

HOUSE BILL REPORT

HB 2122

As Reported by House Committee On:
Public Safety

Title: An act relating to sexually violent predators.

Brief Description: Concerning sexually violent predators.

Sponsors: Representatives Fagan, Goodman, Schmick, Takko, Short, Nealey, Klippert, Stanford, Pettigrew, Orwall, Johnson, Hayes, Farrell, Rodne, Ross, Fitzgibbon, Kirby, Green, Moscoso, Magendanz, Lias, Haler, Appleton, Buys, Morrell, Van De Wege, Ryu, Bergquist and Robinson; by request of Attorney General.

Brief History:

Committee Activity:

Public Safety: 1/14/14, 1/24/14 [DP].

Brief Summary of Bill

- Requires that a person committed as a sexually violent predator must participate in the annual evaluation by the Department of Social and Health Services' evaluator before retaining or requesting appointment of an independent evaluator.
- Waives the annual examination requirement while the committed person is awaiting trial for unconditional release; if a person is recommitted, the next annual examination must be done within one year of the recommitment order.
- Defines "treatment" to be sex offender specific treatment by a certified provider.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass. Signed by 11 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Holy, Hope, Moscoso, Pettigrew, Ross and Takko.

Staff: Sarah Koster (786-7303).

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.

Background:

Sexually Violent Predator Commitment Proceedings: A sexually violent predator (SVP) is a person who has been convicted of, found not guilty by reason of insanity of, or found to be 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.

Once the prosecutor files a petition to civilly commit a person, the court first must determine whether there is probable cause to believe the person is a SVP. If there is probable cause, a full trial is held to determine whether the person is a SVP.

At the trial, the burden is on the state to prove beyond a reasonable doubt that the person is a SVP. If the person requests a 12-person jury, the jury must be unanimous. If the person is found to be a 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.

Annual Examinations: Every year, the DSHS shall conduct an examination of each committed person's mental condition and have a report prepared as to whether the person continues to meet the definition of a SVP and whether conditional release to a less restrictive alternative (LRA) is in the person's best interest and conditions can be imposed to adequately protect the community. The committed person can retain, or have appointed, if indigent, an evaluator to conduct an examination.

Review Proceedings: If the DSHS determines after the annual examination that: (1) the person's condition has so changed that he or she no longer meets the definition of a SVP, or (2) conditional release to a LRA is in the person's best interest and conditions can be imposed to adequately protect the community, the DSHS must authorize the person to petition the court for a full trial to consider either unconditional discharge or conditional release to a LRA.

The committed person may also petition the court for release without the approval of the DSHS. The DSHS must send annual written notice of the right to petition the court, along with a waiver of rights. If the committed person does not waive the right, the court must set a show cause hearing to determine if probable cause exists to warrant a hearing on whether the person's condition has so changed.

If, at the hearing, the committed person demonstrates probable cause to believe that his or her condition has so changed that he or she no longer meets the definition of a SVP or that release to a LRA would be in the person's best interest and conditions would adequately protect the community, the court will order a full trial, at which the burden is on the state. However, a trial may not be ordered unless there is current evidence from a licensed professional that: (1) 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 (2) treatment has brought about a positive change in mental condition.

Summary of Bill:

Annual Examinations: A committed person may not retain or have appointed a separate evaluator unless he or she participated in the most recent interview and evaluation completed by the DSHS.

If a committed person has been granted a trial to determine whether unconditional release is appropriate, in that the person no longer meets the definition of a SVP, the annual examination requirement is waived pending the trial. If the person is recommitted after the trial, the DSHS will conduct a new examination no more than one year after the recommitment order.

Review Proceedings: A trial for conditional or unconditional release may not be ordered unless there is current evidence from a licensed professional that: (1) 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 (2) sex offender specific treatment by a certified professional has brought about a positive change in mental condition.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 2014.

Staff Summary of Public Testimony:

(In support) This has to do with personal safety and community safety. This bill is focused on the process of those who are already civilly committed. Currently, 301 individuals are civilly committed. This is 1 percent of all sex crimes; the worst of the worst. It is in everyone's best interest to have accurate current information. The current situation is that the person can have an outside expert at the cost of \$10,000, even if they refuse to participate with the state expert. The bill does not require them to meet with a state evaluator, except if they want another evaluation at state expense. Fair is fair. With regard to the definition of treatment, evaluations are being put forth which call all kind of things treatment. Alcohol Anonymous and other programs are beneficial, but the committed persons need specific cognitive treatment that the Legislature intended they have. Some people claim that being at the SCC is itself "treatment." This bill is supposed to clarify that sex offender treatment is what is intended.

(With concerns) If civil commitment is going to continue, it should be based on accurate, updated information. There needs to be definitional clarity of what constitutes treatment and there must be consideration of people for whom group therapy is not feasible.

(Opposed) This bill does not provide guidance to what is sex offender specific treatment and that is problematic. A 2012 report found that the SCC's definition was very conservative, referring only to cognitive group therapy, compared to the much broader definition used by

other states. This is important because sex offender therapy is an ever changing field. This bill gives the SCC unfettered discretion to determine who has participated in treatment and thus who can petition the court. The court is well-equipped to make this determination. This bill tries to punish the unwilling, but it punishes the unable. For example, some people cannot participate in a cognitive group therapy treatment because of language, disability, or background.

Persons Testifying: (In support) Representative Fagan, prime sponsor; and Bob Ferguson and Malcolm Ross, Office of the Attorney General.

(With concerns) Ruth Elder, Washington Citizens United for Responsible Education.

(Opposed) Ken Chang, Washington Defender Association of King County.

Persons Signed In To Testify But Not Testifying: None.