

HOUSE BILL REPORT

HB 2598

As Reported by House Committee On:
Criminal Justice & Corrections

Title: An act relating to the implementation of the recommendations of the joint select committee on the equitable distribution of secure community transition facilities.

Brief Description: Implementing the recommendations of the joint select committee on the equitable distribution of secure community transition facilities.

Sponsors: Representatives O'Brien, Morell, Conway, Kagi and Kirby; by request of Jt Select Comm on the Equitable Distrib of Secure Community Transition Facil.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/30/02, 2/8/02 [DPS].

Brief Summary of Substitute Bill

- Allows, under certain circumstances, the siting of secure community transition facilities in certain counties irrespective of land use and other state laws.
- Provides limited immunity to cities and counties for actions relating to the siting of a secure community transition facility.
- Extends the deadline for planning grants for secure community transition facilities.
- Removes the requirement that the Department of Social and Health Services (DSHS) guidelines endeavor to achieve an average law enforcement response time of five minutes and inserts a requirement that law enforcement give calls to a secure community transition facility high priority.
- Clarifies that public transit bus stops are not risk potential activities.
- Requires the DSHS to enter into long-term contracts with certain counties and cities containing secure community transition facilities.
- Imposes requirements regarding mitigation agreements between the DSHS and jurisdictions affected by secure community transition facilities.

- Provides limited immunity to law enforcement officials responding to a call from a secure community transition facility.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives O'Brien, Chair; Lovick, Vice Chair; Ballasiotes, Ranking Minority Member; Kagi, Kirby and Morell.

Minority Report: Without recommendation. Signed by 1 member: Representative Ahern.

Staff: Jim Morishima (786-7191).

Background:

Under the Community Protection Act of 1990, a sexually violent predator may be civilly committed upon the expiration of his or her criminal sentence. A sexually violent predator is a person who has been convicted of, charged with and found not guilty by reason of insanity of, or found to be 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 to a secure facility. Sexually violent predators are committed to the custody of the DSHS and confined at the Special Commitment Center (SCC) for control, care, and individualized treatment.

A person who has been civilly committed is statutorily entitled to an annual review of his or her mental condition, including consideration of whether conditional release to a less restrictive alternative (LRA) is in the best interest of the person and would adequately protect the community. Under a recent decision by the Washington Supreme Court, the person is also entitled to consideration of an LRA at his or her probable cause and commitment hearings.

Since 1994, the SCC has been operating under a federal court injunction requiring that steps be taken to ensure that constitutionally adequate mental health treatment is being provided to the SCC residents. In November 1999, the state was held in contempt of court for failing to take all reasonable steps toward this goal and for intentionally disregarding the requirements of the injunction. The court ordered sanctions of \$50 per day per SCC resident beginning in May of 2000. To date, the sanctions have continued to accrue, but have been suspended because of the state's efforts to bring the program into compliance. One substantial area of concern for the court is the availability of LRAs for qualified residents of the SCC.

In 2001 the Legislature enacted 3ESSB 6151. The bill authorized the DSHS to build a new SCC and a secure community transition facility (SCTF) on McNeil Island. The bill contained provisions relating to the siting of future SCTFs. The bill also created the Joint Select Committee on the Equitable Distribution of Secure Community Transition Facilities. The committee was required to review and make necessary recommendations regarding: 1) the equitable distribution of future SCTFs throughout the state; 2) siting and facility requirements; and 3) mitigation for affected communities.

I. Equitable Distribution of Future SCTFs

The number of SCTF beds that may be sited in a county can be no greater than the number of offenders committed from the county. The DSHS was required to identify the minimum and maximum beds that may be necessary for the period of May 2004 through May 2007 by August 31, 2001. The DSHS identified the following counties as jurisdictions that may be required to site an SCTF during that time period: Chelan, Clark, Cowlitz, Franklin, Grays Harbor, King, Kitsap, Snohomish, Spokane, Thurston, Whatcom, and Yakima.

The SCTFs are essential public facilities under the Growth Management Act (GMA). Counties planning under the GMA must establish a process for identifying essential public facilities. All counties, regardless of whether they plan under the GMA, must establish processes and amend their development regulations as necessary to provide for the siting of SCTFs.

A county that makes a commitment to initiate the process to site one or more SCTFs by February 1, 2002, is eligible to receive a planning grant. A county that has issued all the necessary permits for one or more SCTFs by May 1, 2003, is eligible for an incentive grant of \$50,000 for each bed sited (a county that has issued the necessary permits by January 1, 2003, is eligible for a bonus of 20 percent of this amount). A county that establishes SCTF beds in excess of the maximum that could be sited in that county is eligible for a bonus of \$100,000 for each excess bed established.

II. Siting and Facility Requirements

The DSHS must develop guidelines with respect to the siting of an SCTF. The guidelines must balance the average response time of emergency services in the general area against the proximity of risk-potential activities. The guidelines must endeavor to achieve an average law enforcement response time no greater than five minutes. The guidelines may not allow an SCTF within the line of sight of a risk potential activity. Risk potential activities include: schools, day care and preschool facilities, and school bus stops.

Residents of an SCTF must wear electronic monitoring devices at all times. When the resident leaves the SCTF for appointments, employment, or other approved activities, he

or she must be escorted by at least one SCTF staff member or other person authorized by the court that ordered the LRA and approved by the DSHS. The escort must supervise the resident closely and remain within close proximity. The escort must report any serious violations by the resident and must notify law enforcement of any violations of the law. The escort must not be a relative of the resident.

III. Mitigation

For the McNeil Island SCTF, the state must enter into mitigation agreements with the county, each community in which a resident will reside or regularly spend time, and educational institutions within those jurisdictions. The negotiations must be for agreements that will provide state funding (as appropriated by the Legislature) to mitigate anticipated or realized costs resulting from any increased risks to public safety brought about by the presence of the residents of the SCTF.

There are currently no provisions regarding mitigation for counties within which future SCTFs may be located.

Summary of Substitute Bill:

I. Equitable Distribution of Future SCTFs

No person may bring a cause of action for civil damages based upon the good faith actions of any county or city to provide for the siting of an SCTF. The term "person" includes any individual, agency, corporation, partnership, association, and limited liability entity.

If any of the counties projected to require SCTF beds (and cities within those counties) do not establish processes and amend their development regulations as necessary to provide for the siting of SCTFs by October 1, 2002, the DSHS may site and operate SCTFs within those counties and cities regardless of local land-use laws, the State Environmental Policy Act (SEPA), the Hydraulics Code, the Shorelines Management Act, and other laws. When siting a facility in this manner, the DSHS must consider the same siting criteria that must be considered by the local jurisdictions. The DSHS may consult with a city or county that has been preempted in this manner. It is clarified that if a county or city has complied with the process and development regulation requirements, the DSHS must utilize the jurisdiction's established process when siting an SCTF.

The DSHS must follow the substantive requirements of the SEPA when siting, constructing, or occupying an SCTF. The DSHS must consult with the Department of Ecology (DOE) when planning, constructing, and operating the facility. The DSHS must also make a threshold determination of an SCTFs probable environmental impacts and prepare an environmental impact statement if the facility would have probable significant,

adverse environmental impact. The threshold determination is appealable only to the DOE, which may make non-binding suggestions regarding the determination.

The deadline for applying for a planning grant is extended to 120 days after the effective date of the act. Incentive grants and bonuses available to counties and cities for the siting of SCTFs are contingent upon appropriations from the Legislature.

II. Siting and Facility Requirements

The DSHS policy guidelines no longer must endeavor to achieve a five-minute average law enforcement response time. Law enforcement must respond to a call regarding a resident of an SCTF as a high priority call. No law enforcement officer responding reasonably and in good faith to a call regarding a resident of an SCTF, or city or county employing such officer, is liable in any cause of action for civil damages based on the acts of the resident or the actions of the officer during the response.

It is clarified that a bus stop established primarily for public transit is not a risk potential activity for purposes of siting an SCTF. An escort for a resident who leaves an SCTF, in addition to not being a relative of the resident, may not be a person with whom the resident has, or has had, a dating relationship.

It is clarified that the statutory requirements with respect to siting and operating SCTFs are minimum requirements to be applied by the department. Counties and cities are not authorized to impose additional requirements on the DSHS or its contractors for siting and operating an SCTF. However, the DSHS may add requirements to enhance public safety.

III. Mitigation

At the request of a local government in a city or county in which an SCTF is sited after January 1, 2002, the DSHS must enter into a long-term contract memorializing the agreements between the city or county and the state for the operation of the facility. The contract must contain clauses that state:

- The contract does not obligate the state to continue to operate any aspect of the civil commitment program;
- The operation of the SCTF is contingent upon legislative appropriation; if insufficient funds are appropriated, the department may close the facility; and
- The contract does not obligate the county or city to operate the SCTF.

Subject to funds appropriated by the Legislature, the DSHS may enter into negotiations for a mitigation agreement with a county or city in which an SCTF is sited after January 1, 2002, each community in which persons from the SCTF will reside or regularly spend time, and educational institutions within these jurisdictions. The mitigation agreement must be limited to the following:

- One time training for local law enforcement and administrative staff upon the establishment of an SCTF, including training in coordination emergency procedures, program and facility information, legal requirements, and resident profiles;
- Information coordination, including database infrastructure establishment and programming for the dissemination of information among law enforcement and the DSHS related to facility residents;
- One time capital costs, which are off-site costs associated with the need for increased security in specific locations; and
- Incident response costs, which are law enforcement and criminal justice costs associated with violations of conditions of release or crimes by residents of the SCTF.

Substitute Bill Compared to Original Bill:

The substitute:

- Clarifies that when the DSHS preempts the counties and sites an SCTF, the State Environmental Policy Act (SEPA), the Hydraulics Code, and the Shorelines Management Act are all superseded;
- Requires the DSHS to follow the substantive requirements of the SEPA when siting, constructing, occupying, and operating an SCTF;
- Requires the DSHS to consult with the Department of Ecology (DOE) when planning, constructing, and operating the facility;
- Requires the DSHS to make a threshold determination of an SCTF's probable environmental impact and to prepare an environmental impact statement if the facility would have probable significant, adverse environmental impact. The threshold determination is appealable only to the DOE, which may make non-binding suggestions regarding the determination.
- Specifies that the counties and cities must adopt processes for siting SCTFs by the date specified in RCW 36.70A.130 or September 1, 2002, whichever is earlier. The original bill required the adoption to be completed by the deadline specified in RCW 36.70A.130.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: This bill provides necessary fixes to last year's legislation regarding secure community transition facilities. The limited immunity provided to law enforcement and the counties, and the language clarifying law enforcement's response time obligations are positive aspects of this legislation.

(Concerns) Local governments need to be given more of an opportunity to be involved in the siting process in order to more adequately provide for public safety. The role of local government needs to be more clearly defined. Not allowing local governments to propose safety requirements of secure community transition facilities will discourage them from participating in the process. The definition of risk potential activities should be made more flexible to allow for safety concerns in local jurisdictions. The same immunity provided to local governments in this legislation should be applied to the state in order to prevent lawsuits aimed at delaying the siting of a secure community transition facility. The language in the bill regarding long-term contracts may lead to problems siting a facility if local governments make unrealistic or unconstitutional demands. The language regarding preempting all other laws may not be broad enough to cover state laws that could be used to delay the siting of a secure community transition facility.

Testimony Against: None.

Testified: (In support with amendments) Gary Reiersgard, Snohomish County; Jeff Rasmussen, Cowlitz County Commissioner; and Dan Wood, Grays Harbor County.

(In support with concerns) Tim Brown, Department of Social and Health Services.

(Concerns) Jean Wessman, Washington State Association of Counties.