

SENATE BILL REPORT

ESSB 5465

As Passed Senate, April 30, 2001

Title: An act relating to sex offender treatment providers.

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

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

Brief History:

Committee Activity: Human Services & Corrections: 2/7/01, 2/23/01 [DPS].

Passed Senate: 3/12/01, 49-0.

First Special Session: Passed Senate: 4/30/01, 46-0.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5465 be substituted therefor, and the substitute bill do pass.

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

Staff: Fara Daun (786-7459)

Background: Among the issues addressed by the Senate Subcommittee on Sexually Violent Predators was the limited availability of sex offender treatment providers willing to accept high risk sex offenders as clients. Treatment providers have been sued in the past for their decision to accept high risk clients. Providers also fear that should an offender, particularly a sexually violent predator, reoffend while in their care they would be unable thereafter to acquire professional liability insurance unless they treated only low risk populations. Consequently, most providers are unwilling to accept sexually violent predators as clients. This places the state in danger of being unable to release sexually violent predators to less restrictive alternatives due to lack of available treatment. The state is under an injunction to make less restrictive alternatives more available.

Summary of Bill: Provisions in the health code are updated to match provisions in the criminal and sexually violent predator civil commitment codes. Sex offenders are known to have a risk of reoffense and sex offender treatment providers who have been certified by the Department of Health are not negligent for treating high risk offenders and are not liable for civil damages resulting from the reoffense of a client unless the provider acted with gross negligence or willful and wanton conduct. Treatment providers do have a duty to warn and protect from a serious threat communicated by a client against a reasonably ascertainable victim or victims. Sexually violent predators released to less restrictive alternatives must be treated by a certified provider unless: (1) the less restrictive alternative is located in another state; (2) they are treated by a Department of Social and Health Services (DSHS) employee; or (3) certified providers become unavailable within a reasonable geographic distance of their

less restrictive alternative, the available treatment provider consults with a certified provider, and the evaluation and treatment plan comply with rules adopted by DSHS.

Qualified experts not certified in Washington may evaluate a person on a less restrictive alternative for court proceedings under Chapter 71.09 RCW.

A sex offender treatment provider may not provide services to persons on less restrictive alternatives under Chapter 71.09 RCW if the treatment provider has been convicted of a sex offense or has been suspended or restricted from practicing any health care profession in any jurisdiction.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: It is in the state's interest to have the most experienced therapists working with the highest risk offenders. The most experienced therapists are also those with the most awareness of the risk that a high risk offender's actions could end their ability to practice their profession. The Special Commitment Center and DSHS strongly support this legislation. There is a need for expanded access to treatment providers. The Department of Corrections (DOC) supports this legislation but asks for two amendments. Most sex offenders leave DOC with a court order to get treatment in the community. Statute requires this treatment to be by certified providers. Certified providers are unwilling to treat Level III offenders, particularly those who are not amenable to treatment. DOC would like the legislation to include certified providers treating Level III sex offenders under community custody. DOC would also like to specify that treatment providers who provide DOC with risk identification and risk management services for high risk offenders who are unamenable to treatment are practicing within the scope of their profession. If the state will formally indemnify certified providers, there will be no hole left in the recovery under the state's joint and several liability provisions.

Testimony Against: None.

Testified: Mark Seling, Special Commitment Center, DSHS (pro); Victoria Roberts, DOC (pro); Michael O'Connell, WATSA, private practitioner (pro); Larry Shannon, Washington State Trial Lawyers Association.