

FINAL BILL REPORT

SSB 6493

C 257 L 12
Synopsis as Enacted

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).

Senate Committee on Human Services & Corrections
House Committee on Public Safety & Emergency Preparedness
House Committee on Ways & Means

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 Attorney General's Office, if so requested by the prosecuting attorney, may file a petition alleging that the person is an SVP. In preparation for a trial as to whether the person is an SVP, the court must direct that the person be evaluated by a professional as to whether the person is an SVP.

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 Human 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 less restrictive alternative is appropriate. If the court finds that the state has not met its prima

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facie case or that probable cause exists, 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 sexually violent predator 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 DSHS for payment. Often, these invoices are already approved by the court and DSHS has little recourse but to pay them, even if expenses appear to be excessive or duplicative.

In 2011 the Legislature asked the Office of Public Defense (OPD) to develop a proposal to transfer statewide responsibility for indigent defense of sexually violent predator civil commitment cases from DSHS to OPD. In December 2011 OPD submitted its report to the Legislature, including several options for accomplishing this transfer. Those options included:

- continue the existing reimbursement process with hourly contracts, but transfer state agency responsibility from DSHS to OPD;
- allow OPD to contract with multiple attorneys or group practices statewide; or
- require OPD to hire state employees to provide defense services.

OPD estimates that the second and third options above could save the state between \$700,000 and \$1 million.

Summary: The Director of OPD administers all state-funded services for representation of indigent respondents qualified for appointed counsel in SVP civil commitment cases. In providing those services, the Director must:

- contract with attorneys or groups of attorneys for the provision of legal services;
- establish annual contract fees for payment of indigent defense services;
- ensure an indigent person has one contracted counsel unless the court finds good cause for additional counsel;
- establish procedures for the reimbursement of expert witnesses and other professional and investigative costs;
- make recommendations for appropriate caseload standards for SVP cases; and
- annually submit a report to the Chief Justice, the Governor, and the legislature on the operation of SVP indigent defense services.

The transfer of duties from DSHS to OPD occurs on July 1, 2012, but provisions are made for a transitional period during which the Director may continue existing counsel so as to avoid unnecessary trial continuances.

DSHS is no longer responsible for the cost of one expert or professional person to conduct an evaluation on the prosecuting agency's behalf. The prosecuting agency has a right to a current evaluation of the person by experts chosen by the state. The judge may require the person to complete procedures or tests requested by the evaluator including a clinical interview, psychological testing, plethysmograph testing, and polygraph testing. The state is responsible for the cost of the evaluation.

Indigent persons responding to an SVP petition for commitment and commitment review proceedings are entitled to appointed counsel contracted through OPD. Unless provided as part of the investigation and preparation for any hearing or trial under this chapter, the following activities are beyond the scope of representation of an attorney under contract with OPD:

- investigation or legal representation challenging the conditions of confinement at the special commitment center;
- investigation or legal representation for making requests under the Public Records Act;
- legal representation or advice in filing a grievance against DSHS; and
- other activities as may be excluded by policy or contract with OPD.

OPD is responsible for the cost of one expert or professional person conducting an evaluation on the indigent person's behalf. Expert evaluations are capped at \$10,000; partial evaluations are capped at \$5,500; and expert services apart from an evaluation, exclusive of testimony at trial or depositions, are capped at \$6,000. OPD will pay the costs related to an additional examiner or in excess of the fee caps only upon a finding by the superior court that such appointment or extraordinary fees are for good cause.

DSHS and the courts are authorized to release records to OPD as needed to implement OPD's duties. OPD must maintain the confidentiality of confidential records. The inspection or copying of any nonexempt public record by persons residing in a civil commitment facility for SVPs may be enjoined utilizing the same procedures allowed for enjoining requests from persons serving a criminal sentence. In order to issue an injunction, the court must find that:

- the request was made to harass or intimidate the agency or its employees;
- fulfilling the request would likely threaten the security of correctional facilities;
- fulfilling the request would likely threaten the safety or security of staff, inmates, family members of staff, family members of other inmates, or any other person; or
- fulfilling the request may assist criminal activity.

Votes on Final Passage:

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| Senate | 48 | 0 | |
| House | 93 | 0 | (House amended) |
| Senate | 49 | 0 | (Senate concurred) |

Effective: July 1, 2012