

# SENATE BILL REPORT

## SB 5693

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As of January 18, 2018

**Title:** An act relating to removal of juvenile convictions or adjudications from sexually violent predator status under RCW 71.09.030.

**Brief Description:** Concerning removal of juvenile convictions or adjudications from sexually violent predator status under RCW 71.09.030.

**Sponsors:** Senator Darneille.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 1/17/18.

**Brief Summary of Bill**

- Removes juvenile convictions or adjudications as predicate convictions for the purposes of filing a sexually violent predator (SVP) commitment petition.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Staff:** Keri Waterland (786-7490)

**Background:** Chapter 71.09 RCW provides for the civil commitment of persons who are determined to be SVPs.

SVP means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

An assistant attorney general or county prosecutor may file a petition alleging that a person is a SVP when it appears that a person has been:

- convicted of a sexually violent offense and is about to be released from total confinement;
- found to have committed a sexually violent offense as a juvenile and is about to be released from total confinement;

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- charged with a sexually violent offense and has been determined to be incompetent to stand trial and is about to be released, or has been released;
- found not guilty by reason of insanity of a sexually violent offense and is about to be released, or has been released; or
- convicted of a sexually violent offense since being released from total confinement and has committed a recent overt act.

The petition must be filed in the county in which: the person has been charged or convicted with a sexually violent offense, or a recent overt act occurred.

Sexually violent offense means:

- rape 1, rape 2 by forcible compulsion, rape of a child 1 or 2, statutory rape 1 or 2, indecent liberties by forcible compulsion, indecent liberties against a child under age 14, incest against a child under age 14, or child molestation 1 or 2;
- a felony prior to July 1, 1990, that is comparable to a sexually violent offense, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense;
- murder 1 or 2, assault 1 or 2, assault of a child 1 or 2, kidnapping 1 or 2, burglary 1, residential burglary, or unlawful imprisonment, which act has been determined beyond a reasonable doubt to have been sexually motivated; or
- an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies above.

A person is likely to engage in predatory acts of sexual violence if not confined in a secure facility if the person more probably than not will engage in such acts if released unconditionally from SVP detention. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed.

A recent overt act is any act, threat, or combination thereof that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act or behaviors.

**Summary of Bill:** An SVP petitioner may not use a juvenile adjudication or conviction for a sexually violent offense as a predicate conviction when filing a petition alleging that a person is an SVP.

**Appropriation:** None.

**Fiscal Note:** Requested on January 15, 2018.

**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: It is interesting in how juvenile adjudications are treated in our system. The Supreme Court has determined that the actions of a juvenile are not the same as an adult. In 2001 the civil commitment procedure for sexually violent

predators, who are people who have done their time, and juveniles are treated the same as adults. There is a habit to look at past juvenile sex offence adjudications and use them as a predicate conviction, meaning it may not be the most recent offense, but it has been used to label and hold indefinitely at the special commitment center for sexually violent predators. This is a second tier of confinement, what could be a 15- or 16-year old never being released from that kind of facility. The attorney general sent a letter stating that this bill could result in the immediate release of juveniles with convictions that were sexual in nature, and that they weigh those decision heavily.

**Persons Testifying:** PRO: Senator Jeannie Darneille, Prime Sponsor.

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