

SENATE BILL REPORT

SB 6436

As of February 5, 2020

Title: An act relating to the conditional release of sexually violent predators to less restrictive alternatives.

Brief Description: Concerning the conditional release of sexually violent predators to less restrictive alternatives.

Sponsors: Senators Rolfes, O'Ban, Randall and Wilson, C.

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 2/05/20.

Brief Summary of Bill

- Alters the definition of less restrictive alternative (LRA) to exclude adult family homes.
- Requires sexually violent predators (SVPs) who are conditionally released in an LRA to be first placed to a secure community transition facility before any other placement.
- Requires an SVP to show progress in treatment at the Special Commitment Center and that conditional release would not unduly place the community at risk.
- Alters information requirements for public disclosures for certain offenders.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Staff: Kelsey-anne Fung (786-7479)

Background: Sexually Violent Predators. An SVP is a person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which 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 an SVP when the person is about to be released from a state correctional facility, among other circumstances. The filing 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, the person 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. DSHS must conduct an annual examination of a committed person's mental condition to determine whether the person's condition has changed. If the person's condition has changed and they no longer meet the definition of an SVP, or if conditional release to an LRA is in their best interest and conditions can be imposed adequately protecting the community, 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 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.

Conditional Release to a Less Restrictive Alternative. Before authorizing conditional release to an LRA, the court must determine 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; and
- the person will be supervised by the Department of Corrections (DOC).

Each person conditionally released to an LRA must have their case reviewed by the court within one year of release, and annually thereafter, until the person is unconditionally released. Conditional release to an LRA may be revoked or modified by a court if it is determined the SVP violated the terms and conditions of the conditional release order or needs additional care, monitoring, supervision, or treatment.

Secure Community Transition Facilities. Persons found to be SVPs are committed to the Special Commitment Center on McNeil Island, a total confinement facility with 309 beds. A conditional release of an SVP may be to a community-based LRA placement, including private residences, adult family homes, and group homes, or to a secure community transition facility (SCTF). 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. When siting new SCTF facilities, DSHS must work with local governments to achieve equitable distribution within counties to avoid a disproportionate grouping of similar facilities in any one jurisdiction or community.

Community Notification. When an SVP is conditionally released, unconditionally released, or escapes, 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. 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 Registration and Notification. The End of Sentence Review Committee (ESRC), chaired by DOC, classifies sex offenders being released from state correctional institutions according to their risk of re-offense within the community. ESRC classifies low risk offenders as level I, moderate risk offenders as level II, and high risk offenders as level III. The classifications are forwarded to the county sheriff in the jurisdiction where the offender will reside. The sheriff may adopt ESRC's risk level or establish a different level. If ESRC has not had the opportunity to classify a sex offender, such as when the offender has moved to Washington State from another state, the sheriff's office will perform its own classification of the offender's risk. The risk level classification dictates the level of notice to the public and the amount of information the sheriff may release about the offender.

The Washington Association of Sheriffs and Police Chiefs (WASPC) operates an electronic statewide unified sex offender notification and registration program which contains a database of all registered sex offenders in the state of Washington. WASPC creates and maintains a public website that posts all level II and level III sex offenders. For offenders classified as risk level I, the agencies must share information with other law enforcement agencies, and if the offender is a student, with the public or private school. Agencies may disclose information about a level I sex offender to any victim or witness of the offense, and to any individual community member who lives near the offender's residence. Agencies may disclose information regarding level II sex offenders to law enforcement agencies, public and private schools, day care centers, libraries, and other entities near where the offender resides. Agencies may also disclose information regarding level III sex offenders to the public at large. For level III sex offenders, law enforcement must additionally publish notice in at least one newspaper in the area of the sex offender's registered address.

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

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): The definition of LRA is altered so that a less restrictive alternative placement cannot be an adult family home. The definition of SCTF is altered to include court-ordered placements resulting in more than one SVP in a secure facility. An individual residence is defined as a court-ordered placement to a secure facility housing not more than one SVP who is conditionally released to a single-family residence, multifamily residence, or group dwelling.

Requirements that a court must consider before directing conditional release to an LRA are modified as follows:

- the person has progressed in treatment provided at the Special Commitment Center and the person's conditional release would not unduly place the community at risk;
- if conditionally released, 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 supervised by DOC.

A person who is granted conditional release to an LRA must be placed at an SCTF before any other placement type. This applies even if the person's conditional release is revoked, and the person is again granted conditional release.

For level III sex offenders who were committed as SVPs, local law enforcement agencies must disclose information regarding civil commitment to the public at large, such as status of total confinement, conditional release, and unconditional release, and hold a community notification meeting. The WASPC statewide database website for level III sex offenders must also include a description of the person's prior sexual offenses and civil commitment status and history.

Appropriation: None.

Fiscal Note: Available.

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 on Proposed Substitute: PRO: Current statute creates ambiguous process with no meaningful public notification or involvement from local jurisdictions. Siting process for SCTFs does not include input from local jurisdictions. Asking for the state to improve criteria for locating SVP in LRA housing. Adult family homes are not appropriate setting for placing SVPs, where vulnerable, and often disabled, adults seek long-term care. Placements to AFH put the community at risk.

Persons Testifying: PRO: John Simpson, Councilmember, City of Lakewood; Tricia Benson, Washington State for Public Safety; Tracy Ingram, Oakbrook Community Voice.

Persons Signed In To Testify But Not Testifying: PRO: Errol Archibald, citizen; Robert Gelder, Kitsap County Commissioner.

CON: Errol Archibald, citizen; Devon Gibbs, King County DPD; Shoshana Kehoe-Ehlers, State Office of Public Defense; Sonja Hardenbrook, Washington Defender Association,

Washington Association of Criminal Defense Lawyers; Paul Banken, Washington Association of Criminal Defense Lawyers, Washington Defender Association; Rachael SeEVERS, Disability Rights Washington.

OTHER: Sean Murphy, Department of Social and Health Services Behavioral Health Administration.