

# HOUSE BILL REPORT

## HB 2148

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### As Reported by House Committee On: Ways & Means

**Title:** An act relating to suspending annual examinations and show cause hearings for sexually violent predators convicted of a criminal offense or awaiting trial on criminal charges.

**Brief Description:** Suspending annual examinations and show cause hearings for sexually violent predators convicted of a criminal offense or awaiting trial on criminal charges.

**Sponsors:** Representatives Darneille and Hunter; by request of Department of Social and Health Services.

#### **Brief History:**

##### **Committee Activity:**

Ways & Means: 12/6/11, 12/13/11 [DPS].

#### **Brief Summary of Substitute Bill**

- Suspends the requirement that the Department of Social and Health Services (DSHS) conduct an annual examination for a person civilly committed as a sexually violent predator (SVP) during any period the SVP is confined due to a criminal conviction or detained due to criminal charges.
- Suspends the provisions regarding petitions to the court for conditional release to a less restrictive alternative or unconditional discharge during any period the SVP is confined due to a criminal conviction or detained due to criminal charges.
- Specifies the DSHS must initiate an examination upon the return of the committed person to the DSHS custody.

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### HOUSE COMMITTEE ON WAYS & MEANS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 26 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking

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Minority Member; Carlyle, Chandler, Cody, Dickerson, Haigh, Haler, Hudgins, Hunt, Kagi, Kenney, Ormsby, Parker, Pettigrew, Ross, Schmick, Seaquist, Springer, Sullivan and Wilcox.

**Staff:** Melissa Palmer (786-7388).

### **Background:**

Under the Community Protection Act of 1990, a sexually violent predator (SVP) may be civilly committed for an indefinite period of time. A SVP is a person who: (1) 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 (2) 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. Sexually violent predators are committed to the custody of the Department of Social and Health Services (DSHS) for control, care, and individualized treatment. Most SVPs are currently housed at the Special Commitment Center (SCC) on McNeil Island.

### Commitment Procedures.

*Annual Examinations.* The DSHS must perform an examination of the mental condition of every person committed as a SVP at least once a year. The examination must be prepared by a professionally qualified person. It must address 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 report must be filed with the court, with copies sent to the prosecutor and the committed person. The person may have an expert appointed if he or she is indigent.

### Review Proceedings.

If the DSHS secretary determines 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 appropriate, the DSHS must authorize the person to petition the court for 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.

At the show cause hearing, the prosecutor must present prima facie evidence that the committed person continues to meet the definition of a SVP and that a LRA is not in the person's best interest and conditions would not adequately protect the community. The prosecutor may rely exclusively upon the annual report prepared by the DSHS. The committed person has a right to an attorney to represent him or her at the show cause hearing.

The court sets a final review hearing if it determines either that: (1) the state failed to present prima facie evidence; or (2) there is probable cause to believe the person's 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.

At the final review hearing, the person is entitled to be present and is afforded the same protections as at the commitment proceeding, including the right to a jury trial and the right to be evaluated by an expert. The burden of proof on the state is beyond a reasonable doubt.

The jurisdiction of the court over a civilly committed person continues until the person is unconditionally released. A person subject to court order under chapter 71.09 RCW who is thereafter convicted of a criminal offense remains under the jurisdiction of the DSHS and is returned to the physical custody of the DSHS at the time of release from confinement. Over the past two years, there have been civilly committed persons residing at the SCC who have been convicted of crimes. These persons are currently serving their criminal sentences and are not in the physical custody of the DSHS.

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**Summary of Substitute Bill:**

The statute requiring the Department of Social and Health Services (DSHS) to conduct an annual examination is suspended during any period of time a sexually violent predator (SVP) is either confined for a criminal conviction or is detained due to a criminal charge. Additionally, during any period of time a SVP is confined for a criminal conviction or detained due to criminal charges, the statute regarding petitions to the court for conditional release or unconditional discharge is suspended. Therefore, the authorization and procedures for annual review proceedings are suspended during a period of criminal confinement or detention. The DSHS must initiate an examination of the committed person's mental condition upon the return of the person to the DSHS custody and must follow procedures regarding examinations as provided in statute.

**Substitute Bill Compared to Original Bill:**

The substitute bill specifies that upon the return of a committed person to the DSHS custody, the DSHS must initiate an examination of the person's mental condition and must follow procedures established in statute pertaining to examinations.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) The Department of Social and Health Services (DSHS) has a requirement to do an annual examination. All residents have a right to petition the court for release. Functionally, this process happens when the evaluation opines that the person does not meet the definition of a sexually violent predator (SVP) or that a less restrictive alternative is appropriate. Over the past years, the Special Commitment Center (SCC) has partnered with the federal government to investigate and prosecute crimes committed by the SCC residents. It is virtually impossible for our staff to conduct an annual review of a person who is now not in our physical custody. Absent an annual review, the state has failed in its responsibility. Without an annual review, the person can petition for a hearing challenging their commitment as a SVP. The SCC would have to have a new commitment trial, which costs about \$375,000. The SCC would do an annual review at the time the person is returned to the DSHS custody. This bill makes good, solid sense. Individuals who commit crimes while at the SCC should not be rewarded with conditional release. It is important to not incentivize new crimes at the SCC. This bill addresses this issue of annual exams.

(Opposed) None.

**Persons Testifying:** Kelly Cunningham, Special Commitment Center, Washington State Department of Social and Health Services; Brooke Burbank, Office of the Attorney General; and David Hackett, Washington Association of Prosecuting Attorneys.

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