
Public Safety Committee

HB 2851

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

Sponsors: Representatives Kilduff and Leavitt.

Brief Summary of Bill

- Provides that all civilly committed sexually violent predators (SVPs) have the right to a treatment plan that includes an individualized discharge plan, and describes elements that must be included in the individualized discharge plan.
- Shifts the primary responsibility for identifying less restrictive alternative (LRA) placements for SVPs to the Department of Social and Health Services (DSHS) in certain circumstances, and requires LRA placements that are in line with fair share principles, as defined, when possible.
- Makes changes to the provisions for determining conditions of release for SVPs on LRA placements, and outlines the services that LRA placements must include, if ordered by the court.
- Requires community notification of any change of address of a conditionally released SVP.
- Allows the Department of Corrections to enter a 72-hour arrest warrant pending a judicial bench warrant when a SVP on conditional release disappears.
- Provides that secure community transition facilities and other conditional release facilities may be sited in any county in the state.
- Implements Department of Health credential waivers for sex offender treatment providers working in underserved counties.
- Requires the Washington State Institute for Public Policy to report on the availability of adequate LRA services, and requires the DSHS to present a plan to procure adequate LRA placement services.

Hearing Date: 2/4/20

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.

Staff: Omeara Harrington (786-7136).

Background:

Sexually Violent Predators. A sexually violent predator (SVP) is 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 an SVP when he or she 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. The burden is on the state to prove beyond a reasonable doubt that the person is an SVP. If the person is found to be an SVP, he or she 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. Civilly committed SVPs have the right to adequate care and individualized treatment.

Petitions for Release. On an annual basis, the DSHS must conduct an examination of a committed person's mental condition to determine whether the person's condition has changed. If 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 the 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 the 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: (a) the committed person has undergone a permanent physiological change, such as paralysis, stroke, or dementia, which renders him or her unable to commit a sexually violent act; or (b) 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 that all of the following conditions are met:

- The person will be treated by a qualified 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.
- The person will be under the supervision of the Department of Corrections (DOC).

Additionally, in 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 the 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 his or her county of commitment, the DSHS must provide written notice and an explanation to the law and justice council of the county of placement.

An LRA may not include placement in the Community Protection Program (CPP). The CPP provides intensive 24-hour supervision for clients 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). The DSHS operates an SCTF on McNeil Island. A second SCTF is located in King County. In siting new SCTF facilities, the 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, the 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. The 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:

Discharge Planning. The right of a civilly committed SVP to adequate care and individualized treatment includes the right to a treatment plan that includes an individualized discharge plan. In developing an individualized discharge plan, the DSHS must verify that, at a minimum, the following components are addressed, based on information known to the DSHS: a functional assessment of physical health, functioning, and any need for health aid devices; any history of substance use and abuse; any history of risk and impulsive behaviors; and a summary of treatment needs, including the community services and supports needed for safe living in the community, and providers of such services and supports.

Petitions for Conditional Release to a Less Restrictive Alternative. The processes for petitioning for conditional release to an LRA are modified.

Following a determination by the DSHS on annual review that person's condition has changed such that LRA is appropriate (in other words, in non-contested cases), if the person files a petition for conditional release, the court must order the DSHS to, within 60 days, identify an LRA placement, including identification of a SOTP and housing. Notice of the placement, once identified, must be filed with the court and served on the prosecution and the petitioner. If the DSHS cannot identify a placement, it must provide the court and the parties with a written certification detailing its efforts to find a placement. Upon receiving a certification from the DSHS, the petitioning person may identify a placement. When the court receives a placement plan from the DSHS or the person, it must order a conditional release hearing within 45 days.

If the committed person files a petition for conditional release without authorization from the DSHS (in other words, in a contested case), the process depends on the outcome of the show cause hearing. If the state fails to present prima facie evidence that no LRA is in the best interest of the person and conditions cannot be imposed to adequately protect the community, the process for non-contested petitions is followed. If the court finds probable cause to believe, based on evidence presented by the petitioning person, that release to an LRA is in the best interest and conditions can be imposed to protect the community based on evidence presented by the petitioner, the court must set a hearing on the issue of conditional release once the petitioning person presents an LRA placement meeting statutory criteria. The DSHS is not directed to identify a placement in these circumstances. The current law requirement is removed that, in order for the court to find probable cause for a trial, a proposed LRA placement must be presented to the court at the time of the show cause hearing.

If an immediately preceding LRA was revoked due to loss of housing or treatment for reasons other than the person's noncompliance with conditions, the court must consider an LRA without considering whether condition has changed.

Conditional Release to a Less Restrictive Alternative. The criteria for the court's consideration as to where, and under what conditions, to release an SVP on an LRA are modified. In determining whether release to the county of commitment would be inappropriate, the victim safety concerns that the court must consider are those concerns that cannot be addressed by global positioning system (GPS) tracking. The court must consider the unavailability, rather than the availability, of appropriate treatment and facilities. The availability elsewhere of individualized resources or support needs of the person may constitute reasons to recommend placement outside the county of commitment. In imposing conditions upon a person whose sex offense history includes one or more victims under the age of 18, the court must consider whether it is necessary to impose a

restriction on the proximity of the person's residence to public or private schools offering instruction for kindergarten or any of grades 1 through 12. The DOC's investigation of the placement and recommendations as to additional conditions must be submitted within 60 days of the order to investigate. Recommended conditions must be individualized to address the person's specific risk factors, and may include restrictions on residence, in addition to specification of residence. The statutory prohibition on utilizing the CPP as a LRA placement for SVPs is removed.

When the DSHS develops a LRA placement, it must attempt to identify a placement that is in alignment with fair share principles, and document its rationale for the recommended placement. In this context, "fair share principles" refers to the notion that each county should have options for conditional release housing placements in a number generally equivalent to the number of residents from that county who are subject to total confinement as an SVP. If the court authorizes conditional release to a county other than the county of commitment, the court must enter findings concerning the decision to authorize the placement, and identify whether the release remains in line with fair share principles. If the committed person is not conditionally released to his or her county of commitment, the DSHS must provide the law and justice council of the county of release with notice and a written explanation, including whether the DSHS remains in compliance with fair share principles.

When ordered by the court, the DSHS must provide LRA treatment that includes, at a minimum, the service needs identified in the person's discharge plan, as well as: the assignment of a community care coordinator; regular contacts with providers of court-ordered treatment services; community escorts, if needed; a transition plan addressing access to continued services upon unconditional discharge; financial support for necessary housing; and assistance in pursuing benefits, education, and employment.

If the court enters an order for unconditional discharge of a person from an immediately preceding LRA placement, the court must transmit the order to the DOC for discharge process and termination of cause.

Secure Community Transition Facilities and Other Conditional Release Facilities. The state may site and operate SCTFs and other conditional release facilities in any county in the state. The current law requirement that the DSHS must work with local governments to achieve equitable distribution when siting conditional release facilities within counties is broadened to also apply to siting among the counties of the state.

Community Notification and Related Procedures. In addition to the current law requirement that the DSHS provide 30-days' notice to law enforcement, and to victims and witnesses upon request, of any conditional release, unconditional release, or escape, the DSHS must also provide notice of any change of address for an SVP. However, a return to total confinement or to a SCTF pending revocation or modification proceedings is not considered a change of address unless conditional release is revoked or the return lasts longer than one year.

If an SVP disappears while on conditional release, the DOC may enter an arrest warrant for up to 72 hours pending entry of a bench warrant by the court.

Sex Offender Treatment Providers. To facilitate the equitable geographic distribution of conditionally released SVPs, the DSHS must notify the DOH whenever a SOTP in an underserved county has been contracted to provide treatment services to an SVP on conditional release. In these circumstances, the DOH must waive fees for the credential. An underserved county is a county identified by the DSHS as having an inadequate supply of qualified SOTP to achieve equitable geographic distribution of conditionally released SVPs.

Assessment and Procurement of Adequate Less Restrictive Alternative Services. The Washington State Institute for Public Policy (WSIPP) must review and report by December 1, 2020, on the availability of adequate LRA services within each county in the state. In the event that any county lacks adequate LRA services, the DSHS must present a plan by December 1, 2021, to procure adequate services for LRA placement within each county consistent with fair share principles of release. "Adequate" means meeting the treatment needs of those eligible for conditional release, including the community services and supports needed to support safe living in the community, and the providers of such services and supports.

Appropriation: None.

Fiscal Note: Requested on February 2, 2020.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.