

HOUSE BILL REPORT

SSB 5965

As Reported by House Committee On:
Public Safety

Title: An act relating to sexually violent predators.

Brief Description: Concerning sexually violent predators.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Padden, Darneille, O'Ban, Mullet, Hargrove, Dammeier, Pearson, Fain, Roach, Kohl-Welles, Kline, Conway, Keiser and McAuliffe; by request of Attorney General).

Brief History:

Committee Activity:

Public Safety: 2/19/14, 2/21/14 [DP].

Brief Summary of Substitute Bill

- Requires the Department of Social and Health Services (DSHS) to make a recording of an annual evaluation available to the committed person.
- Prohibits the use of an outside evaluation at trial if the committed person did not participate in the DSHS's annual evaluation.
- 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.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass. Signed by 9 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Holy, Moscoso, Pettigrew and Takko.

Staff: Sarah Koster (786-7303).

Background:

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.

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 a SVP. If there is probable cause, a full trial is held to determine whether the person is a SVP.

At the trial, the burden is on the state to prove beyond a reasonable doubt that the person is a SVP. If the person requests a 12-person jury, the jury must be unanimous. If the person is found to be a 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 (SCC) 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 a 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 a SVP; or (2) conditional release to a 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 a 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 a SVP or that release to a 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: (1) 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 (2) treatment has brought about a positive change in mental condition.

Summary of Bill:

Annual Examinations. If a committed person did not participate in the most recent annual interview and evaluation completed by the DSHS, a report prepared by a separately appointed evaluator is not admissible in a trial for discharge. If the committed person requests it, the DSHS must record the annual review interview and make the recording available to the committed person.

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 a 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: (1) 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 (2) sex offender-specific treatment by a certified professional has brought about a positive change in mental condition.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 2014.

Staff Summary of Public Testimony:

(In support) This is a public safety issue. The system hasn't dealt with these evaluations properly. There is incentive for committed sexually violent predators not to participate in an evaluation and this bill creates an incentive for participation. It is not fair that they can refuse to participate in the state's evaluation and use that as a way to be released earlier than if they had participated. Some of the concerns voiced by opponents of the bill were addressed by the amendment in the Senate. The bill is better than when it came in. There are 300 people civilly committed as sexually violent predators. They are 1 percent of all sex offenders; the worst of the worst.

This bill is a strong step towards more accurate assessments of committed persons and also more effective treatment. Providing for an audio recording of the evaluation may alleviate some concerns of people. There was also a concern that people would not be able to consult with their own expert. This change levels the playing field and allows them to meet with experts, but they cannot present an outside report or testimony unless they participate in the state evaluation.

(Opposed) It is problematic to restrict admission of evidence because a person doesn't participate in a state evaluation; it will result in warehousing individuals even if commitment is not otherwise appropriate. This goes against the purpose of the statute and has due process implications. It is very useful for counsel to see the annual evaluation and the interaction

between the evaluator and committed person. If introducing an outside evaluation is contingent upon participation in the annual evaluation, it becomes a critical stage and an attorney should be present. Why not be transparent? Attorneys are allowed at other examinations. It might allow for better participation from a client if their lawyer is there to observe and not interfere.

As written, this bill will limit the information getting to the courts. There is an interest in confining SVPs and an interest in getting out the people who aren't. If lawyers are there, it will increase the number of people who are willing to participate; even the experts have found it useful in circumstances when lawyers have been there. The language which suspends the annual evaluation during trial is problematic because the case may get pushed back month after month and enough time may have passed that a new evaluation would be useful. This increases the relevant information before the court. Also, the narrowed definition of treatment is concerning because a person cannot get out without showing participation in treatment. If this is restricted to mean only the SCC program, the SCC should be very closely looked at by the Legislature and standards imposed. An example is a client with Asperger's who did not fit the program was not getting better, and he could not get out for 10 years.

Persons Testifying: (In support) Senator Padden, prime sponsor; Bob Ferguson and Malcolm Ross, Office of the Attorney General; and Joanie Deutsch, TVW Capitol Classroom River's Edge High School.

(Opposed) Marla Polin; and Martin Mooney.

Persons Signed In To Testify But Not Testifying: None.