

HOUSE BILL REPORT

E2SSB 5163

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: Senate Committee on Ways & Means (originally sponsored by Senators Rolfes, Dhingra, Saldaña and Wilson, C.).

Brief History:

Committee Activity:

Public Safety: 3/23/21, 3/25/21 [DPA].

**Brief Summary of Engrossed Second Substitute Bill
(As Amended By Committee)**

- Shifts the primary responsibility for identifying less restrictive alternative (LRA) placements for civilly committed sexually violent predators (SVPs) to the Department of Social and Health Services (DSHS) in certain circumstances, and requires LRA placements to be in line with fair share principles when possible.
- Requires the DSHS to contract with LRA housing and treatment providers and use a housing matrix to plan and develop LRA placements.
- Allows the state to site secure community transition facilities and other conditional release and transitional facilities in any county of the state.
- Provides that SVPs must have a clinically appropriate discharge plan as part of the treatment process through the DSHS.
- Requires community notification of any change of address of a conditionally released SVP.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Allows the Department of Corrections to enter a 72-hour arrest warrant pending a judicial bench warrant when an SVP on conditional release disappears.
- Requires the establishment of a workgroup to address issues relating to the availability of sex offender treatment providers.
- Requires the DSHS to enter into a memorandum of understanding with the Department of Licensing to allow residents at the Special Commitment Center to obtain a state identification card.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass as amended. Signed by 8 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Davis, Hackney, Lovick, Orwall, Ramos and Simmons.

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

Minority Report: Without recommendation. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Griffey and Young.

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 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 (SCC) 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 with the petition, 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 sex offender treatment provider (SOTP) 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.

A person conditionally released to an LRA must have his or her 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. 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 a SCTF on McNeil Island. A second SCTF is located in King County. 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 SOTPs may provide treatment to sexually violent predators released to an LRA, unless specified exceptions apply.

Summary of Amended Bill:

Discharge Planning. A civilly committed SVP has a right to the development of an ongoing, clinically appropriate discharge plan as part of the treatment process. Discharge planning requires, at a minimum, that the following are addressed based on information known by the DSHS:

- the person's known physical health, functioning, and any need for health aid devices;
- the person's known intellectual or cognitive level of functioning and need for specialized programming;
- the person's known history of substance use and abuse;
- the person's known history of risky or impulsive behaviors, criminogenic needs, and treatment interventions to address them;

- the person's known ability to perform life skills and activities of daily living independently and the person's need for any disability accommodations;
- a summary of the community services and supports the person needs for a safe life in the community and the type of providers of such services and support; and
- a plan to mitigate the needs identified that also addresses ways to develop or increase social supports, recreation opportunities, gainful employment, and if applicable, spiritual opportunities.

The right to a discharge plan does not guarantee that an SVP will be determined appropriate for discharge at any particular time. Further, it does not preclude the DSHS from expressing professional judgment regarding the suitability of discharge for the protection of a resident's safety or community safety.

Petitions for Conditional Release to a Less Restrictive Alternative. The processes for petitioning for conditional release to an LRA are modified. Following a determination by the DSHS on annual review that person's condition has changed such that an LRA is appropriate (in other words, in non-contested cases), if the person files a petition for conditional release, the court must order the DSHS to identify an LRA placement, including identification of an SOTP and housing. Notice of the placement, once identified, must be filed with the court and served on the prosecution and the petitioner. If the DSHS cannot identify a placement within 90 days, it must provide the court and the parties with a written certification detailing its efforts to find a placement. Upon receiving a certification from the DSHS, the petitioning person may identify a placement. When the court receives a placement plan from the DSHS or the person, it must order a conditional release hearing within 45 days.

If the committed person files a petition for conditional release without authorization from the DSHS (in other words, in a contested case), the process depends on the outcome of the show-cause hearing. If the state fails to present prima facie evidence that no LRA is in the best interest of the person and conditions cannot be imposed to adequately protect the community, the process for non-contested petitions is followed. If the court finds probable cause to believe, based on evidence presented by the petitioning person, that release to an LRA is in the best interest and conditions can be imposed to protect the community based on evidence presented by the petitioner, the court must set a hearing on the issue of conditional release once the petitioning person presents an LRA placement meeting statutory criteria. The DSHS is not directed to identify a placement in these circumstances. The current law requirement is removed that, in order for the court to find probable cause for a trial, a proposed LRA placement must be presented to the court at the time of the show cause hearing.

Conditional Release to a Less Restrictive Alternative. When the DSHS develops an LRA placement, it must attempt to identify a placement aligned with fair share principles and document its rationale for the recommended placement. "Fair share principles" refers to the notion that each county should have options for conditional release housing placements in a

number generally equivalent to the number of residents from that county who are subject to total confinement as an SVP. If the DSHS does not support or recommend conditional release to an LRA due to a clinical determination, the DSHS must document its objection and certify that the department is developing the LRA pursuant to a court order and not because of a clinical determination. When the DSHS develops or proposes an LRA placement, it is considered a predisposition recommendation. If the committed person is not conditionally released to his or her county of commitment, the DSHS must provide the law and justice council of the county of release with notice and a written explanation, including whether the DSHS remains in compliance with fair share principles.

The criteria for the court's consideration as to where, and under what conditions, to release an SVP on an LRA are modified. To the greatest extent possible, the person, person's counsel, prosecuting agency responsible for the initial commitment, treatment provider, supervising community corrections officer, and appropriate clinical staff of the SCC must meet and collaborate to craft individualized, narrowly tailored, and empirically based conditions to present to the court to help facilitate the person's successful transition to the community. The court must consider whether a person's LRA placement in a particular county complies with fair share principles. The availability elsewhere of individualized resources or support needs of the person may constitute reasons to recommend placement outside the county of commitment. 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 and identify whether the release remains in line with fair share principles. In imposing conditions, the court must include a minimum distance restriction of 500 feet on the proximity of the person's residence to child-care facilities and public or private schools providing instruction to kindergarten or any grades 1 through 12. The DOC's investigation of the placement and recommendations as to additional conditions must be submitted within 60 days of the order to investigate. Recommended conditions must be individualized to address the person's specific risk factors and may include restrictions on residence and specification of contact with a reasonable number of individuals upon the person's request who are verified by the DOC to be appropriate social contacts.

When ordered by the court, the DSHS must provide LRA treatment that includes, at a minimum:

- the services identified in the person's discharge plan;
- the assignment of a community care coordinator;
- regular contacts with providers of court-ordered treatment services;
- community escorts, if needed;
- a transition plan that addresses the person's access to continued services upon unconditional discharge;
- financial support for necessary housing;
- life skills training and disability accommodations, if needed; and
- assistance in pursuing benefits, education, and employment.

When the DOC is ordered to investigate a proposed LRA placement, the DSHS must assign a social worker to assist the person with discharge planning, pursuing benefits, and coordination of care prior to release. The social worker must assist the person with completing applications for benefits prior to the person's release from total confinement. In addition, the social worker is responsible for initiating a clinical transition of care between the last treating clinician at the SCC and the person's designated community treatment provider. This transition between one clinical setting to another must occur no later than 15 days before an individual's release from the SCC. If applicable, the social worker must assist the person with locating any needed disability accommodations in the community and with obtaining resources to help address the person's identified life skills needs prior to release from total confinement.

When the court conducts its annual review of an LRA placement, the court may determine whether to modify the person's LRA conditions to ensure that conditional release remains in the best interest of the person and adequately protects the community. If the court enters an order for unconditional discharge of a person from an immediately preceding LRA placement, the court must transmit the order to the DOC for discharge processing and termination of cause.

The DOC and the DSHS, including their officers, agents, and employees, are not liable for the acts of individuals on conditional release unless the respective agency, its officers, agents, and employees acted with gross negligence.

Contracts with Housing and Treatment Providers. The DSHS has primary responsibility for developing LRA placements. Subject to funding, the DSHS must contract with housing and treatment providers from across the state and facilitate fair share principles among the counties. The DSHS must use a specified housing matrix as a guide for planning and developing LRA placements. Considerations for evaluating a proposed vendor's application for LRA housing services must include applicable state and local zoning and building codes, among other things, and the DSHS must require the housing provider to provide proof the facility is in compliance with all local zoning and building codes. The DSHS has oversight over vendors and providers who contract with the state and must maintain a statewide accounting of the contracted community housing and treatment providers in each county. The DSHS must provide a biannual report to the Governor and Legislature on the availability and adequacy of LRA placements and DSHS compliance with fair share principles.

Secure Community Transition Facilities and Other Conditional Release Facilities. Subject to funding, the state is authorized to site and operate SCTFs and other conditional release and transitional facilities in any county in the state. Subject to state funding, the DSHS must conduct a study to explore the development of conditional release and transition facilities, which may include community-based state-operated living alternatives similar to the state-operated living alternative program operated by the developmental disabilities administration.

Community Notification and Related Procedures. In addition to the current notice requirements, the DSHS must also provide notice to law enforcement agencies regarding any change of address for an SVP. However, a return to total confinement or to a SCTF pending revocation or modification proceedings is not considered a change of address unless conditional release is revoked or the return lasts longer than 90 days.

If an SVP disappears while on conditional release, the DOC may enter an arrest warrant for up to 72 hours pending entry of a bench warrant by the court.

Sex Offender Treatment Providers. Subject to funding, the DSHS, the Sex Offender Policy Board (SOPB), and the DOH must convene a workgroup to develop recommendations to increase the availability and quality of SOTPs to meet the growing number of persons qualifying for conditional release to an LRA. The workgroup must gather data on best practices in other states and make certain recommendations in a report due to the Legislature by December 1, 2021.

State Identification Cards. The DSHS must enter into a memorandum of understanding with the Department of Licensing to allow SVPs at the SCC to obtain a state identification card using a written identification verification letter provided from the SCC to the Department of Licensing. The process must occur upon the person's initial detention at the SCC and must reoccur when the person's state identification card expires.

Sex Offender Policy Board. The SOPB is directed to meet quarterly during the 2021-23 biennium to continue its review of SVP and LRA policies and best practices, collaborate with stakeholders and the DSHS, provide outreach to providers and stakeholders, and monitor implementation of the provisions in the underlying bill. The SOPB must also explore and make recommendations whether to continue or remove the prohibition on an LRA from including a placement in the community protection program. During the 2021-23 biennium, the SOPB must provide semiannual updates to the appropriate legislative committees.

Amended Bill Compared to Engrossed Second Substitute Bill:

The discharge planning requirements are modified to provide that planning must be based on information that is known to the DSHS. The requirement for the DSHS to conduct discharge planning does not preclude the DSHS from expressing professional judgment about the suitability of an SVP's discharge from the Special Commitment Center.

A provision is added specifying that the DSHS, its officers, agents, and employees are not liable for the acts of persons on conditional release unless the DSHS, its officers, agents, and employees acted with gross negligence.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended 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) This is a really uncomfortable topic for legislators and stakeholders, but the state has a responsibility to address these serious issues. Legislators need to be thoughtful. The courts have determined that the SVPs on McNeil Island have constitutional rights, and the state does not have the authority to continue to confine them there when the court deems it safe for them to be conditionally released. The Special Commitment Center is a treatment center, not a prison. The number of SVPs qualifying for conditional release is growing because many of them are elderly and have serious medical issues. However, the process for conditional release is imprecise and challenging, in large part because the Legislature has not stepped in and provided clarity and guidance.

There have been recent instances where communities did not receive notice of SVP housing being sited in their neighborhoods. The DSHS blamed the DOC, the DOC blamed it on the courts, and the courts blamed the county sheriffs. It is clear that the process needs work, and the state needs to ensure that housing is sited in proper locations. In other instances, failure to provide proper housing and support for conditional release placements means that some SVPs stay on McNeil Island because of their medical needs, not because they are dangerous. This is creating significant liability and ongoing litigation.

The Legislature asked the SOPB to devise recommendations to fix longstanding issues with the conditional release process and housing. The SOPB engaged in a comprehensive review process, involving stakeholders and practitioners from different backgrounds and interests. This bill implements the final recommendations, which had broad consensus among the SOPB, including prosecutors, defense attorneys, and the Attorney General's Office. It is important to take note that the SOPB starts and ends every discussion with a consideration of the impact on crime victims and communities.

The bill will provide the DSHS with oversight over placements across the state, ensuring that housing is appropriately and safely located. The bill also aligns statute with the recent legal settlement that requires the DSHS to conduct discharge planning. This bill will give communities greater notice and opportunities for input, and it also address fair distribution of these facilities across counties.

(Opposed) None.

(Other) The bill requires the DSHS to engage in discharge planning even when a discharge

is against its professional judgment. The bill also creates a 90-day deadline to identify a residential placement—this is too short. The bill does not address the cooperation of local jurisdictions to support the siting of residential placements. This bill will require substantial new work at the DSHS, and to successfully implement this legislation, significant fiscal resources will be necessary.

Persons Testifying: (In support) Senator Rolfes, prime sponsor; Sonja Hardenbrook, Washington Defender Association and Washington Association of Criminal Defense Lawyers; Rachael SeEVERS, Disability Rights Washington; and Brad Meryhew, Washington Sex Offender Policy Board.

(Other) Sjan Talbot, Behavioral Health Administration, Department of Social and Health Services.

Persons Signed In To Testify But Not Testifying: None.