

HOUSE BILL REPORT

2SSB 5088

As Reported By House Committee On:

Corrections
Appropriations

Title: An act relating to sexually violent predators.

Brief Description: Revising the law relating to sexual predators.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senator Smith).

Brief History:

Committee Activity:

Corrections: 3/28/95, 3/29/95 [DPA];
Appropriations: 4/3/95 [DPA(COR)].

HOUSE COMMITTEE ON CORRECTIONS

Majority Report: Do pass as amended. Signed by 10 members: Representatives Blanton, Vice Chairman; Sherstad, Vice Chairman; Quall, Ranking Minority Member; Tokuda, Assistant Ranking Minority Member; Cole; Dickerson; Koster; Radcliff; K. Schmidt and Schoesler.

Staff: Rick Neidhardt (786-7841).

Background: In 1990, Washington adopted the Community Protection Act. One part of the act created a new civil commitment procedure for individuals deemed to be "sexually violent predators."

A sexually violent predator 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 that makes the person likely to commit predatory acts of sexual violence.

A judge or jury determines whether the person is a sexually violent predator. If found to be a sexually violent predator, the person is civilly committed and held in a special, secure facility. The facility is located in a Department of Corrections (DOC) institution, but is separately staffed and operated by the Department of Social and Health Services (DSHS).

Civily committed sexually violent predators are entitled to constitutionally mandated levels of treatment and care.

A sexually violent predator's commitment is indefinite in duration. A sexually violent predator may be released from commitment only after a court hearing which examines whether the person will engage in predatory acts of sexual violence if released. The hearing may be before a judge or a jury.

The overall statutory scheme for committing sexually violent predators was held to be constitutional by the State Supreme Court in 1993. In re Young, 122 Wn.2d 1 (1993). The Court's opinion, however, identified some portions of the statute where the Constitution requires additional procedural protection.

Legislation has been proposed to respond to the Court's opinion in Young and to provide additional clarification.

Summary of Amended Bill:

Definition of sexually violent predator. The definition is limited by adding a requirement that the person is likely to commit predatory acts of sexual violence if not confined in a secure facility. Accordingly, a person does not qualify as a sexually violent predator if some setting short of total confinement will make the person unlikely to commit predatory acts of sexual violence.

Probable cause hearing. A person has a right to a probable cause hearing within 72 hours of being taken into custody. At this hearing, the person is entitled to an attorney, to present evidence, to cross-examine witnesses, and to view and copy documents in the court file.

Timing of trial. Trial is to be conducted within 45 days after completion of the probable cause hearing. The trial may be continued upon motion of any party or the court if a proper showing of justification is made.

Jury trials. A jury shall consist of 12 jurors. A jury verdict must be unanimous.

Recent overt acts. If an alleged sexually violent predator has been in the community prior to the trial, the person cannot be committed unless the state shows the person committed a recent overt act, which is defined as an act that has caused sexually violent harm or created a reasonable apprehension of such harm.

Conditional release to a less restrictive alternative than total confinement. After a sexually violent predator has been committed, a hearing may be held to determine whether the person should be conditionally released to a less restrictive alternative than total confinement. The hearing shall be before a judge or jury. At the hearing,

the state has the burden of showing beyond a reasonable doubt that the person is not safe to be released and that if conditionally released the person is likely to engage in predatory acts of sexual violence. The judge or jury must find that the conditional release is in the best interests of the respondent and that the community will be adequately protected.

The court must also find that the person's treatment provider is qualified to provide this treatment, that the treatment provider agrees to be responsible for providing certain specified treatment, that the housing is sufficiently secure to protect the community, that the treatment provider and the person providing housing will make specified reports, that the person being released agrees to comply with all conditions of release.

The court must impose other additional conditions in order to ensure the community's safety, including not contacting potential or past victims, prohibiting alcohol or drug use, participating in specific treatment, being supervised by the Department of Corrections, requiring the person to remain in the state, or other restrictions.

The court must annually review the case of any person conditionally released to a less restrictive alternative placement.

The conditions may be modified, or the release may be revoked, if the court determines the person has violated the release conditions or needs additional care and treatment.

The court's jurisdiction over a sexually violent predator continues until the person is unconditionally discharged.

Annual report. The annual report on a committed person, which details the person's mental condition, must include consideration of whether a less restrictive alternative is appropriate.

Rights while committed. The rights of a committed person are more specifically delineated. The person has the right to adequate care and individualized treatment. Medical records shall be maintained and kept available for review by the committed person and other people involved in the commitment process. The Department of Social and Health Services (DSHS) must take reasonable care to safeguard a committed person's personal property. Committed persons may use other methods for obtaining release, including seeking a writ of habeas corpus. An indigent person being released from commitment must be furnished with suitable clothing and a minimal sum of money.

Miscellaneous provisions. When a person is about to be released from total confinement, and the person could qualify as a sexually violent predator, the agency

that has been confining the person is required to furnish full documentation to the prosecutor. The documentation is to include: the entire institutional record; all records of psychological or psychiatric evaluation or treatment; a record of previous arrests and convictions, including police case reports; and a current mental health evaluation.

DSHS is responsible for the costs associated with a person committed as a sexually violent predator, whether the person is in total confinement or is conditionally released to a less restrictive alternative.

Confinement of a person during commitment proceedings shall be in a secure facility.

The process for petitioning for release is expanded to include petitions for conditional release to a less restrictive alternative.

A conditionally released sexually violent predator commits second degree escape if he or she leaves the state without court authorization. The offense is a class C felony.

Notification is to be made to a number of government agencies and individuals, including family members of the victims at least 30 days before a sexually violent predator is conditionally released or unconditionally discharged.

A person committed as a sexually violent predator may be permitted to leave confinement, under escort, in order to attend to seriously ill family members, attend a family member's funeral, or receive necessary dental or medical care.

A provision on frivolous petitions is repealed.

Various definitions are supplied for terms used in these statutes.

Amended Bill Compared to Second Substitute Bill: The provision on escorted leave is replaced with new provisions that more closely parallel the escorted leave provisions already in place for prison inmates. Clarification is added concerning the court's jurisdiction over a sexually violent predator. In order to maintain consistency with parallel statutes, the deadline for notification is changed from 10 days to 30 days before a conditional release or unconditional discharge.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill is in response to a State Supreme Court opinion. The bill addresses the concerns raised in the opinion. It was drafted during many meetings involving interest groups with divergent interests. Under the bill, in order for a person to be committed as a sexually violent predator, the state would have to prove the non-existence of less restrictive alternatives to total confinement. Post-commitment procedures are also created under which a sexually violent predator can be conditionally released to a less restrictive alternative than total confinement. The respondent at a probable cause hearing has more rights regarding confrontation of witnesses than do respondents at similar stages of mental health commitment proceedings or criminal cases. The respondent's attorney can call live witnesses at the probable cause hearing. Filing standards that are more restrictive than those listed in the statute are being used by the End of Sentence Review Committee, the Attorney General's Office, and local prosecutors.

Testimony Against: The bill does not meet the requirements set out in the State Supreme Court opinion. The judge or jury at the time of commitment is not presented with the option of committing the respondent to a less restrictive alternative than total confinement. The judge or jury should have this option at the outset. Less restrictive alternatives can include half-way houses, outpatient treatment, requirements to take medications, 24-hour security at non-DOC facilities, and/or electronic home monitoring. The probable cause hearing is flawed because prosecutors can rely on a written document instead of presenting live witnesses, thereby infringing a respondent's right to confront witnesses. There should be provisions in place to allow for more gradual release. Prosecutors are not bound by the recommendations from the End of Sentence Review Committee, and sometimes file a petition due to pressure from the community. The statute's goal is preventive detention, not treatment. A concern was expressed as to the cost involved in securing police case reports and arrest records.

Testified: Bob Boruchowitz, Washington Defender Association (con); Kit Bail, Indeterminate Sentence Review Board (pro, with a concern); Greg Canova, Attorney General's Office (pro); and Jerry Sheahan, American Civil Liberties Union (con).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Corrections. Signed by 29 members: Representatives Silver, Chairman; Clements, Vice Chairman; Huff, Vice Chairman; Pelesky, Vice Chairman; Sommers, Ranking Minority Member; Valle, Assistant Ranking Minority Member; Basich; Brumsickle; Carlson; Chappell; Cooke; Crouse; G. Fisher; Foreman; Grant; Hargrove; Hickel; Jacobsen; Lambert; Lisk; McMorris; Poulsen; Reams; Rust; Sehlin; Sheahan; Talcott; Thibaudeau and Wolfe.

Minority Report: Without recommendation. Signed by 1 member: Representative Dellwo.

Staff: John Woolley (786-7154).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Corrections: No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The bill is supported by prosecutors. It implements the requirements of the recent Supreme Court finding. It will not result in more filings, but does put more requirements on the civil commitment process. The bill responds to specific points of what needs to be done to maintain the constitutionality of the process.

Testimony Against: The bill is opposed because it does not comply with the recent Supreme Court ruling and does not comply with constitutional requirements.

Testified: Tom McBride, Washington Association of Prosecuting Attorneys (pro); and Sherry Appleton, Washington Defender Association (con).