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**Public Safety & Emergency Preparedness  
Committee**

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**SSB 6493**

**Brief Description:** Addressing sexually violent predator civil commitment cases.

**Sponsors:** Senate Committee on Human Services & Corrections (originally sponsored by Senators Regala, Hargrove, Stevens, Harper, Kline, Carrell and Shin).

**Brief Summary of Substitute Bill**

- Transfers administration of defense representation in sexually violent predator commitment cases from the Department of Social and Health Services to the Office of Public Defense.

**Hearing Date:** 2/17/12

**Staff:** Sarah Koster (786-7303).

**Background:**

Under the Community Protection Act of 1990, a sexually violent predator (SVP) may be civilly committed upon the expiration of that person's criminal sentence. An 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.

When it appears that a person may meet the criteria of an SVP, the prosecuting attorney of the county where the person was convicted or charged or the Office of the Attorney General, if so requested by the prosecuting attorney, may file a petition alleging that the person is an SVP. If the court finds probable cause exists to believe that the person is an SVP, the person will be evaluated by a professional, as to whether he or she is an SVP, in preparation for trial.

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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.*

If a person is found at trial to be an SVP, the state is authorized by statute to involuntarily commit a person to a secure treatment facility. Civil commitment as an SVP is for an indefinite period. Once a person is committed, the Department of Social and Health Services (DSHS) must conduct annual reviews to determine whether the person's condition has so changed such that the person no longer meets the definition of an SVP or if conditional release to a less restrictive alternative (LRA) is in the best interest of the person and conditions can be imposed to protect the community. Even if DSHS's annual review does not result in a recommendation of any type of release, the person may nonetheless petition the court for a conditional release or unconditional discharge.

If a committed person petitions for a conditional release or unconditional discharge, the court must set a show cause hearing. The prosecuting agency must first show that the committed person continues to meet the definition of an SVP and that placement in an LRA is not appropriate. The committed person may then present evidence that the person has so changed, that the person no longer meets commitment criteria, or that conditional release to a LRA is appropriate. If the court finds that the state has not made a prima facie case or that probable cause exists that the person is no longer an SVP, the court must set a review hearing. In order to prevail, the state must once again prove beyond a reasonable doubt that the person meets the definition of a SVP or that conditional release is not appropriate. If the state does not meet its burden, the person must be released.

An indigent person is entitled to appointed counsel and an independent expert evaluation paid for by the state both at the original probable cause and commitment proceeding and in any review proceeding. Requests for the reimbursement of defense counsel and expert evaluators are submitted to the DSHS for payment. The DSHS additionally provides reimbursement to the prosecuting agency for legal costs and the cost of expert evaluators.

The DSHS has adopted rules and regulations restricting reimbursement for civil commitment costs including defined hourly rates for counsel and other legal staff and a cap on expert costs.

Upon request of the Legislature, the Office of Public Defense (OPD) submitted in 2011 a report with a proposal to transfer statewide responsibility for indigent defense of sexually violent predator civil commitment cases from the DSHS to the OPD.

### **Summary of Bill:**

#### The Office of Public Defense Responsibilities.

The Office of Public Defense (OPD) will administer the representation of indigent respondents qualified for appointed counsel in sexually violent predator (SVP) commitment cases.

In providing these services, the Director of the OPD will:

- contract with law firms and individual attorneys to provide legal services to indigent people;
- establish annual contract fees for defense legal services based on professional standards and court rules;
- establish procedures for the reimbursement of expert witnesses and other costs;

- review and analyze caseload standards and make recommendations to the Washington State Bar Association (WSBA) for updating the standards as appropriate;
- submit periodic reports to the Washington Supreme Court, the Governor, and the Legislature, with data on the operation of indigent defense representation under this chapter, including:
  - costs and projected needs for maintaining adequate defense services;
  - the time to trial, with special emphasis on the number of and reason for continuances granted; and
  - recommendations for policy changes to improve the SVP commitment process.

The following activities are outside the scope of the OPD's representation of respondents in SVP commitment cases:

- investigation or legal representation challenging the conditions of confinement at the Special Commitment Center or any secure community transition facility;
- investigation or legal representation for making requests under the Public Records Act, chapter 42.56 RCW;
- legal representation or advice regarding filing a grievance with the DSHS as part of its grievance policy or procedure;
- legal representation during a period not covered as part of the civil commitment process; and
- any other activities excluded by policy or contract with the OPD.

#### Transfer Process.

All of the Department of Social and Health Services' (DSHS) materials related to indigent defense will be transferred to the OPD, as will appropriations made to the DSHS for carrying out this function. The date of transfer is July 1, 2012. However, the OPD has the authority to continue contracting with existing counsel if there is a scheduled trial date within 180 days of this transfer date, so as to provide continuity of service and prevent trial continuances.

If the OPD contracts with existing counsel, as described above, the payment will be prorated based on the new standard contract fees established by the OPD, with a possibility for extra compensation if justified by attorney documentation and the WSBA standards.

#### Evaluation Costs.

The DSHS no longer bears the costs of prosecutorial or defense evaluation of the respondent, either for the initial trial or annual review. The OPD will bear the costs of a defense evaluation, if the respondent is indigent.

Expert evaluation costs are capped at \$10,000, including travel and any other expenses. Partial evaluations are capped at \$5,500 and expert services which do not include evaluations or testimony are capped at \$6,000. The OPD may pay fees beyond these caps if the superior court determines that they are for good cause.

**Appropriation:** None.

**Fiscal Note:** Requested on February 13, 2012.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.