

HOUSE BILL REPORT

ESSB 6594

As Reported by House Committee On:
Criminal Justice & Corrections
Appropriations

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: Senate Committee on Human Services & Corrections (originally sponsored by Senators Carlson, Costa, Hargrove and Long; by request of Jt Select Comm on the Equitable Distrib of Secure Community Transition Facil).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/26/02, 2/27/02 [DPA];
Appropriations: 3/2/02, 3/4/02 [DPA(APP w/o CJC)s].

Brief Summary of Engrossed Substitute Bill
(As Amended by House Committee)

- Allows, under certain circumstances, the siting of secure community transition facilities (SCTF) in counties who had five or more residents at the Special Commitment Center as of April 1, 2001, excluding Pierce County, irrespective of land use and other laws.
- The State Environmental Policy Act (SEPA), Hydraulics Code and Shorelines Management Act preemption provisions expire June 30, 2009.
- 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 an SCTF a high priority.
- Clarifies that public transit bus stops are not risk potential activities and allows the DSHS to add new risk potential activities under certain circumstances.
- Clarifies that local regulations imposing more stringent requirements on SCTF than are provided for by statute are void.

- 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 SCTFs.
- Provides limited immunity to law enforcement officials responding to a call from a SCTF.
- Allows for regional SCTFs containing the beds for multiple counties.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass as amended. Signed by 6 members: Representatives O'Brien, Chair; Lovick, Vice Chair; Ballasiotes, Ranking Minority Member; Kagi, Kirby and Morell.

Minority Report: Do not pass. 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 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.

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 Amended 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 12 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 and all other laws. "All other laws" means the State Environmental Policy Act (SEPA), the Hydraulics Code, the Shorelines Management Act, and other state laws regulating the protection and use of the water, land, and air. This definition also applies to the pre-emption provisions used to site the new SCC and SCTF on McNeil Island.

When siting a facility in a pre-empted county or city, 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 pre-empted in this manner and must conduct the same public hearings required in nonpre-empted jurisdictions. 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.

A pre-empted city or county may propose public safety measures specific to any finalist site to the DSHS in writing. The DSHS must respond to the city or county in writing within 15 business days. If the city or county finds the DSHS response inadequate it may notify the department of the perceived inadequacies within 15 business days. If the DSHS does not revise its response to the satisfaction of the city or county within seven business days, the city or county may petition the Governor to designate a person with law enforcement expertise to review the response using the procedures for emergency adjudicative proceedings in the Administrative Procedures Act. The person must make a final decision within 30 days of hearing the petition. The person's determination is final and may not be the basis for any cause of action in civil court.

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. None of the provisions relating to SEPA may be the basis of any civil cause of action or administrative appeal.

It is clarified that the failure of a county or city to meet the deadline with respect to planning for secure community transition facilities does not jeopardize the receipt of specified state funds or subject the county or city to a private cause of action or an appeal made to a growth management board.

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. The DSHS may designate other risk potential activities after the public hearing process has concluded. 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. The minimum requirements do not prohibit local governments from adopting development regulations as long as they do not impose more restrictive requirements on the SCTFs. Local regulations imposing more restrictive requirements are void. However, the DSHS may add requirements to enhance public safety.

To encourage economies of scale, the DSHS may enter into agreements with two or more counties to create regional SCTFs containing the beds for multiple counties. No county may withdraw from such an agreement unless it has made adequate provisions for any residents displaced by the withdrawal. A regional SCTF must meet the same facility and operating criteria as regular SCTFs. The DSHS must count the beds identified for a participating county in a regional SCTF against the total beds that could be required to be sited in that county.

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.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill:

- Clarifies the Legislature’s intent with regard to the pre-emption provisions;
- Requires the DSHS to follow the substantive requirements of the SEPA when siting, constructing, occupying, and operating a SCTF;
- Requires the DSHS to consult with the DOE when planning, constructing, and operating the facility;
- Requires the DSHS to make a threshold determination of a SCTF’s probable environmental impact and to prepare an environmental impact statement if the facility would have a probable significant, adverse environmental impact;
- Prohibits judicial and administrative actions based on the SEPA provisions;
- Makes a technical correction;
- Allows for regional SCTFs containing the beds for multiple counties;
- Makes a grammatical change to clarify the obligations of cities and counties with respect to planning for SCTFs; and
- Clarifies that the failure to meet the planning deadline with respect to SCTFs does not jeopardize a city or county’s receipt of specified state funds or subject cities or counties to private causes of action or appeals to a growth management board.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: This bill contains an emergency clause and takes effect immediately.

Testimony For: This represents a compromise to make sure that safety issues are addressed. Local governments should be encouraged to engage in this process. The bill follows up on a commitment to site SCTFs in other counties and allows the state to comply with its own laws and the court order. The bill allows us to site future SCTFs in a responsible way. To a large extent, this bill balances constitutional requirements with community safety and is a solid alternative to offenders being free to move about our communities. The limited immunity provisions are important to local governments.

Testimony Against: This bill pre-empts all other state laws protecting the water, land, and air, and applies this pre-emption to the 400-bed facility on McNeil Island. This is extraordinary language given the fact that McNeil Island is an environmentally pristine

area. There should be environmental oversight in the construction of this facility.

Testified: (In support) Senator Carlson, prime sponsor; Dick VanWagenen, Governor's Policy Office; Suzanne Brown, Washington Coalition of Sexual Assault Programs; and Tim Brown, Department of Social and Health Services.

(Neutral) Doug Levy, city of Federal Way; and Jean Wessman, Washington State Association of Counties.

(Concerns) Jackie White, Washington Association of Counties.

(Opposed) George Walk, Pierce County.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Criminal Justice & Corrections. Signed by 14 members: Representatives Sommers, Chair; Doumit, 1st Vice Chair; Fromhold, 2nd Vice Chair; Cody, Dunshee, Grant, Kagi, Kenney, Kessler, Linville, McIntire, Ruderman, Schual-Berke and Tokuda.

Minority Report: Do not pass. Signed by 6 members: Representatives Sehlin, Ranking Minority Member; Lisk, Mastin, Pearson, Pflug and Talcott.

Staff: Amy Hanson (786-7118).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Criminal Justice & Corrections:

The amended bill declares that the need to expeditiously site facilities for sexually violent predators has created an emergency. The SEPA, the Hydraulics Code and the Shorelines Management Act preemption provisions expire June 30, 2009. Finally, the counties eligible for preemption are limited to counties who had five or more residents at the Special Commitment Center as of April 1, 2001, excluding Pierce County.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: We wish we didn't need to have this bill. Last year Pierce County was preempted and 15 beds were sited on McNeil Island. Since then a SEPA lawsuit has been filed by Pierce County. Other cities and counties were directed to take some of

these placements. Twelve counties have been identified. To date, no counties have stepped forward. The McNeil site alone does not allow the courts to lift the injunction or the contempt order. This bill is the product of the recommendations of the joint select committee created last year. The key provision is the ability to preempt counties. Judge Rothstein held a hearing this week. The judge is holding open the record til March 15. There is a clear message that something has to be done. Substantial changes have to be made for the department to comply with the court and state law.

Testimony Against: None.

Testified: Tim Brown, Department of Social and Health Services; and Dick VanWagenen, Governor's Policy Office.