

HOUSE BILL REPORT

HB 1825

As Reported by House Committee On:
Public Safety

Title: An act relating to the placement and treatment of conditionally released sexually violent predators.

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

Sponsors: Representatives Kilduff, Leavitt and Morgan.

Brief History:

Committee Activity:

Public Safety: 2/18/19, 2/21/19 [DPS].

Brief Summary of Substitute Bill

- Provides that the right of a civilly committed sexually violent predator (SVP) to adequate care and individualized treatment includes a right to an individualized discharge plan.
- Requires civilly committed 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.

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.

- Implements Department of Health credential waivers for sex offender treatment providers working in underserved counties.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Goodman, Chair; Davis, Vice Chair; Lovick, Orwall, Pellicciotti and Pettigrew.

Minority Report: Do not pass. Signed by 2 members: Representatives Klippert, Ranking Minority Member; Graham.

Minority Report: Without recommendation. Signed by 2 members: Representatives Sutherland, Assistant Ranking Minority Member; Appleton.

Staff: Omeara Harrington (786-7136).

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 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 (DOC).

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; and
- the location of family or other persons or organizations offering support.

When the DSHS or the court assists in developing an LRA placement, effort must be made to avoid disproportionate effects 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 jurisdiction 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 Substitute Bill:

Discharge Planning. The right of a civilly committed SVP to adequate care and individualized treatment includes the right to an individualized discharge plan. In developing an individualized discharge plan, the DSHS must verify that, at a minimum, the following components are addressed, based on information known to the DSHS: a functional assessment of physical health, functioning, and the need for health aid devices; a history of substance use and abuse; a history of risk and impulsive behaviors; and a summary of treatment needs.

Petitions for Conditional Release to a Less Restrictive Alternative. 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 a 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 1,000 feet of any public or private school offering instruction for kindergarten or any of grades 1 through 12.

Following the filing of a noncontested 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 history of treatment and other information known to the DSHS, the DSHS must provide an assessment of the proposed placement and must recommend any conditions of release that are in the person's best interest and that are critical to the success of the person's treatment and reintegration into the community. The assessment must include, but is not limited to, verification that: the housing and living arrangement complies with statutory requirements; the person has access to the proposed treatment; and there are no barriers to the use of any involved monitoring equipment.

If the proposed LRA involves a residence outside of the county of commitment, the DSHS must also report on whether a placement is available in the county of commitment. This assessment must be based on a review of available housing and treatment providers known to the DSHS at the time and other factors that the DSHS deems critical to the success of the placement. If no such placement is available, the DSHS must report on whether a placement is available in a county other than the proposed county of residence. If neither alternative

placement is available, the DSHS must detail its efforts to find alternative treatment providers and housing, and other inquiries conducted as to alternative placements.

When the DSHS assists with identifying an LRA placement for an SVP, it must attempt to identify a 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. Prior to the conditional release hearing, the county prosecutor in the proposed county of residence may file an objection articulating any circumstances of the specific placement that do not adequately protect the community. The court must consider the objection 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-days' notice to law enforcement, and to victims and witnesses upon 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.

Substitute Bill Compared to Original Bill:

Criteria are outlined for the DSHS to verify in developing an individualized discharge plan.

Notice of the conditional release hearing and a copy of the proposed LRA placement must be provided to the DSHS at least 30 days prior to the date the DSHS supplemental report is due to the court. References to identifying an "appropriate" LRA placement are changed to instead refer to a placement meeting statutory requirements for such placements. Changes are made related to the DSHS review of proposed LRA placements:

- The DSHS must base its assessment of a placement proposed by the committed person upon the person's history of treatment, rather than the person's record.
- The DSHS must provide recommendations for any conditions of release that are in the best interest of the person and that are critical for the success of the person's treatment and reintegration into the community (rather than those conditions that are in the person's best interest and are necessary to protect the community).
- The DSHS assessment must include, but is not limited to: (1) verification that the proposed housing and living arrangement complies with statutory requirements; and (2) verification of access to the proposed treatment and that there are no barriers to the use of any involved monitoring equipment.
- In cases in which an LRA placement involving a residence outside the county of commitment is proposed, the DSHS review may be based on information known to the DSHS and must include, but is not limited to, a review of available treatment providers and housing and other factors that the DSHS determines are critical to the success of the placement.

The school proximity restriction applicable to residences of certain conditionally released SVPs is changed from one-quarter mile to 1,000 feet.

The scope of the objection that may be filed by the county prosecutor in the proposed county of LRA placement is narrowed to objections articulating any circumstances of that specific proposed placement that do not adequately protect the community.

Other minor changes are made to wording for clarity and consistency.

Appropriation: None.

Fiscal Note: Requested on February 13, 2019.

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

Staff Summary of Public Testimony:

(In support) Right now, there is inequitable distribution of placements for individuals on LRAs. Pursuant to previous legislation, a judge must consider conditionally releasing to the county of commitment. However, by the time the proposal reaches the judge, a lot of work to establish the placement has already happened. This bill provides for upstream planning around releasing to the county of commitment and provides better information to the court. Under the bill, the DSHS must prepare a report on placement and recommend conditions. It provides a voice to the community by allowing a prosecutor to file an objection that is

nonbinding but may be considered. The bill also ensures community notice of change of address, including when someone moves from an SCTF to an LRA in the community. The provision restricting proximity to kindergarten through grade 12 schools is based on California law. Providing that a SCTF can be placed anywhere furthers equitable distribution. Currently, sex offender treatment providers have to pay \$1,000 annually to renew their credential. The bill waives fees for those serving people in underserved counties, removing a barrier to providing treatment across the state.

Three SVPs who are level III sex offenders were released from the Special Commitment Center and placed in an adult family home in Lakewood, even though they are not from Pierce County. Now they are living in a residential neighborhood within walking distance of schools, bus stops, playgrounds, and religious facilities. There are a disproportionate number of releases to Pierce County. The legislation requiring courts to consider releasing to the county of commitment did not go far enough. This is not a new idea, as fair share policies require prison inmates to go back to their counties of origin.

(Opposed) Concerns over disproportionate impact are understandable, and work is underway to try to make LRAs more available in other counties. Transition planning is complex, and currently there are only six counties that have placements for SVPs on LRAs. However, this bill sets up a process that is duplicative of what the DOC is already doing. The DOC reports are thorough and go through all aspects of the placement plan, including visiting the residence and the sex offender treatment provider, detailing the behavior of the client, and noting proximity to schools and daycare centers. Other issues with the bill include "appropriateness" not being defined, and a lack of clarity as to whether this is a question for the jury or the court. Having the DSHS work on individualized discharge planning is a good idea, but they do not have staff for that task. Setting up a SCTF in each county is not cost-effective in most counties. Eleven counties only have one SVP on an LRA.

Almost all LRAs are agreed orders, and there are very few trials. Typically, the prosecutor agrees that these clients have been found to no longer meet criteria for commitment and that many are entitled to unconditional release. However, these people have elected to have an LRA first as a step-down, as they have been living in an institution for a long time. There is much to get acclimated to, such as going to the store and getting medical care. Many of these people were committed in the 1990s and are elderly and in poor health. Adult family homes are taking these clients. These people have disabilities and are living in homes built for SVPs; they are not mixing with other populations.

This bill will result in increased expenses. The Sexually Violent Predator Act is funded by the state. With prisons, the county pays for the person being returned. Also, if someone who has been demonized as an SVP is placed in a county that has never had an SVP there will be panic in the community. Pierce County does not panic over these placements. There has never been a hands-on offense by someone released on an LRA. Pierce County having a high number of sex offenders is a positive thing because it leads to enhanced security through having additional community corrections officers. Instead of passing this bill, there should be work with stakeholders and agencies to address these issues.

(Other) There should be a work group convened to reform discharges. Both geographical appropriateness and clinical appropriateness are at issue. Currently, defense counsel must

figure out what kind of support a person will have when they leave the Special Commitment Center, whereas typically, when a person leaves a state facility, the facility does that work.

Persons Testifying: (In support) Representative Kilduff, prime sponsor; and John Caulfield, City of Lakewood.

(Opposed) Rebecca Lederer, Joe Field, and Christine Sanders, Washington Defender Association; and Katie Ross, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

(Other) David Lord, Disability Rights Washington; and Donta Harper, Department of Corrections.

Persons Signed In To Testify But Not Testifying: None.