

SENATE BILL REPORT

SB 6008

AS OF JANUARY 10, 1994

**Brief Description:** Revising procedures relating to sexually violent predators.

**SPONSORS:** Senator A. Smith

**SENATE COMMITTEE ON LAW & JUSTICE**

**Staff:** Susan Mahoney (786-7717)

**Hearing Dates:** January 11, 1994

**BACKGROUND:**

In 1990, the Legislature passed the Community Protection Act in order to address in a comprehensive manner the increasing danger posed by sex offenders, and to enhance the funding of programs for their victims.

One component of the act is a civil commitment procedure, which is created for a special category of sex offenders known as "sexually violent predators." A sexually violent predator is any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence.

A petition for civil commitment may be filed by a prosecuting attorney or the Attorney General if: 1) the sentence for a sexually violent offense has ended or is about to end; or 2) the person is charged with a sexually violent offense and is found not guilty by reason of insanity, or is incompetent to stand trial and is about to be released; and 3) it appears that the person may be a sexually violent predator.

In 1993, the Washington State Supreme Court found the overall statutory scheme presented in the civil commitment section of the Community Protection Act to be constitutional. In Re Young, 122 Wn. 2d 1 (1993). However, the court did find several constitutional flaws within the statute in the following respects:

1. Recent Overt Act. The court held that where an individual has been released from confinement on a sex offense, and lives in the community prior to the initiation of sex predator proceedings, then proof of a recent overt act is necessary to satisfy substantive due process concerns.
2. 72-hour Hearing. Detainees do not have the opportunity to personally appear in court to challenge the probable

cause for detention. Procedural due process guarantees require that the detainee be afforded a probable cause hearing within 72 hours of detention prior to trial.

3. Less Restrictive Alternatives. Not all sex predators present the same level of danger, nor do they require identical treatment conditions. The court held that equal protection concerns require the state to consider less restrictive alternatives with regard to sexually violent predators.
4. Unanimous Jury Verdict. The state is required to prove beyond a reasonable doubt that the person is a sexually violent predator. The court stated that the Legislature's use of the "beyond a reasonable doubt" standard suggested an acute awareness of the need for heightened procedural protections in these proceedings. The court said that the Legislature included the need for a unanimous verdict when it required proof "beyond a reasonable doubt."

It is suggested that the civil commitment portion of the Community Protection Act be modified to conform to the requirements of the recent Supreme Court decision.

**SUMMARY:**

When the county prosecuting attorney or the Attorney General files a petition alleging that a non-incarcerated person is a sexually violent predator, the petition must include an allegation of a recent overt act sufficient to establish probable cause when considered along with other factors.

The person named in a sexually violent predator petition is provided with notice and opportunity to appear at a hearing in order to contest probable cause within 72 hours of the filing of the petition.

When a jury determines that a person is a sexually violent predator, the verdict must be unanimous. The person also has the right to demand that the trial be before a 12-person jury.

If the court or jury finds that treatment in a setting less restrictive than confinement is in the best interest of the person or others, the court must direct the Department of Social and Health Services to determine and administer an appropriate less restrictive course of treatment of the person.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** requested