

# SENATE BILL REPORT

## SB 6217

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As of January 26, 2018

**Title:** An act relating to the processes for reviewing sexually violent predators committed under chapter 71.09 RCW.

**Brief Description:** Concerning the processes for reviewing sexually violent predators committed under chapter 71.09 RCW.

**Sponsors:** Senators Dhingra, O'Ban, Darneille, Hunt, Conway, Keiser and Kuderer; by request of Attorney General.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 1/24/18.

**Brief Summary of Bill**

- Provides review standards for the court to follow in determining whether to order a full evidentiary hearing on whether to order the unconditional discharge or conditional release (CR) to a less restrictive alternative (LRA) of a person committed as a sexually violent predator (SVP).

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Staff:** Keri Waterland (786-7490)

**Background:** An SVP is a 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 if not confined in a secure facility.

A person found to be an SVP is committed to the custody of the Department of Social and Health Services (DSHS) for control, care, and treatment at the Special Commitment Center (SCC).

On an annual basis, DSHS must conduct an examination of a committed person's mental condition to determine whether:

- the person no longer meets the definition of an SVP; or

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*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.*

- a CR to an LRA is in the best interest of the person and conditions can be imposed to adequately protect the community.

If DSHS determines that either of the above conditions are met, DSHS must authorize the person to petition the court for a CR to an LRA, or to petition for an unconditional discharge. A committed person may also petition the court for a CR to an LRA or an unconditional discharge without the approval of DSHS.

DSHS must annually set a show cause hearing to determine if probable cause exists to warrant a hearing to determine whether:

- the person no longer meets the definition of an SVP; or
- a CR to an LRA is in the best interest of the person and conditions can be imposed to adequately protect the community.

At the show cause hearing, the state has the burden to present prima facie evidence that the committed person continues to meet the definition of an SVP, and that a CR to an LRA would be inappropriate. The court must order an evidentiary hearing if:

1. the state fails to meet its burdens; or
2. the committed person presents evidence establishing that:
  - a. the individual's condition has "so changed" that they no longer meet the definition of an SVP; or
  - b. that a proposed LRA is in the best interest of the person and conditions can be imposed to adequately protect the community.

In August of 2017, the Washington Supreme Court decided *In Re Det. of Marcum*, 189 Wn.2d 1, 2017, which granted a full unconditional release hearing to a person committed as an SVP. The court construed current law to find that the state must meet its burden to show that the committed person both (1) continues to meet the definition of SVP; and (2) a CR is not in the person's best interest in order to deny the person a full evidentiary hearing on either issue. Because the court found that the state had not met its burden under part (2), it granted the committed person a full evidentiary hearing on the issue of unconditional release hearing under part (1).

**Summary of Bill:** At an SVP hearing, a court may not order an unconditional release trial if the state produces prima facie evidence that the committed person continues to be an SVP, unless the committed person produces evidence demonstrating:

- probable cause to believe the person's condition has so changed that he or she no longer meets the definition of an SVP or that release to an LRA would be in the person's best interest and conditions can be imposed that would adequately protect the community; and
- that 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 positive response to continuing participation in treatment has brought about a change in the person's mental condition such that the person meets the standard for CR to an LRA or for unconditional release.

The court may not order a CR trial if the state produces prima facie evidence that an LRA is not appropriate for the committed person unless the committed person produces evidence

demonstrating all of the conditions above and presents the court with a specific placement that meets the legal requirements for CR to an LRA.

The bill applies retroactively and prospectively to all petitions.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:** PRO: This is in response to *In re Det. Markum*, a court decision that does not support the intent of Legislature. Without this bill, there is inefficiency, and this creates the need to litigate additional trials. Process and statute are both very complicated. What this body has always intended is that the SVP would be treated before an LRA is granted, with treatment being the main component of this process. Without a fix, individuals could get an unconditional release hearing without treatment. Numerous unwarranted trials and costs to the state would skyrocket.

CON: This is an attempt to deprive liberty and due process. This is bad use of money to confine, when an LRA may be available in the community. This pushes SVPs back to being committed for life. The bill's assertion is incorrect.

OTHER: This would be a good bill if the suggested amendments are added. I agree that the court decision does not support the intent of the Legislature. The drafting of this bill can be improved. The retroactive piece needs to be changed. This bill currently does not abide by law.

**Persons Testifying:** PRO: Senator Manka Dhingra, Prime Sponsor; Yasmin Trudeau, Attorney General's Office; Brooke Burbank, SVP Section Chief, Attorney General's Office.

CON: Elisabeth Smith, ACLU of Washington.

OTHER: Ken Henrikson, citizen; Andrew Morrison, Washington Association of Criminal Defense Lawyers, Washington Defense Association.

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