

# HOUSE BILL REPORT

## SSB 5465

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### As Reported by House Committee On:

Criminal Justice & Corrections

**Title:** An act relating to sex offender treatment providers.

**Brief Description:** Changing provisions relating to sex offender treatment providers.

**Sponsors:** By Senate Committee on Human Services & Corrections (originally sponsored by Senators Costa, Hargrove and Long).

### Brief History:

#### Committee Activity:

Criminal Justice & Corrections: 3/26/01, 3/30/01 [DPA].

#### Brief Summary of Substitute Bill (As Amended by House Committee)

- Grants limited immunity from negligence actions to certified sex offender treatment providers treating sexually violent predators released to a less restrictive alternative under the Community Protection Act.

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## HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass as amended. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Ahern, Republican Vice Chair; Lovick, Democratic Vice Chair; Cairnes, Kagi, Kirby and Morell.

**Staff:** Trudes Hutcheson (786-7384).

### Background:

#### A. Release of sexually violent predators to less restrictive alternatives.

Under the Community Protection Act of 1990, a sexually violent predator may be civilly committed upon the expiration of his or her criminal sentence. A sexually violent predator is a person who has been convicted of, charged with and found not guilty by reason of insanity of, or found to be incompetent to stand trial for, a crime of sexual violence and who suffers from a mental abnormality or personality disorder that makes

the person likely to engage in predatory acts of sexual violence if not confined to a secure facility. Sexually violent predators are committed to the custody of the Department of Social and Health Services (DSHS) and confined at the Special Commitment Center (SCC) for control, care, and individualized treatment.

A person who has been civilly committed is entitled to an annual review of his or her mental condition, including consideration of whether conditional release to a less restrictive alternative (LRA) is in the best interest of the person and would adequately protect the community. Before the court can order that a person be conditionally released to an LRA, the court must find that a number of requirements are met, including certain treatment-related requirements.

The court must find that the person will be treated by a certified sex offender treatment provider who has developed a specific course of treatment for that person. The treatment provider must agree to assume responsibility for the treatment, make progress reports to the court, and immediately report any violations to the court.

Sex offender treatment providers are certified by the Department of Health (DOH) after completing the necessary education, experience, and examination requirements.

**B. Providers subject to civil actions for damages.**

In any civil action alleging negligence, one of the essential elements the plaintiff must show is the existence of a legal duty that the defendant owed to the plaintiff.

Generally, a person does not have a duty to protect another from the criminal acts of third persons. However, Washington courts have recognized an exception to this general rule where a special relationship exists between the defendant and either the third party or the foreseeable victim of the third party. Whether a person has a duty to protect another from the intentional acts of a third person, therefore, depends upon the relationship between the parties and the extent to which the third party's conduct was foreseeable.

Washington's supreme court has held that a therapist may incur a duty to take reasonable precautions to protect another person who might foreseeably be endangered by the patient's mental illness. Petersen v. State, 100 Wn.2d 421 (1983). Case law has suggested that reasonable precautions may include warning the person in danger or notifying law enforcement.

A person owing a duty to another may be liable in a negligence action if the plaintiff shows that the person breached his or her duty, the breach was the proximate cause of the person's injuries, and that damages were incurred.

Gross negligence is negligence substantially and appreciably greater than ordinary negligence. Willful or wanton misconduct is intentional activity done in reckless

disregard of the consequences under circumstances such that a reasonable person would know that substantial harm to another is highly likely.

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**Summary of Amended Bill:**

A certified sex offender treatment provider who provides treatment to a person released to an LRA or to a level III sex offender is not negligent because the provider treats such high risk offenders. It is explicitly stated that sex offenders are known to have a risk of reoffense.

The certified sex offender treatment provider is not liable for civil damages resulting from the reoffense of a client unless the treatment provider's acts or omissions constituted gross negligence or willful or wanton misconduct. The limited liability does not eliminate a provider's duty to warn and protect a third person if the client communicates a serious threat of physical violence against a reasonably ascertainable person. The limited liability applies only to the conduct of the certified sex offender treatment provider and not the conduct of the state.

Only certified sex offender treatment providers may examine and provide treatment to sexually violent predators participating in LRAs unless the court or the DSHS finds that:

- (a) the LRA placement is located in another state;
- (b) the treatment provider is employed by the department; or
- (c) all certified providers are unavailable to provide treatment within a reasonable geographic distance of the person's home, as determined by rules adopted by the DSHS, and the evaluation and treatment plan comply with the rules adopted by the DSHS.

A treatment provider approved by the DSHS who is not certified must consult with a certified provider during the person's period of treatment to ensure compliance with rules adopted by the DOH. Qualified experts who are not certified may evaluate persons in a LRA for purposes of presenting an opinion in court proceedings.

A sex offender treatment provider who is providing evaluation services to the Department of Corrections is practicing within the scope of his or her profession.

**Amended Bill Compared to Substitute Bill:**

The amended bill adds language to clarify that the limited immunity: (a) does not eliminate a treatment provider's duty to warn; and (b) only applies to the treatment provider's conduct and not the conduct of the state.

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**Appropriation:** None.

**Fiscal Note:** Available on original bill. Not requested on substitute.

**Effective Date of Amended Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This bill is in response to an issue that was raised from the subcommittee. Treatment providers do not want to provide treatment to these high risk offenders because of potential civil liability. Currently, there are numerous level III sex offenders required to receive treatment but nobody will treat them. This bill will limit the concerns of the providers.

**Testimony Against:** None.

**Testified:** (In support) Senator Costa, prime sponsor; Victoria Roberts, Department of Corrections; and Mark Seling, Department of Social and Health Services.

(In support with amendments) Larry Shannon, Washington State Trial Lawyers Association.