

OAKLAND CITY COUNCIL

City Attorney

RESOLUTION NO. _____ C.M.S.

DRAFT

INTRODUCED BY COUNCIL MEMBER DESLEY BROOKS

RESOLUTION DECLARING THE CITY OF OAKLAND'S SUPPORT OF SENATE BILL-1366 WHICH WOULD REQUIRE THAT SEXUAL PREDATORS BE RETURNED TO THE COUNTY WHERE THEY WERE CONVICTED EXCEPT UNDER EXTRAORDINARY CIRCUMSTANCES, AND MANDATE NOTIFICATION OF LOCAL LAW ENFORCEMENT 45 DAYS PRIOR TO RELEASE.

WHEREAS, it has been reported that there are an estimated 3,000 parolees and 7,000 probationers in Oakland at any one time; and

WHEREAS, there are approximately 50 probation officers assigned to the City of Oakland who are responsible for supervising these estimated 10,000 adult probationers and parolees; and

WHEREAS, previous placements of sexually violent predators in the city of Oakland have been done under a cloak of secrecy; and

WHEREAS, Senator Deham has introduced Senate Bill 1366 (SB 1366), which attempts to address issues related to the release of sexually violent predators; and

WHEREAS, existing law provides for the commitment of convicted sexually violent predators to the custody of the State Department of Mental Health for treatment. If the Director of Mental Health determines that the person's diagnosed mental disorder has so changed that the person is not likely to commit acts of predatory sexual violence while under supervision and treatment in the community, the director is required to forward a report and recommendation for conditional release to the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections and the court is required to set a hearing; and

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WHEREAS, existing law further provides that a person who has been committed as a sexually violent predator may petition the court for conditional release with or without the recommendation or concurrence of the Director of Mental Health. Upon receipt of a petition from the Director of Mental Health or a committed person, if that petition is not based upon frivolous grounds, the court is required to 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; if not, the court is required to order the committed person to be placed with an appropriate forensic conditional release program operated by the state for one year. Under existing law, that placement must occur within 21 days after receiving notice of the court's finding; and

WHEREAS, existing law also requires the department to provide notice to certain local law enforcement agencies in certain communities, including in the community in which the person may be released for community outpatient treatment. Existing law requires this notice to be made 15 days prior to the department's recommendation to the court for community outpatient treatment. Existing law also requires the Department of Corrections to notify the State Department of Mental Health, and local law enforcement agencies, when the court orders the release of a sexually violent predator; and

WHEREAS, SB-1366 would require placement of a sexually violent predator into a conditional release program within 50 days of the court's finding, and would require notice to local law enforcement agencies by the department or the Department of Corrections 45 days prior to making its recommendation to the court, or the court's release of the sexually violent predator; and

WHEREAS, SB-1366 would authorize local law enforcement agencies that received notice pursuant to the bill to offer placement suggestions and alternatives to the department or court.

WHEREAS, SB-1366 would require the department to provide reasonable public notice to the community into which a person committed as a sexually violent predator may be released, at least 45 days prior to the department's submission of its recommendation to the court for conditional release. It would require the notice to include the name of the person who may be released into the community and a description of the specific crime or crimes for which the person was committed as a sexually violent predator.

WHEREAS, SB-1366 would authorize the department to modify its placement recommendation based on the comments from law enforcement agencies; and

WHEREAS, SB-1366 would require a nonparolee who is conditionally released under these provisions to be placed in the county of civil commitment, except under extraordinary circumstances, as defined in the bill.

RESOLVED, that the City of Oakland declares its support for SB-1366; and

BE IT FURTHER RESOLVED, that the City Council directs the City Administrator and the City's legislative lobbyist to advocate for the above position in the State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA, April 6, 2004

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN and
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

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BILL NUMBER: SB 1366 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Denham

FEBRUARY 18, 2004

An act to amend Sections 6608 and 6609.1 of, and to add Section 6609.4 to, the Welfare and Institutions Code, relating to sexually violent predators.

LEGISLATIVE COUNSEL'S DIGEST

SB 1366, as introduced, Denham. Sexually violent predators: conditional release: notice.

Existing law provides for the commitment of convicted sexually violent predators to the custody of the State Department of Mental Health for treatment. If the Director of Mental Health determines that the person's diagnosed mental disorder has so changed that the person is not likely to commit acts of predatory sexual violence while under supervision and treatment in the community, the director is required to forward a report and recommendation for conditional release to the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections and the court is required to set a hearing.

Under existing law, a person who has been committed as a sexually violent predator may petition the court for conditional release with or without the recommendation or concurrence of the Director of Mental Health. Upon receipt of a petition from the Director of Mental Health or a committed person, if that petition is not based upon frivolous grounds, the court is required to 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; if not, the court is required to order the committed person to be placed with an appropriate forensic conditional release program operated by the state for one year. Under existing law, that placement must occur within 21 days after receiving notice of the court's finding.

Existing law requires the department to provide notice to certain local law enforcement agencies in certain communities, including in the community in which the person may be released for community outpatient treatment. Existing law requires this notice to be made 15 days prior to the department's recommendation to the court for community outpatient treatment. Existing law also requires the Department of Corrections to notify the State Department of Mental Health, and local law enforcement agencies, when the court orders the release of a sexually violent predator.

This bill instead would require placement of a sexually violent predator into a conditional release program within 50 days of the court's finding, and would require notice to local law enforcement agencies by the department or the Department of Corrections 45 days prior to making its recommendation to the court, or the court's release of the sexually violent predator. This bill would authorize

local law enforcement agencies that received notice pursuant to the bill to offer placement suggestions and alternatives to the department or court.

This bill would require the department to provide reasonable public notice to the community into which a person committed as a sexually violent predator may be released, at least 45 days prior to the department's submission of its recommendation to the court for conditional release. It would require the notice to include the name of the person who may be released into the community and a description of the specific crime or crimes for which the person was committed as a sexually violent predator. This bill would authorize the department to modify its placement recommendation based on the comments from law enforcement agencies.

This bill would require a nonparolee who is conditionally released under these provisions to be placed in the county of civil commitment, except under extraordinary circumstances, as defined in the bill.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6608 of the Welfare and Institutions Code is amended to read:

6608. (a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release and subsequent unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, 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. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel.

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

(c) No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.

(d) 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. 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, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.

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

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

50 days after receiving notice of the court's finding, the person shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court.

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

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

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

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

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

SEC. 2. Section 6609.1 of the Welfare and Institutions Code is amended to read:

6609.1. (a) When the State Department of Mental Health makes a

recommendation to the court for community outpatient treatment for any person committed as a sexually violent predator, or when a person who is committed as a sexually violent predator pursuant to this article has petitioned a court pursuant to Section 6608 for conditional release under supervision and treatment in the community pursuant to a conditional release program, or has petitioned a court pursuant to Section 6608 for subsequent unconditional discharge, and the department is notified, or is aware, of the filing of the petition, the department shall notify the sheriff or chief of police, or both, the district attorney, or the county's designated counsel, that have jurisdiction over the following locations:

- (1) The community in which the person may be released for community outpatient treatment.
- (2) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.
- (3) The county that filed for the person's civil commitment pursuant to this article.

The department shall also notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

The notice shall be given at least ~~15~~ 45 days prior to the department's submission of its recommendation to the court in those cases in which the department recommended community outpatient treatment.

(b) When the State Department of Mental Health makes a recommendation to pursue recommitment, makes a recommendation not to pursue recommitment, or seeks a judicial review of commitment status pursuant to subdivision (f) of Section 6605, of any person committed as a sexually violent predator, it shall provide written notice of that action to the sheriff or chief of police, or both, and to the district attorney, that have jurisdiction over the following locations:

- (1) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.
- (2) The community in which the person will probably be released, if recommending not to pursue recommitment.
- (3) The county that filed for the person's civil commitment pursuant to this article.

The State Department of Mental Health shall also notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code. The notice shall be made at least 15 days prior to the department's submission of its recommendation to the court.

Those agencies receiving the notice referred to in this subdivision shall have 15 days from receipt of the notice to provide written comment to the department regarding the impending release. Those comments shall be considered by the department, which may modify its decision regarding the community in which the person is scheduled to be released, based on those comments.

(c) If the court orders the release of a sexually violent predator, the court shall notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections. The Department of Corrections shall notify the State Department of Mental Health, the sheriff or chief of police, or both, and the district attorney, that have jurisdiction over the following locations:

- (1) The community in which the person is to be released.
- (2) The community in which the person maintained his or her last

legal residence as defined in Section 3003 of the Penal Code.

The Department of Corrections shall make the notifications required by this subdivision regardless of whether the person released will be serving a term of parole after release by the court.

The notice shall be given at least 45 days prior to the person's release.

(d) If the person is otherwise subject to parole pursuant to Article 1 (commencing with Section ~~300~~ 3000)

of Chapter 8 of Title 1 of Part 3 of the Penal Code, to allow adequate time for the Department of Corrections to make appropriate parole arrangements upon release of the person, the person shall remain in physical custody for a period not to exceed 72 hours or until parole arrangements are made by the Sexually Violent Predator Parole Coordinator of the Department of Corrections, whichever is sooner. To facilitate timely parole arrangements, notification to the Sexually Violent Predator Parole Coordinator of the Department of Corrections of the pending release shall be made by telephone or facsimile and, to the extent possible, notice of the possible release shall be made in advance of the proceeding or decision determining whether to release the person.

(e) The notice required by this section shall be made whether or not a request has been made pursuant to Section 6609.

(f) The time limits imposed by this section are not applicable when the release date of a sexually violent predator has been advanced by a judicial or administrative process or procedure that could not have reasonably been anticipated by the State Department of Mental Health and where, as the result of the time adjustments, there is less than 30 days remaining on the commitment before the inmate's release, but notice shall be given as soon as practicable. In no case shall notice required by this section to the appropriate agency be later than the day of release.

(g) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. Section 6609.4 is added to the Welfare and Institutions Code, to read:

6609.4. (a) The State Department of Mental Health shall provide reasonable public notice to the community into which a person committed as a sexually violent predator may be released that a sexually violent predator may be conditionally released into the community, in either of the following cases:

(1) Those cases in which the department recommended community outpatient treatment, pursuant to subdivision (a) of Section 6609.1.

(2) Those cases in which the department has been notified by the Department of Corrections that the court has ordered the release of a sexually violent predator, pursuant to subdivision (c) of Section 6609.1.

(b) The notice required by this section shall be given at least 45 days prior to the department's submission of its recommendation to the court or the release of the person by the court, and shall include the name of the person who may be released into the community and a description of the specific crime or crimes for which the person was committed as a sexually violent predator.

(c) Those law enforcement agencies receiving the notice referred to in subdivision (a) or (c) of Section 6609.1 shall have 15 days from receipt of that notice to provide written comment to the department or the court regarding the impending release, and to offer placement suggestions and alternatives. The department or court

shall consider the recommendations, and may modify its decision regarding the community in which the person is scheduled to be released, based on those comments.

(d) (1) Except with respect to a parolee placed pursuant to Section 3003 of the Penal Code, a person the department has recommended for community outpatient treatment pursuant to subdivision (a) of Section 6609.1 shall be released in the county that filed for the person's civil commitment pursuant to this article, unless extraordinary circumstances prevent it.

(2) For purposes of this subdivision, "extraordinary circumstances" means that a victim or family member of a victim of the person committed as a sexually violent predator resides in the county of civil commitment.

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