

# SENATE BILL REPORT

## SB 5040

---

As of February 25, 2019

**Title:** An act relating to the equitable geographic distribution of community placements for institutionalized persons with a history of criminal justice involvement.

**Brief Description:** Concerning the equitable geographic distribution of community placements for institutionalized persons with a history of criminal justice involvement.

**Sponsors:** Senators O'Ban, Becker, Conway, Honeyford and Wagoner.

**Brief History:**

**Committee Activity:** Behavioral Health Subcommittee to Health & Long Term Care: 2/15/19.

**Brief Summary of Bill**

- Requires the Department of Social and Health Services (DSHS) to work with community behavioral health agencies to develop individualized discharge plans for persons committed to a state hospital after committing acts constituting a violent felony to the person's county of origin.
- Requires DSHS to consider releasing a person who is committed as a sexually violent predator (SVP) and qualifies for release on a less restrictive alternative (LRA) to their county of commitment or a neighboring county.
- Requires DSHS to analyze statewide options for LRA placement for a person committed as an SVP and if there is a lack of services in a region to present a plan to procure adequate services in that region.

---

**SENATE COMMITTEE ON BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE**

**Staff:** Kevin Black (786-7747)

**Background:** State Hospitals. DSHS operates two state hospitals for adult patients who have been committed for involuntary mental health treatment, Western State Hospital and Eastern State Hospital. These hospitals serve both civil patients, who have been committed

---

*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.*

by a court under the Involuntary Treatment Act, and forensic patients, who are committed pursuant to criminal charges. Some forensic patients flip their status from forensic to civil when they are found incompetent to stand trial and the court dismisses their criminal cases without prejudice and refers them for civil commitment.

1114 Patients. E2SHB 1114 (2013) established a special designation for state hospital patients who are civilly committed after committing acts constituting a violent felony and whose charges were dismissed based on incompetency to stand trial (1114 patients). These patients lose certain procedural rights at their civil commitment hearings. 1114 patients must be released when their condition is such that their needs can be safely met in a less restrictive alternative to inpatient hospitalization (LRA). The options of a court upon conditional release of an 1114 patient to an LRA do not include supervision by a community corrections officer. Services available on an LRA are specified in statute and must be made available to all civil patients, but are not mandated to be provided to criminal insanity patients.

Sexually Violent Predator Commitments. Under the Community Protection Act of 1990, a person may be committed as an SVP and confined in a secure facility. SVP is defined as a person who has been convicted of, or charged with, a sexually violent offense 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 to a secure facility. When it appears that a person may meet the criteria of an SVP, a prosecuting agency may file a petition to confine the person civilly based on the SVP allegation.

If a trial determines beyond a reasonable doubt that a person may be committed as an SVP, the state is authorized to commit the person to a secure treatment facility for an indefinite period. DSHS operates the Special Commitment Center on McNeil Island, which is a commitment facility for persons found to meet this definition. Once a person is committed, DSHS must conduct annual examinations to determine whether the person's mental condition changed. DSHS must prepare an annual report based on the examination. The annual report must include consideration of whether the committed person currently meets the definition of an SVP, and whether conditional release to an LRA is in the best interest of the person and conditions can be imposed that would adequately protect the community.

County of Commitment Requirement for Persons Committed as Sexually Violent Predators. Before authorizing release of a person committed as an SVP on an LRA, the court must consider whether it is appropriate to release the person in their county of commitment. When DSHS or the court assists in developing a placement that is outside the county of commitment it must endeavor to develop the placement in a manner so as not to have a disproportionate effect on a single county, and must notify the law and justice council of the county where the person is conditionally released with notice and a written explanation.

**Summary of Bill:** Discharging Persons who are 1114 Patients. When developing a discharge plan for an 1114 patient, DSHS must work with community behavioral health agencies to develop an individualized discharge plan which is within the individual's county of origin. County of origin is defined as:

- the county in which the person was most recently enrolled in services prior to commitment;
- another county within the same regional service area; or

- a county within the same regional services area as the county in which the person was criminally charged prior to commitment.

DSHS is excused from discharging an 1114 patient to their county of origin if it determines that return to county of origin would be inappropriate, considering:

- court-ordered protection orders;
- victim safety concerns;
- the availability of appropriate treatment;
- negative influences on the person; or
- the location of family or other persons or organizations offering support to the person.

If the 1114 patient is unable to return to their county of origin and there are two or more options for placement, DSHS must develop a discharge plan that does not have a disproportionate effect on a single county. DSHS must provide the law and justice council of the county of discharge with a written explanation.

Discharging Persons Committed as Sexually Violent Predators. The region in which DSHS must consider releasing a person committed as an SVP before approving an LRA is expanded to include their county of commitment and a neighboring county.

Procurement of Less Restrictive Alternative Services in All Regions. DSHS must review the adequacy of LRA services available for the placement of persons committed as SVPs within each regional service area in order to place persons requiring LRA services in their county of commitment or another county within the same regional service area. If a regional service area lacks adequate LRA services, DSHS must present a plan to procure adequate services within the region.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**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: Thirty-one out of 46 persons released from the Special Commitment Center (SCC) who are living in Pierce County come from outside of Pierce County. I hope that this is the session we pass legislation to more fairly distribute this population around the state. Pierce County is a dumping ground. Not all bridges should dump into one county. Facilities that should have been built in other counties have not been. I am a kid and I am not okay with the council dumping these SVPs in my neighborhood. I do not want to live in fear. There should be more SCTFs. We support fair share and expanding county of origin policy. One county or city should not take on the whole burden of supervising these offenders and SVPs. We need to protect our families and our children and our grandchildren. DSHS has not taken the lead and sited more SCTFs. Somewhere along the way the intent and spirit of this law got lost. Please develop programs that will allow for more equitable distribution.

CON: This appears to be based on a misunderstanding of how LRAs work. These requirements will be expensive and sacrifice community safety in favor of releases to county of commitment and neighboring county releases. For most residents the difference is between people being released on the current LRAs, or being released unconditionally. We should encourage residents to choose LRAs on which they will be monitored. Community safety is not enhanced by forcing discharges into the counties where the residents committed their crimes, where they have their triggers, where they have their old haunts, and where many of their victims still live. For this reason, residents with LRAs who were committed to the SCC from Pierce County have been placed in Spokane. Other counties besides the county of commitment may have the specialized housing needed for persons with developmental disabilities, sex offender treatment resources, and other considerations. The best county for release is the county where the community will be the most safe. Putting up obstacles to release creates backlogs that prevents people from moving into SCTFs. Keeping LRAs in a confined area makes it easier for DOC to monitor them efficiently with more CCOs who are able to make more monitoring visits. There should be a multidisciplinary work group formed to work through these concerns. The report and plan called for in this proposal are expensive and will just tell us what we already know--that there aren't resources for discharge in most counties. Let's put the money towards developing these resources.

OTHER: I appreciate that the bill tries to identify DSHS as an actor which is responsible to identify resources in the community. I think we know what they are—not enough! We should begin by building resources.

**Persons Testifying:** PRO: Senator Steve O'Ban, Prime Sponsor; John Caulfield, City Manager, City of Lakewood; Guy Kent Troy, Oakbrook Community Voice; Daniel Davis, Pierce County Prosecutor; Soleil Sloboda, citizen.

CON: Sonja Hardenbrook, Devon Gibbs, Katie Ross, Washington Defender Association, Washington Association of Criminal Defense Lawyers, Snohomish County Public Defender Association, King County Office of Public Defense.

OTHER: Rachael Seevers, Disability Rights Washington.

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