

SENATE BILL REPORT

SB 6640

As of February 17, 2020

Title: An act relating to the placement and treatment of conditionally released sexually violent predators.

Brief Description: Placing and treating conditionally released sexually violent predators.

Sponsors: Senator O'Ban.

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 2/05/20.

Brief Summary of Bill

- Defines fair share principles and requires the Department of Social and Health Services (DSHS) to take affirmative steps to develop placement options for persons who obtain conditional release from the Special Commitment Center in their county of commitment.
- Allows the state to site secure community transition facilities and other conditional release facilities in any county of the state.
- Establishes a right to discharge planning for persons committed as sexually violent predators and requires DSHS to develop less restrictive alternative placement options.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Staff: Kevin Black (786-7747)

Background: Sexually Violent Predators. A sexually violent predator (SVP) is defined as a person who has been convicted of, found not guilty by reason of insanity of, or found 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.

A prosecutor may petition for indefinite civil commitment of a person as an SVP when the person is about to be released from a state correctional facility, among other circumstances.

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.

The filing of such a petition triggers a probable cause determination followed by a full evidentiary trial. The burden is on the state to prove beyond a reasonable doubt that the person should be committed as an SVP. If the person is so committed, they must be placed in the custody of the Department of Social and Health Services (DSHS) for control, care, and treatment at the Special Commitment Center (SCC) on McNeil Island. Persons civilly committed as SVPs have the right to adequate care and individualized treatment.

Petitions for Release. On an annual basis, DSHS must examine a committed person's mental condition to determine whether the person's condition has changed. If it finds that the person's condition has changed such that the person no longer meets the definition of an SVP, or that conditional release to a less restrictive alternative (LRA) is in the best interest of the person and conditions can be imposed that adequately protect the community, then DSHS must authorize the person to petition the court for unconditional or conditional release. A committed person may also petition the court for unconditional or conditional release without the approval of DSHS, in which case the court must hold a show-cause hearing before proceeding to a full unconditional release or conditional release trial. If the petition is for conditional release to an LRA, the committed person must submit a proposed placement plan to the court with the petition, which must include a proposed residence, treatment plan, and other conditions.

When a committed person petitions the court for release, the state bears the burden to prove that the committed person continues to meet the definition of an SVP and that conditional release to an LRA would be inappropriate. However, a trial may not be ordered unless there is current evidence from a licensed professional 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.

Conditional Release to a Less Restrictive Alternative. Before authorizing conditional release to an LRA, the court must determine all of the following conditions are met:

- the person will be treated by a certified sex offender treatment provider (SOTP) who has presented a specific course of treatment and has agreed to report violations to the court and other specified entities;
- housing exists that is sufficiently secure to protect the community, and the housing provider agrees to accept the person, provide security, and immediately report to the court and other specified entities if the person leaves without authorization;
- the person is willing to comply with the treatment provider and related requirements; and
- the person will be supervised by of the Department of Corrections (DOC).

When authorizing conditional release to an LRA, the court is required to consider release to the person's county of commitment. A person's county of commitment is the county of the court that ordered the person's commitment. It is appropriate to release a person to the person's county of commitment unless the court determines that return to the county of commitment would be inappropriate, considering the following factors:

- any court-issued protection orders;
- victim safety concerns;

- the availability of appropriate treatment or facilities that would adequately protect the community;
- negative influences on the person; and
- the location of family or other persons or organizations offering support.

When DSHS or the court assists in developing an LRA placement, effort must be made to avoid disproportionate effects on a single county. If the person is not released to their county of commitment, DSHS must provide written notice and an explanation to the law and justice council of the county of placement.

Community Protection Program. An LRA may not include placement in the Community Protection Program (CPP). The CPP provides intensive 24-hour supervision for clients of the Developmental Disabilities Administration who have been identified as posing a risk to their community due to criminal charges, conviction, or a history of sexual or violent crime.

Secure Community Transition Facilities. A conditional release of an SVP may be to a community-based LRA placement or to a secure community transition facility (SCTF). DSHS operates an SCTF on McNeil Island. A second SCTF is located in King County. In siting new SCTF facilities, DSHS must work with local governments to achieve equitable distribution within counties in order to avoid a disproportionate grouping of similar facilities in any one jurisdiction or community.

Community Notification. When an SVP is conditionally released, is unconditionally released, or escapes, DSHS must provide notice to the chief of police of the city and the sheriff of the county in which the SVP will be placed, or, if residence is unknown, the sheriff of the county where the SVP was last convicted of a sexually violent offense. DSHS must also notify the Washington State Patrol, which must facilitate dissemination of release information to all law enforcement. Victims, witnesses, and other persons identified by the prosecuting agency are also entitled to notice of release or escape. Notice of conditional or unconditional release must be provided at least 30 days in advance of release.

Sex Offender Treatment Providers. Sex offender treatment providers are certified by the Department of Health (DOH) after completing the necessary education, experience, and examination requirements. Only certified SOTPs may provide treatment to sexually violent predators released to an LRA, unless specified exceptions apply.

Summary of Bill: Assistance Developing Discharge Plans by the Department of Social and Health Services. A person committed as an SVP has the right to a treatment plan that includes an individualized discharge plan developed by DSHS. The discharge plan must address:

- a functional assessment of physical health, functioning, and the need for health aid devices;
- any history of substance use and abuse;
- any history of risk and impulsive behaviors;
- the person's treatment needs, including community services and supports.

If DSHS determines that conditional release from the SCC is in the best interest of a person committed as an SVP and that conditions can be imposed that adequately protect the

community, or if DSHS is unable to show cause why this is not the case in response to the filing of a conditional release petition, the court must order DSHS to identify an LRA for the person that meets statutory requirements within 60 days. If DSHS is unable to identify an appropriate LRA, it must file a notice with the court describing its efforts and the person committed as an SVP may propose an LRA placement. Once an LRA is proposed, the court must schedule a hearing, which must be scheduled within 45 days if DSHS has agreed that conditional release is in the best interests of the person.

DSHS' LRA proposal must include the service needs addressed in the person's discharge plan; assignment of a community care coordinator; regular contacts with providers of court-ordered treatment services; financial support for housing, employment, and education assistance; and community escorts if needed.

Investigation of Discharge Options. The investigation of the proposed LRA by DOC must conclude within 60 days and be individualized to the person's risk factors. Consideration of proximity to schools is limited person's whose sex offense history includes one or more victims under the age of eighteen.

Fair Share Principles. "Fair share principles" is defined to mean that each county has options for conditional release placements for persons committed as SVPs in a number generally equivalent to the number of residents from that county subject to total confinement at the SCC.

DSHS must attempt to identify an LRA placement that is in alignment with fair share principles. If DSHS proposes an LRA outside the county of commitment, the court must find that a documented effort was made to comply with fair share principles. If the court authorizes a placement outside the county of commitment, it must enter specific findings.

Siting of Secure Community Transition Facilities. The state is authorized to site and operate an SCTF or other conditional release facility for persons committed as an SVP in any county in the state.

Sex Offender Treatment Providers. DSHS must notify DOH when it contracts with an SOTP in a underserved county, meaning a county identified by DSHS as having an inadequate supply of SOTPs, to provide sex offender treatment services to a person committed as an SVP. DOH must waive license fees for such a person.

Availability Study. The Washington State Institute for Public Policy must report by December 1, 2020, on the availability of LRA services for persons committed as SVPs within every county of the state. DSHS must present by December 1, 2021, a plan to procure needed services within each county consistent with fair share principles.

Miscellaneous Provisions. A restriction prohibiting placement of a person committed as an SVP in the CPP as part of an LRA is removed.

A person committed as an SVP does not need to prove their condition has changed to qualify for conditional release if the person's immediately preceding LRA was revoked due to loss of housing or treatment for reasons other than noncompliance with LRA conditions.

DOC may order an arrest warrant for up to 72 hours upon the disappearance of a person on and LRA pending entry of a bench warrant by the court.

Change of address provisions for persons on LRAs are modified.

A court order for unconditional discharge of a person from an LRA must transmit the order to DOC for discharge process and termination of cause.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: My preferred option is to ban the placement of persons committed as SVPs in adult family homes. Those measures haven't fared well. This bill attempts to deal with some of the underlying challenges of developing better options for community placement and places the onus on DSHS to develop better options for placement than an adult family home.

CON: I agree that persons committed as SVPs have rights and need to integrate safely back into society. If this bill was put into law without amendments I don't believe it would be followed. Any time you pass by a deficiency and you fail to correct it, you set a new standard. It's important to do the right thing in this age when common sense is an uncommon virtue. Community safety must be the priority. This bill would allow placement of persons committed as SVPs in adult family homes through the CPP, placing other vulnerable adults at risk. Many persons committed as SVPs have intellectual disabilities and they pose a threat to others. Persons committed as SVPs do not belong in the CPP, do not belong in adult family homes, and do not belong in residential areas. SCTFs provide the highest level of safety to the communities.

Persons Testifying: PRO: Senator Steve O'Ban, Prime Sponsor.

CON: Tracy Ingram, Oakbrook Community Voice; Errol Archibald, citizen; Tricia Benson, Washington State for Public Safety.

Persons Signed In To Testify But Not Testifying: PRO: John Simpson, City of Lakewood; Devon Gibbs, King County Department of Public Defense; Shoshana Kehoe-Ehlers, State Office of Public Defense; Sonja Hardenbrook, Washington Defender Association, Washington Association for Criminal Defense Lawyers; Paul Banken, Washington Defender Association, Washington Association for Criminal Defense Lawyers; Rachael Seevers, Disability Rights Washington.

OTHER: Sean Murphy, DSHS Behavioral Health Administration; Rob Gelder, Kitsap County Commissioner.