

# SENATE BILL REPORT

## 2SSB 5088

---

As Passed Senate, March 14, 1995

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

**Brief Description:** Revising the law relating to sexual predators.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senator Smith).

**Brief History:**

**Committee Activity:** Law & Justice: 1/17/95, 2/1/95 [DPS-WM].

Ways & Means: 2/21/95, 3/6/95 [DP2S].

Passed Senate, 3/14/95, 49-0.

---

### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5088 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Smith, Chair; C. Anderson, Vice Chair; Hargrove, Haugen, Johnson, Long, McCaslin, Quigley, Roach and Schow.

**Staff:** Dick Armstrong (786-7460)

**Background:** In 1990, the Legislature passed the Community Protection Act in order to address, in a comprehensive manner, the increasing danger posed by sex offenders.

One component of the act is a civil commitment procedure, which is created for a special category of sex offenders known as "sexually violent predators." A sexually violent predator is any person who has been convicted of or charged with 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.

In 1993, the Washington State Supreme Court found the overall statutory scheme presented in the civil commitment section of the Community Protection Act to be constitutional. In Re Young, 122 Wn. 2d 1 (1993). However, the court did find several aspects of the act which require clarification.

**Summary of Bill:** Comprehensive revisions are made to the sexually violent predator statute to reflect concerns expressed in recent court decisions; in addition, the operation of the statute is clarified.

The definition of a sexual predator is modified to include a requirement that the person needs to be confined in a secure facility in order to prevent future predatory acts.

A person alleged to be a sexual predator is entitled to a probable cause hearing within 72 hours after he or she has been taken into custody. The detained person has the right to be

represented by an attorney, to present evidence, to cross-examine witnesses, and review all reports in the court file.

The detained person has the right to a 12-person verdict, and the jury determination that the person is a sex predator must be unanimous.

If the person is not totally confined at the time the petition is filed, the state must show a recent overt act.

Procedures are established to allow a sex predator to petition the court for a conditional release by showing that his disorder or abnormality has changed to the extent that he is not likely to engage in predatory acts of sexual violence. In addition, the person must show that a qualified treatment provider is going to provide treatment, that a specific course of treatment is established, that a secure facility is available, that he or she is going to comply with the treatment program approved by the department and the court, and the supervision requirements of DOC.

A court must direct a conditional release if the less restrictive alternative is in the best interest of the person and adequately protects the community. The court may impose treatment conditions and other conditions to protect the public.

Procedures are established to revoke the less restrictive alternative if the person does not comply with the terms and conditions of release.

DSHS is responsible for costs relating to evaluation and treatment of the person in a less restrictive alternative.

The crime of escape in the second degree is established for any person who intentionally leaves the state of Washington without prior court authorization after being found to be a sex predator. A violation is a class C felony.

A superior court may allow an escorted leave for a confined person to visit a seriously ill family member or go to the funeral of a family member.

Various definitions are revised or created. Definitions are created for an "overt act" and "likely to engage in predatory acts of sexual violence."

**Appropriation:** None.

**Fiscal Note:** Requested on January 13, 1995.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The bill is supported by the Prosecutor's and the Attorney General's Offices. The bill addresses significant concerns which were identified in a 1993 Washington State Supreme Court case. The fiscal impact needs to be considered.

**Testimony Against:** The bill goes beyond what the Supreme Court said about sex predators. The statute does not adequately protect persons subject to confinement. This statute is criminal in nature and is probably unconstitutional.

**Testified:** PRO: Greg Canova, AG Office; Debbie Ruggles, Sexual Assault Victims; Dennis Marsh, ISRB; CON: Sherry Appleton, WA Defender's Assn.

---

## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5088 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rinehart, Chair; Loveland, Vice Chair; Cantu, Finkbeiner, Gaspard, Hochstatter, Johnson, Long, Moyer, Roach, Snyder, Spanel, Strannigan and Winsley.

**Staff:** Linda Brownell (786-7913)

**Testimony For:** The maximum range of costs for supervision, treatment, and residential care would be approximately \$100,000 to \$120,000 per person per year but most people would not require the high cost program. Two to three people per year might be eligible in the future for a less restrictive confinement, with an estimated cost range of \$80,000 to \$105,000. There are still a number of cases pending in the Supreme Court and in federal court. Current costs average \$45,000 to \$55,000 per person per year in this program.

**Testimony Against:** None.

**Testified:** Bob Boruchowitz, WA Def. Assn. (con); Greg Canova, Attorney General's office (pro).

**House Amendment(s):** The provision on escorted leave is replaced with new provisions that more closely parallel the escorted leave provisions already in place for prison inmates. Clarification is added concerning the court's jurisdiction over a sexually violent predator. In order to maintain consistency with parallel statutes, the deadline for notification is changed from 10 days to 30 days before a conditional release or unconditional discharge.