
Public Safety Committee

HB 2579

Brief Description: Concerning the placement and treatment of conditionally released sexually violent predators.

Sponsors: Representatives Kilduff, McDonald, Muri, Fey, Stambaugh and Sawyer.

Brief Summary of Bill

- Requires a sexually violent predator's (SVP) proposed less restrictive alternative (LRA) placement plan with a residence outside his or her county of commitment to include an explanation as to why the county of commitment is not an appropriate placement for the committed person.
- Requires the court to conduct an evidentiary hearing prior to approving a LRA community placement in a county other than the county of commitment.
- Authorizes a proposed county of placement to intervene as a party in a conditional release proceeding.
- Creates a grant program for qualified professionals in underserved counties to complete training and certification to become sex offender treatment providers.

Hearing Date: 1/29/18

Staff: Kelly Leonard (786-7147).

Background:

Sexually Violent Predators. 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.

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.

A prosecutor may petition for indefinite civil commitment of a SVP when he or she is about to be released from a state correctional facility, among other circumstances. The filing of such a petition triggers a probable cause determination followed by a full evidentiary trial. The burden is on the state to prove beyond a reasonable doubt that the person is a SVP. 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 on McNeil Island.

Annual Review Proceedings. On an annual basis, the DSHS must conduct an examination of a committed person's mental condition to determine whether the person's condition has changed. If the person's condition has changed, then the DSHS must authorize the person to petition the court for unconditional or conditional release, depending on the circumstances. A committed person may also petition the court for unconditional or conditional release without the approval of the DSHS. If the petition is for conditional release to a less restrictive alternative (LRA), the committed person must submit a proposed placement plan, which must include a proposed residence, treatment plan, and other appropriate conditions.

When a committed person petitions the court for release, the state bears the burden to prove that the committed person continues to meet the definition of a SVP and that conditional release to a LRA to a secure transition facility or community placement would be inappropriate. However, a trial may not be ordered unless there is current evidence from a licensed professional that: (a) 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 (b) treatment has brought about a positive change in mental condition.

Less Restrictive Alternative. Before releasing a person to a LRA, the court must determine the following:

- the person will be treated by a qualified treatment provider, who has presented a specific course of treatment and has agreed to report violations to the court and other specified entities;
- housing exists that is sufficiently secure to protect the community, and the housing provider agrees to accept the person, provide security, and immediately report to the court and other specified entities if the person leaves without authorization;
- the person is willing to comply with the treatment provider and related requirements; and
- the person will be under the supervision of the Department of Corrections.

County of Placement versus Commitment. Prior to authorizing release of a SVP to a LRA in community placement, 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.

Sex Offender Treatment Providers. Sex offender treatment providers are certified by the Department of Health after completing the necessary education, experience, and examination requirements. Only certified sex offender treatment providers may provide treatment to sexually violent predators released to a LRA, unless specified exceptions apply.

Summary of Bill:

Developing a Placement Plan. When the DSHS assists in developing a placement plan for a LRA, the DSHS must consider a residential placement in the county of commitment. If the DSHS proposes a residential placement outside of the county of commitment, it must develop the placement in a manner that does not have a disproportionate effect on a single county. Any proposed placement plan with a proposed residence outside the county of commitment must include an explanation as to why the county of commitment is not an appropriate placement for the committed person. The proposal must describe efforts to seek treatment providers and residential placement in the county of commitment, including whether or not every treatment provider in the county of commitment was contacted.

Hearing on County of Placement. The court is required to conduct an evidentiary hearing prior to approving an LRA community placement in a county other than the county of commitment. Placement in a county other than the county of commitment is inappropriate unless there is a threat to public safety.

The factors for considering placement outside the county of commitment are modified. Consideration of victim safety concerns is modified to include when any specific articulated threat to victim safety cannot be addressed by ordering the use of electronic monitoring with Global Positioning System technology. The courts must consider the unavailability of treatment providers rather than the availability of treatment providers. Certain factors are removed, including negative influences on the person or the location of family or other persons or organizations offering support to the person.

If a proposed placement plan includes a residence in a county other than the county of commitment, the state must, at least 60 days prior to the hearing, send notice to the proposed county of placement, including a statistical summary showing the number of all conditional releases to a LRA for the preceding five years. The proposed county of placement may intervene as a party in the proceeding, conduct discovery, and offer evidence and argument at the hearing.

When determining the county of placement for a conditional release, the court must consider the statistical summary and endeavor to equitably distribute releases across the state. If the court authorizes conditional release to a county other than the county of commitment, the court must enter specific findings concerning the decision.

Sex Offender Treatment Providers. The DSHS is required to maintain a list of certified sex offender treatment providers offering treatment to conditionally released sexually violent predators, which must include information on the city and county where providers are located and the type of treatment offered. The list must be updated at least every six months and made available to committed persons eligible or otherwise seeking conditional release.

Subject to an appropriation, the DSHS must administer a grant program for the purpose of expanding the availability of certified sex offender treatment providers in underserved counties. Underserved counties are counties where the DSHS finds there are an insufficient number of treatment providers, thereby preventing residential placement of persons conditionally released in those counties.

Grants may be awarded from July 1, 2018, through June 30, 2021. Grants pay for the costs of the training requirements and the costs of application, examination, and certification. Grant recipients must offer treatment services to persons conditionally released to a LRA in at least one underserved county for a minimum of two years. If an applicant does not fulfill the requirement, he or she must reimburse the DSHS for the total amount of the grant award.

Appropriation: None.

Fiscal Note: Requested on January 24, 2018.

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