
Community Safety Committee

HB 1133

Brief Description: Concerning sexually violent predators.

Sponsors: Representatives Leavitt and Couture; by request of Attorney General.

Brief Summary of Bill

- Modifies certain statutory requirements, restrictions, and procedures related to the civil commitment of sexually violent predators (SVPs), including the conditions by which SVPs may petition for unconditional discharge or conditional release to a less restrictive alternative (LRA).
- Expands the definition of sexually violent offense to include certain military and tribal convictions.
- Expands the definition of recent overt act to include any course of conduct that has caused harm of a sexually violent nature, or that creates a reasonable apprehension of such harm in the mind of an objective person with specified knowledge about the perpetrator.
- Authorizes the Attorney General to issue a civil investigative demand requiring production of specified documentary material or information relevant to the determination of whether to seek the civil commitment of a person as an SVP.
- Prohibits a person from earning supervision compliance credit on any cause served concurrently with an LRA subject to supervision by the Department of Corrections.

Hearing Date: 1/14/25

Staff: Corey Patton (786-7388).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

Civil Commitment of Sexually Violent Predators.

A sexually violent predator (SVP) is a person who has been convicted of, found not guilty by reason of insanity of, or found incompetent to stand trial for a crime of sexual violence, 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 in a secure facility.

Petitions for Civil Commitment and Key Definitions.

A county prosecuting attorney, or the Attorney General if requested by the county prosecuting attorney, may petition for indefinite civil commitment of a person as an SVP when it appears that a person:

- convicted of a sexually violent offense, or found to have committed a sexually violent offense as a juvenile, is about to be released from total confinement;
- charged with a sexually violent offense, and determined to be incompetent to stand trial or found not guilty by reason of insanity, is about to be released or has been released; or
- convicted of a sexually violent offense has since been released from total confinement and committed a recent overt act.

Filing a petition for indefinite civil commitment triggers a probable cause determination, followed by a full evidentiary trial. At trial, the state has the burden of proving beyond a reasonable doubt that the person is an SVP. If found to be an SVP, the person is committed to the custody of the Department of Social and Health Services (DSHS) for control, care, and treatment at the Special Commitment Center on McNeil Island.

A "sexually violent offense" is any of the following felonies committed on, before, or after July 1, 1990, or an attempt, criminal solicitation, or criminal conspiracy to commit such a felony:

- Rape in the first degree, Rape in the second degree by Forcible Compulsion, Rape of a Child in the first or second degree, Statutory Rape in the first or second degree, Indecent Liberties by Forcible Compulsion, Indecent Liberties against a child under age 14, Incest against a child under age 14, or Child Molestation in the first or second degree;
- a felony offense in effect at any time prior to July 1, 1990, that is comparable to any of the aforementioned offenses, or any federal or out-of-state conviction for a felony offense that would be a sexually violent offense under state law; or
- Murder in the first or second degree, Assault in the first or second degree, Assault of a Child in the first or second degree, Kidnapping in the first or second degree, Burglary in the first degree, Residential Burglary, or Unlawful Imprisonment, if determined beyond a reasonable doubt to have been sexually motivated.

A "recent overt act" is any act, threat, or combination thereof, that has either caused harm of a sexually violent nature or that creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act or behaviors.

Determination of Whether to Petition for Civil Commitment.

When it appears that a person may meet the criteria of an SVP, the agency with jurisdiction must make a referral and provide certain relevant information to the applicable county prosecuting attorney and the Attorney General. The county prosecuting attorney is authorized to obtain all records relating to the person if such records are deemed necessary to fulfill the county prosecuting attorney's duties. The county prosecuting attorney is also authorized to utilize the inquiry judge procedures under state law to compel the production of any records necessary to determine whether to petition for indefinite civil commitment of the person as an SVP. The Attorney General may be granted the same authorizations if requested by the county prosecuting attorney.

Petitions for Unconditional Discharge or Conditional Release.

The DSHS must conduct an annual examination of the mental condition of each person civilly committed as an SVP to determine whether the person's condition has changed. If the person's condition has changed such that the person no longer meets the criteria of an SVP, or that 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 the DSHS must authorize the person to petition the court for unconditional discharge or conditional release. Upon receipt of a petition for unconditional discharge or a proposal for an LRA placement, the court must order a hearing within 45 days.

The person may also petition the court for unconditional discharge or conditional release without the DSHS's approval. The DSHS must provide the person with an annual written notice of the person's right to petition over the DSHS's objection, along with a waiver of rights. If the person does not affirmatively waive the right to petition, the court must set a show-cause hearing to determine whether probable cause exists to warrant a hearing on whether the person's condition has changed.

A new trial proceeding may not be ordered unless there is current evidence from a licensed professional that either:

- the person has experienced a permanent physiological change, such as paralysis, stroke, or dementia, that renders the person 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, which indicates that the person meets the standard for conditional release or unconditional discharge.

Conditions Imposed for Conditional Release to a Less Restrictive Alternative.

If the court or jury determines at trial that conditional release to an LRA is in the best interest of the person and includes conditions that would adequately protect the community, and the court determines that the minimum conditions required under state law are met, the court must enter judgment and direct the person's conditional release. Prior to authorizing the conditional release, the court must impose conditions upon the person as are necessary to ensure the safety of the community. The court must also order the Department of Corrections (DOC) to investigate the LRA placement and, within 60 days of the order to investigate, recommend any additional

conditions to the court.

The conditions imposed must be individualized to address the person's specific risk factors and criminogenic needs, and may include, but are not limited to, the following:

- specification of residence or restrictions on residence, including distance restrictions;
- specification of contact with a reasonable number of individuals upon the person's request who are verified by the DOC to be appropriate social contacts;
- prohibition of contact with potential or past victims;
- prohibition of alcohol and other drug use;
- participation in a specific course of inpatient or outpatient treatment that may include monitoring by the use of polygraph and plethysmograph;
- monitoring through the use of global positioning system technology;
- supervision by a DOC community corrections officer;
- a requirement that the person remain within the state unless the person receives prior authorization by the court; and
- any other conditions that the court determines are in the best interest of the person or others.

If the court finds that conditions do not exist that will ensure compliance with treatment and protect the community, then the person must be remanded to the DSHS for control, care, and treatment in a secure facility.

Fair Share Principles.

If the court authorizes conditional release of a person to a county other than the county of commitment based on the DSHS's proposal, the court must also enter specific findings regarding its decision and identify whether the release remains in line with fair share principles for maintaining adequate LRA housing placements in each county in a number generally equivalent to the number of residents from that county who have been civilly committed.

Community Custody.

Community custody is the portion of a person's criminal sentence served in the community under the supervision of the DOC following the person's release from confinement. Courts are required to order community custody for persons convicted of certain offenses. Alternatively, a person convicted of certain offenses may qualify for a special sentencing alternative, where the person receives a reduced or waived term of confinement and instead serves a longer term of community custody.

A person in community custody is subject to conditions imposed by the DOC and the court. The DOC may establish and modify the person's conditions of community custody based on risks to community safety, and issue an arrest warrant if the person violates those conditions. A person who violates conditions of community custody may be subject to sanctions depending on the type of violation, the underlying offense, and other conditions.

Supervision Compliance Credit.

A person may earn supervision compliance credit to reduce the period of time the person is required to serve in community custody. Supervision compliance credit is awarded for complying with supervision terms and making progress towards the goals of an individualized supervision case plan, including:

- participating in specific targeted interventions, risk-related programming, or treatment; and
- completing steps towards specific, targeted goals that enhance protective factors and stability.

Certain persons do not qualify for supervision compliance credit, including any person completing community custody as part of a sentencing alternative, any person released and currently being supervised by the Indeterminate Sentence Review Board, and any person subject to supervision under the Interstate Compact for Adult Offender Supervision.

Summary of Bill:

Key Definitions.

The definition of "sexually violent offense" is expanded to include any military or tribal conviction for a felony offense that would constitute a sexually violent offense under state law. The definition of "recent overt act" is expanded to include any course of conduct, by itself or in combination with an act or threat, that has caused harm of a sexually violent nature or that creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act or behaviors.

Determination of Whether to Petition for Civil Commitment.

The statutory provision authorizing the applicable county prosecuting attorney and the Attorney General to utilize inquiry judge procedures to compel the production of records necessary to determine whether to petition for the civil commitment of a person as a sexually violent predator (SVP) is eliminated. Instead, the Attorney General is authorized to execute and serve a civil investigative demand to any person in possession, custody, or control of certain material or information believed to be relevant to the determination of whether to seek the civil commitment of a person as an SVP, which compels the person served to:

- produce documentary material and permit inspection and copying;
- answer written interrogatories;
- give oral testimony; or
- comply with any combination of such demands pertaining to the documentary material or information.

Civil investigative demands:

- must state the relevant sections authorizing the issuance of the demand, and further state that the demand is for the purpose of obtaining information to aid in a determination of whether to seek the civil commitment of a person;
- must describe the class of any documentary material to be produced with reasonable specificity;
- must prescribe a date and, if applicable, time and location, for compliance with the

- demand;
- must identify the members of the Attorney General's staff who will receive the requested documentary material or information;
- may not contain any requirement which would be unreasonable or improper if contained in other specified subpoenas or requests; and
- may not require the disclosure of any documentary material which would be privileged or would not be required by other specified subpoenas.

Petitions for Unconditional Discharge or Conditional Release.

The statutory requirements, restrictions, and procedures related to petitions for unconditional discharge or conditional release by a person who is civilly committed as an SVP are modified as follows:

- If the Department of Social and Health Services (DSHS) authorizes a petition for conditional release to a less restrictive alternative (LRA), the petition may not include an LRA placement proposed by the petitioner. Upon receipt of the petition, the court must order the DSHS to identify an LRA placement that meets certain statutory conditions. If the DSHS cannot identify an appropriate placement within 90 days, the DSHS must provide a written certification detailing its efforts, and the petitioner may propose an LRA placement.
- Upon receipt of a DSHS-authorized petition for unconditional discharge or a proposal for an LRA placement, the court must hold a trial scheduling conference, rather than a hearing, within 45 days.
- A person who is civilly committed as an SVP is prohibited from petitioning for unconditional discharge or conditional release prior to the completion of the DSHS's annual report, or more than once during the calendar year.
- If a person who is civilly committed as an SVP does not affirmatively waive the person's annual right to petition, the court must set a show-cause hearing to determine whether probable cause exists to warrant a trial, rather than a hearing, on unconditional discharge or conditional release.
- Any time the court orders DSHS to identify an LRA placement that meets certain statutory conditions as part of a petition for conditional release, the DSHS's identified LRA placement is the only one that the court may consider at trial on the issue of conditional release.

Conditions Imposed for Conditional Release.

Upon entering judgment on an LRA placement at issue at trial, or upon the parties' agreement, the court must order the Department of Corrections (DOC) to investigate the LRA placement and recommend conditions to the court within 60 days of serving the order to investigate. After receiving the DOC's report and recommendations, the court must impose such conditions on the petitioner as are necessary to ensure the safety of the community and ensure compliance with treatment. The court must impose conditions that include, but are not limited to, the following:

- prohibition of contact with potential or past victims;
- prohibition of alcohol and other drug use;
- participation in a specific course of inpatient or outpatient treatment that may include

- monitoring by the use of polygraph and plethysmograph;
- monitoring through the use of global positioning system technology;
- supervision by a DOC community corrections officer; and
- a requirement that the person remain within the state unless the person receives prior authorization by the court.

If the DSHS-proposed LRA placement is in a county other than the county of commitment, a party's objection to the DSHS's plan on that basis must be made within 30 days of receiving the plan, unless the deficiency was not reasonably discoverable at that time.

Supervision Compliance Credit.

A person may not earn supervision compliance credit on any cause served concurrently with an LRA subject to supervision by the DOC.

Appropriation: None.

Fiscal Note: Requested on January 8, 2025.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.