

AMENDED IN SENATE MAY 7, 2013
AMENDED IN SENATE MARCH 21, 2013

SENATE BILL

No. 295

Introduced by Senator Emmerson

February 15, 2013

An act to amend Sections 6605 and 6608 of, *and to add Section 6604.9 to*, the Welfare and Institutions Code, relating to sexually violent predators.

LEGISLATIVE COUNSEL'S DIGEST

SB 295, as amended, Emmerson. 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 *is annually reviewed to determine his or her status and by which the 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 *and would make nonsubstantive, organizational changes to the provisions*. 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 places the burden of proof in a hearing for conditional release on the petitioner, by a preponderance of the evidence.

This bill, when the annual report 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, would shift the burden of proof to the state to show, by a preponderance of the evidence, that conditional release is not appropriate.

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~~ *consent* of the ~~Director of State Hospitals~~ *director of the treatment facility* without first obtaining the written recommendation of the ~~Director of State Hospitals~~ *director of the treatment facility*.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 *SECTION 1. Section 6604.9 is added to the Welfare and*
- 2 *Institutions Code, to read:*

1 6604.9. (a) A person found to be a sexually violent predator
2 and committed to the custody of the State Department of State
3 Hospitals shall have a current examination of his or her mental
4 condition made at least once every year. The report shall be in the
5 form of a declaration and shall be prepared by a professionally
6 qualified person. The person may retain, or if he or she is indigent
7 and so requests, the court may appoint, a qualified expert or
8 professional person to examine him or her, and the expert or
9 professional person shall have access to all records concerning
10 the person.

11 (b) The annual report shall include consideration of whether
12 the committed person currently meets the definition of a sexually
13 violent predator and whether conditional release to a less
14 restrictive alternative, pursuant to Section 6608, or an
15 unconditional discharge, pursuant to Section 6605, is in the best
16 interest of the person and conditions can be imposed that would
17 adequately protect the community.

18 (c) The State Department of State Hospitals shall file this
19 periodic report with the court that committed the person under
20 this article. A copy of the report shall be served on the prosecuting
21 agency involved in the initial commitment and upon the committed
22 person.

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

34 (e) The court, upon receipt of the petition for conditional release
35 to a less restrictive alternative, shall consider the petition using
36 procedures described in Section 6608.

37 (f) The court, upon receiving a petition for unconditional
38 discharge, shall order a show cause hearing, pursuant to the
39 provisions of Section 6605, at which the court may consider the
40 petition and any accompanying documentation provided by the

1 *medical director, the prosecuting attorney, or the committed*
2 *person.*

3 **SECTION 1.**

4 *SEC. 2.* Section 6605 of the Welfare and Institutions Code is
5 amended to read:

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

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

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

1 ~~(2)~~

2 6605. (a) (1) The court, upon receiving a petition for
3 unconditional discharge, shall order a show cause hearing, pursuant
4 to paragraph (3), at which the court can consider the petition and
5 any accompanying documentation provided by the medical director,
6 the prosecuting attorney, or the committed person.

7 ~~(3)~~

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

15 ~~(4)~~

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

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

1 (e)

2 (b) If the court or jury rules against the committed person at the
3 hearing conducted pursuant to subdivision ~~(d)~~, (a), the term of
4 commitment of the person shall run for an indeterminate period
5 from the date of this ruling and the committed person may not file
6 a new petition until one year has elapsed from the date of the ruling.
7 If the court or jury rules for the committed person, he or she shall
8 be unconditionally released and unconditionally discharged.

9 (f)

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

18 ~~SEC. 2.~~

19 SEC. 3. Section 6608 of the Welfare and Institutions Code is
20 amended to read:

21 6608. (a) A person who has been committed as a sexually
22 violent predator shall be permitted to petition the court for
23 conditional release with or without the recommendation or
24 concurrence of the Director of State Hospitals. If a person has
25 previously filed a petition for conditional release without the
26 concurrence of the director and the court determined, either upon
27 review of the petition or following a hearing, that the petition was
28 frivolous or that the committed person’s condition had not so
29 changed that he or she would not be a danger to others in that it is
30 not likely that he or she will engage in sexually violent criminal
31 behavior if placed under supervision and treatment in the
32 community, then the court shall deny the subsequent petition unless
33 it contains facts upon which a court could find that the condition
34 of the committed person had so changed that a hearing was
35 warranted. Upon receipt of a first or subsequent petition from a
36 committed person without the concurrence of the director, the
37 court shall endeavor whenever possible to review the petition and
38 determine if it is based upon frivolous grounds and, if so, shall
39 deny the petition without a hearing. The person petitioning for
40 conditional release under this subdivision shall be entitled to

1 assistance of counsel. The person petitioning for conditional release
2 shall serve a copy of the petition on the State Department of State
3 Hospitals at the time the petition is filed with the court.

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

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

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

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.

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

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

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

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

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

36 (k) After a minimum of one year on conditional release, the
37 committed person, with or without the recommendation or
38 concurrence of the Director of State Hospitals, may petition the
39 court for unconditional discharge. The court shall use the
40 procedures described in paragraph (3) of subdivision (c) of, and

1 subdivisions (d) and (e) of, Section 6605 to determine if the person
2 should be unconditionally discharged from commitment on the
3 basis that, by reason of a diagnosed mental disorder, he or she is
4 no longer a danger to the health and safety of others in that it is
5 not likely that he or she will engage in sexually violent criminal
6 behavior.

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