

# SENATE BILL REPORT

## ESB 6870

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As Passed Senate, March 18, 2010

**Title:** An act relating to containing costs for services to sexually violent predators.

**Brief Description:** Containing costs for services to sexually violent predators.

**Sponsors:** Senator Hargrove; by request of Department of Social and Health Services.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 2/25/10 [DP, w/oRec].

Passed Senate: 3/08/10, 37-9.

**First Special Session:** Passed Senate: 3/18/10, 34-8.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** Do pass.

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

**Minority Report:** That it be referred without recommendation.

Signed by Senator Carrell.

**Staff:** Shani Bauer (786-7468)

**Background:** Under the Community Protection Act of 1990, a sexually violent predator may be civilly committed upon the expiration of that person's criminal sentence. A sexually violent predator (SVP) is a person who has been convicted of or charged with a sexually violent offense 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. Crimes that constitute a sexually violent offense are enumerated in the statute and may include a federal or out-of-state offense if the crime would be a sexually violent offense under the laws of this state. 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.

When a prosecuting agency has filed a petition against a person alleging that the person is an SVP or when the person has previously been found to be an SVP and is subject to a hearing for conditional release, the person is entitled to be examined by qualified experts or

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professional persons. If the person is indigent, the court must assist the person in obtaining an expert or professional person to perform an examination.

Once a person is found to be an SVP, the person is entitled to periodic hearings to determine if the person continues to meet the definition of an SVP or if release to a less restrictive alternative is appropriate. A state-endorsed plan for a less restrictive alternative will be a graduated release plan that entails the SVP moving to a Secure Community Transition Facility (SCTF). A SCTF is a facility that provides greater freedom to the SVP and is designed to allow the SVP to gradually transition back to the community while continuing treatment.

A SCTF is required to meet the following minimum staffing requirements:

- for SCTFs opened prior to July 1, 2003, that have six or fewer residents, the facility must maintain one staff per three residents during normal waking hours and one staff per four residents during sleeping hours, but in no case less than two staff per housing unit;
- for SCTFs opened after July 1, 2003, with six or fewer residents, the facility must maintain one staff per resident during normal waking hours and two staff per three residents during normal sleeping hours, but in no case less than two staff per housing unit.

If a SCTF has six or fewer residents, all staff must be classified as a Residential Rehabilitation Counselor II or have a classification that indicates an equivalent or higher level of skill, experience, and training. All staff must have training in sex offender issues, self-defense, and crisis de-escalation skills and must pass a background check.

**Summary of Engrossed Bill:** Terminology regarding an examination is changed to an evaluation. If a person is indigent, the Department of Social and Health Services (DSHS) is responsible for the cost of one expert or professional person to conduct an evaluation on the person's behalf. An expert or professional person of the person's choice must be permitted to have reasonable access to the person for purposes of evaluation. The person is not precluded from paying for additional expert services at his or her own expense.

DSHS is responsible for the cost of one expert or professional person to conduct an evaluation on the prosecuting agency's behalf and must adopt rules to contain costs relating to reimbursement for evaluation services.

Minimum staffing requirements for an SCTF are removed as well as the requirement that all staff be classified as a Residential Rehabilitation Counselor II or higher.

**Appropriation:** None.

**Fiscal Note:** Requested on February 24, 2010.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: Without a limitation on the number of expert evaluators, a person is allowed to go fishing for an evaluator that will help their case. This bill would limit the number of experts that the state would pay for to one, and allow DSHS to pass rules regarding how an expert would be paid. One expert charged \$12,000 for the initial evaluation and then charged \$12,000 again when he testified. We believe this was excessive and therefore want to put some caps on what can be charged. Current staffing levels at the SCTF don't reflect safety concerns and good business practices. We believe the greater safety concern is when an SVP is allowed to go out into the community. DSHS must send one escort with the person, but often sends two. On the other hand, several staff are required at night when the SVPs are sleeping. This is not a good use of resources.

CON: This bill limits the ability of a person to have experts that they need in order to defend their case. Often these people need different types of experts to evaluate different aspects of the case.

**Persons Testifying:** PRO: Kelly Cunningham, Special Commitment Center, DSHS.

CON: Bob Cooper, Washington Defenders Association and Washington Criminal Defense Lawyers' Association.