

**FORENSIC MENTAL HEALTH**

**LEGAL ISSUES**

**Chapter 3**

**Sexually Violent Predators (SVPs)**



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## **A. Introduction**

### **1. *How did SVP commitments come about?***

In 1995, California enacted a controversial commitment law which affects people who had been convicted of certain sex offenses, sentenced to prison, and already served time. The Sexually Violent Predator Act (SVPA), effective in 1996 and amended in 2007 after the passage of California Proposition 83 (“Jessica’s law”) by voters on November 7, 2006, established a procedure that results in the mental health commitment of a class of people who are not necessarily mentally ill, and without regard to whether their “condition” is amenable to treatment. The SVPA is codified in California Welfare & Institutions Code sections 6600 – 6609.3.0.

The Legislature’s purpose for originally enacting the SVPA in 1995 is as follows:

The Legislature finds and declares that a small but extremely dangerous group of sexually violent predators that have diagnosable mental disorders can be identified while they are incarcerated. These people are not safe to be at large and if released represent a danger to the health and safety of others in that they are likely to engage in acts of sexual violence. The Legislature further finds and declares that it is in the interest of society to identify these individuals prior to the expiration of their terms of imprisonment. It is the intent of the Legislature that once identified, these individuals, if found to be likely to commit acts of sexually violent criminal behavior beyond a reasonable doubt, be confined and treated until such time that it can be determined that they no longer present a threat to society. The Legislature further finds and declares that while these individuals have been duly punished for their criminal acts, they are, if adjudicated sexually violent predators, a continuing threat to society. The continuing danger posed by these individuals and the continuing basis for their judicial commitment is a currently diagnosed mental disorder which predisposes them to engage in sexually violent criminal behavior. It is the intent of the Legislature that these individuals be committed and treated for their disorders only as long as the disorders persist and not for any punitive purposes.

Stats. 1995, chs. 762, 1 & 763, 1.

The SVPA has been upheld against several constitutional challenges, including challenges based on a violation of due process and equal protection. *Hubbart v. Knapp* (2004) 379 F.3d 773; *People v. Yartz* (2005) 37 Cal.4<sup>th</sup> 529.

**2. *Is a SVP commitment a further prison sentence?***

No. If someone is found to meet the legal definition of a SVP, he<sup>1</sup> is committed for treatment for a mental disorder which predisposes him to engage in sexually violent criminal behavior. The commitment is not for a punitive purpose. (Stats.1995, ch. 763, § 1.) *Hubbart v. Superior Court*, (1999) 19 Cal.4<sup>th</sup> 1138.

**B. Definition of “Sexually Violent Predator”**

**1. *What is the statutory definition of SVP?***

Under California law, a sexually violent predator is defined as a person: (a) who has been **convicted of a sexually violent offense against one**<sup>2</sup> or more victims for which he received a determinate sentence; (b) who has a **diagnosed mental disorder**; and (c) that makes him a **danger to the health and safety of others** in that it is **likely** that he will **engage in sexually violent criminal behavior**. Welf. & Inst. Code § 6600(a)(1).

**2. *What convictions qualify as a sexually violent offense?***

The SVPA enumerates the types of sex crimes that qualify as “sexually violent offenses” when committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity. Welf. & Inst. Code § 6600(b). *People v. Whitney* (2005) 129 Cal.App.4<sup>th</sup> 1287; *People v. Fulcher* (2006) 136 Cal.App.4<sup>th</sup> 41; *People v. Lopez* (2007) 146 Cal.App.4<sup>th</sup> 1263.

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<sup>1</sup> For the sake of readability, this publication uses the masculine and feminine personal pronouns in alternate chapters.

<sup>2</sup>. Proposition 83, passed by voters in November 2006, lowered the number of convicted sexually violent offenses from two to one.

When the victim of an underlying offense is a child under the age of 14 and the offending act involved “substantial sexual conduct,” the offense shall constitute a “sexually violent offense” for purposes of Welfare and Institutions Code section 6600 even though not accompanied by force or violence. Welf. & Inst. § 6600.1; *People v. Superior Court (Johannes)* (1999) 70 Cal.App.4<sup>th</sup> 558.

**3. What is the requirement of a “currently diagnosed mental disorder”?**

A designation of SVP requires a “currently diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he will engage in sexually violent criminal behavior.” Welf. & Inst. Code § 6600(a). However, the United States Supreme Court has consistently upheld commitment schemes authorizing the use of prior dangerous behavior to establish both present mental impairment and the likelihood of future harm. *Hubbard v. Superior Court*, 19 Cal.4<sup>th</sup> 1138.

Under the SVPA, the definition of “diagnosed mental disorder” is broader than “mental illness”. It includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others. Welf. & Inst. Code § 6600(c).

A person does not have to be amenable to treatment to be designated as an SVP. Welf. & Inst. Code § 6606(b). *Rose v. Mayberg* (2006) 454 F.3d 958; *People v. Rasmuson* (2006) 145 Cal.App.4<sup>th</sup> 1487

**4. What is the dangerousness requirement?**

To make the SVP commitment standard consistent with the statutory probable cause standard, the California Supreme Court read into the commitment standard the requirement that the individual be likely to engage in sexually violent “predatory” behavior. *People v. Hurtado* (2002) 28 Cal.4<sup>th</sup> 1179.

The statutory definition of “predatory” is that the individual’s prior acts were directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization. Welf. & Inst. Code § 6600(e).

The finding of danger to the health and safety of others does not require proof of a recent overt act while the offender is in custody. Welf. & Inst. Code § 6600(d).

## **C. Initiating of SVP Proceedings**

### **1. How is an SVP commitment initiated?**

The Department of Corrections and Rehabilitation (CDCR) and Board of Prison Terms (BPT) are authorized to screen, for possible SVP designation, all inmates in custody who are either serving a determinate prison sentence or who have had their parole revoked.<sup>3</sup> This process involves review of the inmate's background and criminal record, and employs a "structured screening instrument" developed in conjunction with the Department of Mental Health (DMH). Welf. & Inst. Code § 6601(b). When officials determine that an inmate is likely to meet the SVP criteria, he is referred to DMH for a "full evaluation." The evaluation is to be conducted by two practicing psychologists and/or psychiatrists. Welf. & Inst. Code § 6601(d). *In re Wright* (2005) 128 Cal.App.4<sup>th</sup> 663. With certain exceptions, the evaluation should be completed at least six months prior to the inmate's scheduled release date.<sup>4</sup> Welf. & Inst. Code § 6601(a).

The two mental health evaluators must agree that the inmate is mentally disordered and dangerous within the meaning of section 6600 for proceedings to go forward. Welf. & Inst. Code § 6601(d).

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<sup>3</sup>2. A petition may be filed under this section if the individual was in custody pursuant to his determinate prison term, parole revocation term, or a hold placed pursuant to Welfare and Institutions Code section 6601.3. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. Welf. & Inst. Code § 6601(a)(2).

<sup>4</sup>. However, if the inmate was received by the CDCR with less than nine months of his sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the Director may refer the person for evaluation at a date that is less than six months prior to the inmate's scheduled release date. Welf. & Inst. Code § 6601(s)(1).

**2. What do the mental health evaluators assess when evaluating an inmate for SVP commitment?**

The mental health evaluators must assess for diagnosable mental disorders, as well as various factors known to be associated with the risk of re-offense among sex offenders. Risk factors to be considered include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder. Welf. & Inst. Code § 6601(c). Information from previous SVP commitment evaluations cannot be used as evidence for a current SVP commitment evaluation. *People v. Salomon Munoz* (2005) 129 Cal.App.4<sup>th</sup> 421.

**3. What does DMH do with SVP evaluations?**

When only one of the professionals performing the evaluation determines that an individual meets the SVP criteria, DMH must arrange for further examination by two independent health professionals. Welf. & Inst. Code § 6601(e)-(g). If both mental health professionals conclude that the inmate meets the SVP criteria, the DMH Director must forward a request for a petition for commitment to the county in which the inmate was last convicted. If that county's designated counsel concurs with the recommendation, a SVP petition is filed in superior court. Welf. & Inst. Code § 6601(h) and (i).

**4. If an inmate refuses to be interviewed by DMH evaluators, can he still be designated an SVP?**

Yes. A 4<sup>th</sup> Appellate District court held that "a sex offender cannot deny the state access to the workings of his mind and then claim a lack of proof that he has a 'current' psychological disorder. Because he refused to be interviewed by the state's experts, who could have formed an opinion as to his present dangerousness, defendant has forfeited the claim that the state did not prove that he was currently dangerous." *People v. Sumahit* (2005) 128 Cal.App.4<sup>th</sup> 347.

**5. Is it illegal to be held in custody beyond the scheduled release date in order to be evaluated for SVP commitment?**

It depends. Upon a showing of good cause the BPT may order a person to remain in custody for no more than 45 days beyond the person's scheduled release date for full evaluation. Welf. & Inst. Code § 6601.3. A petition that

is not filed within 45 days after the release date will be dismissed. *People v. Superior Court* (2008) 159 Cal.App.4<sup>th</sup> 301.

**6. What happens after a SVP petition is filed in superior court?**

If the superior court determines that an SVP petition, on its face, would support a finding of probable cause, the judge will order that the person be detained in a secure facility until a probable cause hearing can be completed. All proceedings under the SVPA, including the probable cause hearing and trial, are civil rather than criminal in nature. *Seling v. Young* (2001) 531 U.S. 250; *People v. Superior Court (Howard)* (1999) 70 Cal.App.4<sup>th</sup> 136.

**D. The Probable Cause Hearing**

**1. When does the probable cause hearing occur?**

The probable cause hearing is held within 10 calendar days from the order issued by the judge, and may only be continued upon a showing of good cause by the party requesting the continuance. Welf. & Inst. Code §§ 6601.5, 6602(b). The probable cause hearing must be held before the expiration of parole or before the expiration of the 45-day temporary parole hold specified in Welfare and Institutions Code section 6601.3. Welf. & Inst. Code §§ 6601.3, 6601.5; Cal. Code Regs. tit. 15, § 2600.1. *People v. Hayes* (2006) 137 Cal.App.4<sup>th</sup> 34.

**2. What is the standard for probable cause?**

The superior court must find probable cause of the following:

- (i) a statutorily defined diagnosed mental disorder;
- (ii) future dangerousness, i.e., whether a person is likely to commit sexually violent behavior upon release;
- (iii) that the future acts of sexual violence will be predatory; and,
- (iv) conviction of at least one qualifying offense.

*Cooley v. Superior Court* (2002) 29 Cal.4<sup>th</sup> 228.

**3. What procedural rules apply to the probable cause hearing?**

The inmate is entitled to counsel at the probable cause hearing. Due process requires that the SVP probable cause hearing be a full evidentiary hearing, similar to a preliminary hearing in criminal matters, and should allow the admission of both oral and written evidence. *People v. Butler* (1998) 68 Cal.App.4<sup>th</sup> 421; *In re Parker* (1998) 60 Cal.App.4<sup>th</sup> 1453.

Hearsay victim statements found in probation reports are admissible at probable cause hearings to establish the details of the prior sex offenses. *People v. Superior Court (Howard)* (1999) 70 Cal.App.4<sup>th</sup> 136.

Evidence Code §§ 1530 and 1531 apply to SVP probable cause hearings and non-certified psychological evaluations of a defendant's purported mental disorder are not admissible. *In re Kirk* (1999) 74 Cal.App.4<sup>th</sup> 1066.

When no probable cause exists, the petition is dismissed, and the inmate remains subject to parole. Welf. & Inst. Code § 6602(a). If the court finds probable cause within the meaning of Welfare and Institutions Code section 6602, a trial is scheduled to determine whether the person meets the SVP criteria. The individual must remain in a secure facility from the time probable cause is found and the completion of trial. Welf. & Inst. Code § 6602.

**E. The SVP Trial**

**1. What procedural rules apply to an SVP Trial?**

At trial, the individual is entitled to a number of procedural safeguards, including the right to trial by jury, the assistance of counsel, the right to retain experts to perform an examination, and access to all relevant medical and psychological records. Welf. & Inst. Code § 6603(a). Either party may demand a jury trial and if no jury demand is made by either party, the trial will be before the court. Welf. & Inst. Code § 6603(b). The burden of proof is on the state to show that the SVP criteria have been established beyond a reasonable doubt. Welf. & Inst. Code § 6604; *People v. Buffington* (1999) 74 Cal.App.4<sup>th</sup> 1149. Any jury verdict must be unanimous. Welf. & Inst. Code § 6603(f). There is a statutory right, not a constitutional right, to a jury trial. *People v. Rowell* (2005) 133 Cal.App.4<sup>th</sup> 447. For other procedural decisions see *People v. Carlin* (2007) 150

Cal.App.4<sup>th</sup> 322.

If the petitioner's attorney determines that updated evaluations are necessary to properly represent the petitioner, the attorney may request DMH to conduct them. If any of the original evaluators are not available to testify at trial, the attorney may further request that DMH perform replacement evaluations. Welf. & Inst. Code § 6603(c). In the event that the updated or replacement evaluations cause a split opinion as to whether the petitioner meets SVP commitment criteria, DMH must conduct an additional two evaluations. Welf. & Inst. Code §§ 6601(f), 6603(c).

## **2. How long is an SVP commitment?**

Under Jessica's Law, when there is a SVP finding, the person is committed for an **indeterminate term** in a secure DMH designated facility. Welf. & Inst. Code § 6604. For individuals committed as an SVP prior to Jessica's law, California courts are currently split on whether they are now committed under an indeterminate term. Some courts hold that the indeterminate commitment term applies even to people who were committed on two-year terms before Jessica's law was passed. By changing the terms of commitment under the SVPA from two-year terms to indefinite terms, the California Legislature and then the voters demonstrated an intent to keep those found to be SVPs committed until they no longer meet the definition of an SVP. *Bourquez, et al. v. Superior Court of Sacramento* (2007) 156 Cal.App.4<sup>th</sup> 1275; *People v. Shields* (2007) 155 Cal.App.4<sup>th</sup> 559; *People v. Carroll* (2007) 158 Cal.App.4<sup>th</sup> 503. One court held that the indeterminate term, under to Jessica's Law, for an individual committed as an SVP does not apply retroactively. *People v. Whaley* (2008) 160 Cal.App.4<sup>th</sup> 779.

While a court has an inherent power to consolidate SVPA petitions for trial, a court cannot exercise this power solely to accommodate consolidation where earlier SVPA petitions are delayed. *People v. Litmon* (2008) 162 Cal.App.4<sup>th</sup> 383.

A SVP finding tolls the inmate's parole period. Welf. & Inst. Code § 6601(k).

## **F. Confinement and Treatment**

### **1. Where are SVP civil committees housed?**

A person found to be an SVP must be committed to the DMH for appropriate treatment and confined in a secure facility designated by the Director of Mental Health. Welf. & Inst. Code § 6604. The facility should be located on the grounds of an institution under the jurisdiction of the Department of Corrections. *Id.* Presently, males committed under the SVPA are usually confined at Coalinga State Hospital, while females are confined at Patton State Hospital. No person may be placed in a state hospital until there has been a determination of probable cause under sections 6601.3 or 6602. Welf. & Inst. Code § 6602.5(a). People placed on SVP commitment may also be placed on outpatient commitment with CONREP. Welf. & Inst. Code § 6605.

**2. What type of treatment is DMH responsible for providing to SVPs?**

DMH must provide treatment for any diagnosed mental disorder. Welf. & Inst. Code § 6606(a). *Hydrick v. Hunter* (2006) 500 F.3d 978. This treatment obligation exists even where the chance of success in a particular case is low. Welf. & Inst. Code § 6606(b). The treatment program must meet “current institutional standards for the treatment of sex offenders,” and must be based on a “structured treatment protocol” developed by DMH, as set forth in the SVPA. In particular,

[t]he protocol shall describe the number and type of treatment components that are provided in the program, and shall specify how assessment data will be used to determine the course of treatment for each individual offender. The protocol shall also specify measures that will be used to assess treatment progress and changes with respect to the individual’s risk of re-offense.

Welf. & Inst. Code § 6606(c).

State law provides that individuals who are held under civil process must be “confined separately and distinctly” from individuals awaiting criminal trials and from individuals held under criminal sentence. When a SVPA detainee is confined in conditions identical to, similar to, or more restrictive than, those in which his criminal counterparts are held, there is a presumption that the detainee is being subjected to “punishment.” *Jones v. Blanas* (2004) 393 F.3d 918.

DMH will meet with each patient who chooses not to participate in a

specific course of offender treatment on a monthly basis to explain treatment options available to the patient, offer and re-offer treatment, seek to obtain a patient's cooperation in a course of treatment, and document these steps in the patient's record. The fact that a patient has chosen not to participate in treatment in the past cannot support a conclusion that the patient continues to choose not to participate. Welf. & Inst. Code § 6606(e).

DMH shall ensure that policies and procedures are in place that address changes in patient needs, as well as patient choices, and respond to treatment needs in a timely fashion. DMH is authorized to provide programming using an outpatient/day treatment model, in which treatment is provided by licensed clinicians in living units not licensed as health facility beds within a secure facility setting, on less than a 24-hour a day basis. In providing this treatment, DMH must take into consideration the unique characteristics, individual needs, and choices of people committed under this article, including whether or not a person needs antipsychotic medication, whether or not a person has physical medical conditions, and whether or not a person chooses to participate in a specified course of offender treatment. Welf. & Inst. Code § 6606(d).

An SVP can be compelled to take antipsychotic medication in a nonemergency situation only if a court makes one of two findings: (1) that the individual is incompetent, or (2) that the individual is dangerous within the meaning of Welfare and Institutions Code section 5300. *In re Calhoun* (2004) 121 Cal.App.4<sup>th</sup> 1315.

The California Department of Health Services (DHS) allows Coalinga State Hospital to suspend its health facility beds up until 2013. Coalinga State Hospital can voluntarily place suspended beds into active license status by request to DHS as long as those beds meet current operational requirements for licensure. Welf. & Inst. Code § 6606(d).

## **G. Reviewing and Challenging an SVP Commitment**

### **1. *How often does DMH review an SVP's progress in treatment?***

The SVPA includes provisions for an annual review of the individual's mental condition. The report will include consideration of whether the

committed person currently meets the definition of an SVP, and whether conditional release to a less restrictive alternative or an unconditional release is in the best interest of the person and adequately protects the community. DMH files this annual report with the committing court, with a copy of the report provided to the prosecuting District Attorney and the committed SVP. The individual may retain a qualified expert to examine him. The expert is entitled to access to all records of the individual. If the individual is indigent, a court may appoint a qualified expert to evaluate the SVP. Welf. & Inst. Code § 6605(a).

## **2. How can an SVP challenge his commitment?**

Before the passage of Jessica's law in 2006, a person committed under the SVPA was entitled to a hearing at the end of each two-year term of commitment. Now, DMH must give permission to the committed individual to petition the court if: (1) the person's condition has changed so that he no longer meets the definition of an SVP; or (2) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community. Upon receipt of the petition, the judge will order a show cause hearing. Welf. & Inst. Code § 6605(b).

If the court determines at that show cause hearing that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he is not a danger to the health and safety of others, and is not likely to engage in sexually violent criminal behavior if discharged, then the court will set a full hearing on the issue. Welf. & Inst. Code § 6605(c).

An individual who voluntarily commits himself as an SVP does not have standing to challenge his status as an SVP. To have standing an SVP must show he suffered (1) an "injury in fact" that is (2) "fairly traceable" to the state court's commitment order being challenged, and (3) that is likely [to be] redressed by a favorable decision. *Jackson v. CA Depart. Of Mental Health* (2005) 399 F.3d 1069.

If an SVS files a Section 1983 complaint for a violation of his constitutional rights, the court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his commitment; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the

commitment has already been invalidated. *Huftile v. Miccio-Fonseca* (2005) 410 F.3d 1136.

**3. *What standards apply to a hearing to review an SVP commitment?***

At the full hearing, the individual is entitled to the same due process and procedural rights afforded at the initial SVP commitment proceeding. This includes the right to a jury and the right to have an expert evaluation. The court will appoint an expert if the person is indigent and requests an appointment. Welf. & Inst. Code § 6605(d).

At the full hearing, the state must prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he is a danger to the health and safety of others, and is likely to engage in sexually violent criminal behavior if discharged. Welf. & Inst. Code § 6605(d). A favorable ruling entitles the committed person to unconditional release and discharge. However, if the state prevails, the SVP commitment will run for an indeterminate period from the date of the ruling. Welf. & Inst. Code § 6605(e).

## **H. Unconditional Release**

Judicial review of an SVP's commitment can be sought by a writ of habeas corpus pursuant to the procedures set forth in Welfare and Institutions Code section 7250. This petition is made in the superior court from which the commitment was made. If the superior court determines that the person is no longer a SVP, he will be unconditionally released and discharged. Welf. & Inst. Code §§ 6605(f), 6608(a).

## **I. Conditional Release**

**1. *What is a conditional release?***

An SVP can be conditionally released into the community in two ways:

(a) DMH Outpatient Recommendation

The Director of DMH may file a report and recommendation for conditional release when it appears that an individual'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.” Welf. & Inst. Code § 6607(a); or

(b) The SVP Petition for Outpatient Placement

After one year of commitment, an SVP may petition for conditional release and subsequent unconditional discharge without the recommendation or concurrence of DMH. Welf. & Inst. Code §§ 6608(a), (c), (h). However, 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(a). No action on the petition may be taken by the court without first obtaining the written recommendation of the treatment facility director. Welf. & Inst. Code § 6608(j).

**2. *How does the conditional release hearing work?***

Like restoration of sanity, a petition for release is a two-step process:

(a) Conditional Release Hearing

First, the court will hold a hearing to determine whether the person would be a danger to the health and safety of others in that it is likely that he will engage in sexually violent criminal behavior due to his diagnosed mental disorder, if under supervision and treatment in the community. Welf. & Inst. Code § 6608(d). The petitioner has the burden of proof by a preponderance of the evidence. Welf. & Inst. Code § 6608(i). If the court finds for the SVP, the court will order placement with an appropriate conditional release program (CONREP) for one year. Welf. & Inst. Code § 6608(d). All CONREP provisions found in Penal Code section 1605 through section 1610 dealing with supervision and revocation shall apply to any person committed under the SVPA. Welf. & Inst. Code § 6608(e).

(b) Unconditional Release Hearing

Second, at the end of one year, the court will hold another hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a diagnosed mental disorder, he is not a danger to the health and safety of others in that it is not likely that he will engage in sexually violent criminal behavior. Welf. & Inst. Code § 6608(d). The petitioner has the burden of proof by a preponderance of

the evidence. Welf. & Inst. Code § 6608(i). The court cannot make this determination until the person has completed at least one year in CONREP. Welf. & Inst. Code § 6608(d). If the court rules against the petitioner, the person may remain on outpatient status with the CONREP program. Welf. & Inst. Code § 6608(d).

If the court denies the petition for conditional release or denies the petition for unconditional discharge, the petitioner may not file a new petition until one year from the date of denial. Welf. & Inst. Code § 6608(h).

**3. *Are there any restrictions on where an individual can live from an SVP commitment?***

No. A person conditionally released will be placed in the “county of domicile” prior to the person’s incarceration, unless the court finds that extraordinary circumstances require placement outside the county of domicile. Welf. & Inst. Code § 6608.5(a). “County of domicile” means the county where the person has his true, fixed, and permanent home and principal residence and where the person has the intention of returning. If no county can be verified, the county of domicile is the county in which the person was arrested for the crime for which he was last incarcerated. Welf. & Inst. Code § 6608.5(b)(1). “Extraordinary circumstances” means circumstances that would inordinately limit DMH’s ability to effect conditional release of the person in the county of domicile in accordance with § 6608. Welf. & Inst. Code § 6608.5(c).

When recommending specific placement for community outpatient treatment, the department will consider the following:

- (1) the concerns and proximity of the victim or the victim’s next of kin; and,
- (2) the age and profile of the victim or victims in the sexually violent offenses committed by the person subject to placement.

Welf. & Inst. Code § 6608.5(e).

The court will review DMH’s proposed community placement and location of the individual. The court can approve, modify, or reject DMH’s recommendations. Welf. & Inst. Code § 6609.1(c).

Placement shall not be within one-quarter mile of any public or private school providing instruction in kindergarten or grades 1-12, if either of the following conditions exist:

- (1) The person previously been convicted of a violation of the following:
  - (i) Three or more acts of substantial sexual conduct with a child under the age of 14 years while living with the child for at least three months; Penal Code section 288.5; or
  - (ii) Lewd acts upon a child under age 14 (or if the victim is 14 or 15 and the perpetrator is at least 10 years older); Penal Code section 288; or,
- (2) The court finds that the person has a history of improper sexual conduct with children.

Welf. & Inst. Code § 6608.5(f).

**4. *Is an SVP on conditional release provided with any assistance in finding housing?***

Yes. The county of domicile will appoint a county agency to assist in locating and securing housing. The county of domicile will notify the department of the name of the agency at least 60 days before the date of the potential or expected release. Welf. & Inst. Code § 6608.5(d).

**5. *How can conditional release be revoked?***

Please see the Chapter on Conditional Release Program (CONREP). The revocation of an individual's conditional release, due to his refusal to incriminate himself as part of his sex offender treatment, violates his Fifth Amendment right against compelled self-incrimination. *U.S. v. Antelope* (2005) 395 F.3d 1128.

**6. *Does law enforcement play a role in monitoring SVPs on conditional release?***

Yes. DMH may enter into an interagency agreement or contract with the Department of Corrections and Rehabilitation (CDCR) or with local law

enforcement agencies for supervision or monitoring services of SVPs who are conditionally released into the community. Welf. & Inst. Code § 6608.7.

DMH will provide the court with a copy of the written contract entered into with any public or private person or entity responsible for monitoring and supervising the patient's outpatient placement and treatment program. Subcontracts between the contractor and clinicians providing treatment and related services to the patient are not required by the court. Welf. & Inst. Code § 6608.8(a).

The court has the discretion to order DMH to provide a copy of the written terms and condition of conditional release to the sheriff or chief of police, or both, that have jurisdiction over the proposed or actual placement community. Welf. & Inst. Code § 6608.8(c). Terms and conditions of the conditional release cannot be altered by DMH except in emergencies. Welf. & Inst. Code § 6608.8(d)(1). An emergency situation is where it is necessary to protect public safety or the safety of the person. Welf. & Inst. Code § 6608.8(d)(5). If DMH has proposed changes, the patient under conditional release shall be provided notice, along with the district attorney or designated county counsel. The court on its own motion, or upon the motion of either party to the action, may set a hearing on the proposed change. Welf. & Inst. Code §§ 6608.8(d)(2), (3).

Within ten days of a request by the chief of police of a city or the sheriff of a county, DMH must provide the following information concerning each person committed as a SVP who is receiving outpatient care in a conditional release program in that city or county: name, address, date of commitment, county from which committed, date of placement in the conditional release program, fingerprints, and a glossy photograph no smaller than 3-1/8 X 3-1/8 inches in size, or clear copies of the fingerprints and photograph. Welf. & Inst. Code § 6609.

### **7. *Who is notified when an SVP is released?***

In a lead-up to a possible release in which DMH recommends a community placement location, DMH notifies the sheriff or chief of police, or both, the district attorney, or the county's designated counsel about the following:

- (i) the community in which the person may be released for community outpatient treatment;

- (ii) The county that filed for the person's civil commitment; and,
- (iii) The community in which the person maintained his last legal residence.

Welf. & Inst. Code §§ 6609.1(a)(1)(A)-(C)

Upon request, the victim, witness, or next of kin of the victim are entitled to be notified of the scheduled release of the individual under an SVP commitment. Welf. & Inst. Code § 6609.3.