
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 255 **Hearing Date:** June 13, 2017
Author: Gallagher
Version: March 22, 2017
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Sexually Violent Predators: Out-of-County Placement*

HISTORY

Source: Author

Prior Legislation: AB 262 (Lackey) Failed Assembly Public Safety 2015
AB 1607 (Fox) Chapter 877, Stats.2014
AB 768 (Achadjian) not heard Assembly Public Safety 2013

Support: Butte County Board of Supervisors; California Probation, Parole and Correctional Association; California Police Chiefs Association; California State Sheriffs' Association; Judicial Council; Placer County Board of Supervisors; Rural County Representatives of California; San Bernardino County; Sutter County District Attorney's Office; Yuba County Board of Supervisors; Yuba County Sheriff's Department

Opposition: None known

Assembly Floor Vote: 74 - 0

PURPOSE

The purpose of this bill is to specify that courts must consider the connections to the community when designating the placement of a sexually violent predator (SVP) in a county for conditional release. Specifically, the court shall consider if and how long the person has previously resided or been employed in the county; and if the person has next of kin in the county.

Existing law provides that notwithstanding any other provision of law, when a person is released on parole after having served a term of imprisonment in state prison for any offense for which sex offender registration is required, that person may not during the period of parole, reside in any single family dwelling with any other person also required to register as a convicted sex offender, unless those persons are legally related by blood. "Single family dwelling" shall not include a residential facility that serves six or fewer persons. (Penal Code § 3003.5 (a).)

Existing law states notwithstanding any other provision of law, it is unlawful for any person for whom sex offender registration is required to reside within 2,000 feet of any public or private school, or park where children regularly gather. (Penal Code § 3003.5 (b).)

Existing law provides for the civil commitment for psychiatric and psychological treatment of a prison inmate found to be a SVP after the person has served his or her prison commitment. (Welfare & Institutions Code § 6600 et seq.)

Existing law defines a "sexually violent predator" as "a person who has been convicted of a sexually violent offense against at least one victim, and who has a diagnosed mental disorder that makes the person 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." (Welfare & Institutions Code, § 6600 (a)(1).)

Existing law permits a person committed as a SVP to be held for an indeterminate term upon commitment. (Welfare & Institutions Code § 6604.1.)

Existing law requires that a person found to have been a SVP and committed to the Department of State Hospitals (DSH) have a current examination on his or her mental condition made at least yearly. The report shall include consideration of conditional release to a less restrictive alternative or an unconditional release is in the best interest of the person and also what conditions can be imposed to adequately protect the community. (Welfare & Institutions Code § 6604.9.)

Existing law allows a SVP to seek conditional release with the authorization of the Director DSH when DSH determines that the person's condition has so changed that he or she no longer meets the SVP criteria, or when conditional release is in the person's best interest and conditions to adequately protect the public can be imposed. (Welfare & Institutions Code § 6607.)

Existing law allows a person committed as a SVP to petition for conditional release or an unconditional discharge any time after one year of commitment, notwithstanding the lack of recommendation or concurrence by the Director of DSH. (Welfare & Institutions Code § 6608 (a).)

Existing law provides that, if the court deems the conditional release petition not frivolous, the court is to give notice of the hearing date to the attorney designated to represent the county of commitment, the retained or appointed attorney for the committed person, and the Director of State Hospitals at least 30 court days before the hearing date. (Welfare & Institutions Code, § 6608 (b).)

Existing law requires the court to first obtain the written recommendation of the director of the treatment facility before taking any action on the petition for conditional release if the petition is made without the consent of the director of the treatment facility. (Welfare & Institutions Code § 6608 (c).)

Existing law provides that 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. Provides that the attorney designated the county of commitment shall represent the state and have the committed person evaluated by experts chosen by the state and that the committed person shall have the right to the appointment of experts, if he or she so requests. (Welfare & Institutions Code § 6608 (e).)

Existing law requires the court to order the committed person placed with an appropriate forensic conditional release program operated by the state for one year 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. Requires a substantial portion of the state-operated forensic conditional release program to include outpatient supervision and treatment. Provides that the court retains jurisdiction of the person throughout the course of the program. (Welfare & Institutions Code § 6608 (e).)

Existing law provides that 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. (Welfare & Institutions Code § 6608 (h))

Existing law allows, 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, to petition the court for unconditional discharge, as specified. (Welfare & Institutions Code § 6608 (k).)

This bill provides that if the court determines that placement of an SVP in his or her county of domicile is not appropriate then before placing in another county for conditional release the court shall consider if and how long the person has previously resided or been employed in the county and if the person has next of kin in that county.

COMMENTS

1. Need for This Bill

According to the author:

The Sexually Violent Predator (SVP) Program is for offenders who have been convicted of a sexually violent offense against one or more victims and who have a diagnosed mental disorder that makes them likely to reoffend and a danger to the health and safety of others.

The Program requires SVPs to be admitted to the State Hospital for rehabilitation following the completion of their prison sentence. Offenders who complete hospital treatment are conditionally released back into the community where they are monitored and continue to receive counseling.

Current law requires individuals who are conditionally released to be placed in the “county of domicile”. When determining domicile, the court may look at an individual’s driver’s license, ID card, utility receipt etc. (WIC §6608.5 (b)). If no information can be verified, the county of domicile is the county of arrest. Additionally, the court is allowed to place an SVP outside of the county of domicile under “extraordinary circumstances” (WIC §6608.5 (a)(1)).

SVPs are very dangerous serial criminals such as Christopher Hubbart, the “pillowcase rapist” who assaulted 40 women between 1971 and 1983. In 2014, Hubbart was placed in a home in a rural area of Palmdale, after a Santa Clara County Superior Court Judge determined his “domicile” to be Los Angeles County.

Hubbart's release resulted in legislation (AB 1607) allowing counties of potential placement to be given notice and an opportunity to be heard in court.

However, this legislation has not done enough to discourage placement of these offenders in counties where they have no connections.

- In 2016, DSH recommended placement of Fraisure Smith from Solano County in Butte and Yuba counties even though he had no family or connections in these communities.
- In 2017, DSH placed Monterey County SVP Eldridge Lindsey Chaney in a home in rural Yuba County.
- In 2017, DSH recommended placement of San Francisco SVP Luther Evans in San Bernardino County.
- In 2017, DSH recommended placement of Santa Clara SVP Dariel Shazier in Placer County.

AB 255 would require a court to consider where the SVP was living prior to being arrested when determining their county of domicile, which under current law is the first option for county of conditional release. If extraordinary circumstances require placement outside the county of domicile, AB 255 would require the court to place the individual in a county where they have familial, residential, or employment connections.

Individuals who are conditionally released under the Sexually Violent Predator Program should be placed in counties where they have some connection. Unfortunately, SVPs are disproportionately placed in rural counties, which already face their own unique public safety challenges. Moreover, it is much harder for offenders to be rehabilitated in communities where they are complete outsiders. AB 255 enhances judicial discretion by requiring the court to consider additional factors when offenders cannot be placed in their county of domicile.

If it is not possible to place an offender in the county of domicile, AB 255 would require placement in a county where the individual has family, employment, or residential ties.

2. SVP Law Generally

The Sexually Violent Predator Act (SVPA) establishes an extended civil commitment scheme for sex offenders who are about to be released from prison, but are referred to the DSH for treatment in a state hospital, because they have suffered from a mental illness which causes them to be a danger to the safety of others.

The Department of State Hospitals uses specified criteria to determine whether an individual qualifies for treatment as a SVP. Under existing law, a person may be deemed a SVP if: (a) the defendant has committed specified sex offenses against two or more victims; (b) the defendant has a diagnosable mental disorder that makes the person 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; and, (3)

two licensed psychiatrists or psychologists concur in the diagnosis. If both clinical evaluators find that the person meets the criteria, the case is referred to the county district attorney who may file a petition for civil commitment.

Once a petition has been filed, a judge holds a probable cause hearing; and if probable cause is found, the case proceeds to a trial at which the prosecutor must prove to a jury beyond a reasonable doubt that the offender meets the statutory criteria. The state must prove “[1] a person who has been convicted of a sexually violent offense against [at least one] victim[] and [2] who has a diagnosed mental disorder that [3] makes the person a danger to the health and safety of others in that it is likely that he or she will engage in [predatory] sexually violent criminal behavior.” (*Cooley v. Superior Court (Martinez)* (2002) 29 Cal.4th 228, 246.) If the prosecutor meets this burden, the person then can be civilly committed to a DSH facility for treatment.

The Department of State Hospitals must conduct a yearly examination of a SVP's mental condition and submit an annual report to the court. This annual review includes an examination by a qualified expert. (Welf. & Inst. Code, § 6604.9.) In addition, DSH has an obligation to seek judicial review any time it believes a person committed as a SVP no longer meets the criteria, not just annually. (Welf. & Inst. Code, § 6607.)

The SVPA was substantially amended by Proposition 83 (“Jessica's Law”), which became operative on November 7, 2006. Originally, a SVP commitment was for two years; but now, under Jessica's Law, a person committed as a SVP may be held for an indeterminate term upon commitment or until it is shown that the defendant no longer poses a danger to others. (See *People v. McKee* (2010) 47 Cal. 4th 1172, 1185-1187.) Jessica's Law also amended the SVPA to make it more difficult for SVPs to petition for less restrictive alternatives to commitment. These changes have survived due process, ex post facto, and, more recently, equal protection challenges. (See *People v. McKee, supra*, 47 Cal. 4th 1172 and *People v. McKee* (2012) 207 Cal.App.4th 1325.) The standards and procedures for conditional release proceedings were changed by SB 295 (Emmerson) Ch. 182, Stats. 2013.

3. Standards and Procedures under which an SVP Patient can Obtain Conditional or Unconditional Release

A person committed as a SVP may petition the court for conditional release or unconditional discharge after one year of commitment. (Welf. & Inst. Code, § 6608, subd. (a).) The petition can be filed with or without the concurrence of the Director of State Hospitals. The director's concurrence or lack thereof does, however, make a difference in the process used.

A SVP can, with the concurrence of the Director of State Hospitals, petition for unconditional discharge if the patient “no longer meets the definition of a SVP,” or if he can be safely and conditionally released under supervision (Welf. & Inst. Code § 6604.9, subd. (d).)

When SVP patient then files a petition for unconditional release the court orders a show cause hearing. (Welf. & Inst. Code § 6604.9, subd. (f).)¹ If probable cause is found, the patient thereafter has a right to a jury trial and is entitled to relief unless the district attorney proves

¹ If an evaluator determines that the person no longer qualifies as a SVP or that conditional release is in the person's best interest and conditions can be imposed to adequately protect the community, but the Director of State Hospitals disagrees with the recommendation, the Director must nevertheless authorize the petition. (*People v. Landau* (2011) 199 Cal.App.4th 31, 37-39.)

“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 behavior if discharged.” (Welf. & Inst. Code § 6605.) If the SVP patient has filed a petition for conditional release, the court employs the procedures set out in Section 6608 for hearings on conditional release

A committed person may also petition for conditional release and eventual unconditional discharge notwithstanding the lack of recommendation or concurrence by the Director of State Hospitals. (Welf. & Inst. Code, § 6608, subd. (a).) The court “shall endeavor whenever possible to review the petition [filed without the concurrence of DSH] and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing.” (Welf. & Inst. Code, § 6608, subd. (a).)² If the petition is not found to be frivolous, the court shall hold a hearing to determine if the person can be safely released under supervision. (*People v. Smith* (2013) 216 Cal.App.4th 947.)

The SVPA does not define the term “frivolous.” The courts have applied the definition of the term stated in Code of Civil Procedure Section 128.5, subdivision (b)(2): “totally and completely without merit” or “for the sole purpose of harassing an opposing party.” (*People v. Reynolds* (2010) 181 Cal.App.4th 1402, 1411; see also *People v. McKee*, *supra*, 47 Cal.4th 1172; *People v. Collins* (2003) 110 Cal.App.4th 340, 349.) Additionally, in *Reynolds*, *supra*, 181 Cal.App.4th at p. 1407, the court interpreted Welfare and Institutions Code section 6608 to require the petitioner to allege facts in the petition that will show he or she is not likely to engage in sexually-violent criminal behavior due to a diagnosed mental disorder, without supervision and treatment in the community, since that is the relief requested.

Once the court sets the hearing on the petition, then the petitioner is entitled to both the assistance of counsel, and the appointment of an expert. (*People v. McKee*, *supra*, 47 Cal.4th 1172, 1193.) At the hearing, the person petitioning for release has the burden of proof by a preponderance of the evidence if DSH does not agree that the person can be safely released under supervision. If DSH concurs with the petition – agreeing that he can be conditionally released under supervision that would protect the public, the SVP patient has the burden of proof. (Welf. & Inst. Code, § 6608, subd. (i); *People v. Rasmuson* (2006) 145 Cal.App.4th 1487, 1503.) If the petition is denied, the SVP may not file a subsequent petition until one year from the date of the denial. (Welf. & Inst. Code, § 6608, subd. (h).)

4. Finding Housing for an SVP

This bill provides that a person adjudicated as an SVP shall only be placed in a county, other than the county of domicile, after the court considers if the person has previously resided or been employed in the county or if the person has a relative in the county. This may prevent an SVP from residing in a rural area, and rural locations, often, are the only areas where an SVP can find a residence which complies with "Jessica's Law", which prohibits a person required to register as

² Recently, in *People v. McCloud* (2013) 213 Cal.App.4th 1076, the Court of Appeal recognized that the provision in Welfare and Institutions Code section 6608, subdivision (a) allowing for dismissal of a frivolous petition for release without a hearing, may violate the equal protection clause. The petitioner's equal protection claim was based on the fact that “[n]o other commitment scheme allows the judge to deem the petition ‘frivolous’ and thereby deny the petitioner a hearing.” (*Id.* at p. 1087.) The court found there might well be actual disparate treatment of similarly situated persons—and if there was disparate treatment, the State might or might not be justified in so distinguishing between persons. The court remanded the case for further proceedings on the equal protection claim. (*Id.* at p. 1088.)

a convicted sex offender from residing within 2,000 feet of a public or private school, or park where children regularly congregate.

Liberty Health Care, the contract provider for DSH, can often find it difficult to find suitable housing for an SVP on conditional release in the community. In the case of *People v. Superior Court (Karsai)* (2013) 213 Cal App 4th 774, Liberty Health Care reported that its staff had travelled 6,793 miles in one year searching for a residence for Karsai and had viewed 1,261 properties in Santa Barbara, Ventura, and San Luis Obispo Counties. The only potential residence was Karsai's mother's home in Santa Maria, and the Court determined that Karsai's mother's home was not disqualified as a potential residence despite its proximity to a park and an elementary school. Later, Liberty informed the court that the Karsai family had withdrawn his mother's home as a placement/residence site because the family had been beset upon by the local media.

The court then found that "extraordinary circumstances existed, justifying a search for 'any' available housing "without being constrained to San Luis Obispo or Santa Barbara County." Approximately five months later, Liberty had reviewed more than 1,830 sites and had identified two possible locations: an apartment in Sacramento and a small home in Auburn. At a hearing, both the People and Karsai objected to the locations. The People objected due to the proximity of Karsai's victims, and both sides objected "on the basis that the placement would provide no support structure for Mr. Karzai". Agreeing that it would be "fruitless" to pursue those placements, the court ordered Liberty to check into the option of placing Karzai in a travel trailer on a pad next to the San Luis Obispo County Sheriff's Office. Liberty shortly informed the court that there had been objections to Karzai's placement in a trailer and that the pad was "not Jessica's law compliant. Because it appeared to the court that "there was no suitable placement available either in Mr. Karsai's county of domicile, or elsewhere," the court ordered Karsai be "released in Santa Barbara County as a transient." Santa Barbara then sought a writ of mandate in the court of appeal, seeking to vacate the superior court's order releasing Karsai into Santa Barbara as a transient.

The court eventually ruled that nothing in the law forbids the conditional release of an SVP as a transient. "Moreover, to imply such imply such a limitation into the law would raise serious constitutional issues. 'Because civil commitment involves a significant deprivation of liberty, a defendant in an SVP proceeding is entitled to due process protections.' (*People v. Otto* (2001) 26 Cal.4th 200, 209 [109 Cal. Rptr. 2d 327, 26 P.3d 1061].) Once a court has determined that a particular SVP would not be a danger to the health and safety of others in that it is not likely that he or she would engage in sexually violent criminal [*789] behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community, that person unquestionably has a significant liberty interest in being released. To authorize an unspecified delay in that release by implying in the SVPA a requirement that the person must have a specific resident before release, when under the statutory scheme the securing of a specific residence is not a prerequisite to a finding that the person would pose no danger to others if under outpatient supervision and treatment, would run the risk that a person who is no longer dangerous will nonetheless have to remain in custody in a secure facility indefinitely simply because of some [***28] extraneous factor, such as public outrage, that interferes with finding and securing a fixed residence for that person. To avoid such a potential due process problem, we believe the more prudent—as well as that most consistent with the established canons of statutory interpretation—is to not imply in the SVPA something the Legislature did not expressly include in it: the limitation that an SVP cannot be conditionally released in the community without a specific residence."

If this bill becomes law, in some cases it may be impossible to place SVP's in a compliant residence in the community; the courts could be compelled to release SVP's in the community as transients, which would present a risk to the public safety, as they would not be under the watchful eye of Liberty Health Care. A compliant and stable residence can help assure that these SVP's do not recidivate.

5. Argument in Support

The California State Sheriffs' Association supports this bill stating:

Existing statute establishes the Sexually Violent Predator Program (SVP). This program is for offenders who have been convicted of a sexually violent offense against one or more victims and how have a diagnosed mental disorder that makes them likely to reoffend and a danger to the health and safety of others. The program requires SVPs to be admitted to the State Hospital for rehabilitation following the completion of their prison sentence. Offenders who complete hospital treatment are conditionally released back into the community where they are monitored and continue to receive counseling.

Recent cases have revealed that SVPs are being placed in counties, often rural, where they have no familial, residential, or employment connections. Placement without these considerations can make it difficult to compel these dangerous serial criminals to receive the mandatory, ongoing rehabilitative treatments they need so they don't reoffend and intimidate their communities.

-- END --