

AMENDED IN ASSEMBLY MARCH 18, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 821

Introduced by Assembly Member Cooper

February 16, 2021

An act to amend ~~Section 54950 of the Government Code, Section 6608.5 of, and to add Section 6609.4 to, the Welfare and Institutions Code, relating to local government: sexually violent predators.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 821, as amended, Cooper. ~~Local government: open meetings. Sexually violent predators: placement outside county of domicile: notice and hearing.~~

Existing law defines a sexually violent predator as a person who has been convicted of a sexually violent offense and has a diagnosed mental disorder that makes the person a danger to others in that they are likely to engage in sexually violent criminal behavior. Existing law provides for the commitment of a sexually violent predator to the State Department of State Hospitals. Existing law provides that a sexually violent predator may be conditionally released at the end of their commitment, as specified.

Existing law requires a sexually violent predator who is conditionally released to be placed in the county that was the person's county of domicile prior to the person's incarceration, unless extraordinary circumstances exist requiring placement outside the county, as specified.

This bill would require advance notice, as specified, if a sexually violent predator is to be released to a county other than their county of domicile. The bill would require the local jurisdiction to give public notice of the intended release and allow for public comment, as

specified. The bill would require the court to hold an evidentiary hearing to determine if extraordinary circumstances exist. The bill would place the burden of showing extraordinary circumstances on the State Department of State Hospitals. The bill would require the court to accept remote testimony and written affidavits, as specified, for this hearing. The bill would limit how a lack of housing may be used to justify extraordinary circumstances and would require the department to present specified evidence regarding housing. The bill would also provide for discovery of relevant materials.

By requiring local jurisdictions to give public notice and accept public comments, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~Existing law, the Ralph M. Brown Act, requires each legislative body of a local agency to provide notice of the time and place for its regular meetings and an agenda containing a brief general description of each item of business to be transacted. The act also requires that all meetings of a legislative body be open and public, and that all persons be permitted to attend unless a closed session is authorized.~~

~~This bill would make nonsubstantive changes to a provision of the Ralph M. Brown Act.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

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

- 1 **SECTION 1.** *Section 6608.5 of the Welfare and Institutions*
- 2 *Code is amended to read:*
- 3 6608.5. (a) A person who is conditionally released pursuant
- 4 to this article shall be placed in the county of the domicile of the
- 5 person prior to the person’s incarceration, unless both of the
- 6 following conditions are satisfied:

1 (1) ~~The court~~ *court, after a hearing held pursuant to subdivision*
2 *(b) of Section 6609.4,* finds that extraordinary circumstances
3 require placement outside the county of domicile.

4 (2) The designated county of placement was given prior notice
5 and an opportunity to comment on the proposed placement of the
6 committed person in the county, according to procedures set forth
7 in *subdivision (a) of Section ~~6609.1.~~ 6609.4.*

8 (b) (1) For the purposes of this section, “county of domicile”
9 means the county where the person has ~~his or her~~ *their* true, fixed,
10 and permanent home and principal residence and to which ~~he or~~
11 ~~she has~~ *they have* manifested the intention of returning whenever
12 ~~he or she is~~ *they are* absent. For the purposes of determining the
13 county of domicile, the court shall consider information found on
14 a California driver’s license, California identification card, recent
15 rent or utility receipt, printed personalized checks or other recent
16 banking documents showing that person’s name and address, or
17 information contained in an arrest record, probation officer’s report,
18 trial transcript, or other court document. If no information can be
19 identified or verified, the county of domicile of the individual shall
20 be considered to be the county in which the person was arrested
21 for the crime for which ~~he or she was~~ *they were* last incarcerated
22 in the state prison or from which ~~he or she was~~ *they were* last
23 returned from parole.

24 (2) In a case where the person committed a crime while being
25 held for treatment in a state hospital, or while being confined in a
26 state prison or local jail facility, the county wherein that facility
27 was located shall not be considered the county of domicile unless
28 the person resided in that county prior to being housed in the
29 hospital, prison, or jail.

30 (c) For the purposes of this section, “extraordinary
31 circumstances” means circumstances that would inordinately limit
32 the department’s ability to effect conditional release of the person
33 in the county of domicile in accordance with Section 6608 or any
34 other provision of this article, and the procedures described in
35 Sections 1605 to 1610, inclusive, of the Penal Code.

36 (d) The county of domicile shall designate a county agency or
37 program that will provide assistance and consultation in the process
38 of locating and securing housing within the county for persons
39 committed as sexually violent predators who are about to be
40 conditionally released under Section 6608. Upon notification by

1 the department of a person's potential or expected conditional
2 release under Section 6608, the county of domicile shall notify the
3 department of the name of the designated agency or program, at
4 least 60 days before the date of the potential or expected release.

5 (e) In recommending a specific placement for community
6 outpatient treatment, the department or its designee shall consider
7 all of the following:

8 (1) The concerns and proximity of the victim or the victim's
9 next of kin.

10 (2) The age and profile of the victim or victims in the sexually
11 violent offenses committed by the person subject to placement.
12 For purposes of this subdivision, the "profile" of a victim includes,
13 but is not limited to, gender, physical appearance, economic
14 background, profession, and other social or personal characteristics.

15 (f) Notwithstanding any other law, a person released under this
16 section shall not be placed within one-quarter mile of any public
17 or private school providing instruction in kindergarten or any of
18 grades 1 to 12, inclusive, if either of the following conditions exist:

19 (1) The person has previously been convicted of a violation of
20 Section 288.5 of, or subdivision (a) or (b), or paragraph (1) of
21 subdivision (c) of Section 288 of, the Penal Code.

22 (2) The court finds that the person has a history of improper
23 sexual conduct with children.

24 (g) If the court determines that placement of a person in the
25 county of ~~his or her~~ *their* domicile pursuant to subdivision (a) is
26 not appropriate, the court shall consider the following
27 circumstances in designating ~~his or her~~ placement in a county for
28 conditional release:

29 (1) If and how long the person has previously resided or been
30 employed in the county.

31 (2) If the person has next of kin in the county.

32 (h) (1) Except as provided in paragraph (2), if the committed
33 person is ordered to be conditionally released in a county other
34 than the county of commitment, the court shall order that
35 jurisdiction of the person and all records related to the case be
36 transferred to the court of the county of placement. Upon transfer
37 of jurisdiction to the county of placement, the designated attorney
38 of the county of placement shall represent the state in all further
39 proceedings.

1 (2) The designated attorney of the county of commitment shall
2 serve written notice upon the designated attorney for the county
3 of placement within 15 court days of an order to place a committed
4 person in the county of placement. The designated attorney of the
5 county of placement may file an affidavit with the court in the
6 county of commitment objecting to the transfer of jurisdiction
7 within 15 court days after receiving the notice. If the affidavit
8 objecting to the transfer of jurisdiction is timely filed, the court
9 shall not transfer jurisdiction. If an affidavit objecting to the
10 transfer of jurisdiction is not timely filed, paragraph (1) shall apply.

11 (3) For the purpose of this section, “county of placement” means
12 the county where the court orders the committed person to be
13 placed for conditional release.

14 (4) For the purpose of this section, “designated attorney of the
15 county of placement” means the attorney designated in subdivision
16 (l) of Section 6601 in the county of placement.

17 (5) This section shall not be construed to negate or in any way
18 affect the decision of the court of the county of commitment to
19 conditionally release the committed person in the county of
20 placement.

21 *SEC. 2. Section 6609.4 is added to the Welfare and Institutions*
22 *Code, to read:*

23 *6609.4. (a) (1) When the State Department of State Hospitals*
24 *makes a recommendation to the court for community outpatient*
25 *treatment for any person committed as a sexually violent predator,*
26 *or when a person who is committed as a sexually violent predator*
27 *pursuant to this article has petitioned a court pursuant to Section*
28 *6608 for conditional release under supervision and treatment in*
29 *the community pursuant to a conditional release program, or has*
30 *petitioned a court pursuant to Section 6608 for subsequent*
31 *unconditional discharge, and the department is notified, or is*
32 *aware, of the filing of the petition, and when a community*
33 *placement location outside of the person’s county of domicile is*
34 *recommended or proposed, the department shall notify the sheriff*
35 *or chief of police, or both, the district attorney, and the city*
36 *attorney or county counsel, that have jurisdiction over any*
37 *communities where release is proposed, the Department of Justice,*
38 *and, if the person is subject to parole, the Sexually Violent Predator*
39 *Parole Coordinator of the Department of Corrections and*
40 *Rehabilitation.*

1 (2) *The notice required in subdivision (a) shall include, without*
2 *limitation, all of the following:*

3 (A) *The name, proposed placement address, date of commitment,*
4 *county from which committed, proposed date of placement in the*
5 *conditional release program, fingerprints, and a glossy photograph*
6 *no smaller than 3 1/8 by 3 1/8 inches in size, or clear copies of the*
7 *fingerprints and photograph of the person committed as a sexually*
8 *violent predator.*

9 (B) *A detailed statement justifying the extraordinary*
10 *circumstances that prevent placement of the person in their county*
11 *of domicile.*

12 (C) *A list of the parties that are being provided this notice and*
13 *the addresses to which the notices are being sent.*

14 (D) *The date, place, and time of the court hearing at which the*
15 *determination of extraordinary circumstances is to be considered,*
16 *and a proof of service attesting to the notice's mailing in*
17 *accordance with this section.*

18 (3) *The notice shall be given at least 90 days prior to the*
19 *department's submission of its recommendation to the court.*

20 (4) (A) *Upon receipt of the notice, the city attorney or county*
21 *counsel having jurisdiction over the proposed community of release*
22 *shall cause public notice to be given of the proposed placement.*

23 (B) *The public notice shall invite public comment to be made*
24 *in writing and at a public meeting.*

25 (C) *The public notice shall not include the name, photograph,*
26 *or other identifying information of the person committed as a*
27 *sexually violent predator whose release is proposed.*

28 (D) *Public notice shall be made in the same manner as public*
29 *notice is ordinarily given for public meetings.*

30 (E) *The city attorney or county counsel shall compile all*
31 *comments received, both written and those received at the public*
32 *meeting, and shall forward those comments, in a single affidavit,*
33 *to the court.*

34 (b) (1) *Before a person committed as a sexually violent predator*
35 *is released to a county other than their county of domicile, the*
36 *court shall hold an evidentiary hearing to determine if*
37 *extraordinary circumstances, as required by Section 6608.5, exist.*

38 (2) *The department shall bear the burden of proof by clear and*
39 *convincing evidence that extraordinary circumstances presently*
40 *exist to justify placement outside of the county of domicile.*

1 (3) *The court shall allow parties to appear via telephone, video*
2 *conference, or other means of remote appearance. The court shall*
3 *also accept written affidavits, including a summary of public*
4 *comment received pursuant to subdivision (a).*

5 (4) *Lack of housing alone shall not justify extraordinary*
6 *circumstances unless placement in the county of domicile would*
7 *likely result in the person being forced into homelessness or*
8 *unstable or unsafe housing.*

9 (5) *If lack of housing is alleged in justifying extraordinary*
10 *circumstances, the department shall present all of the following:*

11 (A) *Any report regarding the search for housing made by the*
12 *department regarding the search for suitable housing.*

13 (B) *All records involving any efforts to locate housing, including*
14 *but not limited to, search logs, addresses searched, methods of*
15 *search, and dates and times.*

16 (C) *Any site assessments, evaluations, or rental or lease*
17 *documentation for the proposed properties.*

18 (D) *The department's recommendations regarding the suitability*
19 *of the proposed placement location.*

20 (E) *Any quarterly reports completed by the department's*
21 *outpatient treatment designee.*

22 (F) *Any presentence reports completed for the original*
23 *commitment offense.*

24 (6) (A) *Any party to the hearing may, except where limited by*
25 *privilege or order of the court, obtain discovery regarding any*
26 *matter relevant to the finding of extraordinary circumstances,*
27 *including any reports or records generated by the department or*
28 *any doctors or evaluators pursuant to Section 6604.9 or*
29 *subdivisions (a), (e), (f), or (g) of Section 6608.*

30 (B) *Any discovered materials may be subject to a protective*
31 *order issued by the court.*

32 *SEC. 3. If the Commission on State Mandates determines that*
33 *this act contains costs mandated by the state, reimbursement to*
34 *local agencies and school districts for those costs shall be made*
35 *pursuant to Part 7 (commencing with Section 17500) of Division*
36 *4 of Title 2 of the Government Code.*

37 ~~SECTION 1. Section 54950 of the Government Code is~~
38 ~~amended to read:~~

39 ~~54950. (a) In enacting this chapter, the Legislature finds and~~
40 ~~declares that the public commissions, boards, councils, and the~~

1 other public agencies in this state exist to aid in the conduct of the
2 people's business. It is the intent of the law that their actions be
3 taken openly and that their deliberations be conducted openly.

4 (b) The people of this state do not yield their sovereignty to the
5 agencies that serve them. The people, in delegating authority, do
6 not give their public servants the right to decide what is good for
7 the people to know and what is not good for them to know. The
8 people insist on remaining informed, so that they may retain control
9 over the instruments they have created.