

FINAL BILL REPORT

HB 1059

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Synopsis as Enacted

Brief Description: Concerning sexually violent predators.

Sponsors: Representatives Fagan, Goodman, Hayes, Moscoso, Takko, Tarleton, Orwall, Nealey, Klippert, Pettigrew, Gregerson, Haler, Fitzgibbon, Stanford and Farrell; by request of Attorney General.

House Committee on Public Safety
House Committee on Appropriations
Senate Committee on Human Services, Mental Health & Housing

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.

A prosecutor may file a petition to civilly commit a person as a SVP. After the filing of a petition, 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 in their decision. 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 conducts an examination of each committed person's mental condition and prepares a report 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 may retain, or have appointed, if indigent, an evaluator to conduct an examination.

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.

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 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 must 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 change in mental condition such that the person meets the standard for conditional release to a LRA or unconditional release.

Less Restrictive Alternative Release. Before releasing a person to a LRA, the court must make these additional findings:

- the person will be treated by a qualified treatment provider;
- the treatment provider has presented a specific course of treatment and has agreed to assume responsibility for such treatment and will report violations immediately to the court, the prosecutor, the supervising community corrections officer, and the Superintendent of the SCC;
- housing exists in Washington that is sufficiently secure to protect the community, and the person or agency providing housing to the conditionally released person has agreed in writing to accept the person, to provide the level of security required by the court, and to immediately report to the court, the prosecutor, the supervising community corrections officer, and the Superintendent of the SCC if the person leaves the housing without authorization;
- the person is willing to comply with the treatment provider and all requirements imposed by the treatment provider and by the court; and
- the person will be under the supervision of the Department of Corrections and is willing to comply with supervision.

Summary:

Annual Examinations. The DSHS, at the request of the committed person, must allow a record of the annual review interview to be preserved by audio recording and must make the recording available to the committed person. The evaluator must indicate in the report whether the committed person participated in the interview and examination.

In a proceeding to determine whether a committed person will be released to a LRA or unconditionally discharged, any reports and testimony by an expert on behalf of the committed person is excluded if the committed person did not participate in the most recent interview and evaluation completed by the DSHS.

The annual review requirement is suspended while a committed person is awaiting trial for unconditional release. If the person is recommitted, the next annual review must be done within one year of the recommitment order.

Definition of Treatment. "Treatment" is defined as sex offender specific treatment offered at the SCC or a specific course of sex offender treatment by a sex offender treatment provider.

Less Restrictive Alternative Release. Prior to authorizing release of a sexually violent predator to a less restrictive alternative, the court is required to consider release to the person's county of commitment. A person's county of commitment is the county of the court that ordered the person's commitment. It is appropriate to release a person to the person's county of commitment unless the court determines that return to the county of commitment would be inappropriate considering the following factors:

- any court-issued protection orders;
- victim safety concerns;
- the availability of appropriate treatment or facilities that would adequately protect the community;
- negative influences on the person; or
- the location of family or other persons or organizations offering support.

When the DSHS or the court assists in developing a placement of a person, effort must be made to avoid disproportionate effect on a single county. If the person is not released to his or her county of commitment, the DSHS must provide written notice and an explanation to the law and justice council of the county of placement.

Votes on Final Passage:

House	93	5	
Senate	46	0	(Senate amended)
House	87	6	(House concurred)

Effective: July 1, 2015 (Sections 1 and 2)
July 24, 2015