

SENATE BILL REPORT

HB 1059

As Reported by Senate Committee On:
Human Services, Mental Health & Housing, March 31, 2015

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: Passed House: 3/06/15, 93-5.

Committee Activity: Human Services, Mental Health & Housing: 3/30/15, 3/31/15 [DP].

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Majority Report: Do pass.

Signed by Senators O'Ban, Chair; Miloscia, Vice Chair; Darneille, Ranking Minority Member; Hargrove and Padden.

Staff: Lindsay Erickson (786-7465)

Background: Under the Community Protection Act of 1990, a sexually violent predator (SVP) may be civilly committed and confined in a secure facility. An SVP is a person who has been convicted of, or charged with, a sexually violent offense 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 to a secure facility. When it appears that a person may meet the criteria of an SVP, the prosecuting agency may file a petition to confine the person alleged as an SVP.

If a person is found at trial beyond a reasonable doubt to be an SVP, the state is authorized to involuntarily commit the person to a secure treatment facility for an indefinite period. Once a person is committed, the Department of Social and Health Services (DSHS) must conduct annual examinations to determine whether the person's mental condition changed. DSHS must prepare an annual report based on the examination. The annual report must include consideration of whether the committed person currently meets the definition of an SVP, and whether conditional release to a less-restrictive alternative (LRA) is in the best interest of the

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person and conditions can be imposed that would adequately protect the community. DSHS must provide this periodic report to the court and to the committed person.

Committed persons are entitled to an examination from their own expert. If the person is indigent, the committed person may request a court-appointed expert.

If a committed person petitions for conditional release or unconditional discharge, the court must set a show-cause hearing. The prosecuting agency may rely on the annual examinations to show that the committed person continues to meet the definition of an SVP. The committed person may present evidence that the person's condition has so changed that the person no longer meets the definition of an SVP, or that conditional release to an LRA is appropriate. If the court finds that the state has not met its prima facie case or that probable cause exists, the court must set a review hearing. In order to prevail, the state must once again prove beyond a reasonable doubt that the person meets the definition of an SVP or that conditional release is not appropriate. If the state does not meet its burden, the person must be released.

Summary of Bill: In each annual report completed by DSHS, the evaluator must indicate whether the committed person participated in the interview and examination. On request of the committed person, DSHS must audio record the annual review interview and make the recording available to the committed person. Any report prepared by the expert or professional person and any expert testimony on the committed person's behalf is not admissible in a show-cause hearing or review trial unless the committed person participated in the most recent interview and evaluation completed by DSHS. Annual examinations and report requirements are suspended when a court orders a trial to determine whether unconditional release is appropriate.

Treatment is defined to mean the sex offender specific treatment program at the Special Commitment Center or a specific course of sex offender treatment provided by a qualified treatment provider.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This is about personal safety and community safety. The substance of the bill is identical to the Senate companion. This bill gives the right incentives to SVPs to seek appropriate treatment but also protects the due process rights of those individuals. This bill is constitutional. The constitution requires the state's evaluation of the person, and that will not change. Each year, SVPs are petitioning courts for new trials because they have expert reports that say they have changed due to treatments that are not sex offender specific. Only this sex offender treatment will reduce recidivism if they are released into the community. Sex offender specific treatment is designed to identify and treat the individual's dynamic risk factors. Those risk factors have been empirically

demonstrated to be related to sexual and violent recidivism. This treatment is currently offered at the Special Commitment Center (SCC). Therapeutic change is not a passive process; it involves active engagement of the individual and the treatment team to identify risk factors specific to that person in order to bring about change that will decrease risk for re-offense.

CON: The provision regarding the audio recording is supported because it is important to know not only what was said, but how it was said. By denying the committed person's expert evaluation in court if the person has not participated in the evaluation, litigation will increase over the meaning of "participation." There may also be circumstances in which the person is gravely disabled and cannot participate in the evaluation, so the person will be denied the right to participate in the court process. Lack of full participation in the evaluation might even be a problem. Regarding the definition of treatment, clients have many different mental abnormalities and they could benefit from a number of other treatments. The approach needs to be more holistic. Participation in Alcoholics Anonymous or a sweat lodge could also help to successfully reintegrate people into the community. At the SCC, sex offender treatment is only one hour per week, which is not a high level of intensive treatment. There are many other courses available at the SCC, but those do not fit within the SVP treatment definition.

Persons Testifying: PRO: Representative Fagan, prime sponsor; Malcolm Ross, Darwin Roberts, Attorney General of WA; Alison Bogar, King County Prosecuting Attorney; Brian Judd, Brian W. Judd, Ph.D.

CON: Sonja Hardenbrook, Public Defender, Snohomish County Public Defender Assn.; Marla Polin, WA Defender Assn., WA Assn. of Criminal Defense Lawyers; Kenneth Henrikson, citizen.

Persons Signed in to Testify But Not Testifying: No one.