

***Criminal Justice & Corrections
Committee***

ESSB 5122

Brief Description: *Revising procedures and standards for commitment of sexually violent predators.*

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

Brief Summary of Engrossed Substitute Bill

- *Distinguishes the standard for continued civil commitment as a sexually violent predator from the standard for eligibility for conditional release to a less restrictive alternative.*
- *Provides that the court in deciding a civil commitment petition may only consider placement conditions and voluntary treatment options that would be in existence if the person was not committed.*
- *Makes changes to the definitions and procedures applicable to the civil commitment of sexually violent predators.*

Hearing Date: *3/21/01*

Staff: *Jean Ann Quinn (786-7310).*

Background:

I. Initial Civil Commitment Petition. *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 or charged with 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. The term "predatory" is defined to mean acts directed towards strangers or individuals with whom a relationship has been established for*

the primary purpose of victimization. If the person is not totally confined when the petition for civil commitment is filed, the likelihood that the person will engage in these acts if not confined must be evidenced by a "recent overt act."

When it appears that a person may meet the criteria of a sexually violent predator, the prosecuting attorney of the county where the person was convicted or charged or the attorney general if so requested may file a petition alleging that the person is a sexually violent predator. If the judge determines that probable cause exists to believe that the person is a sexually violent predator, the person is provided an opportunity to contest this determination at a probable cause hearing. If the probable cause determination is confirmed, the person is evaluated and the case set for trial. The court or a unanimous jury must determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If this burden is not met, the court must direct the person's release.

In August 2000, the appellate court in Division II decided In Re the Detention of Ross (102 Wn. App. 108, 6 P.3d 625 (2000)), holding that the subject of a civil commitment petition must be allowed to present evidence of conditions under which he or she is not likely to engage in predatory acts of sexual violence, whether or not the court would have the authority to order those conditions. The court did not allow the prosecutor to present evidence that the court could not order the very conditions the person argued would make him unlikely to commit such acts if the jury did not find that he was a sexually violent predator. The result is that the subject of the petition can present entirely speculative conditions that are beyond the authority of the court to order but the prosecutor cannot inform the jury that the conditions on which it is basing its decision will not, and cannot, be ordered, if the person is not civilly committed as a sexually violent predator.

II. Less Restrictive Alternatives /Unconditional Release. A person who has been civilly committed is entitled to an examination of his or her mental condition at least once a year. The review shall include 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. The committed person has a right to annually petition the court for conditional release to an LRA or unconditional release. If the court finds that probable cause exists to believe the person's mental abnormality or personality disorder has so changed that the person is not likely to engage in predatory acts of sexual violence if conditionally released to an LRA or unconditionally discharged, then a hearing is held on the issue. The hearing shall be before a jury if demanded by either side. At the hearing, the state has the burden of proving beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is likely to engage in predatory acts of sexual violence if conditionally released to a less restrictive alternative or unconditionally discharged.

In addition, before the court can order that a person be conditionally released to a specific LRA, the court must find that: (1) the person will be treated by a certified sex offender treatment provider; (2) the treatment provider has developed a specific course of treatment for the person, has agreed to assume responsibility for the treatment, will make progress reports to the court, and will report any violations; (3) the person is willing to comply with treatment and supervision requirements; and (4) housing exists that is sufficiently secure to protect the community.

III. Testimonial Privileges. Generally, a person cannot testify against his or her spouse without the spouse's consent. However, in a proceeding relating to the involuntary commitment of a mentally disordered person a person may testify against his or her spouse without the spouse's consent, but the person cannot not be compelled to testify against the spouse.

Summary of Bill:

I. Initial Civil Commitment Petition. In determining whether a person would be more likely than not to commit acts of sexual violence if not confined to a secure facility, the court or jury can consider only those placement conditions and voluntary treatment options that would be in existence if the person was not committed. The definition of "likely to engage in predatory acts of sexual violence if not confined in a secure facility" means that the person more probably than not will engage in such acts if released unconditionally from detention on the petition. The term "predatory" includes persons of casual acquaintance with whom no substantial personal relationship exists. The term "recent overt act" includes threats, and the determination of whether the act or threat creates a reasonable apprehension of harm is determined by an objective person who knows of the history and mental condition of the person engaging in the act. If the jury cannot reach a unanimous verdict on the petition, the court must declare a mistrial and set a new trial within 45 days unless the prosecutor moves to dismiss the petition. The person may not be released prior to retrial or dismissal of the case.

At the probable cause hearing regarding the initial petition for civil commitment, witnesses for either party are permitted to testify by telephone.

II. Less Restrictive Alternatives /Unconditional Release. The annual examination of a committed person's mental condition is to be made by the Department of Social and Health Services (DSHS). It must include consideration of whether the committed person currently meets the definition of a sexually violent predator, and whether conditional release to an LRA is in the best interest of the person and conditions can be imposed that would adequately protect the community. The report must be prepared by a professionally qualified person, certified to be true under penalty of perjury, served on the prosecutor and the committed person, and filed with the court.

At the probable cause hearing on the LRA/unconditional release issue, the prosecutor must present prima facie evidence that the person continues to meet the definition of a sexually violent predator and that an LRA is not in the best interest of the person and conditions cannot be imposed that adequately protect the community. The state may rely exclusively on the annual examination report to make this required showing.

If a full hearing is then held, if the issue is whether the person should be unconditionally released, the burden of proof is on the state to prove beyond a reasonable doubt that the committed person's condition remains such that they continue to meet the definition of a sexually violent predator. Evidence of the prior commitment trial and disposition is admissible.

If the issue at the full hearing is whether the person should be conditionally released to an LRA, the burden of proof is on the state to prove beyond a reasonable doubt that conditional release to any proposed LRA either is not in the best interest of the committed person or does not include conditions that would adequately protect the community. A person must be civilly committed before the court can consider conditional release to an LRA. The first time that the court considers whether an LRA is appropriate, the court must consider the question without regard to whether the person's condition has changed. Evidence of the prior commitment trial and disposition is admissible.

Before ordering conditional release to a specific LRA, the court must also find that the DSHS has verified with the victim witness programs operated by the DSHS, the Department of Corrections, the Secretary of State and any other appropriate programs that a proposed LRA is not within 25 miles of the last known address of any of the person's registered victims. The court may determine whether a proposed LRA meets the legal requirements through summary judgment proceedings.

III. Testimonial Privileges. A person who is subject to a civil commitment petition cannot prevent his or her spouse from testifying, but the spouse cannot be compelled to testify. Also, any person agreeing to provide treatment, monitoring, or supervision of a committed person on an LRA may be compelled to testify and any privilege that might attach to such testimony is deemed waived.

The act applies to all individuals currently committed or waiting commitment on, before, or after the effective date of the act.

Appropriation: *None.*

Fiscal Note: *Requested on March 13, 2001.*

Effective Date: *The bill contains an emergency clause and takes effect immediately.*