

Assembly Bill No. 1607

CHAPTER 877

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

[Approved by Governor September 30, 2014. Filed with
Secretary of State September 30, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1607, 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 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 be transferred to the court of the county of placement, unless the designated attorney in the county of placement objects, as provided. 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.

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

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

6608. (a) A person who has been committed as a sexually violent predator shall be permitted to petition the court for conditional release with or without the recommendation or concurrence of the Director of State Hospitals. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, 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. The person petitioning for conditional release under this subdivision shall be entitled to assistance of counsel in all hearings under this section. The person petitioning for conditional release shall serve a copy of the petition on the State Department of State Hospitals at the time the petition is filed with the court.

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

(1) If the court deems the petition not frivolous pursuant to subdivision (a), the court shall give notice to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed person, and the Director of State Hospitals of its intention to set a conditional release hearing. The person petitioning for conditional release, the Director of State Hospitals, and the designated attorney of the county of commitment shall 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.

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

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

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

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

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

(C) The designated attorney for the county of domicile and the designated attorney for the county of commitment should cooperate with each other to ensure that all relevant evidence is submitted on behalf of the state. No

attorney other than the designated attorney for the county representing the state shall appear on behalf of the state at the conditional release hearing.

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

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

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

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

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

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

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

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

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

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

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

(g) The court shall 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. The attorney designated pursuant to paragraph (5) of subdivision (b) shall represent the state and may have the committed person

evaluated by experts chosen by the state. The committed person shall have the right to the appointment of experts, if he or she so requests. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program, except as provided in subdivision (g) of Section 6608.5.

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

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

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

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

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

(m) After a minimum of one year on conditional release, the committed person, with or without the recommendation or concurrence of the Director of State Hospitals, may petition the court for unconditional discharge. The court shall use the procedures described in subdivisions (a) and (b) of Section

6605 to determine if the person should be unconditionally discharged from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is no longer a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior.

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

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

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

(2) 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, according to procedures set forth in Section 6609.1.

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

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

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

(d) 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 sexually violent predators who are about to be conditionally released under Section 6608. Upon notification by the department of a person's potential or expected conditional release under Section 6608, the county of domicile shall notify the department of the name of the designated agency or program, at least 60 days before the date of the potential or expected release.

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

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

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

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

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

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

(g) (1) Except as provided in paragraph (2), if the committed person is ordered to be conditionally released in a county other than the county of commitment, the court shall order that jurisdiction of the person and all records related to the case be transferred to the court of the county of placement. Upon transfer of jurisdiction to the county of placement, the designated attorney of the county of placement shall represent the state in all further proceedings.

(2) The designated attorney of the county of commitment shall serve written notice upon the designated attorney for the county of placement within 15 court days of an order to place a committed person in the county of placement. The designated attorney of the county of commitment may file an affidavit with the court in the county of commitment objecting to the transfer of jurisdiction within 15 court days after receiving the notice. If the affidavit objecting to the transfer of jurisdiction is timely filed, the court shall not transfer jurisdiction. If an affidavit objecting to the transfer of jurisdiction is not timely filed, paragraph (1) shall apply.

(3) For the purpose of this section, "county of placement" means the county where the court orders the committed person to be placed for conditional release.

(4) For the purpose of this section, "designated attorney of the county of placement" means the attorney designated in subdivision (l) of Section 6601 in the county of placement.

(5) This section shall not be construed to negate or in any way affect the decision of the court of the county of commitment to conditionally release the committed person in the county of placement.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and

school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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