

SENATE BILL REPORT

SB 5038

As of February 22, 2019

Title: An act relating to limiting the placement of institutionalized persons with a history of criminal justice involvement in adult family homes.

Brief Description: Limiting the placement of institutionalized persons with a history of criminal justice involvement in adult family homes.

Sponsors: Senators O'Ban, Becker, Honeyford and Wagoner.

Brief History:

Committee Activity: Behavioral Health Subcommittee to Health & Long Term Care: 2/15/19.

Brief Summary of Bill

- Prohibits the Department of Social and Health Services (DSHS) from placing a person committed to a state hospital after committing acts constituting a violent felony in an adult family home.
- Prohibits DSHS from placing a person committed to the Special Commitment Center as a sexually violent predator in an adult family home.
- Expands the definition of enhanced services facilities to include providing services to persons committed as sexually violent predators.

SENATE COMMITTEE ON BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE

Staff: Kevin Black (786-7747)

Background: State Hospitals. DSHS operates two state hospitals for adult patients who have been committed for involuntary mental health treatment, Western State Hospital and Eastern State Hospital. These hospitals serve both civil patients, who have been committed by a court under the Involuntary Treatment Act, and forensic patients, who are committed pursuant to criminal charges. Some forensic patients flip their status from forensic to civil

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.

when they are found incompetent to stand trial and the court dismisses their criminal cases without prejudice and refers them for civil commitment.

1114 Patients. E2SHB 1114 (2013) established a special designation for state hospital patients who are civilly committed after committing acts constituting a violent felony and whose charges were dismissed based on incompetency to stand trial (1114 patients). These patients lose certain procedural rights at their civil commitment hearings. 1114 patients must be released when their condition is such that their needs can be safely met in a less restrictive alternative to inpatient hospitalization (LRA). The options of a court upon conditional release of an 1114 patient to an LRA do not include supervision by a community corrections officer. Services available on an LRA are specified in statute and must be made available to all civil patients, but are not mandated to be provided to criminal insanity patients.

Sexually Violent Predator Commitments. Under the Community Protection Act of 1990, a person may be committed as a sexually violent predator (SVP) and confined in a secure facility. SVP is defined as 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, a prosecuting agency may file a petition to confine the person civilly based on the SVP allegation.

If a trial determines beyond a reasonable doubt that a person may be committed as an SVP, the state is authorized to commit the person to a secure treatment facility for an indefinite period. DSHS operates the Special Commitment Center on McNeil Island, which is a commitment facility for persons found to meet this definition. Once a person is committed, 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 LRA is in the best interest of the person and conditions can be imposed that would adequately protect the community.

Adult Family Homes. An adult family home is a licensed residential home in which persons provide personal care, special care, room, and board to one to six adults not related by blood or marriage to the persons providing the services.

Enhanced Services Facilities. An enhanced services facility is a facility that provides treatment and services to persons for whom acute inpatient treatment is not medically necessary and who have been determined by DSHS to be inappropriate for placement in other facilities due to complex needs that result in behavioral and security issues. Enhanced services facilities are required to have sufficient numbers of staff with training in mental health treatment, medication services, assistance with the activities of daily living, and other needs.

Summary of Bill: DSHS may not discharge an 1114 patient from a state hospital to an adult family home.

A court may not enter an LRA order placing a person committed as an SVP to an adult family home. A person committed as a SVP who would otherwise be appropriate for an adult family

home must be placed in an enhanced services facility or a setting that provides at least an equivalent staffing ration and level of security and supervision.

The definition of an enhanced services facility is modified to include providing services to persons who have been judicially determined to meet the definition of an SVP.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Adult family homes are critical for the care of disabled adults and seniors. This legislation will preserve the identity and reputation of these facilities. This bill is intended to stop the practice of placing dangerous individuals in adult family homes. Recently three violent offenders were placed in homes in my district. Imagine you live right next door, how does it change your sense of security and quality of life? It changes the complexion of the neighborhood. This bill is targeted at just two categories of individuals. I was stunned to find out that my son, who needs 24-hour care, could be placed in an adult family home with someone who has a history of sexual predation or violence. This has taken away our sense of security. My father was murdered by a person who was released from Western State Hospital and placed in an adult family home. This could have been avoided. Patients who can not take care of themselves need the protection of this bill. This does not go far enough. People on LRAs go out into the community in outings, parks, and shopping malls. They have chaperones but the chaperones are not armed. The homes would not have so much security if the residents were truly safe to be released. I do not want my grandchildren to be the sexual trigger that causes someone to reoffend. Our communities should not be used as an experiment to see if someone can succeed. People in adult family homes are fragile and very high risk. There has been mission creep in what adult family homes are. They are supposed to provide a residential living environment, not a placement resource for violent, predatory offenders. I do not want this to continue in the city I represent. Adult family homes generated 524 calls for service in Lakewood last year. In the best circumstances the conditions in these homes are chaotic and unpredictable. The facilities are not appropriate for violent offenders. Our quiet residential neighborhood has been impacted by the number of adult family homes. The sense of safety has been lost for everyone in our neighborhood. Stop. Time is up; enough is enough. Persons with mental illness should get the treatment they need without sacrificing the safety of our quiet neighborhood. Too many people have already died. When do the rights of the few outweigh the rights, and security, of the many? It is ridiculous that we even have to address this as a community. Patients should be released to their county of origin. Sex offenders are moving into my neighborhood and I do not feel safe. My wife is scared for her safety and does not sleep at night. Experience shows it is not possible to eliminate all risk. There needs to be more voice from the receiving counties in the discharge process, which does not happen when the burden of developing release plans falls on the defense attorney. Just a few minute lapse in supervision can lead to dire consequences.

CON: The LRA process for SVPs is extremely complicated. We recommend a work group involving stakeholders who are experienced in this litigation and members of the community to work out these issues. This bill places the law in constitutional jeopardy and breach of previous settlement agreements. We need a solution that works for everybody and follows the law and constitution. The Special Commitment Center (SCC) has an elderly, increasingly infirm population. When these residents no longer meet criteria for commitment they need assistance. If it becomes too hard to release someone conditionally, more residents will be released unconditionally. There are no incidents of any person being harmed by a former SCC resident on an LRA. The sex offenders who haven't been caught yet are far more dangerous than the very highly supervised persons on LRAs. People are focusing in the wrong place. This is based on a misunderstanding of how LRAs come to pass. There are only four enhanced services facilities in Washington, with limited beds, most of which are full. Requiring placement in enhanced services facilities would localize persons on LRAs and not return them to their home counties. Some of the SCC residents committed their offenses as teenagers, or when they were mentally children. They are now older men whose last offenses were in the 1970s and 1980s. Some of these residents choose LRAs despite annual findings that they present no risk because they see value in a controlled transition back into the community. There have been no criminal incidents involving persons on LRAs in the history of the special commitment law. The constitution requires placement in the least restrictive setting available. No one is more concerned about the safety of persons in adult family homes than their operators. We do not admit residents unless we can be assured of their safety and of the other residents in the home. This bill perpetuates misconceptions about adult family homes and who they serve. We would be willing to discuss appropriate notifications and training requirements for adult family home operators. Please engage in a meaningful, solutions-oriented approach. Adult family homes are the most clinically appropriate placement for SCC residents who are older, sick, and have personal care needs. Please task DSHS with identifying the resources needed for discharge in the community for residents who no longer meet civil commitment criteria.

Persons Testifying: PRO: Senator Steve O'Ban, Prime Sponsor; John Simpson, Lakewood City Council; Mike Zaro, Lakewood City Police; Jim Sharp, West Pierce Fire and Rescue; Dora Shardelman, Washington State for Public Safety; John Busby, citizen; Tracy Ingram, Oakbrook Community Voice; Twyla Williams, Oakbrook Community Voice; Guy Kent Troy, Oakbrook Community Voice; Carrie Standish, citizen; Daniel Davis, Pierce County Prosecutor's Office; Daniel Defenbaugh, citizen; Doug Richardson, Pierce County Council; Kelley and Ryan Nesbitt, citizens; Freedom Nitschke, citizen; Soleil Sloboda, citizen.

CON: Rachael Seevers, Disability Rights Washington; Sonja Hardenbrook, Devon Gibbs, Katie Ross, Washington Defender Association, Washington Association of Criminal Defense Lawyers, Snohomish County Public Defender Association, King County Office of Public Defense; John Ficker, Adult Family Home Council.

Persons Signed In To Testify But Not Testifying: No one.