

HOUSE BILL REPORT

HB 2934

As Reported By House Committee On:
Criminal Justice & Corrections

Title: An act relating to sexually violent predators.

Brief Description: Revising provisions relating to sexually violent predators.

Sponsors: Representatives Ballasiotes, Costa, Radcliff, O'Brien, Koster, Cody, Mitchell, McDonald, Scott, Kenney, Conway, Gombosky and Mason.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/3/98, 2/6/98 [DP].

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass. Signed by 10 members: Representatives Ballasiotes, Chair; Benson, Vice Chairman; Koster, Vice Chairman; Quall, Ranking Minority Member; O'Brien, Assistant Ranking Minority Member; Cairnes; Hickel; McCune; Mitchell and Sullivan.

Minority Report: Do not pass. Signed by 1 member: Representative Dickerson.

Staff: Mark Hamilton (786-7310).

Background: Currently, under involuntary commitment laws, persons may be conditionally released to settings less restrictive than total confinement. However, there must be a determination that the person committed is no longer a danger to himself or others. A "sexually violent predator" is defined as a person who has been charged with or convicted of sexual violence or who suffers from a condition which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility. The release of sexually violent predators is limited under the law. The current law which deals with sexually violent predator confinement permits release to a less restrictive alternative than total confinement in certain instances, but does not require that the less restrictive alternative be one which is also reasonably available, as a practical and expense-limiting measure.

Summary of Bill:

Section 1. Findings. The Legislature finds that consideration of placement of sexually violent predators in a setting less restrictive than total confinement cannot occur at the initial commitment proceeding for such offenders, because they require an intensive period of evaluation and treatment in a controlled and secure environment before determining the possibility of a less restrictive alternative.

Section 2. Definitions.

"Likely to engage in predatory acts of sexual violence if not confined in a secure facility." This means that the person will more likely than not engage in such acts if released from detention unconditionally; a recent overt act (if the person is not totally confined at the time the petition for commitment is filed) is required to evidence this likelihood.

"Recent overt act." Clarifies the standard for determining existence of a recent overt act to include an act that has caused harm of a sexually violent nature or has created an apprehension of such harm as determined by an objective person who knows the history of the person's mental condition. Also clarifies that a statement may constitute such an act.

"Probable cause to believe that a person is a sexually violent predator." Sets preponderance of the evidence as standard to support such a finding.

Section 3. Trial « Determination « Commitment procedures. Requires certain considerations by the finder of fact in determining whether a person is a sexually violent predator, beyond a reasonable doubt. Specifically, requires that fact-finder may only consider any actual conditions and voluntary treatment options that would exist for the person if unconditionally released from detention, and whether the person would be likely to engage in predatory acts of sexual violence if not securely confined. Also imposes restriction on court that it may only impose a less restrictive alternative than total confinement *following* the initial commitment. If a unanimous determination is not made (in the case of jury as fact-finder), the court must declare a mistrial and may set a retrial within 45 days of the date of the mistrial; retrial may be continued for good cause. However, in no event may the person be released from confinement pending the retrial.

Section 4. Annual examinations of persons committed. Requires an annual report by the Department of Social and Health Services to be filed with the court regarding the committed sexually violent predator. The report must be prepared by a professionally qualified person. It must also include consideration of whether the person meets the definition of sexually violent predator, and whether the person qualifies for reasonably available less restrictive alternatives to total confinement.

Section 5. *Petition for conditional release to less restrictive alternative or unconditional discharge « Procedures.* Provides for procedures by which the Department of Social and Health Services may authorize the person committed to petition the court for a reasonably available less restrictive alternative. This is available if the secretary of the department determines that the person no longer meets the definition of sexually violent predator and that conditional release to a less restrictive alternative than total confinement would be in the best interest of the person and would adequately protect the community. The prosecuting attorney may show *prima facie* evidence that such alternatives are not in the person's best interests or will not adequately protect the community. The state may rely exclusively on the annual report. The burden of proof at the hearing is on the state to prove beyond a reasonable doubt that the person continues to meet the definition of sexually violent predator, if the issue is whether the person should be discharged unconditionally. If the issue is whether the person should be conditionally released, the burden on the state is to prove by clear and convincing evidence that a less restrictive alternative is not in the person's best interests or would not adequately protect the community, or is not reasonably available.

Section 6. *Conditional release to less restrictive alternative « Verdict.* Adds special verdict question whether the state has proved by clear and convincing evidence that a proposed less restrictive alternative is not reasonably available. Also requires that ten jurors must agree as to each question in order to reach a verdict.

Section 7. *Conditional release to less restrictive environment.* Permits the court or jury to determine that a less restrictive alternative is reasonably available for purposes of conditional release.

Section 8. *Application.* Applies to all individuals committed or awaiting commitment under chapter 71.09 RCW on, before, or after the date of passage.

Appropriation: None.

Fiscal Note: Requested on February 3, 1998.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: The bill recognizes that sexually violent predators are a unique and dangerous class of people with conditions which render them unamenable to existing mental illness treatment, and which make them different from others with mental diseases or defects. Because of the unique danger that these individuals pose of engaging in sexually violent behavior, it is not appropriate they must undergo a significant period of intensive evaluation and treatment before being considered for a less restrictive alternative to total confinement.

Testimony Against: This bill is fatally flawed, and would not pass constitutional muster. The U.S. Supreme Court ruled in a 5-4 decision that Washington's present law permitting the commitment of sexually violent predators is constitutional. However, extending the reach of that law, as this bill does, could tip the balance the other direction in a future case. Because of the disadvantages to defendants (respondents) imposed by the bill, there is a risk of having the law overturned. In addition, the mistrial provision is probably unconstitutional. This bill makes it extraordinarily easy to get sex offenders into commitment, but nearly impossible to get them out.

What is needed is not a further limit on less restrictive alternatives, but aggressive community supervision of appropriate candidates. A person's behavior in a situation of total confinement does not indicate what the behavior will be when he or she is put in a highly supervised setting in the community. With regard to the "reasonable availability" of any less restrictive alternative, the state will now say, in effect, that such an alternative is not available, because it has not been made available « "if we don't build it, they cannot come." Including statements in the definition of "recent overt act" will destroy any motivation for treatment. Successful treatment requires admitting the terrible things that the person has done and may sometimes still want to do. If admitting those things, even in the context of treatment, would count as a recent overt act, there would be no motivation to engage in the type of "brutal honesty" that is necessary for effective treatment.

Testified: (Pro) Tom McBride, Washington Association of Prosecuting Attorneys; and Sarah Sappington, Assistant Attorney General, for the Attorney General's Office. (Con) John Q. La Fond, Professor of Law, Seattle University School of Law; Nancy Horgan and David Hirsch, The Defender Association.