

SENATE BILL REPORT

SB 5845

As Reported By Senate Committee On:
Human Services & Corrections, February 22, 2001

Title: An act relating to the siting and oversight of facilities for the treatment and housing of sexually violent predators.

Brief Description: Regulating siting of sex offender treatment facilities.

Sponsors: Senators Fraser, Costa, Long, Winsley and Kohl-Welles.

Brief History:

Committee Activity: Human Services & Corrections: 2/14/01, 2/22/01 [DPS-WM].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5845 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hargrove, Chair; Costa, Vice Chair; Carlson, Franklin, Kastama, Kohl-Welles, Long and Stevens.

Staff: Fara Daun (786-7459)

Background: In 1990, Washington State enacted the Community Protection Act to provide for civil commitment of sexually violent predators following their release from criminal confinement. Persons committed under this statute are confined in the Special Commitment Center (SCC), which is operated by the Department of Social and Health Services (DSHS).

In 1995, the Washington Supreme Court ruled that for the program to be constitutional, the state must provide an opportunity for release to a less restrictive alternative (LRA) for those persons who a court or jury determined were appropriate for an LRA. The Legislature amended the law to provide for consideration of an LRA by the courts either when the state recommends it or when the person petitions over the state's objections. Five of the approximately 70 persons committed under this provision have been conditionally released to LRAs. There are about 60 persons housed at the SCC awaiting civil commitment trials. Persons awaiting a civil commitment trial are not eligible for an LRA.

The Community Protection Act has been in place long enough now that a growing number of civilly committed persons are nearing the need for an LRA placement. Most sexually violent predators do not have appropriate family placements and so must be placed elsewhere in the community. An LRA placement can be made only after a court orders it and the conditions of the placement meet the statutory requirements. Washington is under a federal court injunction to improve treatment and provide less restrictive placements in the community.

Summary of Substitute Bill: The Secretary of DSHS must adopt a rule that balances average law enforcement response time against distance from risk potential activities. The rule must endeavor to achieve a maximum five minute response time and sites may not be in direct proximity to risk potential activities or facilities in existence at the time the site is listed for consideration. The rule must specify how DSHS will measure distance. The rule must establish a method for analyzing and comparing the remaining public safety, site, and programming criteria and must have its analysis available at public hearings related to siting.

The secretary must report to the Legislature whether there is a significant group of potential sites beyond an average five minute response time but more than two miles from any risk-potential activities, and report whether the criteria should be changed.

To be listed for consideration, a property must meet the distance requirements set out in rule, must be available for lease or purchase in the required time, reliable security and back-up systems must be available, and appropriate permitting must be available under the local zoning laws.

DSHS must analyze and compare sites that meet the minimum criteria according to the method established in rule. Minimum public safety, site, and program criteria are specified and are based on the DSHS final criteria published in November 2000. Entry level or trainee personnel must be supervised by more experienced personnel. The facility must have minimum security, alarm, and back-up systems including generator systems. The systems must be commercial grade, tamper-proof, and have panic devices for staff. There must be land and cellular telephone access and radio back-up.

New secure facilities may only be operated following appropriate public participation. This includes two public hearings in each of the three finalist communities and at least one more public hearing in the selected community. If only one site is under consideration, at least two public hearings must be held in that community. Fourteen days notice of the hearing must be given through radio, television and newspapers of general circulation, and to local persons and organizations.

The secretary must assist local communities that wish to develop operational advisory boards. The boards may review and make recommendations regarding the security and operations of the secure facility and may make recommendations with regard to conditions or modifications necessary with relation to any person the secretary proposes to house in the facility.

Violations of conditions must be reported to the department and any person who commits a serious violation must be immediately returned to the Special Commitment Center, the court must be notified, and revocation or modification procedures initiated, unless DSHS shows good cause why the LRA should not be revoked or modified. Where DSHS contracts with a provider to operate a secure facility, great weight must be given to the provider's past record related to violations of conditions.

DSHS must work with local jurisdictions to develop locations for secure facilities. Secure facilities are essential public facilities and every county must develop a county wide plan in coordination with the cities and DSHS by September 1, 2002. Growth Management Act counties may use their Growth Management Act processes. The planning process must consider the location and impact of the secure facilities, equitable distribution of secure

facilities, and coordination of regulations. The plan must be consistent with the siting criteria and allow permitting within 60 days. Cities in the county must update their plans to reflect the changes in the county plan.

Substitute Bill Compared to Original Bill: The substitute clarifies legislative intent, simplifies and clarifies rulemaking, siting criteria, and security system requirements. Each county must develop a county wide plan in coordination with the cities and DSHS by September 1, 2002 . The considerations and minimum requirements of the plan are specified. Cities in the county must update their plans to reflect the changes in the county plan.

Appropriation: None.

Fiscal Note: Requested on February 6, 2001.

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

Testimony For: Legislation is needed because of the way DSHS has attempted to site facilities. The current method does not provide for sufficient time for communities to plan, or for sufficient public participation in the process. DSHS is in a difficult position, and these facilities must be sited, but local people have the best information on sites in their communities. DSHS must be required to act on the information it receives in the public process. The facilities cannot be excluded; they are essential public facilities and must be sited. Rural cities do not have the emergency personnel to house a site like this and DSHS must consider the burden of other facilities in the county. The state should pay the extra cost of law enforcement to counties. There should be penalties if DSHS fails to comply with the requirements. The bill does much to provide the guidelines that DSHS needs. Public notice is critical. Operational advisory board language should be strengthened. Public safety must be the primary criteria. Criteria are important but as listed, they may be too limiting.

Testimony Against: Criteria related to escorts away from the facility do not allow the court discretion to "step down" the supervision as a person progresses. A definition of serious violation is not needed as there is a process for revocation in the code.

Testified: Senator Karen Fraser, sponsor; Diane Oberquell, Thurston Co. Commissioner, Washington Association of Counties (pro with concerns); Jim Hill, Mayor, Medical Lake (pro with comments); Judy Abbott, Medical Lake City Council (pro); Steve Albrecht, MD, Thurston County citizen (pro); Ralph Murphy, Thurston County citizen (pro); Kathleen Swan, citizen (questions); Suzanne Brown, Washington Coalition of Sexual Assault Programs (pro); Heather Lechner, Washington Association of Criminal Defense Lawyers and Washington Defenders Association (concerns).