

SENATE BILL REPORT

SB 6515

As of January 25, 2018

Title: An act relating to the legal and geographical review requirements for the conditional release of sexually violent predators to a less restrictive alternative.

Brief Description: Concerning the legal and geographical review requirements for the conditional release of sexually violent predators to a less restrictive alternative.

Sponsors: Senators Conway, Darneille, O'Ban, Becker, Zeiger and Fortunato.

Brief History:

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

Brief Summary of Bill

- Requires a court to hold an evidentiary hearing reviewing certain information before granting a conditional release (CR) on a less restrictive alternative (LRA) for a person committed as a sexually violent predator (SVP), if the release is to a county other than the county of commitment.
- Requires the state to provide a statistical summary of SVP releases by receiving county compared to county of commitment before proposing the release of a person committed as an SVP.
- Requires the state to consider placement of a person committed as an SVP who is preparing for release from custody in the county of commitment and neighboring counties first, and provides that lack of treatment in the county of commitment is not a precluding factor for placement.
- Requires the state to certify that it has contacted all certified treatment providers in the county of commitment and all neighboring counties, and that the treatment providers refused to treat the individual prior to placement outside county of commitment, before recommending release of a person committed as an SVP outside the person's county of commitment.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Keri Waterland (786-7490)

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.

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. The Department of Social and Health Services (DSHS) operates the Special Commitment Center (SCC) and two secure community transition facilities (SCTF's) to provide for persons committed to inpatient or facility-based LRA treatment as SVPs.

On an annual basis, DSHS must conduct an examination of the mental condition of a person committed as an SVP to determine whether:

- the person no longer meets the definition of an SVP; or
- if the person still meets this definition, whether 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 are met, DSHS must allow the person to petition the court for a CR to an LRA or 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.

During hearings to determine if a CR to an LRA should be granted, the burden of proof at the hearing is on the state to prove beyond a reasonable doubt that the CR should not be granted, because the proposed LRA either:

- is not in the best interest of the committed person; or
- does not include conditions that would adequately protect the community.

Prior to authorizing release to an LRA, the court must consider whether it is appropriate to release the person to the person's county of commitment. A Legislative finding adopted in 2015, states that to ensure equitable distribution of releases, and prevent the disproportionate grouping of persons subject to LRAs in any one county or community, it is appropriate for LRAs to occur in the person's county of commitment.

Summary of Bill: A court must only approve the release of a person committed as an SVP on an LRA to their county of commitment or neighboring county unless, after an evidentiary hearing, the court determines that the person's release to their county of commitment would present a substantial threat to public safety, considering any court-issued protection orders and any specific, articulated threat to victim safety that cannot be addressed by court-ordered electronic monitoring, including the use of global positioning satellite technology. The lack of availability of appropriate treatment or facilities that would adequately protect the community in the county of commitment must not be considered as a precluding factor for placement in the county of commitment or neighboring counties.

The court must enter specific findings of fact concerning the decision to release to a county other than the county of commitment. The decision may not be based upon maintaining continuity with a current or prior treatment provider if the county has more than one treatment provider or where the county of commitment has a population in excess of 450,000 according to the latest census data or a more recent official estimate of the state Office of Financial Management.

The state must certify to the court by means of sworn evidence, and the court must find, that the state has contacted all certified treatment providers in the county of commitment and all neighboring counties, and that each provider refused to accept the person for treatment, before any release outside the county of commitment. The court may not grant an LRA if the person is unwilling to accept treatment from a qualified and willing treatment provider in the county of commitment, or a neighboring county.

The SCC must provide the county of a proposed release from the SCC with a statistical summary of LRAs from the SCC by county of commitment and by receiving county over the last five years, at least 60 days before the hearing.

The state must develop a placement for a person who qualifies for release from the SCC in the county of commitment and neighboring counties first, in a manner that does not have a disproportionate effect on a single county. The state must explain in writing its reasons for placement in the selected county. Notice and a written explanation must be provided to the Law and Justice Council in the county in which the person is proposed to be conditionally released. The county may intervene as a party in the proceeding, conduct discovery, and offer evidence and argument at the hearing.

The court may not consider the following factors as a basis for release of a person committed as an SVP outside the county of commitment:

- the availability of recommended counseling or treatment for issues other than sex offender treatment including, but not limited to, chemical dependency, domestic violence, and anger management;
- the presence outside the county of commitment of a potential support network for the committed person, such as the presence of one or more of the committed person's family members, friends, or other acquaintances; or
- an effort to limit the travel distance or travel time for treatment or other purposes.

An agency providing treatment to a person committed as an SVP under an LRA must report monthly, or as directed, to the Law and Justice Council of the county in which the person is released stating whether the person is complying with the terms and conditions of the LRA.

Appropriation: None.

Fiscal Note: Requested on January 23, 2018.

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: This is a good bill aimed at having people released to their county of commitment. Pierce County is frustrated with inaction for finding other placements outside of Pierce County for SVPs. Fair share legislation was enacted, but nothing has been done yet.

CON: It is true, there are problems with the LRA process. This bill will make the process harder. Especially because of the limitation on placement, which will make it hard to place

people with highly intensive needs for their disabilities. There is limited placement and treatment in the community, and this will slow those placements down. We have strong concerns, but are not in denial of this problem. The bill has erroneous assumptions about how LRAs are granted, and we are the only state in the nation doing it this way. I request you give this legislation to the sex offender policy board (SOPB) and a currently occurring workgroup for one year, with a mandate to come back to the legislature with a solution.

OTHER: Bigger issues are at play in the statute. A group is already working on these issues, they are not talking about geographical distribution at this time, but could. We would like to work on these issues and present these to the Legislature. SVPs cannot qualify for housing vouchers. There is interest in putting this into law, but we are not ready yet. This follows a SOPB recommendation from 2016.

Persons Testifying: PRO: Senator Steve Conway, Prime Sponsor.

CON: Rachael SeEVERS, Disability Rights Washington; Andrew Morrison, Washington Association of Criminal Defense Lawyers, WDA.

OTHER: Sophia Byrd McSherry, Washington State Office of Public Defense.

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