

# SENATE BILL REPORT

## SB 5033

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As Reported by Senate Committee On:  
Human Services, Mental Health & Housing, January 29, 2015

**Title:** An act relating to sexually violent predators.

**Brief Description:** Concerning sexually violent predators.

**Sponsors:** Senators Padden, Darneille, Pearson, Mullet, Fraser, Fain, Keiser, Kohl-Welles, O'Ban, Conway, Dammeier and Chase; by request of Attorney General.

**Brief History:**

**Committee Activity:** Human Services, Mental Health & Housing: 1/22/15, 1/29/15 [DP-WM].

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### SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

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

Signed by Senators O'Ban, Chair; Miloscia, Vice Chair; Darneille, Ranking Minority Member; Hargrove and Padden.

**Staff:** Lindsay Erickson (786-7465)

**Background:** Under the Community Protection Act of 1990, a sexually violent predator (SVP) may be civilly committed and confined in a secure facility. An SVP is 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, the prosecuting agency may file a petition to confine the person alleged as an SVP.

If a person is found at trial beyond a reasonable doubt to be an SVP, the state is authorized to involuntarily commit the person to a secure treatment facility for an indefinite period. Once a person is committed, the Department of Social and Health Services (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 a less-restrictive alternative (LRA) is in the best interest of the

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person and conditions can be imposed that would adequately protect the community. DSHS must provide this periodic report to the court and to the committed person.

Committed persons are entitled to an examination from their own expert. If the person is indigent, the committed person may request a court-appointed expert.

If a committed person petitions for conditional release or unconditional discharge, the court must set a show-cause hearing. The prosecuting agency may rely on the annual examinations to show that the committed person continues to meet the definition of an SVP. The committed person may present evidence that the person's condition has so changed that the person no longer meets the definition of an SVP, or that conditional release to an LRA is appropriate. If the court finds that the state has not met its prima facie case or that probable cause exists, the court must set a review hearing. In order to prevail, the state must once again prove beyond a reasonable doubt that the person meets the definition of an SVP or that conditional release is not appropriate. If the state does not meet its burden, the person must be released.

**Summary of Bill:** In each annual report completed by DSHS, the evaluator must indicate whether the committed person participated in the interview and examination. On request of the committed person, DSHS must audio record the annual review interview and make the recording available to the committed person. Any report prepared by the expert or professional person and any expert testimony on the committed person's behalf is not admissible in a show-cause hearing or review trial unless the committed person participated in the most recent interview and evaluation completed by DSHS. Annual examinations and report requirements are suspended when a court orders a trial to determine whether unconditional release is appropriate.

Treatment is defined to mean the sex offender specific treatment program at the special commitment center or by a qualified treatment provider.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains an emergency clause and takes effect on July 1, 2015.

**Staff Summary of Public Testimony:** PRO: Additional safeguards were added to this bill, including the audio recording capability. Those committed at the special commitment center (SCC) are among the most dangerous sex offenders in the state. But there is a problem with the current statute, because it gives the wrong incentives to individuals at the SCC. They currently do not have the right incentives to seek the kind of treatment they need to reduce their dangerousness, and the current system encourages needless and excessive litigation. This bill defines treatment to mean sex offender treatment, and this change will help to reduce the amount of litigation to the appropriate level while preventing other treatment, such as attending chapel and drug and alcohol dependency, from qualifying under the statute. This sex offender treatment offered at the SCC is designed specifically to treat the sex offender's

risk factors. This bill would also prevent situations in which the individual refuses to meet with the SCC examiner and then receives a new trial based on the examiner's lack of available information to show the individual is still a sexually violent predator. This bill respects the due process rights of the committed individuals.

CON: There are language and communication barriers to treatment at the SCC – Korean language speaker, for example, or a committed person who is deaf. These people will have no opportunity to get out of the SCC under this bill. This bill gives the SCC the ability to define what sex offender treatment is, yet none of the people defining sex offender treatment are certified sex offender treatment providers. This creates ambiguity in the statute, and language in this bill is too ambiguous for the courts to apply. The definition of treatment should be more general, because many of those at the SCC need more than just sex offender treatment and could benefit greatly from other treatment options. Some of the individuals at the SCC don't need sex offender treatment. No other states have legislation like this because it could lower treatment participation.

OTHER: Monitoring visits were conducted in September and December 2014, to address accessibility concerns at the SCC, including whether some individuals are unable to participate in treatment due to limited SCC accommodations.

**Persons Testifying:** PRO: Senator Padden, prime sponsor; Darwin Roberts, Malcolm Ross, Attorney General of WA; Brian Judd, Ph.D., Private Practice, Joint Forensic Unit.

CON: Lin-Marie Nacht, King Co. Dept. of Public Defense; Ken Henrikson, citizen.

OTHER: David Lord, Disability Rights WA.