicile.~~

9 ~~(2) If no county other than the county of commitment appears~~
10 ~~to be the county of domicile, the court shall determine, consistent~~
11 ~~with Section 6608.5, that the county of commitment is the county~~
12 ~~of domicile.~~

13 ~~(3) If it appears or there are allegations that one or more~~
14 ~~counties, other than the county of commitment, may be the county~~
15 ~~of domicile, the court shall set a hearing to determine the county~~
16 ~~of domicile, consistent with the provisions of Section 6608.5. The~~
17 ~~court shall, at least 30 court days prior to the hearing, give notice~~
18 ~~of the domicile hearing to the persons listed in paragraph (1) and~~
19 ~~to the designated attorney for any county that is alleged to be the~~
20 ~~county of domicile. Persons listed in this paragraph and paragraph~~
21 ~~(1) may, at least 10 court days prior to the hearing, file and serve~~
22 ~~declarations, documentary evidence, and other pleadings, that are~~
23 ~~specific only to the issue of domicile. The court may, consistent~~
24 ~~with Section 6608.5, decide the issue of domicile solely on the~~
25 ~~pleadings, or additionally permit, in the interests of justice,~~
26 ~~argument and testimony.~~

27 ~~(4) After determining the county of domicile pursuant to~~
28 ~~paragraph (2) or (3), the court shall set a date for a conditional~~
29 ~~release hearing and shall give notice of the hearing at least 30 court~~
30 ~~days before the hearing to the persons described in paragraph (1)~~
31 ~~and the designated attorney for the county of domicile.~~

32 ~~(5) (A) If the county of domicile is different than the county~~
33 ~~of commitment, the designated attorney for the county of domicile~~
34 ~~and the designated attorney for the county of commitment may~~
35 ~~mutually agree that the designated attorney for the county of~~
36 ~~domicile will represent the state at the conditional release hearing.~~
37 ~~If the designated attorneys do not make this agreement, the~~
38 ~~designated attorney for the county of commitment will represent~~
39 ~~the state at the conditional release hearing.~~

1 ~~(B) At least 20 court days before the conditional release hearing,~~
2 ~~the designated attorney for the county of commitment shall give~~
3 ~~notice to the parties listed in paragraph (1) and to the court whether~~
4 ~~the state will be represented by the designated attorney of the~~
5 ~~county of domicile or the designated attorney of the county of~~
6 ~~commitment.~~

7 ~~(C) The designated attorney for the county of domicile and the~~
8 ~~designated attorney for the county of commitment should cooperate~~
9 ~~with each other to ensure that all relevant evidence is submitted~~
10 ~~on behalf of the state. No attorney other than the designated~~
11 ~~attorney for the county representing the state shall appear on behalf~~
12 ~~of the state at the conditional release hearing.~~

13 ~~(6) The court's determination of a county of domicile shall~~
14 ~~govern the current and any subsequent petition for conditional~~
15 ~~release under this section.~~

16 ~~(7) For the purpose of this subdivision, the term "county of~~
17 ~~domicile" shall have the same meaning as defined in Section~~
18 ~~6608.5.~~

19 ~~(8) For purposes of this section, the term "designated attorney~~
20 ~~of the county of commitment" means the attorney designated in~~
21 ~~subdivision (i) of Section 6601 in the county of commitment.~~

22 ~~(9) For purposes of this section, the term "designated attorney~~
23 ~~for the county of domicile" means the attorney designated in~~
24 ~~subdivision (i) of Section 6601 in the county of domicile.~~

25 ~~(e) The proceedings for a conditional release hearing in a case~~
26 ~~where the court has previously determined the county of domicile~~
27 ~~shall be as follows:~~

28 ~~(1) If the court determines, pursuant to subdivision (a), that the~~
29 ~~petition is not frivolous, the court shall give notice of the hearing~~
30 ~~date at least 30 days prior to the hearing to the designated attorneys~~
31 ~~for the county of domicile and the county of commitment, the~~
32 ~~retained or appointed attorney for the petitioner, and the Director~~
33 ~~of State Hospitals.~~

34 ~~(2) Representation of the state at the conditional release hearing~~
35 ~~shall be pursuant to paragraph (5) of subdivision (b).~~

36 ~~(d) (1) If a committed person has been conditionally released~~
37 ~~by a court to a county other than the county of domicile, and the~~
38 ~~jurisdiction of the person has been transferred to that county,~~
39 ~~pursuant to subdivision (g) of Section 6608.5, the notice specified~~
40 ~~in paragraph (1) of subdivision (c) shall be given to the designated~~

1 attorney of the county of placement who shall represent the state
2 in any further proceedings.

3 ~~(2) The term “county of placement” means the county where~~
4 ~~the court has placed a person who is granted conditional release.~~

5 ~~(e) If the petition for conditional release is made without the~~
6 ~~consent of the director of the treatment facility, no action shall be~~
7 ~~taken on the petition by the court without first obtaining the written~~
8 ~~recommendation of the director of the treatment facility.~~

9 ~~(f) A hearing upon the petition shall not be held until the person~~
10 ~~who is committed has been under commitment for confinement~~
11 ~~and care in a facility designated by the Director of State Hospitals~~
12 ~~for not less than one year from the date of the order of commitment.~~
13 ~~A hearing upon the petition shall not be held until the community~~
14 ~~program director designated by the State Department of State~~
15 ~~Hospitals submits a report to the court that makes a~~
16 ~~recommendation as to the appropriateness of placing the person~~
17 ~~in a state-operated forensic conditional release program.~~

18 ~~(g) The court shall hold a hearing to determine whether the~~
19 ~~person committed would be a danger to the health and safety of~~
20 ~~others in that it is likely that he or she will engage in sexually~~
21 ~~violent criminal behavior due to his or her diagnosed mental~~
22 ~~disorder if under supervision and treatment in the community. The~~
23 ~~attorney designated pursuant to paragraph (5) of subdivision (b)~~
24 ~~shall represent the state and shall have the committed person~~
25 ~~evaluated by experts chosen by the state. The committed person~~
26 ~~shall have the right to the appointment of experts, if he or she so~~
27 ~~requests. If the court at the hearing determines that the committed~~
28 ~~person would not be a danger to others due to his or her diagnosed~~
29 ~~mental disorder while under supervision and treatment in the~~
30 ~~community, the court shall order the committed person placed with~~
31 ~~an appropriate forensic conditional release program operated by~~
32 ~~the state for one year. A substantial portion of the state-operated~~
33 ~~forensic conditional release program shall include outpatient~~
34 ~~supervision and treatment. The court shall retain jurisdiction of~~
35 ~~the person throughout the course of the program, except as~~
36 ~~provided in subdivision (g) of Section 6608.5.~~

37 ~~(h) Before placing a committed person in a state-operated~~
38 ~~forensic conditional release program, the community program~~
39 ~~director designated by the State Department of State Hospitals~~
40 ~~shall submit a written recommendation to the court stating which~~

1 forensic conditional release program is most appropriate for
2 supervising and treating the committed person. If the court does
3 not accept the community program director's recommendation,
4 the court shall specify the reason or reasons for its order on the
5 record. The procedures described in Sections 1605 to 1610,
6 inclusive, of the Penal Code shall apply to the person placed in
7 the forensic conditional release program.

8 (i) If the court determines that the person should be transferred
9 to a state-operated forensic conditional release program, the
10 community program director, or his or her designee, shall make
11 the necessary placement arrangements and, within 30 days after
12 receiving notice of the court's finding, the person shall be placed
13 in the community in accordance with the treatment and supervision
14 plan unless good cause for not doing so is presented to the court.

15 (j) If the court denies the petition to place the person in an
16 appropriate forensic conditional release program, the person may
17 not file a new application until one year has elapsed from the date
18 of the denial.

19 (k) In a hearing authorized by this section, the committed person
20 shall have the burden of proof by a preponderance of the evidence,
21 unless the report required by Section 6604.9 determines that
22 conditional release to a less restrictive alternative is in the best
23 interest of the person and that conditions can be imposed that would
24 adequately protect the community, in which case the burden of
25 proof shall be on the state to show, by a preponderance of the
26 evidence, that conditional release is not appropriate.

27 (l) Time spent in a conditional release program pursuant to this
28 section shall not count toward the term of commitment under this
29 article unless the person is confined in a locked facility by the
30 conditional release program, in which case the time spent in a
31 locked facility shall count toward the term of commitment.

32 (m) After a minimum of one year on conditional release, the
33 committed person, with or without the recommendation or
34 concurrence of the Director of State Hospitals, may petition the
35 court for unconditional discharge. The court shall use the
36 procedures described in subdivisions (a) and (b) of Section 6605
37 to determine if the person should be unconditionally discharged
38 from commitment on the basis that, by reason of a diagnosed
39 mental disorder, he or she is no longer a danger to the health and

1 safety of others in that it is not likely that he or she will engage in
2 sexually violent criminal behavior.

3 ~~SEC. 2. Section 6608.5 of the Welfare and Institutions Code~~
4 ~~is amended to read:~~

5 ~~6608.5. (a) A person who is conditionally released pursuant~~
6 ~~to this article shall be placed in the county of the domicile of the~~
7 ~~person prior to the person's incarceration, unless both of the~~
8 ~~following conditions are satisfied:~~

9 ~~(1) The court finds that extraordinary circumstances require~~
10 ~~placement outside the county of domicile.~~

11 ~~(2) The designated county of placement was given prior notice~~
12 ~~and an opportunity to comment on the proposed placement of the~~
13 ~~committed person in the county, according to procedures set forth~~
14 ~~in Section 6609.1.~~

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

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

36 ~~(c) For the purposes of this section, "extraordinary~~
37 ~~circumstances" means circumstances that would inordinately limit~~
38 ~~the department's ability to effect conditional release of the person~~
39 ~~in the county of domicile in accordance with Section 6608 or any~~

1 other provision of this article, and the procedures described in
2 Sections 1605 to 1610, inclusive, of the Penal Code.

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

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

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

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

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

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

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

32 ~~(g) If the committed person has been conditionally released in
33 a county other than the county of commitment, the jurisdiction of
34 the person shall, upon request of the designated attorney of the
35 county of placement, be transferred to the court of the county of
36 placement.~~

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

39 6608. (a) A person who has been committed as a sexually
40 violent predator shall be permitted to petition the court for

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

22 (b) If the court deems the petition not frivolous pursuant to
23 subdivision (a), the court shall give notice of the hearing date to
24 the attorney designated in subdivision (i) of Section 6601, the
25 retained or appointed attorney for the committed person, and the
26 Director of State Hospitals at least 30 court days before the hearing
27 date.

28 (c) If the petition for conditional release is made without the
29 consent of the director of the treatment facility, no action shall be
30 taken on the petition by the court without first obtaining the written
31 recommendation of the director of the treatment facility.

32 (d) No hearing upon the petition shall be held until the person
33 who is committed has been under commitment for confinement
34 and care in a facility designated by the Director of State Hospitals
35 for not less than one year from the date of the order of commitment.
36 No hearing upon the petition shall be held until the community
37 program director designated by the State Department of State
38 Hospitals submits a report to the court that makes a
39 recommendation as to the appropriateness of placing the person
40 in a state-operated forensic conditional release program.

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

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

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

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

1 (i) In a hearing authorized by this section, the committed person
 2 shall have the burden of proof by a preponderance of the evidence,
 3 unless the report required by Section 6604.9 determines that
 4 conditional release to a less restrictive alternative is in the best
 5 interest of the person and that conditions can be imposed that would
 6 adequately protect the community, in which case the burden of
 7 proof shall be on the state to show, by a preponderance of the
 8 evidence, that conditional release is not appropriate.

9 (j) Time spent in a conditional release pursuant to this
 10 section shall not count toward the term of commitment under this
 11 article unless the person is confined in a locked facility by the
 12 conditional release program, in which case the time spent in a
 13 locked facility shall count toward the term of commitment.

14 (k) After a minimum of one year on conditional release, the
 15 committed person, with or without the recommendation or
 16 concurrence of the Director of State Hospitals, may petition the
 17 court for unconditional discharge. The court shall use the
 18 procedures described in subdivisions (a) and (b) of Section 6605
 19 to determine if the person should be unconditionally discharged
 20 from commitment on the basis that, by reason of a diagnosed
 21 mental disorder, he or she is no longer a danger to the health and
 22 safety of others in that it is not likely that he or she will engage in
 23 sexually violent criminal behavior.

24 (l) *This section shall remain in effect only until January 1, 2016,*
 25 *and as of that date is repealed, unless a later enacted statute, that*
 26 *is enacted before January 1, 2016, deletes or extends that date.*

27 *SEC. 2. Section 6608 is added to the Welfare and Institutions*
 28 *Code, to read:*

29 *6608. (a) A person who has been committed as a sexually*
 30 *violent predator shall be permitted to petition the court for*
 31 *conditional release with or without the recommendation or*
 32 *concurrence of the Director of State Hospitals. If a person has*
 33 *previously filed a petition for conditional release without the*
 34 *concurrence of the director and the court determined, either upon*
 35 *review of the petition or following a hearing, that the petition was*
 36 *frivolous or that the committed person's condition had not so*
 37 *changed that he or she would not be a danger to others in that it*
 38 *is not likely that he or she will engage in sexually violent criminal*
 39 *behavior if placed under supervision and treatment in the*
 40 *community, the court shall deny the subsequent petition unless it*

1 contains facts upon which a court could find that the condition of
2 the committed person had so changed that a hearing was
3 warranted. Upon receipt of a first or subsequent petition from a
4 committed person without the concurrence of the director, the
5 court shall endeavor whenever possible to review the petition and
6 determine if it is based upon frivolous grounds and, if so, shall
7 deny the petition without a hearing. The person petitioning for
8 conditional release under this subdivision shall be entitled to
9 assistance of counsel in all hearings under this section. The person
10 petitioning for conditional release shall serve a copy of the petition
11 on the State Department of State Hospitals at the time the petition
12 is filed with the court.

13 (b) The procedure for a conditional release hearing in a case
14 where the county of domicile has not yet been determined shall be
15 as follows:

16 (1) If the court deems the petition not frivolous pursuant to
17 subdivision (a), the court shall give notice to the attorney
18 designated in subdivision (i) of Section 6601, the retained or
19 appointed attorney for the committed person, and the Director of
20 State Hospitals of its intention to set a conditional release hearing.
21 The person petitioning for conditional release, the Director of
22 State Hospitals, and the designated attorney of the county of
23 commitment shall notify the court within 30 court days of receipt
24 of this notice if it appears that a county other than the county of
25 commitment may be the county of domicile.

26 (2) If no county other than the county of commitment appears
27 to be the county of domicile, the court shall determine, consistent
28 with Section 6608.5, that the county of commitment is the county
29 of domicile.

30 (3) If it appears or there are allegations that one or more
31 counties, other than the county of commitment, may be the county
32 of domicile, the court shall set a hearing to determine the county
33 of domicile, consistent with the provisions of Section 6608.5. The
34 court shall, at least 30 court days prior to the hearing, give notice
35 of the domicile hearing to the persons listed in paragraph (1) and
36 to the designated attorney for any county that is alleged to be the
37 county of domicile. Persons listed in this paragraph and paragraph
38 (1) may, at least 10 court days prior to the hearing, file and serve
39 declarations, documentary evidence, and other pleadings, that are
40 specific only to the issue of domicile. The court may, consistent

1 *with Section 6608.5, decide the issue of domicile solely on the*
2 *pleadings, or additionally permit, in the interests of justice,*
3 *argument and testimony.*

4 *(4) After determining the county of domicile pursuant to*
5 *paragraph (2) or (3), the court shall set a date for a conditional*
6 *release hearing and shall give notice of the hearing at least 30*
7 *court days before the hearing to the persons described in*
8 *paragraph (1) and the designated attorney for the county of*
9 *domicile.*

10 *(5) (A) If the county of domicile is different than the county of*
11 *commitment, the designated attorney for the county of domicile*
12 *and the designated attorney for the county of commitment may*
13 *mutually agree that the designated attorney for the county of*
14 *domicile will represent the state at the conditional release hearing.*
15 *If the designated attorneys do not make this agreement, the*
16 *designated attorney for the county of commitment will represent*
17 *the state at the conditional release hearing.*

18 *(B) At least 20 court days before the conditional release hearing,*
19 *the designated attorney for the county of commitment shall give*
20 *notice to the parties listed in paragraph (1) and to the court*
21 *whether the state will be represented by the designated attorney*
22 *of the county of domicile or the designated attorney of the county*
23 *of commitment.*

24 *(C) The designated attorney for the county of domicile and the*
25 *designated attorney for the county of commitment should cooperate*
26 *with each other to ensure that all relevant evidence is submitted*
27 *on behalf of the state. No attorney other than the designated*
28 *attorney for the county representing the state shall appear on*
29 *behalf of the state at the conditional release hearing.*

30 *(6) The court's determination of a county of domicile shall*
31 *govern the current and any subsequent petition for conditional*
32 *release under this section.*

33 *(7) For the purpose of this subdivision, the term "county of*
34 *domicile" shall have the same meaning as defined in Section*
35 *6608.5.*

36 *(8) For purposes of this section, the term "designated attorney*
37 *of the county of commitment" means the attorney designated in*
38 *subdivision (i) of Section 6601 in the county of commitment.*

1 (9) For purposes of this section, the term “designated attorney
2 for the county of domicile” means the attorney designated in
3 subdivision (i) of Section 6601 in the county of domicile.

4 (c) The proceedings for a conditional release hearing in a case
5 where the court has previously determined the county of domicile
6 shall be as follows:

7 (1) If the court determines, pursuant to subdivision (a), that the
8 petition is not frivolous, the court shall give notice of the hearing
9 date at least 30 days prior to the hearing to the designated
10 attorneys for the county of domicile and the county of commitment,
11 the retained or appointed attorney for the petitioner, and the
12 Director of State Hospitals.

13 (2) Representation of the state at the conditional release hearing
14 shall be pursuant to paragraph (5) of subdivision (b).

15 (d) (1) If a committed person has been conditionally released
16 by a court to a county other than the county of domicile, and the
17 jurisdiction of the person has been transferred to that county,
18 pursuant to subdivision (g) of Section 6608.5, the notice specified
19 in paragraph (1) of subdivision (c) shall be given to the designated
20 attorney of the county of placement who shall represent the state
21 in any further proceedings.

22 (2) The term “county of placement” means the county where
23 the court has placed a person who is granted conditional release.

24 (e) If the petition for conditional release is made without the
25 consent of the director of the treatment facility, no action shall be
26 taken on the petition by the court without first obtaining the written
27 recommendation of the director of the treatment facility.

28 (f) A hearing upon the petition shall not be held until the person
29 who is committed has been under commitment for confinement
30 and care in a facility designated by the Director of State Hospitals
31 for not less than one year from the date of the order of commitment.
32 A hearing upon the petition shall not be held until the community
33 program director designated by the State Department of State
34 Hospitals submits a report to the court that makes a
35 recommendation as to the appropriateness of placing the person
36 in a state-operated forensic conditional release program.

37 (g) The court shall hold a hearing to determine whether the
38 person committed would be a danger to the health and safety of
39 others in that it is likely that he or she will engage in sexually
40 violent criminal behavior due to his or her diagnosed mental

1 *disorder if under supervision and treatment in the community. The*
2 *attorney designated pursuant to paragraph (5) of subdivision (b)*
3 *shall represent the state and shall have the committed person*
4 *evaluated by experts chosen by the state. The committed person*
5 *shall have the right to the appointment of experts, if he or she so*
6 *requests. If the court at the hearing determines that the committed*
7 *person would not be a danger to others due to his or her diagnosed*
8 *mental disorder while under supervision and treatment in the*
9 *community, the court shall order the committed person placed*
10 *with an appropriate forensic conditional release program operated*
11 *by the state for one year. A substantial portion of the state-operated*
12 *forensic conditional release program shall include outpatient*
13 *supervision and treatment. The court shall retain jurisdiction of*
14 *the person throughout the course of the program, except as*
15 *provided in subdivision (g) of Section 6608.5.*

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

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

34 *(j) If the court denies the petition to place the person in an*
35 *appropriate forensic conditional release program, the person may*
36 *not file a new application until one year has elapsed from the date*
37 *of the denial.*

38 *(k) In a hearing authorized by this section, the committed person*
39 *shall have the burden of proof by a preponderance of the evidence,*
40 *unless the report required by Section 6604.9 determines that*

1 conditional release to a less restrictive alternative is in the best
2 interest of the person and that conditions can be imposed that
3 would adequately protect the community, in which case the burden
4 of proof shall be on the state to show, by a preponderance of the
5 evidence, that conditional release is not appropriate.

6 (l) Time spent in a conditional release program pursuant to this
7 section shall not count toward the term of commitment under this
8 article unless the person is confined in a locked facility by the
9 conditional release program, in which case the time spent in a
10 locked facility shall count toward the term of commitment.

11 (m) After a minimum of one year on conditional release, the
12 committed person, with or without the recommendation or
13 concurrence of the Director of State Hospitals, may petition the
14 court for unconditional discharge. The court shall use the
15 procedures described in subdivisions (a) and (b) of Section 6605
16 to determine if the person should be unconditionally discharged
17 from commitment on the basis that, by reason of a diagnosed
18 mental disorder, he or she is no longer a danger to the health and
19 safety of others in that it is not likely that he or she will engage in
20 sexually violent criminal behavior.

21 (n) This section shall become operative on January 1, 2016.

22 SEC. 3. Section 6608.5 of the Welfare and Institutions Code
23 is amended to read:

24 6608.5. (a) A person who is conditionally released pursuant
25 to this article shall be placed in the county of the domicile of the
26 person prior to the person's incarceration, unless the court finds
27 that extraordinary circumstances require placement outside the
28 county of domicile.

29 (b) (1) For the purposes of this section, "county of domicile"
30 means the county where the person has his or her true, fixed, and
31 permanent home and principal residence and to which he or she
32 has manifested the intention of returning whenever he or she is
33 absent. For the purposes of determining the county of domicile,
34 the court may consider information found on a California driver's
35 license, California identification card, recent rent or utility receipt,
36 printed personalized checks or other recent banking documents
37 showing that person's name and address, or information contained
38 in an arrest record, probation officer's report, trial transcript, or
39 other court document. If no information can be identified or
40 verified, the county of domicile of the individual shall be

1 considered to be the county in which the person was arrested for
2 the crime for which he or she was last incarcerated in the state
3 prison or from which he or she was last returned from parole.

4 (2) In a case where the person committed a crime while being
5 held for treatment in a state hospital, or while being confined in a
6 state prison or local jail facility, the county wherein that facility
7 was located shall not be considered the county of domicile unless
8 the person resided in that county prior to being housed in the
9 hospital, prison, or jail.

10 (c) For the purposes of this section, “extraordinary
11 circumstances” means circumstances that would inordinately limit
12 the department’s ability to effect conditional release of the person
13 in the county of domicile in accordance with Section 6608 or any
14 other provision of this article, and the procedures described in
15 Sections 1605 to 1610, inclusive, of the Penal Code.

16 (d) The county of domicile shall designate a county agency or
17 program that will provide assistance and consultation in the process
18 of locating and securing housing within the county for persons
19 committed as sexually violent predators who are about to be
20 conditionally released under Section 6608. Upon notification by
21 the department of a person’s potential or expected conditional
22 release under Section 6608, the county of domicile shall notify the
23 department of the name of the designated agency or program, at
24 least 60 days before the date of the potential or expected release.

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

28 (1) The concerns and proximity of the victim or the victim’s
29 next of kin.

30 (2) The age and profile of the victim or victims in the sexually
31 violent offenses committed by the person subject to placement.
32 For purposes of this subdivision, the “profile” of a victim includes,
33 but is not limited to, gender, physical appearance, economic
34 background, profession, and other social or personal characteristics.

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

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

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

6 (g) *This section shall remain in effect only until January 1, 2016,*
7 *and as of that date is repealed, unless a later enacted statute, that*
8 *is enacted before January 1, 2016, deletes or extends that date.*

9 SEC. 4. Section 6608.5 is added to the Welfare and Institutions
10 Code, to read:

11 6608.5. (a) *A person who is conditionally released pursuant*
12 *to this article shall be placed in the county of the domicile of the*
13 *person prior to the person's incarceration, unless both of the*
14 *following conditions are satisfied:*

15 (1) *The court finds that extraordinary circumstances require*
16 *placement outside the county of domicile.*

17 (2) *The designated county of placement was given prior notice*
18 *and an opportunity to comment on the proposed placement of the*
19 *committed person in the county, according to procedures set forth*
20 *in Section 6609.1.*

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

36 (2) *In a case where the person committed a crime while being*
37 *held for treatment in a state hospital, or while being confined in*
38 *a state prison or local jail facility, the county wherein that facility*
39 *was located shall not be considered the county of domicile unless*

1 *the person resided in that county prior to being housed in the*
2 *hospital, prison, or jail.*

3 *(c) For the purposes of this section, “extraordinary*
4 *circumstances” means circumstances that would inordinately limit*
5 *the department’s ability to effect conditional release of the person*
6 *in the county of domicile in accordance with Section 6608 or any*
7 *other provision of this article, and the procedures described in*
8 *Sections 1605 to 1610, inclusive, of the Penal Code.*

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

18 *(e) In recommending a specific placement for community*
19 *outpatient treatment, the department or its designee shall consider*
20 *all of the following:*

21 *(1) The concerns and proximity of the victim or the victim’s next*
22 *of kin.*

23 *(2) The age and profile of the victim or victims in the sexually*
24 *violent offenses committed by the person subject to placement. For*
25 *purposes of this subdivision, the “profile” of a victim includes,*
26 *but is not limited to, gender, physical appearance, economic*
27 *background, profession, and other social or personal*
28 *characteristics.*

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

34 *(1) The person has previously been convicted of a violation of*
35 *Section 288.5 of, or subdivision (a) or (b), or paragraph (1) of*
36 *subdivision (c) of Section 288 of, the Penal Code.*

37 *(2) The court finds that the person has a history of improper*
38 *sexual conduct with children.*

39 *(g) If the committed person has been conditionally released in*
40 *a county other than the county of commitment, the jurisdiction of*

1 *the person shall, upon request of the designated attorney of the*
2 *county of placement, be transferred to the court of the county of*
3 *placement.*

4 *(h) This section shall become operative on January 1, 2016.*

5 ~~SEC. 3.~~

6 *SEC. 5.* If the Commission on State Mandates determines that
7 this act contains costs mandated by the state, reimbursement to
8 local agencies and school districts for those costs shall be made
9 pursuant to Part 7 (commencing with Section 17500) of Division
10 4 of Title 2 of the Government Code.