

FINAL BILL REPORT

ESSB 5122

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Synopsis as Enacted

Brief Description: Revising procedures and standards for commitment of sexually violent predators.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Costa, Long and Hargrove).

Senate Committee on Human Services & Corrections
House Committee on Criminal Justice & Corrections

Background: Since the Community Protection Act of 1990 was amended in 1995 to require the possibility of less restrictive alternatives, the less restrictive alternative provisions have been heavily litigated at the trial level and have been subject to a number of interpretations in the appellate courts. In August 2000, the appellate court in Division II decided a case, *In re the Detention of Ross* (102 Wn. App. 108, 6 P.3d 625 (2000)), which made a substantial change in the law. This case held that the subject of a civil commitment petition under the sexually violent predator statute must be allowed to present evidence of conditions under which he or she is not likely to engage in predatory acts of sexual violence, whether or not the court would have the authority to order those conditions. The court did not allow the prosecutor to present evidence that the court could not order the very conditions the person argued would make him unlikely to commit such acts if the jury did not find that he was a sexually violent predator. This places the state in a "catch-22" in which the person it seeks to commit can present entirely speculative conditions that are beyond the authority of the court to order but the prosecutor cannot inform the jury that the conditions on which it is basing its decision will not, and cannot, be ordered, if the person is not civilly committed as a sexually violent predator.

In 2000, the Senate Subcommittee on Sexually Violent Predators considered a number of issues related to civil commitment and release to less restrictive alternatives, including the issues raised by the *Ross* decision. This bill is one of the products of that subcommittee.

Summary: The standard for civil commitment is distinguished from the standard for eligibility for a less restrictive alternative (LRA). In determining whether a person would be more likely than not to commit acts of sexual violence if not confined to a secure facility, the court or jury can consider only those conditions which would be in existence if the person was not committed.

The standard for eligibility for an LRA is that the LRA is in the best interest of the person and conditions can be imposed that adequately protect the community. A person must be civilly committed before the court can consider conditional release to an LRA. The first time that the court considers whether an LRA is appropriate, the court must consider the question without considering whether the person's condition has changed.

If a jury is unable to reach a unanimous verdict, the court must declare a mistrial and set a retrial within 45 days unless the prosecuting agency earlier moves to dismiss the petition. The person may not be released from confinement prior to the retrial or dismissal of the case.

A spouse's testimonial privilege in a proceeding for civil commitment of a sexually violent predator is the same as the privilege under the general civil commitment and criminal insanity statutes. Under this standard, the person who is subject to the petition cannot prevent his or her spouse from testifying, but the spouse cannot be compelled to testify. A person who has agreed to treat, monitor, or supervise a sexually violent predator on a less restrictive alternative has no privilege in court proceedings and may be compelled to testify.

A witness for either side in the probable cause hearing prior to an initial petition hearing may testify by telephone. The court may determine whether the conditions of a proposed LRA meet the legal standard through a summary judgment proceeding.

The Department of Social and Health Services must work with interested parties to develop improved procedures for notifying victims when a sexually violent predator is released to an LRA, while maintaining the confidentiality of victim information.

Votes on Final Passage:

Senate	46	0	
House	95	1	(House amended)
Senate	46	0	(Senate concurred)

Effective: May 14, 2001