

SENATE BILL REPORT

SB 5582

As Passed Senate, March 9, 2005

Title: An act relating to the use of demographic factors in proceedings under chapter 71.09 RCW.

Brief Description: Clarifying how demographic factors are used with regard to sexually violent predators.

Sponsors: Senators Regala, Hargrove, Stevens, Carrell, Franklin, McAuliffe and Kohl-Welles.

Brief History:

Committee Activity: Human Services & Corrections: 2/3/05, 2/14/05 [DP].

Passed Senate: 3/9/05, 47-0.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, McAuliffe and Thibaudeau.

Staff: Fara Daun (786-7459)

Background: Under current law a sexually violent predator who is civilly committed under chapter 71.09 RCW has an annual review to determine whether he or she continues to meet the commitment standard and whether conditional release to a less restrictive alternative is appropriate. If DSHS does not support a conditional release to the community or an unconditional release in the annual review process, a civilly committed person may seek a review or a new commitment trial at any time. The committed person must present a prima facie case in a show cause hearing that he or she has "so changed" that he or she no longer meets commitment criteria or that conditional release to a less restrictive alternative is in his or her best interests, and that conditions can be imposed that adequately protect the community. Until 2004, the demonstration that the person had "so changed" focused on actual changes in the offender due to health issues or success in treatment.

In 2004, Mr. Andre Brigham Young brought such a case to the trial court. Mr. Young argued that, because he is over 60, he is statistically unlikely to commit a new sex offense and, therefore, he has "so changed" that he no longer meets the definition of a sexually violent predator. Mr. Young's case was based on a demographic study of sex offenders leaving Canadian prisons that included seven persons over the age of 60. The trial court rejected Mr. Young's argument. The appellate court reversed the trial court and ordered a new commitment trial for Mr. Young based on its holding that the trial court could not make a judgment about the credibility of the evidence because stating a prima facie case means that, assuming everything in the claim were proved true, the person making the claim would be likely to win (*In re Young*, 120 Wn. App. 753 (2004)). The state Supreme Court did not accept

the case for review. Consequently, a trial court must assume the validity of the petition, even where it knows it is not valid. Several trial courts and at least one appellate decision have followed the *Young* decision.

Summary of Bill: A showing that a person has "so changed" requires a showing that, since the person's last commitment proceeding, there has been a substantial change in the committed person's physical or mental condition that indicates either that the person no longer meets the commitment standard or that conditional release to a less restrictive alternative is in the person's best interest and conditions can be imposed that adequately protect the community. The changes include an identified physiological change that renders the person unable to commit a sexually violent act and a change in the person's mental condition brought about through positive response to continuing treatment.

A change in a single demographic factor, without more, does not establish probable cause for a new trial proceeding under the "so changed" prong. Demographic factors include, but are not limited to age, marital status, and gender.

Appropriation: None.

Fiscal Note: Requested on February 1, 2005.

Committee/Commission/Task Force Created: No.

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

Testimony For: The Legislature needs to clarify its intent that the "so changed" standard relates to the actual condition of the committed person. The bill is constitutional because it requires that the court consider the committed person's actual condition and not base its decision on academic studies that may or may not reflect the offender. Of the 210-215 sexually violent predators there are 81 over 50 and 62 between 40 and 50. All 143 could petition now or in the near future on the basis of age alone if the *Young* decision is allowed to stand. The Superior court recently granted a new trial to Keith Elmore, based solely on age and cited the *Young* decision as the only reason it was doing so. It is very disturbing to the community to have to have new trials base solely on the offender getting older. This bill sends a strong message that the way out is through success in treatment.

Testimony Against: The constitution requires that civil commitment be based on current condition and studies should be allowed to show the condition. Those who are not engaging in treatment will not start if this bill passes. Recommitment trials are less expensive than original commitment trials. There will not be new petitions every year because the *Young* court found that one year wasn't enough difference.

Who Testified: PRO: Senator Debbie Regala, prime sponsor; David Hackett, King County Prosecutor's Office; Todd Bowers, Office of the Attorney General; Suzanne Brown-McBride, Washington Coalition of Sexual Assault Programs; Dr. Henry Richards, Director, Special Commitment Center, Department of Social and Health Services.

CON: Dennis Carroll, Anita Paulson, The Defender Association.