
Public Safety Committee

HB 2122

Brief Description: Concerning sexually violent predators.

Sponsors: Representatives Fagan, Goodman, Schmick, Takko, Short, Nealey, Klippert, Stanford, Pettigrew, Orwall, Johnson, Hayes, Farrell, Rodne, Ross, Fitzgibbon, Kirby, Green, Moscoso, Magendanz and Liias; by request of Attorney General.

Brief Summary of Bill

- Requires that a person committed as a sexually violent predator must participate in the annual evaluation by the Department of Social and Health Services' evaluator before retaining or requesting appointment of an independent evaluator.
- Waives the annual examination requirement while the committed person is awaiting trial for unconditional release; if a person is recommitted, the next annual examination must be done within one year of the recommitment order.
- Defines "treatment" to be sex offender specific treatment by a certified provider.

Hearing Date: 1/14/14

Staff: Sarah Koster (786-7303).

Background:

Sexually Violent Predator Commitment Proceedings: A sexually violent predator (SVP) is a person who 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 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.

Once the prosecutor files a petition to civilly commit a person, the court first must determine whether there is probable cause to believe the person is an SVP. If there is probable cause, a full trial is held to determine whether the person is an SVP.

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.

At the trial, the burden is on the state to prove beyond a reasonable doubt that the person is an SVP. If the person requests a 12-person jury, the jury must be unanimous. If the person is found to be an SVP, he or she is committed to the custody of the Department of Social and Health Services (DSHS) for control, care, and treatment at the Special Commitment Center on McNeil Island.

Annual Examinations: Every year, the DSHS shall conduct an examination of each committed person's mental condition and have a report prepared as to whether the person continues to meet the definition of an SVP and whether conditional release to a less restrictive alternative (LRA) is in the person's best interest and conditions can be imposed to adequately protect the community. The committed person can retain, or have appointed, if indigent, an evaluator to conduct an examination.

Review Proceedings: If the DSHS determines after the annual examination 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 in the person's best interest and conditions can be imposed to adequately protect the community, the DSHS must authorize the person to petition the court for a full trial to consider 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.

If, at the hearing, the committed person demonstrates probable cause to believe that his or her 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, the court will order a full trial, at which the burden is on the state. However, a trial may not be ordered unless there is current evidence from a licensed professional that: (i) the committed person has undergone a permanent physiological change, such as paralysis, stroke, or dementia, which renders him or her unable to commit a sexually violent act; or (ii) treatment has brought about a positive change in mental condition.

Summary of Bill:

Annual Examinations: A committed person may not retain or have appointed a separate evaluator unless he or she participated in the most recent interview and evaluation completed by the DSHS.

If a committed person has been granted a trial to determine whether unconditional release is appropriate, in that the person no longer meets the definition of an SVP, the annual examination requirement is waived pending the trial. If the person is recommitted after the trial, the DSHS will conduct a new examination no more than one year after the recommitment order.

Review Proceedings: A trial for conditional or unconditional release may not be ordered unless there is current evidence from a licensed professional that: (i) the committed person has undergone a permanent physiological change, such as paralysis, stroke, or dementia, which

renders him or her unable to commit a sexually violent act; or (ii) sex offender specific treatment by a certified professional has brought about a positive change in mental condition.

Appropriation: None.

Fiscal Note: Requested on January 8, 2014.

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