

# HOUSE BILL REPORT

## HB 1059

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**As Reported by House Committee On:**  
Public Safety

**Title:** An act relating to sexually violent predators.

**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.

**Brief History:**

**Committee Activity:**

Public Safety: 1/20/15, 2/6/15 [DP].

**Brief Summary of Bill**

- Excludes evidence from an expert on a committed person's behalf if the committed person does not participate in the Department of Social and Health Services' most recent annual review interview and evaluation.
- Suspends 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 the sex offender specific treatment program at the Special Commitment Center or a course of sex offender treatment by a certified provider.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass. Signed by 7 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Griffey, Pettigrew and Wilson.

**Minority Report:** Do not pass. Signed by 1 member: Representative Appleton.

**Staff:** Cassie Jones (786-7303).

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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.*

## **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 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 shall conduct an examination of each committed person's mental condition and prepare 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 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 change in mental condition such that the person meets the standard for conditional release to a LRA or unconditional release.

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**Summary of Bill:**

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.

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

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect on July 1, 2015.

**Staff Summary of Public Testimony:**

(In support) This bill is important to a lot of families and victims. The bill should get thorough review and approval. There has been an effort to work with those who oppose the bill. There was a case where a woman was raped by a man, a career criminal, who was later convicted for the crime. The man was later committed to McNeil Island and the victims thought it was over. The whole time he was in the SCC he never participated in any treatment. These people cannot be cured. The man was released and now lives 50 miles from his victim. His other victims are afraid to see him. Criminals have all the rights, they get free attorneys, and they can refuse treatment. The victims get nothing but pain and live in fear forever. Victims cannot afford lawyers for civil suits and they are afraid of offenders that are released. These offenders should have to go to treatment and be evaluated prior to release.

Sexually violent predators have been released because the sections of this bill are not in the law. Experts can be hired to evaluate SVPs they have never met face to face. A single trial can cost \$250,000. The safety of the public is impacted by the release of SVPs. Sexually violent predators are allowed to get out without effective treatment or evaluation.

Sexually violent predators impose great costs on victims and their families. This bill represents a reasonable compromise—proper due process rights for the SVPs balanced with an appropriate volume of litigation and incentives for participation in treatment.

Sexual abuser specific treatment promotes public safety. The Legislature meant treatment in the statute to be sex offender specific treatment. In 2005 SVPs were getting new trials every year claiming that they did not meet the criteria. The law was amended to require participation in treatment. Defense experts have said that behavior control is treatment; part of the treatment milieu. Regarding frivolous litigation, there are expensive experts who claim that this treatment milieu causes a change in circumstance. They lose every one of these motions, but they are appealed over and over. By the time this litigation is complete, it is time for the next annual review. Prosecutors are being papered to death by frivolous appeals. This bill will help end that practice.

(Opposed) There are concerns regarding the facility and the effectiveness of treatment at the SCC. The particular issue in the bill is defining treatment. There is concern that committed individuals cannot access treatment due to a disability for which they are not receiving accommodation.

The committee should reject this bill or refer the issue to the Sex Offender Policy Board. The statute allows a person to have a new trial if the person has changed through treatment or their physical condition has changed. The case mentioned earlier was a physical change case and would not have been affected by the changes in this bill. Courts should be the ones to decide if a person has changed through treatment. This bill will lead to a federal injunction or be found unconstitutional. In the case mentioned previously, the individual was evaluated by the state and the defense. At the end, the state agreed to dismiss the case. The statute needs to allow meaningful paths to exit or it is not constitutional.

It is not proper to require a person to meet with a state evaluator prior to having their own expert. There is a long history of negative interactions between staff and the residents at the SCC. The state evaluator is perceived as an arm of the state trying to keep them in confinement. The definition of treatment is too narrow. There are a number of treatment modalities to treat sex offenders. A specific sex offender treatment program is not always necessary. Individuals who no longer meet the criteria can continue to be warehoused with these changes in the bill.

The residents' ability to challenge the review is what makes the statute constitutional. If the ability to challenge it is taken away, the statute will become unconstitutional and it will be challenged. Tax payers will not save any money. The entire facility is a treatment program. The entire environment is a treatment milieu. There should be a workgroup to make the law better.

**Persons Testifying:** (In support) Representative Fagan, prime sponsor; Sharon and Charles Clizer; and Darwin Roberts and Malcom Ross, Office of the Attorney General.

(Opposed) David Lord, Disability Rights Washington; Lin-Marie Nacht, King County Department of Public Defense and Washington Defender Association; Paul Spizman,

Washington Association for the Treatment of Sexual Abusers; Virginia Faller, King County Department of Public Defense; and Tomas Madrigal.

**Persons Signed In To Testify But Not Testifying:** None.