

SENATE BILL REPORT

HB 2271

As Reported by Senate Committee On:
Ways & Means, March 7, 2018

Title: An act relating to the processes for reviewing sexually violent predators committed under chapter 71.09 RCW.

Brief Description: Concerning the processes for reviewing sexually violent predators committed under chapter 71.09 RCW.

Sponsors: Representatives Muri, Kilduff, Fey, Sawyer, Klippert, Jinkins, Griffey and Kraft; by request of Attorney General.

Brief History: Passed House: 3/06/18, 98-0.

Committee Activity: Ways & Means: 3/07/18, 3/07/18 [DP].

Brief Summary of Bill

- Specifies review standards for the court to evaluate whether to order evidentiary trials for unconditional discharge or conditional release (CR) to a less restrictive alternative (LRA) of persons committed as sexually violent predators (SVP).

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair; Braun, Ranking Member; Honeyford, Assistant Ranking Member; Bailey, Becker, Billig, Brown, Carlyle, Conway, Darneille, Fain, Hasegawa, Hunt, Keiser, Mullet, Palumbo, Pedersen, Ranker, Rivers, Schoesler, Van De Wege, Wagoner and Warnick.

Staff: Claire Goodwin (786-7736)

Background: Sexually Violent Predators. A SVP is a person who 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 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 in a secure facility.

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.

A prosecutor may petition for indefinite civil commitment of a SVP who is about to be released from a state correctional facility, among other circumstances. The filing of such a petition triggers a probable cause determination followed by a full evidentiary trial. At the trial, the burden is on the state to prove beyond a reasonable doubt that the person is a SVP. If the person requests a 12-person jury, the jury must be unanimous. If the person is found to be a SVP, the person is committed to the custody of the Department of Social and Health Services (DSHS) for control, care, and treatment at the Special Commitment Center on McNeil Island.

Annual Examinations and Review Proceedings. On an annual basis, DSHS must conduct an examination of a committed person's mental condition to determine 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. DSHS may authorize the person to petition the court for a full trial to consider either unconditional release into the community or conditional release to a LRA.

A committed person may also petition the court for unconditional or conditional release without the approval of DSHS. 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 trial.

At the show cause hearing, the state bears the burden to present prima facie evidence that the committed person continues to meet the definition of a SVP and that conditional release to a LRA would be inappropriate. The court must order an evidentiary hearing if the state fails to meet its burdens, or, alternatively, if the committed person establishes probable cause to believe their condition has so changed that they no longer meet the definition of a SVP, warranting unconditional release, or that conditional release to a LRA would be appropriate. However, a trial may not be ordered unless there is current evidence from a licensed professional that: (1) the committed person has undergone a permanent physiological change, such as paralysis, stroke, or dementia, which renders the person unable to commit a sexually violent act; or (2) treatment has brought about a positive change in mental condition. Further, when a person seeks conditional release to a LRA, the court may not find probable cause unless the committed person proposes a LRA placement plan meeting current statutory requirements.

In re. Det. of Marcum. In August of 2017, the Washington Supreme Court issued *In re Det. of Marcum*, 189 Wn.2d 1 (2017), determining that the state must meet both burdens regardless of the type of release sought by the committed person, including that the committed person continues to meet the definition of a SVP and that conditional release to a LRA would be inappropriate. If the state fails to make this two-pronged showing, the court must order a trial on the issue of unconditional release, conditional release, or both.

Summary of Bill: Intent. A section is included specifying the Legislature's intent to remedy the *In re. Det. of Marcum* decision. The intent of the statute has been that there are two independent issues at a post-commitment show cause hearing: whether the individual continues to meet statutory criteria; and if so, whether conditional release to a LRA is appropriate. Lack of proof of one issue does not affect the finding on the other issue.

Show Cause Hearing. If the state produces prima facie evidence that the committed person continues to be a SVP, then the state's burden under the statute is met, and an unconditional release trial may not be ordered unless the committed person:

- produces evidence demonstrating probable cause exists to believe the person's condition has so changed that they no longer meet 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; and
- produces evidence demonstrating that the committed person has undergone a permanent physiological change, such as paralysis, stroke, or dementia, which renders the person unable to commit a sexually violent act; or treatment has brought about a positive change in mental condition.

If the state produces prima facie evidence that a LRA is not appropriate for the committed person, then the state's burden under the statute is met, and a conditional release trial may not be ordered unless the committed person:

- produces evidence demonstrating probable cause exists to believe the person's condition has so changed that they 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;
- produces evidence demonstrating that the committed person has undergone a permanent physiological change, such as paralysis, stroke, or dementia, which renders the person unable to commit a sexually violent act; or treatment has brought about a positive change in mental condition; and
- presents a proposed LRA placement plan meeting current statutory requirements.

Application. The bill is curative and remedial, and it applies retroactively and prospectively to all petitions.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: This legislation restores the statute to operate as it was intended. If this bill does not pass, there will be an increase in workload and trials and at least five additional attorney general staff may be needed. Already the *In re. Det. of Marcum* decision has led to 33 additional trials and associated costs. This bill is necessary for public safety as well.

Persons Testifying: PRO: Representative Dick Muri, Prime Sponsor; Yasmin Trudeau, Attorney General's Office; Bryan Russell, Attorney General's Office.

Persons Signed In To Testify But Not Testifying: No one.