

# SENATE BILL REPORT

## SB 5965

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As Reported by Senate Committee On:  
Human Services & Corrections, January 28, 2014

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

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

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

**Brief History:**

**Committee Activity:** Human Services & Corrections: 1/21/14, 1/28/14 [DPS].

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** That Substitute Senate Bill No. 5965 be substituted therefor, and the substitute bill do pass.

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

**Staff:** Shani Bauer (786-7468)

**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 file this periodic report with the court and 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 so changed that the person no longer meets commitment criteria, 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 (Recommended Substitute):** 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.

**EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute):** If a committed person does not participate in the annual review, any examination or testimony by the committed person's expert is not admissible in a show cause hearing or review trial. The provision disallowing a court-appointed expert for an indigent person if the person does not participate in the annual review is removed. At the committed person's request, DSHS must preserve an audio recording of the annual review interview and make the recording available to the committed person.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** The bill takes effect on July 1, 2014.

**Staff Summary of Public Testimony on Original Bill:** PRO: This bill addresses people already committed to the Civil Commitment Center. Constitutionally and by statute the state must evaluate a resident periodically to maintain commitment. Sometimes the resident

refuses to meet with the evaluator. The state process of continuing to prove the mental status of the committed person is being frustrated by the resident's lack of participation. The state is faced with the position of the committed person seeking a review trial when the judge has two evaluations in front of them, one where the person has participated and the other where the person has not. In order to maintain public safety, it is imperative that the state evaluator be able to interview the committed person. Second, the bill defines treatment as sex offender specific treatment. Some residents are claiming a variety of treatment options, including narcotics anonymous and spiritual counseling as constituting treatment when they have not participated in any form of sex offender specific treatment. Residents have been awarded new trials on this basis. Finally, the bill resets the clock for the state's obligation to complete an annual review. There have been circumstances in which the resident is awarded a trial, the state proves its allegations, and one month later a new annual review is due. This prompts the resident to file for a review trial all over again.

CON: Other states resolve these issues in other ways. It is unclear from the legislation how the court is to determine whether the resident has fully participated in treatment or the annual review. The definition of treatment blocks treatment opportunities for segments of the population that have mental illnesses or other disabilities. There is a belief that this bill will save money by avoiding a trial. That is untrue. Very few of these cases end up going to trial and most end up in a settlement for a less restrictive alternative. In order to get a new trial, the defense must show that they changed through treatment. Treatment providers make declarations about treatment a person received and how behavior changed. Inspection of Care Report from 2012 noted that definition of treatment at a special commitment center (SCC) is very conservative. This is a problem for certain individuals. For example, a client who speaks Korean cannot participate in group treatment because he does not speak English. A developmentally disabled participant who cannot hear also cannot participate in group therapy. If you delegate that decision to the SCC, you will continue to get those types of results. In other parts of the law, sex offender treatment is defined as treatment provided by a certified treatment provider. No treatment providers at SCC are certified. The provisions in this bill will lead to substantial litigation. There are equal protection issues with only requiring indigent residents to participate in an annual review to get an expert, and effective assistance of counsel issues if an attorney cannot consult with an expert.

**Persons Testifying:** PRO: Malcolm Ross, Attorney General of WA.

CON: Ken Henrikson, King County Office of Public Defense, TDA Division, Sexually Violent Predator Unit; Lin-Marae Nacht, Public Defender; Marla Polin, Spokane Defense Attorney.