

SENATE BILL REPORT

ESHB 2262

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, FEBRUARY 27, 1992

Brief Description: Refining the community protection act of 1990.

SPONSORS: House Committee on Judiciary (originally sponsored by Representatives Appelwick, Padden, Wineberry, Riley, Tate, Wang, Roland, Winsley, Paris, May, Bowman, Orr and Van Luven; by request of Department of Corrections, Dept. of Social and Health Services and Indeterminate Sentence Review Board)

HOUSE COMMITTEE ON JUDICIARY

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

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

Staff: Jon Carlson (786-7459)

Hearing Dates: February 26, 1992; February 27, 1992

BACKGROUND:

In 1990, the Legislature passed the Community Protection Act of 1990, a comprehensive act concerning sex offenders. The act created a civil commitment scheme for civil commitment of sexually violent predators. The act provides that three months before the anticipated release from total confinement of a sex offender who committed a sex offense between June 30, 1984 and July 1, 1988, the Department of Corrections must notify the prosecutor of the county where the person was convicted of the offender's release. The department must also provide the prosecutor with information about the offender's conduct in prison and must indicate whether the department recommends that the prosecutor file a civil commitment petition. Under the civil commitment act, several other sex offenders are eligible for civil commitment, including juveniles, insane people who were found not guilty by reason of insanity, and persons acquitted of sex offenses due to incompetence to stand trial. No specific statute exists requiring those agencies to notify the prosecutor about the person's release, nor does a specific statute exist requiring notice to the prosecutor of the release of offenders whose crimes were not committed within that four-year period.

A person may become eligible for civil commitment in a variety of ways. An adult offender who has been convicted or a juvenile offender who has been adjudicated of a sexually violent offense becomes eligible when the person's sentence or

disposition is about to expire or has expired. Some confusion has existed because it is unclear whether the term "sentence" means that a person on parole under the old indeterminate sentencing scheme may be eligible for civil commitment or that the person must be revoked on parole to become eligible for civil commitment at the expiration of the sentence.

An offender may be civilly committed if the person "is likely to engage" in predatory acts of sexual violence. The criteria for release varies depending on whether the state or the offender bears the burden of proof. The state must prove the person "will engage" in predatory acts of violence. If the committed person bears the burden of proof, it must be shown that he or she "will not" engage in predatory acts of sexual violence, arguably a higher standard.

The Community Protection Act also requires that therapists who treat adult and juvenile sex offenders be certified by the state Department of Health. Some sex offenders may have moved out of state before discovery or may want to move out of state. No exception exists to allow offenders that would otherwise be eligible for treatment to be treated by a non-certified sex therapist.

The Department of Corrections must notify various parties no later than 10 days before a sex or violent offender is paroled, placed in community placement or work release, or furloughed. The statute does not expressly state that the department must notify those parties when the offender is released.

SUMMARY:

Three months before the anticipated release of a person who may be eligible for civil commitment, the agency that has jurisdiction over the person must refer the person to the appropriate county prosecuting attorney. "Agency" means the Department of Corrections, the Indeterminate Sentence Review Board, or the Department of Social and Health Services as appropriate. The agency must document the person's institutional adjustment and any treatment received. The agency does not have to prepare a narrative description.

The eligibility criteria for civil commitment are amended to indicate a person is eligible for civil commitment when the person's term of total confinement is about to expire or has expired.

The criteria for release of committed sexually violent predators is changed to be consistent with the criteria for commitment so that the state will have to prove that the person "is likely to engage" rather than "will engage" in acts of sexual violence if released. When the committed person is moving for release the committed person will have to prove that he or she "is not likely to engage" rather than "will not engage" in sexually violent acts.

Sex offenders who have moved or are going to move out of state may, under certain circumstances, be treated by therapists who are not certified in the state of Washington.

The Department of Corrections must provide notice of a sex offender's release at least 10 days before the offender's release. 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.

Appropriation: none

Revenue: none

Fiscal Note: available

SUMMARY OF PROPOSED SENATE AMENDMENT:

A minor change in terminology is adopted.

TESTIMONY FOR:

The language making the standard of proof consistent throughout the civil commitment section further clarifies the Community Protection Act.

TESTIMONY AGAINST: None

TESTIFIED: Mike Grant, Assistant Attorney General (pro)