
ENGROSSED SUBSTITUTE SENATE BILL 5845

State of Washington

57th Legislature

2001 Regular Session

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

READ FIRST TIME 02/26/01.

1 AN ACT Relating to the siting and oversight of facilities for the
2 treatment and housing of sexually violent predators; amending RCW
3 71.09.020 and 36.70A.200; adding new sections to chapter 71.09 RCW;
4 adding a new section to chapter 36.70A RCW; adding a new section to
5 chapter 36.70 RCW; creating new sections; prescribing penalties; and
6 declaring an emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** (1) The legislature recognizes that the
9 individualized treatment required for constitutional civil commitment
10 includes the realistic possibility of release to a less restrictive
11 alternative than total confinement in appropriate cases. The
12 legislature finds that most persons civilly committed under chapter
13 71.09 RCW who become eligible for release to a less restrictive
14 alternative do not have appropriate housing and that the lack of
15 housing may unduly restrict the person's ability to move to a less
16 restrictive alternative placement. The legislature also finds that
17 these facilities are essential public facilities, are subject to public
18 protest upon siting, and that some cities and counties have imposed
19 moratoriums on zoning and permitting processes. The legislature

1 further finds that this reaction hampers its ability and the ability of
2 the department of social and health services to comply with
3 constitutional and statutory requirements and with court orders to
4 create housing for less restrictive alternative placements. The
5 legislature, therefore, intends to provide statewide guidance for the
6 siting of less restrictive alternative housing for persons placed on
7 less restrictive alternative placements under chapter 71.09 RCW.

8 (2) It is the intent of the legislature to:

9 (a) Enhance public safety and maximize the potential for successful
10 treatment of sexually violent predators through the tightly managed use
11 of less restrictive alternatives in community-based secure community
12 transition facilities;

13 (b) Maximize the safety of communities in which secure community
14 transition facilities are located and ensure public input into secure
15 community transition facilities by enabling community participation in
16 decisions involving these essential public facilities;

17 (c) Comply with federal court orders and require the siting of less
18 restrictive alternative housing facilities and to preclude the
19 possibility that the department of social and health services would be
20 unable to site a facility due to local moratoriums and requirements;

21 (d) Require the department to work with local jurisdictions to
22 address specific local concerns and develop zoning requirements and
23 development regulations that balance the need for siting with public
24 safety; and

25 (e) Improve public safety by strengthening the safeguards in
26 placement, oversight, and monitoring of the persons released to a less
27 restrictive alternative in a secure community transition facility, and
28 by establishing minimum standards for the siting and operation of
29 secure community transition facilities.

30 (3) The legislature finds that community participation in siting
31 and oversight is vital to the success of secure community transition
32 facilities for less restrictive alternatives.

33 **Sec. 2.** RCW 71.09.020 and 1995 c 216 s 1 are each amended to read
34 as follows:

35 Unless the context clearly requires otherwise, the definitions in
36 this section apply throughout this chapter.

37 (1) (~~"Sexually violent predator" means any person who has been~~
38 ~~convicted of or charged with a crime of sexual violence and who suffers~~

1 from a mental abnormality or personality disorder which makes the
2 person likely to engage in predatory acts of sexual violence if not
3 confined in a secure facility.

4 (2) ~~"Mental abnormality" means a congenital or acquired condition~~
5 ~~affecting the emotional or volitional capacity which predisposes the~~
6 ~~person to the commission of criminal sexual acts in a degree~~
7 ~~constituting such person a menace to the health and safety of others.)~~
8 "Department" means the department of social and health services.

9 (2) "Less restrictive alternative" means court-ordered treatment in
10 a setting less restrictive than total confinement.

11 (3) "Likely to engage in predatory acts of sexual violence" means
12 that the person more probably than not will engage in such acts. Such
13 likelihood must be evidenced by a recent overt act if the person is not
14 totally confined at the time the petition is filed under RCW 71.09.030.

15 (4) "Mental abnormality" means a congenital or acquired condition
16 affecting the emotional or volitional capacity which predisposes the
17 person to the commission of criminal sexual acts in a degree
18 constituting such person a menace to the health and safety of others.

19 (5) "Predatory" means acts directed towards strangers or
20 individuals with whom a relationship has been established or promoted
21 for the primary purpose of victimization.

22 ((+5)) (6) "Recent overt act" means any act that has either caused
23 harm of a sexually violent nature or creates a reasonable apprehension
24 of such harm.

25 ((+6)) (7) "Risk potential activity" or "risk potential facility"
26 means an activity or facility that provides a higher incidence of risk
27 to the public from persons conditionally released from the special
28 commitment center. Risk potential activities and facilities include:
29 Public and private schools, school bus stops, licensed day care and
30 licensed preschool facilities, public parks, publicly dedicated trails,
31 sports fields, playgrounds, recreational and community centers,
32 churches, synagogues, temples, mosques, and public libraries.

33 (8) "Secretary" means the secretary of social and health services
34 or the secretary's designee.

35 (9) "Secure facility" means a residential facility for persons
36 civilly confined under the provisions of this chapter. A secure
37 facility is a facility that provides supervision and sex offender
38 treatment services in a total confinement setting. Secure facilities

1 include the special commitment center and any similar facility for
2 males or females designated as a secure facility by the secretary.

3 (10) "Secure community transition facility" means a residential
4 facility for persons civilly committed and conditionally released to a
5 less restrictive alternative under this chapter. A secure community
6 transition facility has supervision, security, and either provides or
7 ensures the provision of sex offender treatment services. Secure
8 community transition facilities include but are not limited to any
9 step-down facility and any community-based housing established under
10 this chapter and operated by the secretary or under contract with the
11 secretary.

12 (11) "Sexually violent offense" means an act committed on, before,
13 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as
14 rape in the first degree, rape in the second degree by forcible
15 compulsion, rape of a child in the first or second degree, statutory
16 rape in the first or second degree, indecent liberties by forcible
17 compulsion, indecent liberties against a child under age fourteen,
18 incest against a child under age fourteen, or child molestation in the
19 first or second degree; (b) a felony offense in effect at any time
20 prior to July 1, 1990, that is comparable to a sexually violent offense
21 as defined in (a) of this subsection, or any federal or out-of-state
22 conviction for a felony offense that under the laws of this state would
23 be a sexually violent offense as defined in this subsection; (c) an act
24 of murder in the first or second degree, assault in the first or second
25 degree, assault of a child in the first or second degree, kidnapping in
26 the first or second degree, burglary in the first degree, residential
27 burglary, or unlawful imprisonment, which act, either at the time of
28 sentencing for the offense or subsequently during civil commitment
29 proceedings pursuant to chapter 71.09 RCW, has been determined beyond
30 a reasonable doubt to have been sexually motivated, as that term is
31 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28
32 RCW, that is an attempt, criminal solicitation, or criminal conspiracy
33 to commit one of the felonies designated in (a), (b), or (c) of this
34 subsection.

35 ~~((7) "Less restrictive alternative" means court-ordered treatment~~
36 ~~in a setting less restrictive than total confinement.~~

37 ~~(8) "Secretary" means the secretary of social and health services~~
38 ~~or his or her designee.))~~

1 (12) "Sexually violent predator" means any person who has been
2 convicted of or charged with a crime of sexual violence and who suffers
3 from a mental abnormality or personality disorder which makes the
4 person likely to engage in predatory acts of sexual violence if not
5 confined in a secure facility.

6 (13) "Step-down facility" means any secure community transition
7 facility that provides residence for more than five persons.

8 NEW SECTION. Sec. 3. A new section is added to chapter 71.09 RCW
9 to read as follows:

10 (1) The secretary shall adopt rules that balance the average
11 response time of emergency services to the general area of the proposed
12 facility against the proximity of the proposed site to risk potential
13 activities and facilities in existence at the time the site is listed
14 for consideration.

15 (2) In balancing the competing criteria of proximity and response
16 time the rule shall endeavor to achieve an average law enforcement
17 response time not greater than five minutes and in no case shall the
18 rule permit location of a facility adjacent to, immediately across a
19 street or parking lot from, or within the line of sight of a risk
20 potential activity or facility in existence at the time a site is
21 listed for consideration. "Within the line of sight" means that it is
22 possible to reasonably visually distinguish and recognize individuals.

23 (3) The rule shall require that great weight be given to sites that
24 are the farthest removed from any risk potential activity.

25 (4) The rule shall specify how distance from the location is
26 measured and any variations in the measurement based on the size of the
27 property within which a proposed facility is to be located.

28 (5) The rule shall establish a method to analyze and compare the
29 criteria for each site in terms of public safety and security, site
30 characteristics, and program components. In making a decision
31 regarding a site following the analysis and comparison, the secretary
32 shall give priority to public safety and security considerations. The
33 analysis and comparison of the criteria are to be documented and made
34 available at the public hearings prescribed in section 7 of this act.

35 (6) The rule shall contain a schedule of monetary penalties for
36 contractors operating secure community transition facilities, not to
37 exceed the total compensation set forth in the contract, and include

1 provisions for termination of all contracts with a service provider
2 that has repeated or serious violations of section 9 of this act.

3 NEW SECTION. **Sec. 4.** By December 1, 2001, the secretary of the
4 department of social and health services shall determine and report to
5 the legislature whether there is a significant group of potential
6 locations that are outside of a five-minute law enforcement response
7 time zone that are more than two miles from any risk potential
8 activities and whether, in the secretary's judgment, the legislature
9 should require the rule to be revised to permit consideration of these
10 properties.

11 NEW SECTION. **Sec. 5.** A new section is added to chapter 71.09 RCW
12 to read as follows:

13 The secretary shall establish criteria for the siting of secure
14 community transition facilities which shall include at least the
15 following minimum requirements:

16 (1) Any real property listed for consideration for the location of
17 or use as a secure community transition facility must meet all of the
18 following criteria:

19 (a) The proximity and response time criteria established under
20 section 3 of this act;

21 (b) The site or building is available for lease for the anticipated
22 use period or for purchase;

23 (c) Security monitoring services and appropriate back-up systems
24 are available and reliable;

25 (d) Appropriate mental health and sex offender treatment providers
26 must be available within a reasonable commute; and

27 (e) Appropriate permitting for a secure community transition
28 facility must be possible under the zoning code of the local
29 jurisdiction.

30 (2) For sites which meet the criteria of subsection (1) of this
31 section, the department shall analyze and compare the criteria in
32 subsections (3) through (5) of this section using the method
33 established in section 3 of this act.

34 (3) Public safety and security criteria shall include at least the
35 following:

36 (a) Whether limited visibility between the facility and adjacent
37 properties can be achieved prior to placement of any person;

1 (b) The distance from, and number of, risk potential activities and
2 facilities, as measured using the rules adopted under section 3 of this
3 act;

4 (c) The existence of or ability to establish barriers between the
5 site and the risk potential facilities and activities;

6 (d) Suitability of the buildings to be used for the secure
7 community transition facility with regard to existing or feasibly
8 modified features; and

9 (e) The availability of electronic monitoring that allows a
10 resident's location to be determined with specificity.

11 (4) Site characteristics criteria shall include at least the
12 following:

13 (a) Reasonableness of rental, lease, or sale terms including length
14 and renewability of a lease or rental agreement;

15 (b) Traffic and access patterns associated with the real property;

16 (c) Feasibility of complying with zoning requirements within the
17 necessary time frame; and

18 (d) A contractor or contractors are available to install, monitor,
19 and repair the necessary security and alarm systems.

20 (5) Program characteristics criteria shall include at least the
21 following:

22 (a) Reasonable proximity to available medical, mental health, sex
23 offender, and chemical dependency treatment providers and facilities;

24 (b) Suitability of the location for programming, staffing, and
25 support considerations;

26 (c) Proximity to employment, educational, vocational, and other
27 treatment plan components; and

28 (d) In facilities housing five or fewer residents, a minimum
29 staffing ratio of one staff per resident during normal waking hours and
30 two awake staff during normal sleeping hours. In no case shall all
31 staff on a shift be persons classified as entry or trainee level staff.

32 (6) Unless otherwise ordered by the court, at least one staff
33 member, or other court-authorized and department-approved person must
34 escort each resident when the resident leaves the site for
35 appointments, employment, or other approved activities. Escorting
36 persons must supervise the resident closely and maintain close
37 proximity to the resident.

38 (7) For purposes of this section "available" or "availability" of
39 qualified treatment providers includes provider qualifications and

1 willingness to provide services, average commute time, and cost of
2 services.

3 NEW SECTION. **Sec. 6.** A new section is added to chapter 71.09 RCW
4 to read as follows:

5 Security systems for secure community transition facilities housing
6 five or fewer residents shall meet the following minimum
7 qualifications:

8 (1)(a) The security panel must be a commercial grade panel with
9 tamper-proof switches and a key-lock to prevent unauthorized access.

10 (b) There must be an emergency electrical supply system which shall
11 include a battery back-up system and a generator.

12 (2) The system must include personal panic devices for all staff.

13 (3) The security system must be capable of being monitored and
14 signaled either by telephone through either a land or cellular
15 telephone system or by private radio network in the event of a total
16 dial-tone failure or through equivalent technologies.

17 (4) The department shall issue photo-identification badges to all
18 staff which must be worn at all times.

19 NEW SECTION. **Sec. 7.** A new section is added to chapter 71.09 RCW
20 to read as follows:

21 (1) Whenever the department of social and health services operates,
22 or the secretary enters a contract to operate, a secure community
23 transition facility, the secure community transition facility may be
24 operated only after the public notification and opportunities for
25 review and comment as required by this section.

26 (2) The secretary shall establish a process for early and
27 continuous public participation in establishing or relocating secure
28 community transition facilities. The process shall include, at a
29 minimum, public meetings in the local communities affected, as well as
30 opportunities for written and oral comments, in the following manner:

31 (a) If there are more than three sites initially selected as
32 potential locations and the selection process by the secretary or a
33 service provider reduces the number of possible sites for a secure
34 community transition facility to no fewer than three, the secretary or
35 the chief operating officer of the service provider shall notify the
36 public of the possible siting and hold at least two public hearings in

1 each community where a secure community transition facility may be
2 sited.

3 (b) When the secretary or service provider has determined the
4 secure community transition facility's location, the secretary or the
5 chief operating officer of the service provider shall hold at least one
6 additional public hearing in the community where the secure community
7 transition facility will be sited.

8 (c) When the secretary has entered negotiations with a service
9 provider and only one site is under consideration, then at least two
10 public hearings shall be held.

11 (d) To provide adequate notice of, and opportunity for interested
12 persons to comment on, a proposed location, the secretary or the chief
13 operating officer of the service provider shall provide at least
14 fourteen days' advance notice of the meeting to all newspapers of
15 general circulation in the community, all radio and television stations
16 generally available to persons in the community, any school district in
17 which the secure community transition facility would be sited or whose
18 boundary is within two miles of a proposed secure community transition
19 facility, any library district in which the secure community transition
20 facility would be sited, local business or fraternal organizations that
21 request notification from the secretary or agency, and any person or
22 property owner within a one-half mile radius of the proposed secure
23 community transition facility. Before initiating this process, the
24 department of social and health services shall contact local government
25 planning agencies in the communities containing the proposed secure
26 community transition facility. The department of social and health
27 services shall coordinate with local government agencies to ensure that
28 opportunities are provided for effective citizen input and to reduce
29 the duplication of notice and meetings.

30 (3) Except as otherwise provided by law, this section applies only
31 to secure community transition facilities sited after the effective
32 date of this act.

33 NEW SECTION. **Sec. 8.** A new section is added to chapter 71.09 RCW
34 to read as follows:

35 (1) The secretary shall develop a process with local governments
36 that allows each community in which a secure community transition
37 facility is located to establish operational advisory boards for the
38 secure community transition facilities. The department of social and

1 health services may conduct community awareness activities to publicize
2 this opportunity. The operational advisory boards developed under this
3 section shall be implemented following the decision to locate a secure
4 community transition facility in a particular community.

5 (2) The operational advisory boards may review and make
6 recommendations regarding the security and operations of the secure
7 community transition facility and conditions or modifications necessary
8 with relation to any person who the secretary proposes to place in the
9 secure community transition facility.

10 (3) The operational advisory boards, their members, and any agency
11 represented by a member shall not be liable in any cause of action as
12 a result of its recommendations unless the advisory board acts with
13 gross negligence or bad faith in making a recommendation.

14 (4) Members of a board shall be reimbursed for travel expenses as
15 provided in RCW 43.03.050 and 43.03.060.

16 NEW SECTION. **Sec. 9.** A new section is added to chapter 71.09 RCW
17 to read as follows:

18 (1) The secretary shall adopt a violation reporting policy for
19 persons conditionally released to less restrictive alternative
20 placements in secure community transition facilities. The policy shall
21 require written documentation by the department of social and health
22 services and service providers of all violations of conditions set by
23 the department of social and health services, the department of
24 corrections, or the court and establish criteria for returning a
25 violator to the special commitment center or a step-down facility. Any
26 conditionally released person who commits a serious violation of
27 conditions shall be returned to the special commitment center and the
28 court shall be notified immediately and the court shall initiate
29 proceedings under RCW 71.09.098 to revoke or modify the less
30 restrictive alternative placement unless the department makes a good
31 cause showing why proceedings should not be initiated. For the
32 purposes of this section, "serious violation" includes but is not
33 limited to:

34 (a) The commission of any criminal offense;

35 (b) Any unlawful use or possession of a controlled substance; and

36 (c) Any violation of conditions targeted to address the person's
37 documented pattern of offense that increases the risk to public safety.

1 When a person is released to a less restrictive alternative in a
2 secure community transition facility under this chapter and is under
3 the supervision of the department of corrections, notice of any
4 violation of the person's conditions of release must also be made to
5 the department of corrections.

6 (2) Whenever the secretary contracts with a service provider to
7 operate a secure community transition facility, the contract shall
8 include a requirement that the service provider must report to the
9 department of social and health services any known violation of
10 conditions committed by any resident of the secure community transition
11 facility.

12 (3) The secretary shall document in writing all violations,
13 penalties, actions by the department of social and health services to
14 remove persons from a secure community transition facility, and
15 contract terminations. The secretary shall give great weight to a
16 service provider's record of violations, penalties, actions by the
17 department of social and health services or the department of
18 corrections to remove persons from a secure community transition
19 facility, and contract terminations in determining to execute, renew,
20 or renegotiate a contract with a service provider.

21 NEW SECTION. **Sec. 10.** A new section is added to chapter 36.70A
22 RCW to read as follows:

23 (1) On or before September 1, 2002, the legislative authority of
24 each county in the state shall adopt a countywide planning policy to
25 establish the process for siting and to provide for an equitable
26 distribution of secure community transition facilities as defined in
27 RCW 71.09.020 within the county and the cities located in whole or in
28 part within the county. The countywide planning policy required by
29 this section shall be adopted in cooperation with the cities located in
30 whole or in part within the county. Counties planning under the growth
31 management act may integrate the planning policy required in the
32 section with their growth management act planning process.

33 (2) The department of social and health services shall be notified
34 by each county of its intent to begin the countywide planning policy
35 process required by this section and the department shall be invited to
36 participate in this process.

37 (3) The countywide planning policy required by this section shall,
38 at a minimum, address the following:

1 (a) The location of existing secure community transition
2 facilities;

3 (b) The social, economic, and other impacts of the existing secure
4 community transition facilities on the communities in which they are
5 located and the incremental impacts of siting additional secure
6 community transition facilities in these communities;

7 (c) A proposed allocation for the siting of future secure community
8 transition facilities among the county and the cities located in whole
9 or in part within the county; and

10 (d) Coordination of development regulations, including but not
11 limited to zoning regulations and design standards, to ensure that the
12 proposed allocation of future secure community transition facilities
13 can be achieved.

14 (4) The countywide planning policy required by this section shall:

15 (a) Be consistent with the siting criteria established pursuant to
16 sections 3 and 5 through 7 of this act;

17 (b) Require any local conditional use permit or other development
18 application process not to exceed sixty days in length and provide for
19 an appeal process.

20 (5) Within six months of the date the countywide planning policy
21 required by subsection (1) of this section is adopted, the county and
22 each city within the county shall adopt development regulations
23 implementing the policy adopted under this section through appropriate
24 revisions to their comprehensive plan and development regulations.

25 NEW SECTION. **Sec. 11.** A new section is added to chapter 36.70 RCW
26 to read as follows:

27 Counties planning under this chapter must adopt a countywide
28 planning policy for the siting of secure community transition
29 facilities that complies with the timelines and requirements of section
30 10 of this act.

31 **Sec. 12.** RCW 36.70A.200 and 1998 c 171 s 3 are each amended to
32 read as follows:

33 (1) The comprehensive plan of each county and city that is planning
34 under this chapter shall include a process for identifying and siting
35 essential public facilities. Essential public facilities include those
36 facilities that are typically difficult to site, such as airports,
37 state education facilities and state or regional transportation

1 facilities as defined in RCW 47.06.140, state and local correctional
2 facilities, solid waste handling facilities, and in-patient facilities
3 including substance abuse facilities, mental health facilities, ((and))
4 group homes, and secure community transition facilities as defined in
5 RCW 71.09.020.

6 (2) The office of financial management shall maintain a list of
7 those essential state public facilities that are required or likely to
8 be built within the next six years. The office of financial management
9 may at any time add facilities to the list. No local comprehensive
10 plan or development regulation may preclude the siting of essential
11 public facilities.

12 NEW SECTION. Sec. 13. A new section is added to chapter 71.09 RCW
13 to read as follows:

14 Nothing in this act shall operate to restrict a court's authority
15 to make less restrictive alternative placements to a committed person's
16 individual residence. A court-ordered less restrictive alternative
17 placement to a committed person's individual residence is not a less
18 restrictive placement to a secure community transition facility.

19 NEW SECTION. Sec. 14. This act is necessary for the immediate
20 preservation of the public peace, health, or safety, or support of the
21 state government and its existing public institutions, and takes effect
22 immediately.

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