

***Criminal Justice & Corrections
Committee***

ESSB 5845

Brief Description: *Regulating siting of sex offender treatment facilities.*

Sponsors: *By Senate Committee on Human Services & Corrections (originally sponsored by Senators Fraser, Costa, Long, Winsley and Kohl-Welles).*

Brief Summary of Engrossed Substitute Bill

- *Defines and sets criteria for secure community transition facilities for sexually violent predators conditionally released to a less restrictive alternative.*
- *Establishes a public notice and hearing process for the siting of secure community transition facilities, and permits community operational advisory boards.*
- *Requires a violation reporting policy.*
- *Requires local governments to plan for the siting and equitable distribution of secure community transition facilities.*

Hearing Date: *3/26/01*

Staff: *Jean Ann Quinn (786-7310).*

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 Department of Social and Health Services (DSHS) and confined at the Special Commitment Center (SCC) for control, care,

and individualized treatment.

A person who has been civilly committed is 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. Before the court can order that a person be conditionally released to an LRA, the court must find that certain requirements are met, including the requirement that housing is available that is sufficiently secure to protect the community.

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 court has deferred imposition of these sanctions, finding that the SCC is making genuine efforts to bring the program into compliance. One area that continues to be of concern to the court, however, is the lack of arrangements for the transition of qualified residents into LRAs.

In August 2000, the DSHS formed a Secure Placement Advisory Committee and with the assistance of this committee and other public input, established criteria for the siting of LRAs housing up to three SCC residents on conditional release status. Using this criteria, 11 state- owned properties were then selected as potential sites for the location of the first such LRA. The department made a final selection from among those 11 potential sites, and also selected three possible alternatives. The local governments of some of the affected locations have since taken legal action attempting to halt the siting of these LRAs in their respective jurisdictions.

Local governments are authorized by the state constitution to make and enforce all local police, sanitary, and other regulations not in conflict with state general laws. This "police power" includes authority to adopt and enforce ordinances to regulate property development, including permit requirements, and to impose fines for violation of ordinances.

A conditional use is a use permitted in a specific zone only after review by the appropriate permitting authority and the imposition of permit conditions making the use compatible with other permitted uses in the zone. Conditions and requirements for conditional use and special use permits are specified in local ordinances.

The Growth Management Act (GMA) requires a county and its cities to plan if the county meets certain population and growth criteria and allows counties not meeting these criteria to choose to plan under the GMA. Currently, 29 of 39 counties plan under the GMA. The GMA requires all counties and cities in the state to take certain actions, including designation and protection of critical areas and designation of natural resource lands. The GMA imposes additional requirements on counties and cities planning under the GMA (GMA jurisdictions), including: (1) adoption of county-wide planning policies to coordinate comprehensive planning among counties and their cities; (2) designation of urban growth areas; (3) adoption of a comprehensive plan with certain required elements;

and (4) adoption of implementing development regulations. By September 1, 2002, and every five years thereafter, the GMA jurisdictions must review their comprehensive plans and development regulations for consistency with the GMA requirements and must revise their plans and regulations if necessary.

GMA jurisdictions must have a process for identifying and siting essential public facilities. Essential public facilities are described in the GMA as those public facilities that are typically difficult to site and include, among other facilities, state and local correctional facilities, mental health facilities, and group homes. No GMA plan or development regulation may preclude the siting of essential public facilities.

Summary of Bill:

Secure Community Transition Facilities. A secure community transition facility is defined to mean a residential facility for sexually violent predators conditionally released to a less restrictive alternative, operated either by the DSHS or under contract with the DSHS.

Response Time for Emergency Services. The DSHS must establish rules that balance the average response time of emergency services to a proposed facility against the proximity of risk potential facilities, such as schools, daycare facilities, and public parks. The rule must endeavor to achieve a five minute response time, and the rule may not permit the location of a facility adjacent to, immediately across the street or parking lot from, or within the line of sight of a risk potential activity. Great weight must be given to sites that are farthest removed from any risk potential activity. The rule must also establish a method for analyzing and comparing sites with regard to public safety and security, site characteristics, and program components. The analysis and comparison must be available at the required public hearings related to siting. In addition, the rule is to contain a schedule of monetary and termination penalties for contractors who fail to meet the violation reporting requirements of the law.

Criteria for Secure Community Transition Facilities. The DSHS is directed to establish criteria for the siting of secure community transition facilities. At a minimum, the criteria must require that the facility meet the distance requirements set out in the rule, the property be available for lease, the required security systems be available, treatment providers be available within a reasonable commute, and appropriate permitting is possible under the local zoning regulations. Any site that meets these criteria must be analyzed and compared according to the method established in the rule considering the following:

- (1) Public safety and security criteria must include an analysis of whether limited visibility between the facility and adjacent properties can be achieved, the ability to establish barriers between the site and risk potential activities, the features of the facility, and the availability of electronic monitoring.*
- (2) Site characteristics criteria must include the reasonableness of the rent, lease, or sale terms, traffic and access patterns associated with the property, the feasibility of complying with zoning requirements, and the availability of contractors to install, monitor, and repair the security systems.*

(3) Program characteristics criteria must include reasonable proximity to available medical and other treatment providers and facilities, suitability of the location for programming, staffing, and support considerations, proximity to employment, educational, vocational, and other treatment plan components. For facilities housing five or fewer residents, it also must include a minimum staffing ratio of one staff per resident during normal waking hours and two during normal sleeping hours. In addition, residents must be escorted when leaving the facility, unless otherwise ordered by the court.

Security Systems. A secure community transition facility housing five or fewer residents must have specified security, alarm, and back-up emergency systems, including generator systems. The system must be capable of being monitored either by telephone or by private radio network or equivalent technologies. It also must include panic devices for all staff. Photo-identification badges must be issued and worn by staff at all times.

Public Notice and Hearing Process. Unless otherwise provided by law, a secure community transition facility may only be operated after a public notice and hearing process. If three potential sites are identified, that process must include at least two public hearings in each affected community, and an additional hearing in the community where the final selection is made. If only one site is under consideration, at least two public hearings must be held in that community. Fourteen-day notice of the hearing must be given through radio, television, and newspapers of general circulation, and to school districts, library districts, local business organizations and any person or property owner within a one-half mile radius of the facility.

Operational Advisory Boards. The DSHS must work with local communities to develop and implement operational advisory boards to review and make recommendations regarding the security and operations of the secure community transition facility and conditions with respect to any resident proposed to be placed in the facility.

Violations Policy. The DSHS must develop a reporting policy requiring written documentation by the DSHS and service providers of all violations, and establishing criteria for returning a violator to the SCC or a step-down facility. Serious violations, including the commission of a criminal offense, or unlawful drug use or possession, require that the person be immediately returned to the SCC and revocation or modification procedures initiated, unless the department makes a good cause showing why these proceedings should not be initiated. Any contract with a service provider must include a requirement that the contractor report any known violations, and the secretary shall give great weight to the contractor's record in determining whether to renew or renegotiate a contract with that provider.

Local Government Planning Process. Each county must, by September 1, 2002, adopt a countywide planning policy to establish the process for the siting and equitable distribution of secure community transition facilities within the county and the cities located in whole or in part within the county. Counties planning under the GMA may integrate this requirement with their GMA planning process. The policy must address the location of existing secure community transition facilities, the impacts of existing secure community transition facilities on the communities where they are located, the incremental impacts of siting additional secure community transition facilities in these communities, a proposed

allocation for future facilities, and the coordination of development regulations to ensure that siting of these facilities can be achieved. The policy must be consistent with the siting criteria and require that any conditional use permit or other development application process not exceed 60 days in length and provide for an appeal process.

Within six months after the adoption of the countywide planning policy, the county and each city within the county must adopt development regulations implementing the policy through revisions to their comprehensive plan and development regulations.

The definition of essential public facilities includes secure community transition facilities.

Appropriation: *None.*

Fiscal Note: *Requested on March 20, 2001.*

Effective Date: *The bill contains an emergency clause and takes effect immediately.*