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**Ways & Means Committee**

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**HB 2148**

**Brief Description:** Suspending annual examinations and show cause hearings for sexually violent predators convicted of a criminal offense or awaiting trial on criminal charges.

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

**Brief Summary of Bill**

- Suspends the requirement that the Department of Social and Health Services (DSHS) conduct an annual examination for a person civilly committed as a sexually violent predator (SVP) during any period the SVP is confined due to a criminal conviction or detained due to criminal charges.
- Suspends the provisions regarding petitions to the court for conditional release to a less restrictive alternative (LRA) or unconditional discharge during any period the SVP is confined due to a criminal conviction or detained due to criminal charges.

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

**Staff:** Melissa Palmer (786-7388).

**Background:**

Under the Community Protection Act of 1990, a sexually violent predator (SVP) may be civilly committed for an indefinite period of time. An SVP is a person who: (1) has been convicted of, found not guilty by reason of insanity of, or found to be incompetent to stand trial for, a crime of sexual violence, and (2) 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. SVPs are committed to the custody of the Department of Social and Health Services (DSHS) for control, care, and individualized treatment. Most SVPs are currently housed at the Special Commitment Center (SCC) on McNeil Island.

*Commitment Procedures:*

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Annual Examinations: The DSHS must perform an examination of the mental condition of every person committed as an SVP at least once a year. The examination must be prepared by a professionally qualified person. It must address whether the person continues to meet the definition of an SVP and whether conditional release to an LRA in the person's best interest and conditions can be imposed to adequately protect the community. The report must be filed with the court, with copies sent to the prosecutor and the committed person. The person may have an expert appointed if he or she is indigent.

*Review Proceedings:*

If the DSHS secretary determines that: (1) the person's condition has so changed that he or she no longer meets the definition of an SVP, or (2) conditional release to an LRA is appropriate, the DSHS must authorize the person to petition the court for either unconditional discharge or conditional release to an LRA.

The committed person may also petition the court for release without the approval of the DSHS. The DSHS must send annual written notice of the right to petition the court, along with a waiver of rights. If the committed person does not waive the right, the court must set a show cause hearing to determine if probable cause exists to warrant a hearing on whether the person's condition has so changed.

At the show cause hearing, the prosecutor must present prima facie evidence that the committed person continues to meet the definition of an SVP and that an LRA is not in the person's best interest and conditions would not adequately protect the community. The prosecutor may rely exclusively upon the annual report prepared by the DSHS. The committed person has a right to an attorney to represent him or her at the show cause hearing.

The court sets a final review hearing if it determines either that: (1) the state failed to present prima facie evidence, or (2) there is probable cause to believe the person's condition has so changed that he or she no longer meets the definition of an SVP or that release to an LRA would be in the person's best interest and conditions would adequately protect the community.

At the final review hearing, the person is entitled to be present and is afforded the same protections as at the commitment proceeding, including the right to a jury trial and the right to be evaluated by an expert. The burden of proof on the state is beyond a reasonable doubt.

The jurisdiction of the court over a civilly committed person continues until the person is unconditionally released. A person subject to court order under Chapter RCW 71.09 who is thereafter convicted of a criminal offense remains under the jurisdiction of the DSHS and is returned to the physical custody of the DSHS at the time of release from confinement. Over the past two years, there have been civilly committed persons residing at the SCC who have been convicted of crimes. These persons are currently serving their criminal sentences and are not in the physical custody of the DSHS.

**Summary of Bill:**

The statute requiring the Department of Social and Health Services (DSHS) to conduct an annual examination is suspended during any period of time a sexually violent predator (SVP) is either confined for a criminal conviction or is detained due to a criminal charge. Additionally, during any period of time an SVP is confined for a criminal conviction or detained due to criminal charges, the statute regarding petitions to the court for conditional release or unconditional discharge is suspended. Therefore, the authorization and procedures for annual review proceedings are suspended during a period of criminal confinement or detention.

**Appropriation:** None.

**Fiscal Note:** Requested on December 5, 2011.

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