

FINAL BILL REPORT

E2SSB 5163

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Synopsis as Enacted

Brief Description: Concerning the placement and treatment of conditionally released sexually violent predators.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Rolfes, Dhingra, Saldaña and Wilson, C.).

Senate Committee on Human Services, Reentry & Rehabilitation
Senate Committee on Ways & Means
House Committee on Public Safety
House Committee on Appropriations

Background: Sexually Violent Predators. A sexually violent predator (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 prosecutor may petition for indefinite civil commitment of a person as an SVP when the person is about to be released from a state correctional facility, among other circumstances. The filing of the petition triggers a probable cause determination followed by a full evidentiary trial. The burden is on the state to prove beyond a reasonable doubt that the person should be civilly committed as an SVP. If the person is found to be an SVP, the person must be placed in the custody of the Department of Social and Health Services (DSHS) for control, care, and treatment at the Special Commitment Center (SCC) on McNeil Island. Civilly committed SVPs have the right to adequate care and individualized treatment.

Petitions for Release. DSHS must annually examine an SVP's mental condition to determine whether the person's condition has changed. If the SVP's condition has changed so that the person no longer meets the definition of an SVP, or if conditional release to a less restrictive alternative (LRA) is in the best interest of the person and conditions can be imposed that adequately protect the community, then DSHS must authorize the person to

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petition the court for unconditional or conditional release. An SVP may also petition the court for unconditional or conditional release without the approval of DSHS, in which case the court must hold a show-cause hearing before proceeding to a full unconditional release or conditional release trial. If the petition is for conditional release to an LRA, the person must propose a placement plan to the court, which must include a proposed residence, treatment plan, and other conditions.

When an SVP petitions the court for release, the state bears the burden to prove the person continues to meet the definition of an SVP and that conditional release to an LRA would be inappropriate. However, a trial may not be ordered unless there is current evidence from a licensed professional that the committed person has undergone a permanent physiological change, such as paralysis, stroke, or dementia, which renders them unable to commit a sexually violent act, or treatment has brought about a positive change in mental condition.

Criteria for Conditional Release to a Less Restrictive Alternative. Before authorizing conditional release to an LRA, the court must find that all of the following are met:

- the person will be treated by a qualified sex offender treatment provider (SOTP) who has presented a specific course of treatment and has agreed to report violations to the court and other specified entities;
- housing exists that is sufficiently secure to protect the community, and the housing provider agrees to accept the person, provide security, and immediately report to the court and other specified entities if the person leaves without authorization;
- the person is willing to comply with requirements imposed by the SOTP and the court; and
- the person will be supervised by the Department of Corrections (DOC).

County of Commitment. When authorizing conditional release to an LRA, the court must consider release to the person's county of commitment, which is the county of the court that ordered the person's commitment. It is appropriate to release a person to the person's county of commitment unless the court determines that return to the county of commitment would be inappropriate, considering any court-issued protection orders; victim safety concerns; the availability of appropriate treatment or facilities that would adequately protect the community; negative influences on the person and the location of family or other persons or organizations offering support. When DSHS or the court assists in developing an LRA placement, effort must be made to avoid disproportionate effects on a single county. If the person is not released to their county of commitment, DSHS must provide written notice and an explanation to the law and justice council of the county of placement.

Modification of the Less Restrictive Alternative Order. Each person conditionally released to an LRA must have their case reviewed by the court within one year of release, and annually thereafter, until the person is unconditionally released. The sole question for the court is whether the person shall continue to be conditionally released to a LRA. Conditional release to an LRA may be revoked or modified by a court if it is determined the SVP violated the terms and conditions of the conditional release order or needs additional

care, monitoring, supervision, or treatment.

Secure Community Transition Facilities. Persons found to be SVPs are committed to the SCC on McNeil Island. A conditional release of an SVP may be to a community-based LRA placement or a secure community transition facility (SCTF). Community-based LRA placements may include private residences, adult family homes, and group homes. DSHS operates an SCTF on McNeil Island with a maximum capacity of 24 beds. A second SCTF in King County can house up to six individuals. When siting new SCTF facilities, DSHS must work with local governments to achieve equitable distribution within counties to avoid a disproportionate grouping of similar facilities in any one jurisdiction or community.

Community Notification. When an SVP is conditionally released, is unconditionally released, or escapes, DSHS must provide notice to the local law enforcement agency where the person will be placed, or, if residence is unknown, the county sheriff where the SVP was last convicted of a sexually violent offense. DSHS must also notify the Washington State Patrol, which must facilitate dissemination of release information to all law enforcement. Victims, witnesses, and other persons identified by the prosecuting agency are also entitled to notice of release or escape. Notice of conditional or unconditional release must be provided at least 30 days before release.

Supervision of Sex Offenders. DOC is required to have a policy governing its evaluation and approval of release plans for sex offenders. The policy must include, at a minimum, a formal process by which victims, witnesses, and other interested persons may provide information and comments to DOC on potential safety risks a sex offender may pose to specific individuals or classes of individuals. For persons convicted of a felony sex offense against a minor after June 6, 1996, DOC is prohibited from approving a residence location if the proposed residence includes a minor victim or child of similar age or circumstance as a previous victim who may be put at substantial risk of harm; or is within close proximity of the current residence of a minor victim, unless certain circumstances apply. DOC may also reject a residence location if the proposed residence is within close proximity to schools, child care centers, playgrounds, or other grounds or facilities where children of similar age or circumstance as a previous victim are present who may be put at substantial risk of harm by the sex offender's residence at that location.

State Identification Cards. The Department of Licensing (DOL) requires applicants for driver licenses or identification cards to provide DOL with certain valid identifying documentation. DOL has determined that a written identification document completed by DOC is sufficient to clearly establish identity. DOC and DOL have an interagency agreement and memorandum of understanding to assist incarcerated individuals at state correctional facilities with obtaining a state driver license or identification card at the time of release. Prior to the day of release, or when it has been determined that the incarcerated individual needs a state driver license or identification card, DOC staff will complete a verification letter and send it to DOL.

State-Operated Living Alternatives Program. According to the Developmental Disabilities Administration at DSHS, the State-Operated Living Alternatives (SOLA) program is a state-operated supported living program that offers up to 24 hours support and habilitation services so individuals can live in their own homes with up to three others. Individuals pay for their own rent, food, and other personal expenses with assistance from staff to manage their finances as needed.

Sex Offender Policy Board. In 2008, the Legislature created the Sex Offender Policy Board (SOPB) to promote a coordinated and integrated response to sex offender management. SOPB is organized as an independent entity, staffed and maintained by the Sentencing Guidelines Commission, which is located within the Office of Financial Management. SOPB may be convened by the Governor or a legislative committee of jurisdiction to undertake projects to assist policymakers in making informed judgments about issues relating to sex offender policy, and to conduct case reviews of sex offense incidents to understand performance of the state's sex offender prevention and response systems. SOPB consists of 13 voting members with representatives from various agencies and stakeholder groups as specified in law.

In March 2020, the Senate Ways and Means Committee convened the SOPB to review policies and practices related to civilly committed SVPs and their release from the SCC. SOPB submitted a final report to the committee on December 1, 2020. The final report, *Recommendations and Current Practices for Special Commitment Center Releases*, includes 35 recommendations.

Summary: Discharge Planning. In addition to adequate care and individualized treatment, a civilly committed SVP has the right to the development of an ongoing, clinically appropriate discharge plan as part of the treatment process. The right to the development of a discharge plan does not guarantee any particular person will be determined appropriate for discharge at any particular time. Further, it does not preclude DSHS from expressing professional judgement regarding the suitability of discharge for the protection of a resident's safety or community safety. Based on information known to DSHS, and in accordance with policies adopted by DSHS, the following must be addressed in the person's ongoing discharge plan:

- the resident's known physical health, functioning, and any need for health aid devices;
- the resident's known intellectual or cognitive level of functioning and need for specialized programming;
- the resident's known history of substance use and abuse;
- the resident's known history of risky or impulsive behaviors, criminogenic needs, and treatment interventions to address them;
- the resident's known ability to perform life skills and activities of daily living independently, and any need for disability accommodations;
- a summary of the known community services and supports the resident needs for a safe life in the community and the type of providers of such services and support; and
- a plan to mitigate identified needs that also addresses ways to develop or increase

social supports, recreation opportunities, gainful employment, and if applicable, spiritual opportunities.

When ordered by the court, DSHS must provide LRA treatment that includes at a minimum:

- services identified in the person's discharge plan;
- assignment of a community care coordinator;
- regular contacts with providers of court-ordered treatment services;
- community escorts if needed;
- a transition plan that addresses the person's access to continued services upon unconditional discharge;
- financial support for necessary housing;
- life skills training and disability accommodations if needed; and
- assistance in pursuing benefits, education, and employment.

Subject to appropriations, at the time when DOC is ordered to investigate a proposed LRA placement, DSHS must assign a social worker to assist the person with discharge planning, pursuing benefits, and coordination of care prior to release from the SCC. The social worker must assist the person with completing benefits applications, initiating a clinical transition of care between the SCC clinician and the person's community SOTP up to 15 days before a person's release from the SCC, and locating any needed disability accommodations in the community and resources to help address any life skills needs.

Petitions for Conditional Release to a Less Restrictive Alternative. The processes for petitioning for conditional release to an LRA are modified. Following a determination by DSHS that the person's condition has changed such that an LRA is appropriate, if the person files a petition for conditional release, the court must order DSHS to identify an LRA placement, including identification of a SOTP and housing. Once identified, notice of the placement must be filed with the court and served upon the prosecuting attorney, any victim who has opted to receive notifications under current law, and the person and their counsel. If DSHS cannot identify a placement within 90 days, it must provide a written certification to the court and the parties detailing its efforts to find a placement. Upon receiving DSHS' certification, the person may propose an LRA. When the court receives a proposed LRA placement plan from either DSHS or the person, it must order a conditional release hearing within 45 days.

If the person files a petition for conditional release without authorization from DSHS, the process depends on the outcome of the show cause hearing. If the state fails to present prima facie evidence that no LRA is in the best interest of the person and conditions cannot be imposed to adequately protect the community, the court must order DSHS to propose a LRA. If DSHS cannot identify a placement within 90 days, it must provide a written certification to the court and the parties detailing its efforts to find a placement. Upon receiving DSHS' certification, the person may propose an LRA. When the court receives a proposed LRA placement plan from either DSHS or the person, it must order a conditional release hearing within 45 days. If the court finds at the show cause hearing probable cause

exists to believe, based on evidence presented by the person, that release to an LRA is in the person's best interest and conditions can be imposed to adequately protect the community, the court must set a hearing on the issue of conditional release once the person presents a qualifying LRA placement.

Conditional Release to a Less Restrictive Alternative. The criteria a court must consider before authorizing conditional release to an LRA are expanded to include a documented effort was made by DSHS to ensure the LRA placement is consistent with fair share principles of release if DSHS has proposed housing outside the county of commitment.

When imposing conditions upon an SVP, the court must impose a restriction on the proximity of the person's residence to public or private schools. Courts must require a minimum distance restriction of 500 feet on the proximity of the person's residence to child care facilities and public or private schools providing instruction to kindergarten or any grades 1 through 12. DOC's investigation of the placement and conditions recommendations must be submitted to the court within 60 days of the order to investigate. Recommended conditions must be individualized to address the person's specific risk factors and criminogenic needs, and the non-exhaustive list of potential conditions a court may impose is expanded to include restrictions on residences and specification of contact with a reasonable number of individuals verified by DOC to be appropriate social contacts.

To the greatest extent possible, the prosecutor, the person's counsel, SOTP, the supervising community corrections officer, and appropriate SCC clinical staff must collaborate to craft individualized, narrowly tailored, and empirically based conditions to present to the court to help facilitate the person's successful transition to the community.

When DSHS develops an LRA placement, it must attempt to identify a placement which is aligned with fair share principles, and document its rationale for the recommended placement. "Fair share principles" means each county should have adequate options for conditional release housing placements in a number generally equivalent to the number of residents from that county who are subject to total confinement as an SVP. If the court authorizes conditional release to a county other than the county of commitment, the court must enter specific findings concerning the decision, and identify whether the release remains in line with fair share principles. If the person is not conditionally released to their county of commitment, DSHS must provide the law and justice council of the county of release with notice and a written explanation, including whether DSHS remains in compliance with fair share principles. If DSHS does not support or recommend conditional release to an LRA due to a clinical determination, DSHS must document its objection and certify it is developing the LRA pursuant to a court order and not because of a clinical determination.

When DSHS develops or proposes an LRA placement, it shall be considered a predisposition recommendation. When developing, modifying, and enforcing LRAs, DSHS is deemed to be performing a quasi-judicial function.

Contracts with Housing and Treatment Providers. DSHS has primary responsibility for developing LRA placements and must use a specified housing matrix as a guide for planning and developing LRA placements. Considerations in the housing matrix may not be used as a reason to deny an LRA placement. Considerations for evaluating a proposed vendor's application for LRA housing services must include applicable state and local zoning and building codes, among other things, and DSHS must require the housing provider to provide proof the facility is in compliance with all local zoning and building codes. DSHS must use a request for proposal process, subject to appropriations, to contract with housing and treatment providers across the state and facilitate fair share among counties. DSHS has oversight over vendors and providers who contract with the state, and must maintain a statewide accounting of the contracted community housing and treatment providers in each county. DSHS must provide a biannual report to the Governor and Legislature on the availability and adequacy of LRA placements and DSHS compliance with fair share principles.

Conditional Release and Transition Facilities. Subject to appropriations, DSHS must explore the development of conditional release and transition facilities, which may include community-based state-operated living alternatives similar to the SOLA program operated by the Development Disabilities Administration. DSHS may identify facilities or placements through a request for proposal process or direct state acquisition. Any contracts require DSHS oversight over placements to ensure the programs are operating appropriately.

Modification to the Less Restrictive Alternative Order. When a court reviews an LRA order, the question for the court is expanded to include whether modification to the person's LRA order is appropriate to ensure the conditional release remains in the best interest of the person and adequate to protect the victim and the community.

Siting of Secure Community Transition Facilities and Other Conditional Release and Transitional Facilities. The state may site and operate SCTFs and other conditional release and transitional facilities in any county in the state in accordance with state law governing public hearing, review, and comment for siting a SCTF once DSHS has demonstrated a need to the appropriate committees of the Legislature and appropriate funding has been provided. When DSHS identifies potential counties and sites within a county to site a SCTF or other conditional release and transitional facility, DSHS must work with local governments to provide equitable distribution of such facilities.

Community Notification. A change of address for an SVP on conditional release is added to the circumstances for when DSHS must provide 30-days' notice to local law enforcement, and victims and witnesses who requested notice. A change of address does not include a return to the SCC or a SCTF pending revocation or modification proceedings, and an additional community notification process is not required, unless conditional release is revoked or the return lasts longer than 90 days.

Disappearance of a Sexually Violent Predator on Conditional Release. If an SVP disappears while on conditional release, DOC may enter a warrant for the person's arrest for up to 96 hours pending entry of a bench warrant by the court. DOC, its officers, agents, and employees are not liable for the acts of individuals on conditional release unless DOC, its officers, agents, and employees acted with gross negligence. DSHS, its officers, agents, and employees are not liable for the acts of individuals on conditional release unless DSHS, its officers, agents, and employees acted with gross negligence.

Sex Offender Treatment Providers. Subject to appropriations, DSHS, SOPB, and the Department of Health (DOH) must convene a work group to develop recommendations to increase the availability and quality of SOTPs to meet the growing number of persons qualifying for conditional release to an LRA. The work group must gather data on best practices in other states and make certain recommendations in a report due to the Legislature by December 1, 2021.

State Identification Cards. DSHS must enter into a memorandum of understanding with DOL to allow residents at the SCC to obtain a state identification card using a written identification verification letter provided from the SCC to DOL. The process must occur upon the person's initial detention at the SCC and must reoccur when the person's state identification card expires.

Sex Offender Policy Board. The SOPB is directed to meet quarterly during the 2021-23 biennium to continue its review of SVP and LRA policies and best practices, collaborate with stakeholders and DSHS, provide outreach to providers and stakeholders, and monitor implementation of this act. SOPB must also explore and make recommendations whether to continue or remove the prohibition on an LRA from including a placement in the community protection program. During the 2021-23 biennium, SOPB must provide semiannual updates to the appropriate legislative committees.

Votes on Final Passage:

Senate	27	22	
House	61	37	(House amended)
Senate	27	22	(Senate concurred)

Effective: July 25, 2021