

AMENDED IN SENATE MARCH 21, 2013

SENATE BILL

No. 295

Introduced by Senator Emmerson

February 15, 2013

An act to amend ~~Section 4905~~ *Sections 6605 and 6608* of the Welfare and Institutions Code, relating to ~~developmental services~~: *sexually violent predators*.

LEGISLATIVE COUNSEL'S DIGEST

SB 295, as amended, Emmerson. ~~Developmental services: protection and advocacy agencies~~: *Sexually violent predators: civil commitment*.

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 or unconditional discharge. Proposition 83 of the November 7, 2006, statewide general election, made various changes to the sexually violent predator civil commitment process.

Proposition 83 permits the Legislature to amend its provisions, either by a $\frac{2}{3}$ vote of the membership of each house, or by a majority vote of the membership of each house if the amendments expand the scope of the application of the provisions of the proposition or increase the punishments or penalties provided in the proposition.

This bill would clarify which provisions are to be used when a committed person petitions for conditional release and which provisions are to be used when a committed person petitions for unconditional discharge. The bill would also require the community program director designated by the State Department of State Hospitals to submit a report to the court in response to the petition that makes a recommendation as to the appropriateness of placement of the person in a state-operated forensic conditional release program before a hearing can be held. The bill would require, as part of the conditional release hearing, that a designated attorney represent the state and have the committed person evaluated by experts chosen by the state. The bill would also prohibit, if unconditional discharge is denied, the committed person from petitioning for unconditional discharge for one year.

Existing law prohibits action on a petition for conditional release that was not made by the director of the treatment facility to which the person is committed without first obtaining the written recommendation of the director of the treatment facility.

This bill would, instead, prohibit action on a petition for conditional release that was not made with the recommendation or concurrence of the Director of State Hospitals without first obtaining the written recommendation of the Director of State Hospitals.

~~Existing law, the Lanterman Developmental Disabilities Services Act, requires the State Department of Developmental Services to contract with appropriate agencies to provide community services and support for persons with developmental disabilities and their families, including, but not limited to, regional centers, and sets forth the duties of the regional centers, including, but not limited to, development of individual program plan and the purchase of needed services to implement the plan. Existing law prohibits an employee or agent of a facility, program or service from subjecting a person with a disability to reprisal or harassment that would prevent the person, his or her legally authorized representative, or family member from reporting to the protection and advocacy agency designated by the Governor information pertaining to suspected abuse, neglect, or other violations of the person's rights.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~^{yes}. State-mandated local program: no.

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

1 **SECTION 1.** *Section 6605 of the Welfare and Institutions Code*
2 *is amended to read:*

3 6605. (a) A person found to be a sexually violent predator and
4 committed to the custody of the State Department of State Hospitals
5 shall have a current examination of his or her mental condition
6 made at least once every year. The annual report shall include
7 consideration of whether the committed person currently meets
8 the definition of a sexually violent predator and whether conditional
9 release to a less restrictive alternative, *pursuant to the procedure*
10 *described in Section 6608*, or an unconditional ~~release~~ *discharge,*
11 *pursuant to the procedure described in this section*, is in the best
12 interest of the person and conditions can be imposed that would
13 adequately protect the community. The State Department of State
14 Hospitals shall file this periodic report with the court that
15 committed the person under this article. The report shall be in the
16 form of a declaration and shall be prepared by a professionally
17 qualified person. A copy of the report shall be served on the
18 prosecuting agency involved in the initial commitment and upon
19 the committed person. The person may retain, or if he or she is
20 indigent and so requests, the court may appoint, a qualified expert
21 or professional person to examine him or her, and the expert or
22 professional person shall have access to all records concerning the
23 person.

24 (b) If the State Department of State Hospitals determines that
25 either: (1) the person's condition has so changed that the person
26 no longer meets the definition of a sexually violent predator *and*
27 *should, therefor, be considered for unconditional discharge*, or
28 (2) conditional release to a less restrictive alternative is in the best
29 interest of the person and conditions can be imposed that
30 adequately protect the community, the director shall authorize the
31 person to petition the court for conditional release to a less
32 restrictive alternative or for an unconditional discharge. The
33 petition shall be filed with the court and served upon the
34 prosecuting agency responsible for the initial commitment. ~~The~~

35 (c) (1) *The court, upon receipt of the petition for conditional*
36 *release to a less restrictive alternative* ~~or~~, *shall consider that*
37 *petition using the procedures described in subdivisions (c) to (j),*
38 *inclusive, of Section 6608.*

1 (2) *The court, upon receiving a petition for unconditional*
2 *discharge, shall order a show cause hearing, pursuant to paragraph*
3 *(3), at which the court can consider the petition and any*
4 *accompanying documentation provided by the medical director,*
5 *the prosecuting attorney, or the committed person.*

6 (e)

7 (3) If the court at the show cause hearing determines that *the*
8 *committed person has shown* probable cause ~~exists~~ to believe that
9 ~~the committed person's~~ *his or her* diagnosed mental disorder has
10 so changed that he or she is not a danger to the health and safety
11 of others and is not likely to engage in sexually violent criminal
12 behavior if discharged, then the court shall set a hearing on the
13 issue.

14 (d) At the hearing, the committed person shall have the right to
15 be present and shall be entitled to the benefit of all constitutional
16 protections that were afforded to him or her at the initial
17 commitment proceeding. The attorney designated by the county
18 pursuant to subdivision (i) of Section 6601 shall represent the state
19 and shall have the right to demand a jury trial and to have the
20 committed person evaluated by experts chosen by the state. The
21 committed person also shall have the right to demand a jury trial
22 and to have experts evaluate him or her on his or her behalf. The
23 court shall appoint an expert if the person is indigent and requests
24 an appointment. The burden of proof at the hearing shall be on the
25 state to prove beyond a reasonable doubt that the committed
26 person's diagnosed mental disorder remains such that he or she is
27 a danger to the health and safety of others and is likely to engage
28 in sexually violent criminal behavior if discharged. Where the
29 person's failure to participate in or complete treatment is relied
30 upon as proof that the person's condition has not changed, and
31 there is evidence to support that reliance, the jury shall be instructed
32 substantially as follows:

33 "The committed person's failure to participate in or complete
34 the State Department of State Hospitals Sex Offender Commitment
35 Program (SOCP) are facts that, if proved, may be considered as
36 evidence that the committed person's condition has not changed.
37 The weight to be given that evidence is a matter for the jury to
38 determine."

39 (e) If the court or jury rules against the committed person at the
40 hearing conducted pursuant to subdivision (d), the term of

1 commitment of the person shall run for an indeterminate period
 2 from the date of this ~~ruling~~. *ruling and the committed person may*
 3 *not file a new petition until one year has elapsed from the date of*
 4 *the ruling.* If the court or jury rules for the committed person, he
 5 or she shall be unconditionally released and unconditionally
 6 discharged.

7 (f) ~~In the event that~~ *If* the State Department of State Hospitals
 8 has reason to believe that a person committed to it as a sexually
 9 violent predator is no longer a sexually violent predator, it shall
 10 seek judicial review of the person’s commitment pursuant to the
 11 procedures set forth in Section 7250 in the superior court from
 12 which the commitment was made. If the superior court determines
 13 that the person is no longer a sexually violent predator, he or she
 14 shall be unconditionally released and unconditionally discharged.

15 *SEC. 2. Section 6608 of the Welfare and Institutions Code is*
 16 *amended to read:*

17 6608. (a) ~~Nothing in this article shall prohibit the~~ *A person*
 18 *who has been committed as a sexually violent predator* ~~from~~
 19 ~~petitioning~~ *shall be permitted to petition* the court for conditional
 20 release ~~or an unconditional discharge~~ *with or* without the
 21 recommendation or concurrence of the Director of State Hospitals.
 22 If a person has previously filed a petition for conditional release
 23 without the concurrence of the director and the court determined,
 24 either upon review of the petition or following a hearing, that the
 25 petition was frivolous or that the committed person’s condition
 26 had not so changed that he or she would not be a danger to others
 27 in that it is not likely that he or she will engage in sexually violent
 28 criminal behavior if placed under supervision and treatment in the
 29 community, then the court shall deny the subsequent petition unless
 30 it contains facts upon which a court could find that the condition
 31 of the committed person had so changed that a hearing was
 32 warranted. Upon receipt of a first or subsequent petition from a
 33 committed person without the concurrence of the director, the
 34 court shall endeavor whenever possible to review the petition and
 35 determine if it is based upon frivolous grounds and, if so, shall
 36 deny the petition without a hearing. The person petitioning for
 37 conditional release ~~and unconditional discharge~~ under this
 38 subdivision shall be entitled to assistance of counsel. The person
 39 petitioning for conditional release ~~or unconditional discharge~~ shall

1 serve a copy of the petition on the State Department of State
2 Hospitals at the time the petition is filed with the court.

3 (b) ~~The~~ *If the court deems the petition not frivolous pursuant*
4 *to subdivision (a), the court shall give notice of the hearing date*
5 *to the attorney designated in subdivision (i) of Section 6601, the*
6 *retained or appointed attorney for the committed person, and the*
7 *Director of State Hospitals at least 30 court days before the hearing*
8 *date.*

9 (c) *If the petition for conditional release is made without the*
10 *consent of the Director of State Hospitals, no action shall be taken*
11 *on the petition by the court without first obtaining the written*
12 *recommendation of the Director of State Hospitals.*

13 (d)

14 (d) No hearing upon the petition shall be held until the person
15 who is committed has been under commitment for confinement
16 and care in a facility designated by the Director of State Hospitals
17 for not less than one year from the date of the order of commitment.
18 *No hearing upon the petition shall be held until the community*
19 *program director designated by the State Department of State*
20 *Hospitals submits a report to the court that makes a*
21 *recommendation as to the appropriateness of placing the person*
22 *in a state-operated forensic conditional release program.*

23 (e)

24 (e) The court shall hold a hearing to determine whether the
25 person committed would be a danger to the health and safety of
26 others in that it is likely that he or she will engage in sexually
27 violent criminal behavior due to his or her diagnosed mental
28 disorder if under supervision and treatment in the community. *The*
29 *attorney designated pursuant to subdivision (i) of Section 6601*
30 *shall represent the state and shall have the committed person*
31 *evaluated by experts chosen by the state.* If the court at the hearing
32 determines that the committed person would not be a danger to
33 others due to his or her diagnosed mental disorder while under
34 supervision and treatment in the community, the court shall order
35 the committed person placed with an appropriate forensic
36 conditional release program operated by the state for one year. A
37 substantial portion of the state-operated forensic conditional release
38 program shall include outpatient supervision and treatment. The
39 court shall retain jurisdiction of the person throughout the course
40 of the program. ~~At the end of one year, the court shall hold a~~

1 ~~hearing to determine if the person should be unconditionally~~
2 ~~released from commitment on the basis that, by reason of a~~
3 ~~diagnosed mental disorder, he or she is not a danger to the health~~
4 ~~and safety of others in that it is not likely that he or she will engage~~
5 ~~in sexually violent criminal behavior. The court shall not make~~
6 ~~this determination until the person has completed at least one year~~
7 ~~in the state-operated forensic conditional release program. The~~
8 ~~court shall notify the Director of State Hospitals of the hearing~~
9 ~~date.~~

10 (e)

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

22 (f)

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

30 ~~(g) If the court rules against the committed person at the trial~~
31 ~~for unconditional release from commitment, the court may place~~
32 ~~the committed person on outpatient status in accordance with the~~
33 ~~procedures described in Title 15 (commencing with Section 1600)~~
34 ~~of Part 2 of the Penal Code.~~

35 (h) If the court denies the petition to place the person in an
36 appropriate forensic conditional release program ~~or if the petition~~
37 ~~for unconditional discharge is denied~~, the person may not file a
38 new application until one year has elapsed from the date of the
39 denial.

1 (i) In ~~any~~ a hearing authorized by this section, the ~~petitioner~~
 2 *committed person* shall have the burden of proof by a
 3 preponderance of the evidence.

4 ~~(j) If the petition for conditional release is not made the director~~
 5 ~~of the treatment facility to which the person is committed, no action~~
 6 ~~on the petition shall be taken by the court without first obtaining~~
 7 ~~the written recommendation of the director of the treatment facility.~~

8 ~~(k)~~

9 (j) Time spent in a conditional release program 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 paragraph (3) of subdivision (c) of, and*
 19 *subdivisions (d) and (e) of, Section 6605 to determine if the person*
 20 *should be unconditionally discharged from commitment on the*
 21 *basis that, by reason of a diagnosed mental disorder, he or she is*
 22 *no longer a danger to the health and safety of others in that it is*
 23 *not likely that he or she will engage in sexually violent criminal*
 24 *behavior.*

25 SECTION 1. ~~Section 4905 of the Welfare and Institutions Code~~
 26 ~~is amended to read:~~

27 4905. ~~(a) No employee or agent of a facility, program, or~~
 28 ~~service shall subject a person with a disability to reprisal or~~
 29 ~~harassment or directly or indirectly take or threaten to take an~~
 30 ~~action that would prevent the person, his or her legally authorized~~
 31 ~~representative, or family member from reporting or otherwise~~
 32 ~~bringing to the attention of the protection and advocacy agency~~
 33 ~~the facts or information relative to suspected abuse, neglect, or~~
 34 ~~other violations of the person's rights.~~

35 ~~(b) An attempt to involuntarily remove from a facility, program,~~
 36 ~~or service, or to deny privileges or rights without good cause to a~~
 37 ~~person with a disability by whom or for whom a complaint has~~
 38 ~~been made to the protection and advocacy agency, within 60 days~~
 39 ~~after the date the complaint is made or within 60 days after the~~
 40 ~~conclusion of a proceeding resulting from the complaint, shall~~

- 1 ~~raise a presumption that the action was taken in retaliation for the~~
- 2 ~~filing of the complaint.~~

O