

---

## Public Safety Committee

---

### HB 1825

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

**Sponsors:** Representatives Kilduff, Leavitt and Morgan.

#### Brief Summary of Bill

- Requires civilly committed sexually violent predators (SVPs) petitioning for conditional release to a less restrictive alternative (LRA) to document efforts to find placement in the county of commitment.
- Requires the Department of Social and Health Services to review proposed conditional release LRA placement plans and report to the court with potential alternative placements in certain circumstances.
- Imposes school-proximity restrictions on residential placements for certain SVPs on LRA orders.
- Modifies the criteria that courts must consider in deciding conditional release petitions for SVPs.
- Requires community notification of any change of address of a conditionally released SVP.
- Provides that secure community transition facilities may be sited in any county in the state.
- Implements Department of Health credential waivers for sex offender treatment providers working in underserved counties.

**Hearing Date:** 2/18/19

**Staff:** Omeara Harrington (786-7136).

**Background:**

---

*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.*

*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 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 petition for indefinite civil commitment of an 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 an SVP. 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 on McNeil Island. Civilly committed SVPs have the right to adequate care and individualized treatment.

*Petitions for Release.* 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 such that the person no longer meets the definition of an SVP, or that conditional release to a less restrictive alternative (LRA) is in the best interest of the person and conditions can be imposed that adequately protect the community, then the DSHS must authorize the person to petition the court for unconditional or conditional release. A committed person may also petition the court for unconditional or conditional release without the approval of the DSHS, in which case the court must hold a show-cause hearing before proceeding to a full unconditional release or conditional release trial. If the petition is for conditional release to an LRA, the committed person must submit a proposed placement plan to the court, which must include a proposed residence, treatment plan, and other 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 an SVP and that conditional release to an LRA 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.

*Conditional Release to a Less Restrictive Alternative.* Before authorizing conditional release to an LRA, the court must determine that all of the following conditions are met:

- 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.
- The person will be under the supervision of the Department of Corrections.

Additionally, in authorizing conditional release to an LRA, 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.

*Secure Community Transition Facilities.* A conditional release of an SVP may be to a community-based LRA placement or to a secure community transition facility (SCTF). The DSHS operates an SCTF on McNeil Island with a maximum capacity of 24 beds. A second SCTF, located in King County, can house up to six individuals and is in the process of expanding its capacity. In siting new SCTF facilities, the DSHS must work with local governments to achieve equitable distribution within counties in order to avoid a disproportionate grouping of similar facilities in any one county or community.

*Community Notification.* When an SVP is conditionally released, is unconditionally released, or escapes, the DSHS must provide notice to the chief of police of the city and the sheriff of the county in which the SVP will be placed, or, if residence is unknown, the sheriff of the county where the SVP was last convicted of a sexually violent offense. The DSHS must also notify the Washington State Patrol, which must facilitate dissemination of release information to all law enforcement. Victims, witnesses, and other persons identified by the prosecuting agency are also entitled to notice of release or escape. Notice of conditional or unconditional release must be provided at least 30 days in advance of release.

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

### **Summary of Bill:**

*Petitions for Conditional Release to a Less Restrictive Alternative.* The right of a civilly committed SVP to adequate care and individualized treatment includes the right to an individualized discharge plan.

If an SVP petitioning for conditional release to an LRA proposes a placement that includes a residence outside of the county of commitment, he or she must present the court with documentation of his or her efforts to secure an appropriate residential placement within the county of commitment. If the petitioning SVP has an offense history that involves an offense with a victim under the age of 18, the proposed LRA housing must not be within one-quarter

mile of any public or private school offering instruction for kindergarten or any of grades 1 through 12.

Following the filing of a non-contested petition, or, in the case of a contested petition, following the show-cause hearing, the DSHS must review the proposed LRA placement and prepare a supplemental report for the court. Based on the person's record and other information known to the DSHS, the DSHS must provide an assessment of the appropriateness of the proposed placement. The DSHS must also recommend any conditions of release that are in the person's best interest and that are necessary to adequately protect the community. If the proposed LRA plan involves a residence outside of the county of commitment, the DSHS must investigate and report on whether an appropriate placement is available in the county of commitment. If no such placement is available, the DSHS must investigate and report on whether an appropriate placement is available in a county other than the proposed county of residence. If neither alternative placement is available, the DSHS must explain its reasoning for coming to this conclusion in the report.

When the DSHS assists with identifying an LRA placement for an SVP, it must attempt to identify an appropriate placement in the county of commitment. If such placement is not available, it must endeavor to not have a disproportionate effect on any one county and must document its rationale.

*Conditional Release to a Less Restrictive Alternative.* Prior to authorizing a conditional release, the court must consider the release conditions proposed by the DSHS and any alternative placements proposed by the DSHS. The criteria for the court's consideration when determining whether release to the county of commitment would be inappropriate are modified. The victim safety concerns that the court must consider are those concerns that cannot be addressed by global positioning system (GPS) tracking. The court must consider the unavailability, rather than the availability, of appropriate treatment and facilities.

The state must serve written notice of the proposed placement plan on the proposed county of residence, if different than the county of commitment. The county prosecutor in the proposed county of residence may file an objection prior to the conditional release hearing, which the court must consider prior to approving placement.

If the court authorizes conditional release to a county other than the county of commitment, the court must enter findings concerning the decision to authorize the placement.

*Secure Community Transition Facilities.* The state may site and operate SCTFs in any county in the state. The current law requirement that the DSHS must work with local governments to achieve equitable distribution when siting SCTFs within counties is broadened to also apply to siting among the counties of the state.

*Community Notification.* In addition to the current law requirement that the DSHS provide 30-day notice to law enforcement, and victims and witnesses on request, of any conditional release, unconditional release, or escape, the DSHS must also provide notice of any change of address for an SVP.

*Sex Offender Treatment Providers.* To facilitate the equitable geographic distribution of conditionally released SVPs, the DSHS must notify the DOH whenever a sex offender treatment provider in an underserved county has been contracted to provide treatment services to an SVP on conditional release. In these circumstances, the DOH must waive fees for the credential. An underserved county is a county identified by the DSHS as having an inadequate supply of qualified sex offender treatment providers to achieve equitable geographic distribution of conditionally released SVPs.

**Appropriation:** None.

**Fiscal Note:** Requested on February 13, 2019.

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