

FINAL BILL REPORT

SB 5582

C 344 L 05
Synopsis as Enacted

Brief Description: Clarifying how demographic factors are used with regard to sexually violent predators.

Sponsors: Senators Regala, Hargrove, Stevens, Carrell, Franklin, McAuliffe and Kohl-Welles.

Senate Committee on Human Services & Corrections

House Committee on Criminal Justice & Corrections

Background: Under current law a sexually violent predator who is civilly committed under chapter 71.09 RCW has an annual review to determine whether he or she continues to meet the commitment standard and whether conditional release to a less restrictive alternative is appropriate. If the Department of Social and Health Services does not support a conditional release to the community or an unconditional release in the annual review process, a civilly committed person may seek a review or a new commitment trial at any time. The committed person must present a prima facie case in a show cause hearing that he or she has "so changed" that he or she no longer meets commitment criteria or that conditional release to a less restrictive alternative is in his or her best interest, and that conditions can be imposed that adequately protect the community. Until 2004, the demonstration that the person had "so changed" focused on actual changes in the offender due to health issues or success in treatment.

In 2004, Mr. Andre Brigham Young brought such a case to the trial court. Mr. Young argued that, because he is over 60, he is statistically unlikely to commit a new sex offense and, therefore, he has "so changed" that he no longer meets the definition of a sexually violent predator. Mr. Young's case was based on a demographic study of sex offenders leaving Canadian prisons that included seven persons over the age of 60. The trial court rejected Mr. Young's argument. The appellate court reversed the trial court and ordered a new commitment trial for Mr. Young based on its holding that the trial court could not make a judgment about the credibility of the evidence because stating a prima facie case means that, assuming everything in the claim were proved true, the person making the claim would be likely to win (*In re Young*, 120 Wn. App. 753 (2004)). The state Supreme Court did not accept the case for review. Consequently, a trial court must assume the validity of the petition, even where it knows it is not valid. Several trial courts and at least one appellate decision have followed the *Young* decision.

Summary: A showing that a person has "so changed" requires a showing that, since the person's last commitment proceeding, there has been a substantial change in the committed person's physical or mental condition that indicates either that the person no longer meets the commitment standard or that conditional release to a less restrictive alternative is in the person's best interest and conditions can be imposed that adequately protect the community. The changes include an identified physiological change that renders the person unable to

commit a sexually violent act and a change in the person's mental condition brought about through positive response to continuing treatment.

A change in a single demographic factor, without more, does not establish probable cause for a new trial proceeding under the "so changed" prong. Demographic factors include, but are not limited to age, marital status, and gender.

Votes on Final Passage:

Senate	47	0
House	96	0

Effective: May 9, 2005