

SENATE BILL REPORT

HB 2119

AS REPORTED BY COMMITTEE ON WAYS & MEANS, APRIL 8, 1991

Brief Description: Sentencing sexually violent offenders.

SPONSORS: Representatives Appelwick and Vance.

HOUSE COMMITTEE ON JUDICIARY

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Nelson, Chairman; Thorsness, Vice Chairman; Erwin, Hayner, L. Kreidler, Madsen, Newhouse, Rasmussen, and A. Smith.

Staff: Jon Carlson (786-7459)

Hearing Dates: April 1, 1991; April 2, 1991

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators McDonald, Chairman; Craswell, Vice Chairman; Bailey, Bauer, Bluechel, Cantu, Gaspard, Hayner, Johnson, L. Kreidler, Matson, Murray, Newhouse, Niemi, Owen, Rinehart, Saling, L. Smith, Talmadge, West, Williams, and Wojahn.

Staff: Cindi Holmstrom (786-7715)

Hearing Dates: April 5, 1991; April 8, 1991

BACKGROUND:

The Community Protection Act of 1990 provided that "sexually violent predators" may be indefinitely civilly committed to the Department of Social and Health Services. A "sexually violent predator" is defined as 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.

"Predatory" means that the acts are directed toward strangers or individuals with whom the offender has established a relationship for the primary purpose of victimization.

"Sexually violent offenses" include sex offenses that involve physical violence, sex offenses that are considered "violent" because the victims are children, offenses such as murder,

assault, and burglary that are "sexually motivated," and attempts to commit any of those offenses.

The act provides for evaluation of the person the state seeks to commit, a trial by jury, and review proceedings following commitment. The act applies to adults and juveniles.

Critics of the civil commitment provisions argue that the act is an unconstitutional "preventative detention" of individuals that have either served their time on convictions or have not been convicted of a crime. Other complaints have been that sex offenders are not "mentally ill" and therefore commitment for treatment is inappropriate and illusory. Further, critics are concerned about the inaccuracy of predicting future dangerous behavior. They argue that the criminal justice system and not the mental health system is the appropriate mechanism for society to address sex offenders.

SUMMARY:

If the Washington Supreme Court, in a final decision, finds that civil commitment of sexually violent predators is unconstitutional, then offenders convicted of a sexually violent offense committed on or after the Washington Supreme Court's decision, may be given an exceptional sentence of life imprisonment without the possibility of release, if:

(a) An adult offender committed the sexually violent offense within 24 months of a conviction or convictions for a sexually violent offense or offenses, whether the prior convictions were for offenses committed when the offender was an adult or a juvenile. The 24-month period is tolled during any time the offender is in jail, prison, a mental institution, or a juvenile detention or correction facility; or

(b) An adult offender has two prior convictions of sexually violent offenses, whether the prior offenses were committed as an adult or a juvenile.

"Sexually violent offense" means a sex offense that currently may form the basis for civil commitment as a sexually violent predator under the Community Protection Act of 1990, except the definition does not include attempts to commit a sexually violent offense.

The statutory maximum provisions for each of the new sexually violent offenses are amended to provide that the statutory maximum is life imprisonment without release, community custody, or parole if the court imposes an exceptional sentence under the act.

Appropriation: none

Revenue: none

Fiscal Note: available

SUMMARY OF PROPOSED SENATE LAW & JUSTICE AMENDMENT:

Sections 1-22 of the striking amendment incorporate HB 2119 in its entirety. Sections 23-33 contain the provisions of SHB 2015 which make refinements to the Community Protection Act.

Summary of Sections 23-33:

Three months before the anticipated release from total confinement of a sex offender, any agency that has jurisdiction over the sex offender for a sex offense must notify the prosecuting attorney of the county where the person was convicted if the agency recommends that a civil commitment petition be filed. "Agency" means the Department of Corrections, the Indeterminate Sentence Review Board, or the Department of Social and Health Services as appropriate. The agency will be immune from any liability for any good faith conduct in referring the person for commitment.

A sex offender whose "term of confinement," rather than "sentence," is about to expire, or has expired, before, on, or after July 1, 1990, may be eligible for civil commitment. If a sexually violent predator who is civilly committed is under the Indeterminate Sentence Review Board's jurisdiction when committed, the parole period will run concurrently with the civil commitment period and will not be tolled.

The court must conduct a trial on the civil commitment petition within 45 days after the alleged sexually violent predator is taken into custody, rather than 45 days from the filing of the petition.

The Department of Corrections must provide notice of a sex offender's release at least 10 days before the offender's release, in addition to current requirements of providing notice of parole, community placement, work release placement, furlough, or escape. If the department does not know where the sex offender will reside, the department must send notice to the county sheriff and the chief of police in the city and county where the offender was convicted. The department must also notify the State Patrol who shall put the information into the crime information center for dissemination to law enforcement. This comports with current practice.

The Division of Juvenile Rehabilitation must provide notice of a juvenile's transfer to a community residential facility within three days of the transfer rather than 10 days of the transfer.

A technical correction is made to the Juvenile Justice Act to amend a provision that provides that certain sex offenders will be under parole for 24 months. This is not a change in the law, it only amends a section of the chapter that was not amended last year.

The provisions governing background checks are reenacted merging the two independently enacted bills amending the same section.

Sex offenders who are sentenced under a special sexual sentencing alternative must comply with the reporting requirements and the restrictions on changing sex offender therapists and treatment conditions enacted under the 1990 act, whether the offender committed the sex offense before, on, or after July 1, 1990. Sex offender therapists must also comply with the reporting requirements for any offender the therapist is treating, regardless of when the offender committed the act. The court must consider the victim's opinion regarding the appropriateness of the sentencing alternative, regardless of when the offender committed the act.

This act applies to all sex offenses committed on, before, or after the effective date of this act, which takes effect immediately.

SUMMARY OF PROPOSED SENATE WAYS & MEANS AMENDMENT:

Language is added which makes the provisions refining the Community Protection Act (sections 23-33) contingent upon funding in the Omnibus Appropriations Act.

TESTIMONY FOR (Law & Justice):

If the civil commitment portion of the Community Protection Act is found unconstitutional, it's important for the court to have the discretion to impose a life sentence without the possibility of release upon dangerous sexual predators.

TESTIMONY AGAINST (Law & Justice): None

TESTIFIED (Law & Justice): Helen Harlow, President, Tennis Shoe Brigade (pro); Dennis Marsh, Executive Secretary, Indeterminate Sentence Review Board

TESTIMONY FOR (Ways & Means): None

TESTIMONY AGAINST (Ways & Means): None

TESTIFIED (Ways & Means): No one