

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1176

Introduced by Assembly Member Spitzer

February 23, 2007

An act to amend Section 6608 of the Welfare and Institutions Code, relating to sexually violent predators.

LEGISLATIVE COUNSEL'S DIGEST

AB 1176, as amended, Spitzer. Sexually violent predators: *petitions for release and discharge*.

Existing law requires, prior to release from the custody of the Department of Corrections and Rehabilitation of a person who has been convicted of certain crimes of a sexual nature, the director to refer that person to the State Department of Mental Health for evaluation if the director determines that person may be a sexually violent predator.

Under existing law, if the evaluation by the State Department of Mental Health determines that the person is a sexually violent predator, the department is required to forward a request for the filing of a petition to the counsel designated by the county in which the person was convicted. The law authorizes civil commitment of the person to the State Department of Mental Health as a sexually violent predator, for treatment in a secure facility, if the person is adjudicated to be likely to engage in sexually violent criminal behavior if discharged.

Existing law, as an initiative measure, may not be amended by the Legislature, except by a $\frac{2}{3}$ vote bill, or by a majority vote bill to expand the scope of application of its provision or to increase the punishment or penalties.

~~This bill would declare the intent of the Legislature to subsequently amend this bill to include provisions that would enact the recommendations of the Governor’s High Risk Sex Offender Task Force relating to jurisdiction over conditional release petitions in cases where the county of commitment and the county of domicile of a sexually violent predator are different.~~

Existing law authorizes the court to order the committed person to be unconditionally discharged, or conditionally released for supervised community treatment in the county of domicile, if certain findings are made.

This bill would establish a process for determining the county to hear the petition for conditional release or unconditional discharge in cases where the county of commitment is other than the county of domicile.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~^{yes}. State-mandated local program: no.

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

1 SECTION. 1. Section 6608 of the Welfare and Institutions Code
2 is amended to read:
3 6608. (a) (1) Nothing in this article shall prohibit the person
4 who has been committed as a sexually violent predator from
5 petitioning the court for conditional release or an unconditional
6 discharge without the recommendation or concurrence of the
7 Director of Mental Health. If a person has previously filed a
8 petition for conditional release without the concurrence of the
9 director and the court determined, either upon review of the petition
10 or following a hearing, that the petition was frivolous or that the
11 committed person’s condition had not so changed that he or she
12 would not be a danger to others in that it is not likely that he or
13 she will engage in sexually violent criminal behavior if placed
14 under supervision and treatment in the community, then the court
15 shall deny the subsequent petition unless it contains facts upon
16 which a court could find that the condition of the committed person
17 had so changed that a hearing was warranted. Upon receipt of a
18 first or subsequent petition from a committed person without the
19 concurrence of the director, the court shall endeavor whenever
20 possible to review the petition and determine if it is based upon
21 frivolous grounds and, if so, shall deny the petition without a
22 hearing. The person petitioning for conditional release and

1 unconditional discharge under this subdivision shall be entitled to
2 assistance of counsel.

3 (2) (A) *If a petition for conditional release or unconditional*
4 *discharge is filed with the superior court of the county of*
5 *commitment, and the county of domicile, as defined in Section*
6 *6608.5, has not been determined, the superior court of the county*
7 *of commitment shall first make a ruling regarding the county of*
8 *domicile of the person before proceeding further with a hearing.*

9 (B) *If the court finds that the county of commitment is the county*
10 *of domicile, it shall resume proceedings on the petition.*

11 (C) *If the court finds that the county of domicile is a county*
12 *other than the county of commitment, the court shall suspend the*
13 *proceedings on the petition, and transfer the petition as set forth*
14 *in paragraph (3).*

15 (3) *If the person's county of domicile has been determined by*
16 *the superior court of the county of commitment to be a county other*
17 *than the county of commitment under paragraph (2), the superior*
18 *court shall transfer the petition for conditional release or*
19 *unconditional discharge to the superior court of the county of*
20 *domicile and a copy of the petition shall be served upon the*
21 *attorney designated by the county of domicile pursuant to*
22 *subdivision (i) of Section 6601 within five days of the date of*
23 *transfer. The superior court in the county of domicile may elect to*
24 *hear the petition. If the court decides not to hear the petition, the*
25 *court shall return the petition to the superior court of the county*
26 *of commitment with the explanation that it has decided not to hear*
27 *the petition, and shall provide notice of the decision not to hear*
28 *the petition to the attorney designated by the county of commitment*
29 *and to the State Department of Mental Health, within five days of*
30 *the date of the courts decision not to hear the petition.*

31 (4) *If the superior court in the county of domicile elects,*
32 *pursuant to paragraph (3), not to hear a petition, the superior*
33 *court in the county of commitment shall resume the proceedings*
34 *on the petition.*

35 (b) The court shall give notice of the hearing date to the attorney
36 designated in subdivision (i) of Section 6601, the retained or
37 appointed attorney for the committed person, and the Director of
38 Mental Health at least 15 court days before the hearing date.

39 (c) No hearing upon the petition shall be held until the person
40 who is committed has been under commitment for confinement

1 and care in a facility designated by the Director of Mental Health
2 for not less than one year from the date of the order of commitment.

3 (d) The court shall hold a hearing to determine whether the
4 person committed would be a danger to the health and safety of
5 others in that it is likely that he or she will engage in sexually
6 violent criminal behavior due to his or her diagnosed mental
7 disorder if under supervision and treatment in the community. If
8 the court at the hearing determines that the committed person
9 would not be a danger to others due to his or her diagnosed mental
10 disorder while under supervision and treatment in the community,
11 the court shall order the committed person placed with an
12 appropriate forensic conditional release program operated by the
13 state for one year. A substantial portion of the state-operated
14 forensic conditional release program shall include outpatient
15 supervision and treatment. The court shall retain jurisdiction of
16 the person throughout the course of the program. At the end of
17 one year, the court shall hold a hearing to determine if the person
18 should be unconditionally released from commitment on the basis
19 that, by reason of a diagnosed mental disorder, he or she is not a
20 danger to the health and safety of others in that it is not likely that
21 he or she will engage in sexually violent criminal behavior. The
22 court shall not make this determination until the person has
23 completed at least one year in the state-operated forensic
24 conditional release program. The court shall notify the Director
25 of Mental Health of the hearing date.

26 (e) Before placing a committed person in a state-operated
27 forensic conditional release program, the community program
28 director designated by the State Department of Mental Health shall
29 submit a written recommendation to the court stating which
30 forensic conditional release program is most appropriate for
31 supervising and treating the committed person. If the court does
32 not accept the community program director's recommendation,
33 the court shall specify the reason or reasons for its order on the
34 record. The procedures described in Sections 1605 to 1610,
35 inclusive, of the Penal Code shall apply to the person placed in
36 the forensic conditional release program.

37 (f) If the court determines that the person should be transferred
38 to a state-operated forensic conditional release program, the
39 community program director, or his or her designee, shall make
40 the necessary placement arrangements and, within 21 days after

1 receiving notice of the court’s finding, the person shall be placed
2 in the community in accordance with the treatment and supervision
3 plan unless good cause for not doing so is presented to the court.

4 (g) If the court rules against the committed person at the trial
5 for unconditional release from commitment, the court may place
6 the committed person on outpatient status in accordance with the
7 procedures described in Title 15 (commencing with Section 1600)
8 of Part 2 of the Penal Code.

9 (h) If the court denies the petition to place the person in an
10 appropriate forensic conditional release program or if the petition
11 for unconditional discharge is denied, the person may not file a
12 new application until one year has elapsed from the date of the
13 denial.

14 (i) In any hearing authorized by this section, the petitioner shall
15 have the burden of proof by a preponderance of the evidence.

16 (j) If the petition for conditional release is not made by the
17 director of the treatment facility to which the person is committed,
18 no action on the petition shall be taken by the court without first
19 obtaining the written recommendation of the director of the
20 treatment facility.

21 (k) Time spent in a conditional release program pursuant to this
22 section shall not count toward the term of commitment under this
23 article unless the person is confined in a locked facility by the
24 conditional release program, in which case the time spent in a
25 locked facility shall count toward the term of commitment.

26 ~~SECTION 1. It is the intent of the Legislature to subsequently~~
27 ~~amend this measure to include provisions that would enact the~~
28 ~~recommendations of the Governor’s High Risk Sex Offender Task~~
29 ~~Force relating to jurisdiction over conditional release petitions in~~
30 ~~cases where the county of commitment and the county of domicile~~
31 ~~of a sexually violent predator are different.~~