

# HOUSE BILL REPORT

## SSB 5718

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### As Passed House - Amended:

April 1, 2009

**Title:** An act relating to the commitment of sexually violent predators.

**Brief Description:** Concerning the commitment of sexually violent predators.

**Sponsors:** Senate Committee on Human Services & Corrections (originally sponsored by Senators Regala, Stevens, Holmquist, Hobbs, Carrell and Hatfield; by request of Attorney General).

### Brief History:

#### Committee Activity:

Public Safety & Emergency Preparedness: 3/18/09 [DPA].

#### Floor Activity

Passed House - Amended: 4/1/09, 97-0.

### Brief Summary of Substitute Bill (As Amended by House)

- Modifies provisions related to civil commitment procedures for sexually violent predators.

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## HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

**Majority Report:** Do pass as amended. Signed by 8 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Goodman, Kirby and Ross.

**Staff:** Lara Zarowsky (786-7123)

### Background:

#### Civil Commitment.

Under the Community Protection Act of 1990, a sexually violent predator (SVP) may be civilly committed upon the expiration of his or her criminal sentence. A SVP is a person who has been convicted of, charged with, or found not guilty by reason of insanity, or has

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*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.*

been 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 to a secure facility. The SVPs are committed to the custody of the Department of Social and Health Services (DSHS) and confined at the Special Commitment Center (SCC) for control, care, and individualized treatment. Because they are civilly committed (as opposed to criminally confined), residents of the SCC are not subject to as many restrictions as persons confined pursuant to a criminal conviction.

#### Less Restrictive Alternative.

A person who has been civilly committed is statutorily entitled to an annual review of his or her mental condition, including consideration of whether conditional release to a less restrictive alternative (LRA) is in the best interest of the person and would adequately protect the community. The person is also entitled to consideration of release to a LRA at his or her probable cause and commitment hearings. From 1994 until 2007, the SCC operated under a federal court injunction requiring that steps be taken to ensure that constitutionally adequate mental health treatment was being provided to the residents of the SCC. One substantial area of concern for the court in issuing and maintaining the injunction was the availability of LRAs for qualified residents of the SCC. In 2001 the Legislature authorized the DSHS to build Secure Community Transition Facilities (SCTF) to serve as a LRA for qualified residents. There are currently two SCTFs – one located on McNeil Island, and the other located in King County. The court may order a SVP to a LRA if it finds: (1) the person will be treated by a qualified treatment provider; (2) the treatment provider has presented a specific course of treatment and has agreed to assume treatment responsibility and provide progress reports to the court; (3) housing exists that is sufficiently secure to protect the community; (4) the person is willing to comply with the treatment plan; and (5) the person is willing to comply with supervision requirements imposed by the Department of Corrections (DOC).

#### Sexually Violent Predator Determination.

When it appears that a confined person may meet the criteria for a SVP, the agency with jurisdiction must refer the person to the prosecuting agency. The referring agency will be the DOC, the Indeterminate Sentence Review Board, or the DSHS. Referrals are also generated through the End of Sentence Review Committee, which is given broad authority to access relevant records.

When a person is not confined but has previously committed a sexually violent offense, the likelihood that the person will again engage in these acts if not confined must be evidenced by a "recent overt act." In such cases, the prosecuting attorney of the county in which the person was convicted or, upon request of the prosecuting attorney, the Office of the Attorney General may file a petition alleging that the person is a SVP. Once a petition is filed, the person may be taken into custody and a probable cause hearing must be held within 72 hours. If a judge finds probable cause to believe the person is a SVP, the person is afforded an opportunity to challenge this finding. If probable cause is confirmed, the person is evaluated and the case is set for trial. The court or a unanimous jury must determine beyond a reasonable doubt that the person is a SVP. If the burden is not met, the court must order the person released.

### Commitment Procedures.

If a person is found at trial to be a SVP, the state is authorized by statute to involuntarily commit that person to a secure treatment facility. Civil commitment as a SVP is for an indefinite period. Once committed, the DSHS must conduct annual reviews to determine whether: (1) the detainee's condition has "so changed" that the person no longer meets the definition of a SVP; or (2) conditional release to a LRA is in the best interest of the detainee and conditions can be imposed to protect the community.

The detainee may petition annually for conditional release or unconditional discharge. The court must set a show cause hearing to determine whether probable cause exists to warrant a hearing on whether the person still meets the definition of a SVP or if a LRA is appropriate. If the person no longer meets the definition of a SVP, the person must be released. The person detained or the state may propose a conditional release to a LRA. A state-endorsed plan will be a graduated release plan that entails the SVP moving to a SCTF, which provides greater freedom to the SVP and is designed to allow a gradual transition back to the community while continuing treatment. If a SVP submits his or her own proposal for release to a LRA, the plan must meet specific criteria.

### **Summary of Amended Bill:**

#### Definitions.

"Personality disorder" is defined as "an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment. Purported evidence of a personality disorder must be by testimony of a licensed forensic psychologist or psychiatrist."

"Prosecuting agency" is defined as "the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney, as provided in RCW 71.09.030."

The definition of "recent overt act" is clarified.

#### Access to and Disclosure of Records.

The prosecuting agency is granted authority "to obtain all records relating to the person" if the prosecuting agency deems such records necessary to fulfill its duties. Disclosure of such records is limited to that required for the performance of the prosecuting agency's duties, or as otherwise authorized by law.

The prosecuting agency is granted authority to utilize "inquiry judge" procedures to compel production of records necessary to determine whether to seek civil commitment of a person. Disclosure of such records is limited to that required for the performance of the prosecuting agency's duties, or as otherwise authorized by law.

#### Filing of Petitions.

The bill clarifies that a SVP petition may be filed by: (1) the prosecuting attorney in a county in which the person has been charged or convicted of a sexually violent offense, or where a recent overt act has occurred, if the requisite crime constituting a sexually violent offense

occurred in another state; or (2) the Attorney General, if requested by the prosecuting attorney.

#### Probable Cause Hearings.

Upon serving the SVP petition, the prosecuting agency must within 24 hours provide the person who is the subject of the petition (subject) with a copy of all materials obtained by the prosecuting agency or provided to them by the referring agency.

The subject may be held in total confinement until the trial court renders a probable cause determination, and the county is entitled to reimbursement for the cost of housing and transporting the subject.

Discovery under the civil rules "shall not occur" until after the court has issued its decision on the probable cause hearing.

The court must allow a witness called by either party to testify for purposes of the probable cause hearing by telephone.

#### Detainment During Proceedings.

If civil commitment proceedings last more than one day, the subject may be held in county jail for the duration of the proceedings and returned to the custody of the DSHS on weekends and court holidays, if the court determines that such a transfer is feasible. The county is entitled to reimbursement for the cost of housing and transporting the subject.

#### Release Upon Dismissal of Petition.

If the petition is dismissed, the subject of the petition must be released within 24 hours of service of the release order on the Superintendent of the SCC, unless the person agrees to a later release date.

#### Less Restrictive Alternatives.

The court "may not find probable cause" to conduct a trial to consider the issue of release to a LRA unless a proposed LRA alternative placement is presented to the court at the show cause hearing.

When considering whether a person should be released to a LRA, the recommitment proceeding must proceed according to the initial commitment procedures.

The court may consider release to a LRA *only* if it first finds: (1) that sufficient housing exists in Washington to accommodate the person while protecting the community; and (2) that the person will be under the personal supervision of the DOC.

Upon release to a LRA, the person must be monitored with the use of global positioning system satellite technology.

#### Less Restrictive Alternatives-Revocation or Modification.

A person on conditional release may be taken into custody and detained at the county jail or the total confinement facility if the supervising community corrections officer or the DSHS

reasonably believe the person is in need of additional care, monitoring, supervision, or treatment by presenting a danger to him- or herself or others.

In a hearing to revoke or modify the LRA release order, the state bears the burden to prove that the person is in need of additional care, monitoring, supervision, or treatment.

The court must consider the following factors when determining whether to **revoke** the LRA and may revoke based on any single factor or combination of factors:

- the nature of the condition violated;
- whether the violation was intentional or grossly negligent;
- the ability of the person to comply with the release order; and
- the risk involved if conditional release continues.

The court may modify the LRA order by adding conditions if the person needs additional care, monitoring, supervision, or treatment. The court may impose a new treatment provider, new housing, or additional supervision conditions.

If conditional release is revoked, the person must be remanded to the SCC on McNeil Island.

#### Criminal Conduct.

The DSHS is required to provide a copy of all reports provided to or by law enforcement if a person detained or committed as a SVP is named or listed as a suspect, witness, or victim in a crime.

Any conditional release order must be immediately revoked upon conviction for a criminal offense.

Any person found to be a SVP must be returned to the custody of the DSHS following release from confinement in a federal facility.

#### Retroactivity and Savings Clause.

The provisions of the bill apply to all persons committed or awaiting commitment on, before, or after the effective date, whether confined in a secure facility or on conditional release.

The bill contains a savings clause. The remainder of the act stays in effect if any provision or its application to any person is declared invalid.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill contains an emergency clause and takes effect immediately.

#### **Staff Summary of Public Testimony:**

(In support) This bill is critical for public safety, particularly section 3 in the bill which expands jurisdiction to include those offenders who committed their predicate offense

outside of Washington. The bill is important to protect the community from offenders who are fleeing to the state who do not have a conviction for a sexually violent offense in Washington.

This bill is the result of many years of experience with the sexually violent predator statute and codifies procedures that will help things move more smoothly. The bill includes an orderly modification/revocation procedure for those on conditional release. In the years since 1997 when conditional release was instituted, there has never been a re-offense and the community has been protected.

(Opposed) None.

**Persons Testifying:** Brooke Burbank, Office of the Attorney General; David Hackett, King County Prosecuting Attorneys Office; and Pete McDonald, Washington Criminal Defense Lawyers and Washington Defender Association.

**Persons Signed In To Testify But Not Testifying:** None.