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**Ways & Means Committee**

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**HB 2133**

**Brief Description:** Containing funding for costs associated with sexually violent predator commitment legal proceedings.

**Sponsors:** Representatives Darneille and Hunter; by request of Department of Social and Health Services.

**Brief Summary of Bill**

- Limits the costs for which the Department of Social and Health Services is responsible for sexually violent predator (SVP) civil commitment proceedings.
- Provides that counties are responsible for any other costs related to prosecution and defense of SVP civil commitment proceedings.

**Hearing Date:** 12/6/11

**Staff:** Alexa Silver (786-7190) and Melissa Palmer (786-7388)

**Background:**

*Sexually Violent Predator Commitment and Examination Process*

A sexually violent predator (SVP) is a person who has been charged with or convicted of 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 in a secure facility.

A county prosecutor or the Attorney General's Office, if requested by the county prosecutor, may file a petition to civilly commit a person as an SVP. Currently, King County prosecutes its own SVP proceedings, and the Attorney General's Office prosecutes SVP cases for other counties.

Once the prosecuting agency files the petition, the court must determine whether there is probable cause to believe the person is an SVP. The person may be held in the county jail until

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the court makes the probable cause determination. The county is entitled to reimbursement from the State for housing and transporting the person.

If the court finds probable cause, the person is transferred to the Special Commitment Center (SCC) for evaluation. The court must order a commitment trial within 45 days, although it may continue the trial either on its own motion or upon request of a party and a showing of good cause if the person would not be substantially prejudiced. If the trial lasts more than one day, the person may be held in the county jail and returned to the SCC on weekends and holidays. The county is entitled to reimbursement for the cost of housing and transporting the person. If the jury or judge finds the person is an SVP, he or she is committed to the custody of the DSHS for control, care, and treatment at the SCC.

The Department of Social and Health Services (DSHS) must perform an examination of the mental condition of every person committed as an SVP at least once a year. If the DSHS determines the person no longer meets the definition of an SVP or should be conditionally released, the DSHS authorizes the person to petition the court for discharge or conditional release.

The SVP also has a right to petition the court for release on an annual basis, and if the SVP does not waive this right, the court must set a show cause hearing. Following the show cause hearing, the judge orders a release hearing if the state failed to present prima facie evidence or there is probable cause to believe that the person is no longer an SVP or that conditional release would be in the person's best interest and conditions would adequately protect the community.

#### *Costs Related to Attorneys and Experts in SVP Commitment Proceedings*

At all stages of SVP commitment proceedings, the person has a right to an attorney. If the person is indigent, the court will appoint an attorney. Practices regarding the number of attorneys appointed vary among the counties. The Washington Bar Association Standards for Indigent Defense Services provide that generally there should be two attorneys on each SVP case.

Whenever a person is subjected to an SVP evaluation, the DSHS is responsible for the cost of one expert or professional to conduct an evaluation on the person's behalf. The person may pay for additional expert services at his or her own expense. At the trial and the release hearing, the DSHS is responsible for the cost of an expert to evaluate the person on behalf of the prosecutor. Earlier this year, the DSHS adopted rules to set standards on reimbursement of legal and expert costs.

#### **Summary of Bill:**

The Department of Social and Health Services (DSHS) is responsible for reimbursing the following costs:

- A single prosecuting attorney and attorney for the person at all stages of the proceedings, including the show cause hearing;
- A single paralegal and investigator for each the prosecution and the person at all stages;
- A single expert evaluation for each the prosecution and the person at all stages, including the release trial; and
- The cost of transportation of the person to and from court proceedings at all stages.

The DSHS is not responsible for the following costs:

- Costs of the prosecution and defense during the initial commitment trial that result from the delay of the case after the first continuance requested by either party; and
- Housing the person pending a decision whether there is probable cause and during the commitment trial.

The county in which a commitment petition was filed is responsible for all other costs of the prosecution and defense.

The DSHS is required to adopt rules to contain costs related to reimbursement for prosecution and defense.

**Appropriation:** None.

**Fiscal Note:** Requested on November 28, 2011.

**Effective Date:** The bill contains an emergency clause and takes effect on February 1, 2012.