
THIRD READING

Bill No: AB 1253
Author: Maienschein (D)
Amended: 5/4/23 in Assembly
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-0, 7/11/23
AYES: Bradford, Ochoa Bogh, Skinner, Wiener
NO VOTE RECORDED: Wahab

ASSEMBLY FLOOR: 72-0, 5/31/23 - See last page for vote

SUBJECT: Hearsay: exceptions

SOURCE: Crime Victims United of California

DIGEST: This bill allows hearsay statements from a victim, eyewitness, or medical examiner in a sexually violent predator (SVP) probable cause hearing.

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) Requires a judge of the superior court to review the petition and shall determine whether there is probable cause to believe that the individual named

in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release:

- a) The person named in the petition shall be entitled to assistance of counsel at the probable cause hearing.
 - b) Upon the commencement of the probable cause hearing, the person shall remain in custody pending the completion of the probable cause hearing.
 - c) Provides that if the judge determines there is not probable cause, he or she shall dismiss the petition and any person subject to parole shall report to parole. If the judge determines that there is probable cause, the judge shall order that the person remain in custody in a secure facility until a trial is completed and shall order that a trial be conducted to determine whether the person is, by reason of a diagnosed mental disorder, a danger to the health and safety of others in that the person is likely to engage in acts of sexual violence upon his or her release from the jurisdiction of the Department of Corrections and Rehabilitation or other secure facility. (Welf. & Inst. Code, § 6602 (a).)
- 4) Allows, at the probable cause hearing for the existence of any prior convictions to be shown with documentary evidence. The details underlying the commission of an offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of State Hospitals. (Welf. & Inst. Code, § 6600 (a)(3).)
 - 5) Provides that upon a showing of probable cause that a person is subject to the SVPA, the person is entitled to a trial by jury, to the assistance of counsel, to the right to retain experts or professional persons to perform an examination on the person's behalf, and to have access to all relevant medical and psychological records and reports. (Welf. & Inst. Code § 6603 (a).)
 - 6) Provides that the court or jury shall determine whether, beyond a reasonable doubt, the person is a SVP. If the court or jury determines that the person is a SVP, the person shall be committed for an indeterminate term to the custody of the State Department of State Hospitals for appropriate treatment and confinement in a secure facility designated by the Director of the Department of State Hospitals (DSH). (Welf. & Inst. Code § 6604.)

- 7) Permits a person committed as an SVP to be held for an indeterminate term upon commitment. (Welf. & Inst. Code §§ 6604 & 6604.1.)
- 8) Requires that a person found to have been an SVP and committed to the 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, (a) & (b).)
- 9) 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 Director of DSH 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.)
- 10) 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).)
- 11) 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).)
- 12) 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).)
- 13) Provides that the Evidence Code applies in all actions, "[e]xcept as otherwise provided by statute." (Evidence Code § 300.)
- 14) States that only relevant evidence is admissible, and except as otherwise provided by statute, all relevant evidence is admissible. (Evidence Code §§ 350, 351.)
- 15) Defines "hearsay evidence" as a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of

the matter stated. Provides that hearsay evidence is inadmissible, except as provided by law. (Evidence Code § 1200.)

- 16) Authorizes a court in its discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. (Evidence Code § 352.)
- 17) Specifies that circumstances that are relevant to the issue of trustworthiness include, but are not limited to, the following:
 - a) Whether the statement was made in contemplation of pending or anticipated litigation in which the declarant was interested.
 - b) Whether the declarant has a bias or motive for fabricating the statement, and the extent of any bias or motive.
 - c) Whether the statement is corroborated by evidence other than statements that are admissible only pursuant to this provision of law. (Evidence Code § 1370 (b).)

This bill:

- 1) Creates a hearsay exception applicable only at a hearing to determine whether a person shall be held as an SVP.
- 2) Provides specifically that within an official written report or record of a law enforcement officer regarding a sexual offense in a person's conviction, for the purposes of an SVP hearing the following are not inadmissible when offered to prove the truth of the matter stated:
 - a) A statement from a victim of the sexual offense.
 - b) A statement from an eyewitness to the sexual offense.
 - c) A statement from a sexual assault medical examiner who examined a victim of the sexual offense.

Comments

According to the author, “Survivors of sexual assault have endured unspeakable trauma. Many struggle for years to heal and move past the crimes that were committed against them. The civil hearing process to designate a sexual offender as a Sexually Violent Predator can begin years or decades after the resolution of criminal cases. As part of this process, victims are asked to return to court and relive the details of what happened to them. Because of the quick timeframe of SVP hearings, victims can find themselves being contacted out of the blue, years after their crime and asked to quickly come to court and relive their trauma. While having the victim testify in person during the SVP trial phase is important for due process, AB 1253 gives the victims the benefit of time and consideration by allowing specified statements previously made to law enforcement to be used in lieu of testimony for the purposes of the SVP probable cause hearing. It is important that sexual assault survivors are treated with dignity and respect when they are asked to share their stories. AB 1253 provides that.”

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

SUPPORT: (Verified 7/13/23)

Crime Victims United of California (source)
Ventura County Office of the District Attorney

OPPOSITION: (Verified 7/13/23)

California Attorneys for Criminal Justice

ARGUMENTS IN SUPPORT: The Ventura County Office of the District Attorney supports this bill stating:

AB 1253 would allow prosecutors to present details of the alleged SVP’s non predicate sexual offenses without requiring live testimony from survivors at the probable cause hearing, though live testimony would still be required at trial. At SVP probable cause hearings, your bill will permit introduction of official law enforcement reports containing statements from a victim of a sexual offense, from an eyewitness to a sexual offense, or from a sexual assault medical examiner, if the alleged SVP was convicted of the sexual offense to which the statements relate. This new hearsay exception would spare survivors the trauma of repeatedly facing and confronting their abuser.

This change in the law is needed because, as the recent Supreme Court case of *Walker v. Superior Court* (2021) 12 Cal. 5th 177, recognized, the body of SVP law currently contains no express provision that allows hearsay evidence about non predicate offenses at a probable cause hearing. Concurring in that opinion, former California Supreme Court Chief Justice Tani Cantil-Sakauye urged the Legislature to address this problem by creating the necessary hearsay exception. (*Id.* at p.212)

AB 1253's hearsay exception is narrowly targeted to address the Chief Justice's urging, permitting only hearsay contained in the official records and related to a sexual offense for which the alleged SVP was convicted, and permitting that hearsay only at the probable cause hearing, not the trial. Enacting AB 1253 permits judges to know thte full scope of the alleged SVP's prior sexual offenses without "converting the probable cause haring into a proceeding barely distinguishable from a subsequent trial on the merits. " (Walker, supra, 12 Cal. 5th at p212)

ARGUMENTS IN OPPOSITION: The California Attorneys for Criminal Justice oppose this bill stating:

In *Walker v. Superior Court* (2021) 12 C.5th 177, a unanimous California Supreme Court ruled that the hearsay rule applies at Sexually Violent Predator Act (SVPA) (WIC 6602) probable cause hearings. The Court further held that nothing in the language of the SVPA created an explicit exception for hearsay to be admitted at probable cause hearings. (*Walker* at p. 195)

The *Walker* Court goes on to say that: "The general rule that hearsay evidence is inadmissible because it is inherently unreliable is of venerable common law pedigree. Courts exercise this power [referring to hearsay exceptions] only 'for classes of evidence for which there is a substantial need, and which possess an intrinsic reliability that enable them to surmount constitutional and other objections that generally apply to hearsay evidence.'" (*Walker* at p. 205)

AB 1253 proposes to allow hearsay statements in police and probation reports regarding the defendant's past sexual offense to be admitted through, for example, mental health evaluators who testify at these SVP probable cause hearings regarding whether the defendant should remain in custody or be released having served his sentence for his criminal conviction. As noted in *Walker*, there is no reason to believe that "the mental health evaluators bring any professional judgment to bear in assessing the veracity of these

hearsay statements....The experts readily admitted that they simply *assumed* these documents [police and probation reports] had accurate information....Given these reliability concerns, we think it implausible that it was within the ambit of the legislative purpose to allow the admission of this information as evidence merely because experts chose to include it in their evaluation reports.” (*Walker* at p. 203. Emphasis added.)

AB 1253 seeks to transform the probable cause hearing under WIC 6602(a) from an adversarial hearing into a mere ministerial function. This is not what the Legislature originally intended nor should it do so now by passing AB 1253.

ASSEMBLY FLOOR: 72-0, 5/31/23

AYES: Addis, Aguiar-Curry, Alanis, Alvarez, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Chen, Connolly, Megan Dahle, Davies, Dixon, Essayli, Flora, Mike Fong, Vince Fong, Gabriel, Gallagher, Garcia, Gipson, Grayson, Haney, Hart, Holden, Hoover, Irwin, Jackson, Lackey, Lee, Low, Lowenthal, Maienschein, Mathis, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Jim Patterson, Joe Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Sanchez, Santiago, Schiavo, Soria, Ta, Ting, Valencia, Villapudua, Waldron, Wallis, Ward, Wicks, Wilson, Wood, Rendon

NO VOTE RECORDED: Arambula, Bonta, Bryan, Friedman, Jones-Sawyer, Kalra, Weber, Zbur

Prepared by: Mary Kennedy / PUB. S. /
8/7/23 13:32:17

**** END ****