

Senate Bill No. 295

Passed the Senate August 15, 2013

Secretary of the Senate

Passed the Assembly August 8, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, Emerson. 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, and would give the committed person the right to the appointment of experts, if he or she so requests. 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 consent of the director of the treatment facility without first obtaining the written recommendation of the director of the treatment facility.

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

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

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

professional person shall have access to all records concerning the person.

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

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

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

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

(f) The court, upon receiving a petition for unconditional discharge, shall order a show cause hearing, pursuant to the provisions of Section 6605, at which the court may consider the petition and any accompanying documentation provided by the medical director, the prosecuting attorney, or the committed person.

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

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

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

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

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

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

(c) If the State Department of State Hospitals has reason to believe that a person committed to it as a sexually violent predator

is no longer a sexually violent predator, it shall seek judicial review of the person's commitment pursuant to the procedures set forth in Section 7250 in the superior court from which the commitment was made. If the superior court determines that the person is no longer a sexually violent predator, he or she shall be unconditionally released and unconditionally discharged.

SEC. 3. 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, then 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. 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) If the court deems the petition not frivolous pursuant to subdivision (a), the court shall give notice of the hearing date 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 at least 30 court days before the hearing date.

(c) 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.

(d) No hearing upon the petition shall 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. No hearing upon the petition shall 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.

(e) 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 subdivision (i) of Section 6601 shall represent the state and shall 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

Approved _____, 2013

Governor