

---

# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2019 - 2020 Regular

---

**Bill No:** AB 303                      **Hearing Date:** June 18, 2019  
**Author:** Cervantes  
**Version:** April 23, 2019  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** GC

**Subject:** *Mental Health: Sexually Violent Predators: Trial*

## HISTORY

**Source:** Los Angeles County District Attorney's Office

**Prior Legislation:** AB 2661 (Arambula), Ch. 821, Stats. of 2018.  
AB 255 (Gallagher), Ch. 39, Stats. of 2017.  
AB 262 (Lackey), 2015, failed passage in Assembly Public Safety.

**Support:** California Police Chiefs Association; Peace Officers' Research Association of California (PORAC); Riverside County District Attorney; Riverside Sheriffs' Association

**Opposition:** None known

**Assembly Floor Vote:** 78 - 0

## PURPOSE

***The purpose of this bill is to establish procedures for requesting and granting continuances in Sexually Violent Predator (SVP) civil trial proceedings.***

*Existing law* provides that a court may grant a continuance before or during trial on an affirmative showing of good cause and each request for a continuance must be considered on its own merits (Cal. Rules of Ct., Rule 3.1332, subd. (c).)

*Existing law* provides for the civil commitment for psychiatric and psychological treatment of a prison inmate found to be an SVP after the person has served his or her prison commitment. (Welf. & Inst. 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." (Welf. & Inst. Code § 6600, subd. (a)(1).)

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

*Existing law* allows an SVP to seek conditional release with the authorization of the DSH Director 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. (Welf. & Inst. Code § 6607.)

*Existing law* allows a person committed as an 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. (Welf. & Inst. Code § 6608, subd. (a).)

*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 in 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. (Welf. & Inst. Code § 6608, subd. (e).)

*Existing law* specifies that continuances in criminal cases shall be granted only upon a showing of good cause. Neither the convenience of the parties nor a stipulation of the parties is in and of itself good cause. (Pen. Code, § 1050, subd. (e).)

*Existing law* states that at the conclusion of the motion for continuance in a criminal case, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes. (Pen. Code, § 1050, subd. (f).)

*Existing law* specifies that in deciding whether or not good cause for a continuance has been shown, the court shall consider the general convenience and prior commitments of all witnesses, including peace officers. (Pen. Code, § 1050, subd. (g)(1).)

*Existing law* provides that a continuance in a criminal case shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. Whenever any continuance is granted, the court shall state on the record the facts proved that justify the length of the continuance, and those facts shall be entered in the minutes. (Pen. Code, § 1050, subd. (i).)

*This bill* specifies that, to continue an SVP trial, written notice shall be filed and served on all parties to the proceeding, together with affidavits or declarations detailing specific facts showing that a continuance is necessary. With the following procedures:

- 1) All moving and supporting papers shall be served and filed at least 10 court days before the hearing, except as provided in paragraph (2). The moving and supporting papers served shall be a copy of the papers filed or to be filed with the court.
- 2) If the written notice is served by mail, the 10-day period of notice before the hearing shall be increased as follows:
  - a) Five calendar days if the place of mailing and the place of address are within the State of California.

- b) Ten calendar days if either the place of mailing or the place of address is outside the State of California, but within the United States.
  - c) Twenty calendar days if either the place of mailing or the place of address is outside the United States.
  - d) Two calendar days if the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery.
- 3) All papers opposing a continuance motion noticed pursuant to this subdivision shall be filed with the court and a copy shall be served on each party at least four court days before the hearing. All reply papers shall be served on each party at least two court days before the hearing. A party may waive the right to have documents served in a timely manner after receiving actual notice of the request for continuance.
  - 4) If a party makes a motion for a continuance that does not comply with the requirements described in this subdivision, the court shall hold a hearing on whether there is good cause for the failure to comply with those requirements. At the conclusion of the hearing, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of the finding and a statement of facts proved shall be entered in the minutes. If the moving party is unable to show good cause for the failure to give notice, the motion for continuance shall not be granted.
  - 5) Continuances shall be granted only upon a showing of good cause. The court shall not find good cause solely based on the convenience of the parties or a stipulation of the parties. At the conclusion of the motion for continuance, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes.
  - 6) In determining good cause, the court shall consider the general convenience and prior commitments of all witnesses. The court shall also consider the general convenience and prior commitments of each witness in selecting a continuance date if the motion is granted. The facts as to inconvenience or prior commitments may be offered by the witness or by a party to the case.
  - 7) Except as specified a continuance shall be granted only for the period of time shown to be necessary by the evidence considered at the hearing on the motion. If a continuance is granted, the court shall state on the record the facts proved that justify the length of the continuance, and those facts shall be entered in the minutes.
  - 8) For purposes of this subdivision, "good cause" includes, but is not limited to, those cases in which the attorney assigned to the case has another trial or probable cause hearing in progress. A continuance granted pursuant to this subdivision as the result of another trial or hearing in progress shall not exceed 10 court days after the conclusion of that trial or hearing.

## COMMENTS

### 1. Need for This Bill

According to the author:

Under existing law, a sexually violent predator (SVP) is entitled to a trial to determine whether he or she should be committed to state custody even after serving a criminal sentence. However, there is little statutory guidance for the procedure a court should use when determining whether to issue a continuance, or a delay, of this very specific kind of trial. This lack of guidance can contribute to lengthy trial delays, which can lead to the release of an SVP without a trial due to a violation of his or her constitutional right to a speedy trial. For this reason, in 2018 a Los Angeles County court ordered the release of an individual who had been in custody for 17 years while awaiting his SVP trial.

Assembly Bill 303 (Cervantes) would help cut down on lengthy and possibly unconstitutional delays, as well as prevent the release of SVPs without a trial, by providing procedures for a court to use when determining whether to issue a continuance in SVP trials.

### 2. Sexually Violent Predator (SVP) Laws 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 DSH 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 one 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 DSH 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. 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.

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, 1185-87.)

### 3. Speedy Trial Rights

Under both the United States Constitution and the California Constitution grant persons accused the right to a speedy trial. (US Const. amend VI; Cal. Const. art I. § 15; Pen. Code § 1382.) In criminal cases the delay in the investigation or prosecution of a criminal matter may violate a defendant's constitutional or statutory rights. A defendant may seek an order terminating a criminal action or for other sanctions because of a delay in the prosecution of the case. (Pen. Code § 686.) This is often due to the fact that many defendants are in custody awaiting the advancement of their criminal matters, likewise SVPs are in-custody awaiting the advancement of their proceeding. Liberty issues are at stake.

In the case of *People v. Superior Court (Vasquez)*(2018), 27 Cal.App.5<sup>th</sup> 36, an SVP petition against George Vasquez was dismissed for due process violations based on the lengthy delay in bringing the case to trial. Mr. Vasquez was detained in state hospitals for over 17 years awaiting trial on the petition, as a series of six appointed attorneys slowly moved his case toward trial. (*Id.* at 40.)

Fourteen years into Mr. Vasquez's confinement, the public defender's office suffered a 50 percent cut to its attorney staffing and the loss of paralegals, which further slowed down Mr. Vasquez's third deputy public defender in her preparation for trial. After two more years of slow progress, this attorney was transferred out of the SVP unit just months before Vasquez's January 2017 trial date. After Mr. Vasquez's fifth attorney requested yet another continuance to prepare for trial, Vasquez objected, declaring, "Enough is enough." At this point, 16 years after the petition was filed, the trial court granted Mr. Vasquez's motion to relieve the public defender's office as his counsel and appointed a bar panel attorney to represent Mr. Vasquez. *Id.* at 41.

Eight months later Mr. Vasquez's new attorney filed a motion to dismiss the petition for violation of Mr. Vasquez's due process right to a speedy trial. By then no new trial date had been set. After the trial court granted Mr. Vasquez's motion to dismiss and ordered that Mr. Vasquez be released, the Appellate Court upheld the dismissal based the violation of Vasquez's right to due process under the Fourteenth Amendment to the U.S. Constitution. The Appellate Court found that a substantial portion of the delay resulted from a systemic breakdown in the public defender system that was attributed to the state. The Appellate court found that the breakdown forced Mr. Vasquez to choose between having prepared counsel and a timely trial, and that Mr. Vasquez had a right to both.

During the course of the time that Mr. Vasquez was awaiting trial, he began sex offender treatment at the state hospital and one of the state evaluators reached the opinion that Vasquez no longer qualified as a SVP.

The Appellate Court applied a due process balancing test established by U.S. Supreme Court. The Appellate Court concluded that under the balancing test Mr. Vasquez had suffered prejudice due to the excessive delay and that the delay was caused by state action. In reaching that holding, the Appellate Court stated, “[t]he ultimate responsibility for bringing a person to trial on an SVP petition at a ‘meaningful time’ rests with the government.” (Id. at 58.) The Appellate Court did not find that the prosecution was at fault for the delay.

In discussing the trial courts’ responsibility to manage Mr. Vasquez’s case, the Appellate Court stated, “We recognize the trial court did not initiate any of the continuances, instead granting continuances at the request of Vasquez’s counsel or by stipulation of counsel. The record shows that many of these continuances were granted for good cause, including, for example, while the attorneys were waiting for new expert evaluations or after the trial court ruled that a new probable cause hearing was required. However, during the first 14 years of Vasquez’s confinement, his case was continued over 50 times, either by stipulation of counsel or a request by Vasquez’s counsel. The Appellate Court cited language from the California Supreme Court which stated, “[I]t is entirely appropriate for the court to set deadlines and to hold the parties strictly to those deadlines unless a continuance is justified by a concrete showing of good cause for the delay.” The Appellate Court found that it did not appear from the record that during the first 14-year period the trial court took meaningful action to set deadlines or otherwise control the proceedings and protect Vasquez’s right to a timely trial. The Appellate Court said that even where the attorneys stipulate to continue a trial date, the trial court has an obligation to determine whether there is a good cause for the continuance. (Id. at 74-75.)

This bill would establish timelines to file and respond to motions to continue SVP trials. The timeline in this bill requires initial notice of the request for continuance to be served and filed 10 days before the hearing on the motion to continue. This bill would also provide criteria to be used by judges when evaluating the request to continue a trial in an SVP case. The criteria requires courts to make findings that good cause exists for continuance of an SVP trial and requires the court to make a record of facts justifying good cause. The criteria to evaluate a request to continue a trial in an SVP case is consistent with the criteria currently utilized by courts in criminal cases.

#### **4. Argument in Support**

According to the *Los Angeles County District Attorney’s Office*:

Currently, there is no express provision for a speedy trial in the Sexually Violent Predator (SVP) Act. (Welfare and Institutions Code section 6600 et seq.). This is problematic for both the prosecution (“Petitioner”) and the defense (“Respondent”). Historically, the defense has rarely sought to bring these cases to trial for tactical reasons. Because lengthy delays increase the time between the respondent’s last offense and the trial, they can result in a number of problems such as jurors becoming desensitized to the enormity of the underlying sexual offenses and sexual assault victims who are no longer available as witnesses because the crimes are remote in time. These delays are also problematic for the actual respondents themselves as the delays often result in their remaining in custody for many years without a trial.

*People v. Vasquez* (2018) 27 Cal. App. 5th 36 recognized the deficiency in the current law but attributed any 'systemic delay,' to the state, even when caused by defense counsel. In that case, respondent Vasquez was convicted in criminal court of four counts of lewd and lascivious acts on a child under the age of 14. He was sentenced to 12 years in prison. Prior to his release, the People filed an SVP petition. Although Mr. Vasquez had his probable cause hearing, he remained in custody for 17 years without a trial while several of his attorneys from within the Public Defender's Office replaced one another over the years and requested time to prepare for trial. During the first 14 years, the trial had been continued over 50 times, either by stipulation of counsel or a request by Vasquez's attorneys.

AB 303...adds language to section 6603 setting forth procedures for continuing SVP trials only upon a finding of good cause, using language from the Code of Civil Procedure as well as Penal Code section 1050 as guidance. Conceptually, AB 303 would codify the finding and conclusions of the *Vasquez* case which is the controlling case law on this topic.

Because the burden of bringing SVP cases to trial in a timely manner falls on the petitioner, the amendments proposed by this legislation are a necessary mechanism whereby prosecutors could effectively fulfill their obligation to ensure due process for respondents while at the same time protecting the public from the premature release of dangerous, sexually violent predators. It would also codify the respondents' right to a speedy trial under the due process clause of the Constitution, as recognized in *Vasquez*.

-- END --