
UNFINISHED BUSINESS

Bill No: SB 1034
Author: Atkins (D)
Amended: 8/15/22
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-0, 4/5/22
AYES: Ochoa Bogh, Kamlager, Skinner, Wiener
NO VOTE RECORDED: Bradford

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/19/22
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, Wieckowski

SENATE FLOOR: 37-0, 5/23/22
AYES: Allen, Atkins, Bates, Becker, Borgeas, Bradford, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk
NO VOTE RECORDED: Archuleta, Caballero, Hertzberg

ASSEMBLY FLOOR: 70-0, 8/23/22 - See last page for vote

SUBJECT: Sexually violent predators

SOURCE: Author

DIGEST: This bill establishes a process for finding housing for a sexually violent predator (SVP) who has been found to no longer be a danger and set forth what a court must do in order to determine extraordinary circumstances exist so that a sexually violent predator cannot be placed in the county of domicile.

Assembly Amendments clarify that the court shall make a determination that the person would not be a danger to the health and safety of others in that the person will engage in sexually criminal behavior due to the person's diagnosed mental disorder before releasing on conditional release; require s 30 days notice to the

district attorney if the person is being placed in a different county; makes technical amendmnets.

ANALYSIS:

Existing law:

- 1) Provides for the civil commitment for psychiatric and psychological treatment of a prison inmate found to be an SVP after the person has served their prison commitment. This is known as the Sexually Violent Predator Act (SVPA). (Welf. & Inst. Code, § 6600, et seq.)
- 2) 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, (a)(1).) 3)
- 3) Permits a person committed as an SVP to be held for an indeterminate term upon commitment. (Welf. & Inst. Code, §§ 6604 & 6604.1.)
- 4) Requires that a person found to have been an SVP and committed to the Department of State Hospitals (DSH) have a current examination on their mental condition made at least yearly. The report shall include consideration of whether 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. (Welf. & Inst. Code, § 6604.9, subds. (a) & (b).)
- 5) Provides that when DSH determines that the person's condition has so changed that he or she is not likely to commit acts of predatory sexual violence while under community treatment and supervision, then the DSH Director shall forward a report and recommendation for conditional release to the court, the prosecuting agency, and the attorney of record for the committed person. (Welf. & Inst. Code, § 6607.)
- 6) Establishes a process whereby a person committed as an SVP can 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, (a), (f) & (m).)
- 7) Provides that if the petition is made without the consent of the director of the treatment facility, no action may be taken on the petition without first

- obtaining the written recommendation of the director of the treatment facility. (Welf. & Inst. Code, § 6608, (e).)
- 8) Prohibits the court from holding a hearing on a petition for conditional release until the community program director designated by DHS submits a report to the court that makes a recommendation as to the appropriateness of placing the inmate in a state-operated forensic conditional release program. (Welf. & Inst. Code, § 6608, (f); Pen. Code, § 1605, (a).)
 - 9) Requires the court to place the committed person in a forensic conditional release program operated by the state for one year if it finds that the person is not a danger to others due to their mental disorder diagnosis while under treatment and supervision in the community. Specifies that the program must include outpatient care. (Welf. & Inst. Code, § 6608, (g).)
 - 10) Provides that before actually placing a person on conditional release, the community program director designated by DSH must recommend the program most appropriate for supervising and treating the person. (Welf. & Inst. Code, § 6608, (h).)
 - 11) Provides that a person who is conditionally released pursuant to this article shall be placed in the county of domicile of the person prior to the person's incarceration, unless both of the following conditions are satisfied:
 - a) The court finds that extraordinary circumstances require placement outside the county of domicile.
 - b) The designated county of placement was given prior notice and an opportunity to comment on the proposed placement of the committed person in the county. ((Welf. & Inst. Code, 6608.5, (a).)
 - 12) States that the county of domicile shall designate a county agency or program that will provide assistance and consultation in the process of locating and securing housing within the county for persons committed as SVPs who are about to be conditionally released. (Welf. & Inst. Code, § 6608.5, (d).)
 - 13) Specifies that in recommending a specific placement for community outpatient treatment, DSH or its designee shall consider all of the following: a) The concerns and proximity of the victim or the victim's next of kin; and b) The age and profile of the victim or victims in the sexually violent offenses committed by the person subject to placement. The "profile" of a victim includes, but is not limited to, gender, physical appearance, economic

background, profession, and other social or personal characteristics. (Welf. & Inst. Code, § 6608.5, (e)(1)-(2).)

- 14) States that if the court determines that placement of a person in the county of his or her domicile is not appropriate, the court shall consider the following circumstances in designating his or her placement in a county for conditional release: a) If and how long the person has previously resided or been employed in the county; and b) If the person has next of kin in the county. (Welf. & Inst. Code, § 6608.5, (g)(1)- (2))

This bill:

- 1) Clarifies that a person is conditionally released after a judicial determination that a person would not be a danger to others due to a diagnosed mental disorder while under supervision and treatment in the community.
- 2) Provides that the counsel for the committed individual, the sheriff or the chief of police of the locality for placement, and the county counsel and the district attorney of the county of domicile, or their designees, shall provide the assistance and consultation in securing housing.
- 3) Provides that DSH shall convene a committee with the listed participants for the purpose of obtaining relevant assistance and consultation information in order secure suitable housing for the person to be conditionally released.
- 4) Provides that a court may order a status conference to evaluate the DSH's progress in locating and securing housing and in obtaining relevant assistance and consultation information from the participants. The court may sanction any of the participants for failure to appear at the status conference unless they show good cause for their failure to appear.
- 5) Provides that a court may make a finding of extraordinary circumstances only after the committed person's county of domicile has petitioned the court to make this finding.
- 6) Provides that the court may grant the county of domicile's petition and make a finding of extraordinary circumstances only after all of the following has occurred:
 - a) The county of domicile has demonstrated to the court that the county of domicile has engaged in an exhaustive search with meaningful and robust participation from the parties in both committee conferences and status conferences. The county of domicile shall provide the court with

declarations from the county of domicile and all the participants attesting to the exhaustive housing search.

- b) The county of domicile has provided at least one alternative placement county for consideration and has noticed the district attorney, or district attorneys, of the alternative placement county, or counties, and the department regarding the county of domicile's intention to petition for a finding of extraordinary circumstances. And if applicable, the county of domicile shall indicate how the committee person has a community connection to a proposed placement county.
 - c) The county of domicile has provided the declarations and community connection information to DSH and to the district attorney of the proposed alternate placement county.
 - d) DSH and the district attorney of a proposed alternate placement county have had an opportunity to be heard and noticed at a hearing.
- 7) Provides that a court shall not order a search of alternative housing placements outside of the county of domicile until after the court has granted a petition finding that extraordinary circumstances exist.
- 8) Provides that the Judicial Counsel shall report to the Legislature on an annual basis the instances in which a court issues a finding of extraordinary circumstances and shall detail the court's findings and ground supporting the findings as stated by the court.

Background

Obtaining Release from Commitment. 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 makes 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 for conditional release. (Welf. & Inst. Code, § 6604.9, subd. (d).) 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.) When the petition is filed with the

concurrence of the DSH, the court orders a show-cause hearing. (Welf. & Inst. Code, § 6604.9, subd. (f).) 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 "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.)

A committed person may also petition for conditional release or unconditional discharge notwithstanding the lack of recommendation or concurrence by the Director of State Hospitals. (Welf. & Inst. Code, § 6608, subd. (a).) Upon receipt of this type of petition, 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." (Welf. & Inst. Code, § 6608, subd. (a) If the petition is not found to be frivolous, the court is required to hold a hearing. (*People v. Smith* (2013) 216 Cal.App.4th 947.)

The SVPA does not define the term "frivolous." The courts have applied the definition of "frivolous" found 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. (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).)

Changes in the Process. Existing law provides that when determining where an SVP shall be placed the county of domicile, or other designated county, shall provide assistance in locating an appropriate place for the person to live. This bill

specifies that the counsel for the committed person, the sheriff or chief of police, the county counsel, and the district attorney should all be involved in the process.

This bill further provides that DSH shall convene a committee with the participants for the purpose of obtaining the necessary assistance and that the court may order a status conference where all parties are required to participate to make sure the entities are participating in helping find suitable housing.

Making it clear who should be involved in this process will hopefully, help the process of placing SVPs after a court has found they will not be a danger. However, it is important that the process does not take too long so the person is not kept longer than they should be once they have been found not to be dangerous.

Extraordinary Circumstances to not be Placed in County of Domicile. Under existing law, a court may determine that the placement of a person in the county of domicile is not appropriate if they find extraordinary circumstances. Extraordinary circumstances is defined as circumstances that would inordinately limit the DSH's ability to effect conditional release of the person in the county of domicile but does not require any findings on the record or allow for any appeal of that this decision.

This bill sets up a process that to determine when a finding of extraordinary circumstances is appropriate. The county of domicile must show that they have engaged in an exhaustive housing search. They must provide at least one alternative county, and have notified the district attorney in that county and state any connection the person has to the county, if there is one. The district attorney in the proposed county also needs to have an opportunity to be heard on the issue of placement.

If the court does find extraordinary circumstances to place in another county, this bill requires the court to make its findings on the record. Costs of finding housing is not alone enough of a reason for finding extraordinary circumstances.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee:

- 1) Costs (General Fund (GF)) possibly in the hundreds of thousands of dollars to the DSH in additional workload to coordinate with local officials and counsel for an SVP to provide consultation on housing and advise the courts on progress in securing housing for the SVP.

- 2) Possibly reimbursable costs (GF and local funds) in the upper thousands of dollars to low hundreds of thousands of dollars in additional staff workload to local district attorney offices and law enforcement offices to participate in a DSH committee regarding suitable housing for a SVP.
- 3) Minor and absorbable costs to the Judicial Council to report to the Legislature on instances where the court finds extraordinary circumstances. Additionally, minor and absorbable costs to the trial courts to consider factors pertaining to “extraordinary circumstances.” Trial courts currently adjudicate claims related to SVP placement including factors to consider when deciding not to return an SVP to their county of domicile. As a result, staff workload costs to consider additional factors related to a determination of “extraordinary circumstances” should be minor and absorbable.

SUPPORT: (Verified 8/19/22)

City of San Diego
Los Angeles County District Attorney’s Office

OPPOSITION: (Verified 8/19/22)

None received

ARGUMENTS IN SUPPORT: In support the City of San Diego states:

On behalf of the City of San Diego, I am writing in support of your measure, SB 1034, which establishes a relocation process for a sexually violent predator (SVP) who has been approved for conditional release and sets forth court procedures to determine when extraordinary circumstances exist for a sexually violent predator to be placed outside the county of domicile.

Specifically, the process mandated by SB 1034 would require relevant local agencies form a committee to help determine the placement of an SVP upon conditional release. Local law enforcement involvement in SVP placement decisions is critical to ensure transparency and improve local public safety. The existing Conditional Release Program provides that a court may issue an order finding that the SVP can be safely released back into the community with outpatient treatment because further confinement may amount to constitutional rights violations. However, the current process does not require the participation of any local officials in the placement of the released SVP.

SB 1034 infuses the SVP placement process with the vitally important local community perspective. Thank you for your leadership on this issue.

ASSEMBLY FLOOR: 70-0, 8/23/22

AYES: Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Daly, Flora, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, McKinnor, Medina, Mullin, Nazarian, Nguyen, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NO VOTE RECORDED: Bigelow, Megan Dahle, Davies, Fong, Gallagher, Gray, Kiley, Muratsuchi, Patterson, Blanca Rubio

Prepared by: Mary Kennedy / PUB. S. /
8/23/22 15:01:04

**** END ****