

HOUSE BILL REPORT

SHB 1668

As Passed House:
March 6, 2015

Title: An act relating to restricting conditional releases of sexually violent predators outside their county of origin.

Brief Description: Restricting conditional releases of sexually violent predators outside their county of origin.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Kilduff, Muri, Hurst, Fey, Stokesbary, Jinkins, Stambaugh, Kirby, Zeiger and Sawyer).

Brief History:

Committee Activity:

Public Safety: 2/6/15, 2/13/15 [DPS];
Appropriations: 2/26/15, 2/27/15 [DPS(PS)].

Floor Activity:

Passed House: 3/6/15, 76-22.

Brief Summary of Substitute Bill

- Requires a court, when ordering release of a sexually violent predator to a less restrictive alternative, to consider release to the person's county of commitment.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

Staff: Cassie Jones (786-7303).

HOUSE COMMITTEE ON APPROPRIATIONS

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.

Majority Report: The substitute bill by Committee on Public Safety be substituted therefor and the substitute bill do pass. Signed by 24 members: Representatives Hunter, Chair; Chandler, Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Carlyle, Cody, Dunshee, Fagan, Hansen, Hudgins, G. Hunt, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Pettigrew, Sawyer, Senn, Springer, Stokesbary, Sullivan, Taylor, Tharinger and Walkinshaw.

Minority Report: Do not pass. Signed by 7 members: Representatives Buys, Condotta, Dent, Haler, Magendanz, Schmick and Van Werven.

Minority Report: Without recommendation. Signed by 2 members: Representatives Ormsby, Vice Chair; Parker, Assistant Ranking Minority Member.

Staff: James Kettel (786-7123).

Background:

A sexually violent predator (SVP) is a person who: (1) 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 (2) 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 as an SVP, the court first must determine whether there is probable cause to believe the person is an SVP. If the court finds probable cause, the case is set for a full trial. The state has the burden to prove beyond a reasonable doubt that the person is an SVP. If the person requests a jury, the jury verdict 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 (SCC) on McNeil Island.

Every year, the DSHS must conduct an examination of each committed person's mental condition and report whether: (1) the person continues to meet the definition of an SVP; and (2) 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. 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 an LRA is in the person's best interest and conditions can be imposed to adequately protect the community, the DSHS must permit the person to petition the court for a 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. If, at the show cause 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 must order a full trial, at which the burden of proof 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 an LRA or unconditional release.

Before releasing a person to an LRA, the court must make the following 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 immediately to report to the court, the prosecutor, the supervising community corrections officer, and the Superintendent of the SCC if the person leaves the housing to which he or she has been assigned 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 of Substitute Bill:

Before authorizing release of a person to an LRA, the court must consider whether it is appropriate to release the person to the person's county of commitment. A person's county of commitment is the county of the court which 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.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Public Safety):

(In support) This bill would address the problem that a disproportionate number of SVPs are released to Pierce County from the SCC. This class of individuals is extremely dangerous. Pierce County should not have to be the top destination for the SVPs. This bill would require a judge to first look to the county of origin. A judge would consider support of the offender, victims' concerns, and treatment options for the offender. The judge balances the concerns. The bill has safeguards and honors the principle of fairness. It requires the DSHS to give notice of where and when the sex offenders are released. Sometimes the communities are unaware. Notice to the community promotes public safety.

(Opposed) This bill addresses LRAs. If the committed people misbehave, they are immediately taken back into custody. Usually these releases come about as agreement. The sex offenders that are conditionally released are often well behaved and have been in treatment a long time. There are not very many of them. Statistics show that since the law was enacted, there have been no incidents of sexual re-offense while SVPs have been on LRAs. Less restricted alternatives are good for public safety. This bill creates busy work surrounding LRAs. It does not save county resources. Counties of origin may not have adequate resources. The court, the DSHS, or the defense attorney may have to analyze which county would be appropriate. This bill would discourage the whole process of conditional releases by increasing the cost of the process. It would not benefit community safety.

Staff Summary of Public Testimony (Appropriations):

(In support) The bill addresses community safety. The data suggests a growing and real concern in Pierce County. A disproportionate share of sexually violent predators (SVP) are released from the Special Commitment Center into less restrictive alternatives within Pierce County. Many SVPs have been released into Pierce County, but their conviction occurred elsewhere. This bill provides a solution that is fair and equitable. A judge is required to first look to the county of commitment when determining the less restrictive alternative for an SVP. The Department of Social and Health Services is required to tell county officials when an SVP has been released into their county, including a notification that the SVP committed his or her offense in a different county. Other safeguards in the bill include requirements to address victim concerns and review the availability of treatment facilities. Fair share is not a new concept. If a person is released conditionally from the Department of Corrections, then the default placement is the county of origin. At a small cost, this bill would advance sound policy.

(Opposed) None.

Persons Testifying (Public Safety): (In support) Representative Kilduff, prime sponsor; and Mark Lindquist, Pierce County Prosecuting Attorney's Office.

(Opposed) Kenneth Chang, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

Persons Testifying (Appropriations): Representative Kilduff, prime sponsor.

Persons Signed In To Testify But Not Testifying (Public Safety): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.