

SENATE BILL REPORT

E2SSB 6445

As Passed Senate, February 17, 1998

Title: An act relating to the placement of children under the jurisdiction of the department of social and health services.

Brief Description: Modifying provisions relating to children placed in community facilities.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Long, Hargrove, Haugen, Zarelli, McAuliffe, Franklin and Winsley).

Brief History:

Committee Activity: Human Services & Corrections: 1/27/98, 2/5/98 [DPS-WM].

Ways & Means: 2/9/98, 2/10/98 [DP2S].

Passed Senate, 2/17/98, 49-0.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6445 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Long, Chair; Zarelli, Vice Chair; Franklin, Hargrove, Kohl, Schow and Stevens.

Staff: Fara Daun (786-7459)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6445 be substituted therefor, and the second substitute bill do pass.

Signed by Senators West, Chair; Deccio, Vice Chair; Strannigan, Vice Chair; Bauer, Brown, Fraser, Hochstatter, Kohl, Long, Loveland, McDonald, Rossi, Schow, B. Sheldon, Snyder, Spanel, Swecker, Thibaudeau and Winsley.

Staff: Bryon Moore (786-7726)

Background: In September of 1997, a 17-year-old resident in a Juvenile Rehabilitation Administration (JRA) community placement group home walked away from his job and raped and murdered a 12-year-old babysitter during a burglary. The subsequent investigation revealed that JRA did not have vital school record information and information regarding the juvenile's previous law enforcement encounters.

The federal Family Education Rights and Privacy Act (FERPA) limits the transfer of education records to transfers with the prior notice and consent of both juveniles and their parents. FERPA provides two exceptions for transfers for law enforcement purposes: (1) Records may be transferred prior to trial in order to effectively serve the juvenile. These

transfers generally require prior notification to the juvenile and his or her parents; and (2) after conviction, records may be transferred without consent only by a subpoena containing a non-disclosure order.

Current Washington statutes do not reflect the most recent changes in FERPA and may provide conflicting direction to the schools. JRA reports that it has been difficult to obtain complete, timely, records necessary for conducting risk assessment for juveniles placed with the agency. These records are necessary to assist JRA to address individual needs, to serve the juvenile effectively, and to provide juveniles with the best placement to assist them to successfully make a smooth transition to non-offender status.

In addition to risk assessment concerns, other concerns have been raised related to the placement of juveniles in the community. These include: an inadequate distinction between group homes for children with and children without criminal convictions; inadequate employee screening; inadequate night staffing at some facilities; inconsistent communication with local law enforcement and JRA; inconsistent monitoring of juveniles in school and work placements; and inadequate community participation and information.

Summary of Bill: The Department of Social and Health Services (DSHS) must establish a process for community involvement in the siting of JRA group homes through mandated public hearings.

JRA and the service providers must provide communities with the opportunity to form community placement oversight committees. The department must assist communities that decide to establish a community placement oversight committee. The committees include representatives of law enforcement, the local school district, and the public. The committees review and make a recommendation regarding placement of juveniles in the community facility. The Legislature intends that committees, their members and the agencies represented by the members be immune from liability for their good faith actions in placement decisions.

DSHS must adopt a policy for the common use of group homes for JRA and non-JRA children. DSHS must not place juveniles who commit any class A felony with non-JRA children.

DSHS must establish a violation policy that includes a definition of serious infractions and serious violations. All criminal offenses and all drug or alcohol violations are defined as serious violations. DSHS must return juveniles who commit serious infractions or serious violations of their placement conditions to an institution. Juveniles who have been returned to an institution following a violation may not subsequently be placed in a community facility until a new risk assessment is completed and the secretary determines that the juvenile can adhere to the conditions of the community facility placement. DSHS must maintain records of juveniles' infractions and violations.

Each service provider must report to DSHS every known violation or infraction a juvenile offender commits. Serious infractions and serious violations must be reported immediately upon discovery. All other infractions and violations must be reported within 24 hours of discovery. DSHS must document reported violations. Service providers that fail to report juveniles' known violations are subject to both monetary penalties and contract sanctions or

termination. DSHS must give great weight to a service provider's record of infractions and violations in any execution, renewal, or renegotiation of the service provider's contract.

DSHS must publish and maintain a staffed 24-hour toll-free phone line for reporting a juvenile's violations of community placement conditions. The phone number must be distributed to the persons most likely to have contact or supervisory authority over any juvenile. It must also be included in all service provider contracts and monitoring agreements.

Any juvenile placed in a school, work, or volunteer situation must be subject to monitoring agreements. These agreements acknowledge the juvenile's status as an offender, provide for notification when they discover any condition is breached, and provide for accountability checks and performance reviews of the juvenile by the JRA group home. The agreements must be in writing and signed by the juvenile, the employer, supervisor, or school, JRA, and the contracting service provider. Both DSHS and the service providers must keep a copy of the executed agreements.

Juveniles are not eligible for placement in a community facility until they have spent at least 10 percent of their sentences, but not less than 30 days, in a secure institution.

Eligible juveniles may not be placed in a JRA group home unless:

- (1) The juvenile's school records have been received and reviewed in conjunction with other information to conduct a risk assessment and security classification and the risk assessment, including a determination of drug and alcohol abuse, is complete;
- (2) The completed risk assessment indicates that the juvenile will not pose more than a minimum risk to public safety;
- (3) The community placement oversight committee, if one exists, has reviewed and acted on the placement; and
- (4) Local law enforcement has been properly notified.

The department must request education records for first-time offenders after conviction by a subpoena. The prosecutor or local probation department must request records for all juveniles with one or more previous convictions prior to trial. The Legislature intends that education records will be used to perform a risk assessment that will assist JRA to address individual needs, to serve the juvenile effectively, and to provide juveniles with the best placement to assist them to successfully make a smooth transition to non-offender status.

Employees and volunteers must pass background checks. Persons who have committed sex offenses or violent offenses are prospectively disqualified from positions in which they may have more than nominal access to JRA children. Failure to report a post-employment conviction constitutes misconduct.

The Washington State Institute for Public Policy must conduct a study that includes an evaluation of the: (a) security, staffing and operation; (b) offender intake and assessment

procedures; (c) violation history and appeals process for violations and infractions committed by juveniles.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect September 1, 1998.

Testimony For: The bill does a good job of recognizing the issues. There is general recognition that community support is vital and can create the kind of strong bonds that assist in reducing recidivism and helping the transition to productive, lawful lives. The composition of the community placement oversight committee is appropriate because it balanced the views and needs of both professionals and citizens. There was strong support for group home accountability provisions and strengthening the risk assessment tool to ensure that the tool was adequate and reliable. There was strong support for expanded information sharing and ensuring that all appropriate records were available for the risk assessment. The 24-hour hotline is a good idea.

Testimony Against: Community placement oversight committees should be composed of professionals and should not have veto power. There was concern about blanket refusals to place certain types of juveniles, and concern about the time frame for denial of placement.

The prohibition on placement of Class A felony offenders in facilities that also serve DCFS youth would create a severe hardship on several classes of juveniles including pregnant offenders, female offenders, and offenders needing drug and alcohol or mental health treatment. These programs are not available in group care facilities that do not also serve DCFS youth.

Establish time frame for hearings. Require two hearings when only a single site is considered. Require that one hearing be held in the evening. Elect placement committee at siting hearing.

Testified: Senator Jeanine Long, prime sponsor (pro); Senator Mary Margaret Haugen (pro); General Ted Jenes (pro) ; Sid Sidorowicz, JRA (concerns).

House Amendment(s): The House amendment delayed implementation of community placement oversight committees until after receiving study results in December 1998. It added community placement oversight committees, juvenile justice standards, and comparative recidivism rates for certain classes of juveniles with and without parole services to the study. The amendment also creates two limited exceptions to the prohibition on placing juveniles who have committed class A felonies in the same facility as children under the supervision of the Division of Children and Family Services. Finally, the amendment included a null and void clause.