

SENATE BILL REPORT

SB 5406

As Reported By Senate Committee On:
Human Services & Corrections, February 9, 2001

Title: An act relating to amending the definition of sexually violent offense for purposes of civil commitment and making technical and clarifying amendments.

Brief Description: Revising the definition of "sexually violent offense" for the purposes of civil commitment procedures.

Sponsors: Senators Long, Hargrove and Costa.

Brief History:

Committee Activity: Human Services & Corrections: 2/2/01, 2/9/01 [DPS].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5406 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Costa, Vice Chair; Carlson, Franklin, Hewitt, Kastama, Long and Stevens.

Staff: Fara Daun (786-7459)

Background: In 1990, the Community Protection Act established a civil commitment process for sexually violent predators. The usual civil commitment standard does not include most of these people because, although sexual paraphilias are a psychiatric personality disorder that creates a likelihood of serious harm, they do not meet the state's definition of mental disorder. In addition, paraphilias require a specific type of treatment not available in state hospitals and confinement separate from persons who might become victims. Consequently, the standards for commitment under this act are different than the standards under the normal civil commitment act in several ways. The state must prove, beyond a reasonable doubt, that the person has been charged with or convicted of a sexually violent offense and has a mental abnormality or personality disorder that makes him or her likely to commit predatory acts of sexual violence if not confined in a secure facility.

No person can be committed under the statute if he or she has not committed a sexually violent offense. In the case of some crimes, such as first degree rape, simply proving the conviction is sufficient, but others must have a showing of sexual motivation proved beyond a reasonable doubt at the commitment trial.

There is concern because the statute currently excludes some persons from commitment whose crimes are very violent. Some of these are persons who made a plea agreement because the prosecutor was unsure that an element of the crime not related to violence could be proved. These persons have committed acts that are within the intent of the Community

Protection Act, but they cannot be civilly committed as sexually violent predators because they pled to a crime that was not on the list in the statute.

Summary of Substitute Bill: The definition of sexually violent offenses includes, in addition to the current list, homicide by abuse and manslaughter in the first or second degree when committed with a sexual motivation. It also includes sex offenses that can be determined, beyond a reasonable doubt, to have been committed using forcible compulsion, torture, or a deadly weapon, or to have inflicted substantial or great bodily harm on the victim. Proof that the crime meets the standard for a sexually violent offense can be made at sentencing for the crime or at the civil commitment trial.

Substitute Bill Compared to Original Bill: A technical change is made to an "or" between reorganized sections.

Appropriation: None.

Fiscal Note: Requested on January 22, 2001.

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

Testimony For: This will protect the community by better addressing the people that the law was intended to cover. It closes an important loophole. The state should be concerned with the exact nature of the underlying crime and not the label that it obtained through prosecution decisions. This would cover some cases of offenders who are currently in the community committing acts that qualify as "recent overt acts" where there is no current recourse until there is a new victim. Some case history examples were provided.

Testimony Against: This will have both operating budget and capital budget fiscal impacts. The state should not expand the predicate offenses because the underlying law was intended to be very narrow and this opens it too widely. It will make it harder to settle cases. Some offenders that would come under the new definition might be serving jail sentences.

Testified: David Hackett, King County Prosecuting Attorney's Office (pro); Victoria Roberts, Department of Corrections; Mark Seling, Special Commitment Center Director; Heather Lechner, Washington Defenders Association and Washington Association of Criminal Defense Lawyers (con).