

**MAY 19 2021**

By: C. Lindemood

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

DOUGLAS BADGER,	)	<b>CASE NO. MH 102714</b>
	)	
Petitioner,	)	
	)	
v.	)	<b>ORDER RE: PROPOSED</b>
	)	<b>PLACEMENT OF SEXUALLY</b>
PEOPLE OF THE STATE OF	)	<b>VIOLENT PREDATOR</b>
CALIFORNIA,	)	<b>PURSUANT TO W&amp;I §6608(i)</b>
	)	
Respondent.	)	
_____	)	

Following a court trial in December 2020, this court granted Petitioner's request for conditional release pursuant to Welfare and Institutions Code Section 6608. Based upon the uncontroverted testimony of Petitioner's treating physicians and therapists, the court found that Petitioner would not be a danger to the health and safety of others in that it was not likely he would engage in sexually violent criminal behavior due to his diagnosed mental disorder if under supervision and treatment in the community. The court ordered Liberty Healthcare to submit written recommendations regarding proposed placement and conditions of supervision and treatment.

On March 1, 2021, a site assessment report was concluded and submitted to the court regarding a proposed placement for Petitioner at 10957 Horizon Hills Drive, El Cajon, CA 92020.

Notice of a public hearing was given pursuant to Section 6609.1 and on April 20, 2021, the hearing was conducted remotely using the Zoom video-conferencing platform. The court heard from government officials as well as some 40 members of the public,

counsel for the parties and a representative of Liberty Healthcare. The speakers who addressed the court at the hearing were overwhelmingly opposed to the proposed placement. The court also received in excess of 700 emails, 150 telephone calls and dozens of letters from concerned neighbors opposing the proposed placement of Petitioner into their community. The court took the decision to approve or reject the proposed placement on Horizon Hills Drive under submission.

Welfare and Institutions Code Section 6608.5, which is part of "Jessica's Law", addresses the placement of persons who are conditionally released. Subsection "e" requires consideration of the concerns and proximity of the victim or the victim's next of kin, as well as the age and profile of the victim and victims, and prohibits placement within one-quarter mile of any public or private school from kindergarten through grade 12 for certain charged crimes or if the court finds that the person has a history of improper sexual conduct with children.

Aside from the statutory requirements above, there is no provision in the law that sets forth specific criteria to guide the court in the exercise of its discretion in determining whether the proposed placement is appropriate. Thus, the court must use its best judgment to balance the rights of the Petitioner with the legitimate concerns of the community in which Petitioner is to be placed. The issue of placement is frequently the single most difficult issue for the parties and the court in satisfying the statutory requirements. Many of the problems associated with finding a residence relate to public opposition to such placement. It is highly unlikely that any community would want such an offender living in their midst. Accordingly, if public sentiment constituted the controlling factor in placement, no such offender would ever be placed in the community and the provisions of the conditional release law would, in effect, be negated.

However, this does not mean that the court need not seriously consider the specific objections of the public. Aside from general opposition to having sexual predators in the community, there may be specific facts and circumstances that militate against placement at the proposed address.

It is clear from the many comments made by members of the public as well as the court's own observations that the Mount Helix community, which includes Horizon Hills Drive, is a densely populated suburban neighborhood consisting of many families and children. One community member advised the court that 89 children live within 2000 feet of the proposed address. During the Covid-19 pandemic, schools were closed and children were subjected to "distance learning" while remaining at home. There are two neighborhood elementary schools, Fuerte Elementary and Chase Elementary within relatively close proximity to the proposed address. There are no school busses provided for children who live in this area and children must either walk to school or be transported to school by car. The court heard from a resident who teaches piano in her home and was concerned about the children who walk to her home for lessons. Several neighbors advised the court that they themselves had been the victims of sexual assault and were traumatized by the idea of a sexual offender living nearby.

Horizon Hills Drive itself is a winding street consisting of rolling hills with no sidewalks and no nighttime lighting. The nearest public transportation bus stop is located in the vicinity of Chase Elementary School. The hilly nature of the area along with lack of sidewalks and public transportation would potentially present significant obstacles for persons with mobility issues, such as Petitioner.

The court was advised that SDG&E frequently shuts off electricity in the neighborhood when there is the potential for wildfires. Neighbors also voiced their concerns about inadequate law enforcement presence and the length of response time should law enforcement be needed at the address.

Welfare and Institutions Code Section 6608, subdivision (i) requires that upon a finding that a sexually violent predator (SVP) can be treated in the community under subdivision (g), "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."

Although the court is fully aware of the difficulty that exists in finding appropriate housing for conditionally released sexual predators, based upon the factors outlined above, the court finds that the residence at 10957 Horizon Hills Drive, El Cajon, CA is not suitable for Petitioner. The court requests that Liberty Healthcare search for a more suitable residence. The court will confer with the parties to set a date for a status conference.

A copy of this Order shall be served upon Liberty Healthcare, the Petitioner, the Office of the San Diego County Primary Public Defender and the San Diego District Attorney.

IT IS SO ORDERED.

DATED: May 19, 2021

*Theodore M. Weathers*

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Theodore M. Weathers  
JUDGE OF THE SUPERIOR COURT