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SENATE BILL 5845

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State of Washington

57th Legislature

2001 Regular Session

By Senators Fraser, Costa, Long, Winsley and Kohl-Welles

Read first time 02/05/2001. Referred to Committee on Human Services & Corrections.

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 creating a new section; prescribing penalties; and declaring an  
5 emergency.

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

7 NEW SECTION. **Sec. 1.** (1) It is the intent of the legislature to:

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

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

16 (c) Improve public safety by strengthening the safeguards in  
17 placement, oversight, and monitoring of the persons released to a less  
18 restrictive alternative in a secure residential facility, and by

1 establishing minimum standards for the siting and operation of secure  
2 residential facilities.

3 (2) The legislature finds that community participation in siting  
4 and oversight is vital to the success of secure facilities for less  
5 restrictive alternatives.

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

8 Unless the context clearly requires otherwise, the definitions in  
9 this section apply throughout this chapter.

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

15 ~~(2) "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 ~~(3)) "Less restrictive alternative" means court-ordered treatment~~  
20 ~~in a setting less restrictive than total confinement.~~

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

25 (3) "Mental abnormality" means a congenital or acquired condition  
26 affecting the emotional or volitional capacity which predisposes the  
27 person to the commission of criminal sexual acts in a degree  
28 constituting such person a menace to the health and safety of others.

29 (4) "Predatory" means acts directed towards strangers or  
30 individuals with whom a relationship has been established or promoted  
31 for the primary purpose of victimization.

32 (5) "Recent overt act" means any act that has either caused harm of  
33 a sexually violent nature or creates a reasonable apprehension of such  
34 harm.

35 (6) "Risk potential activity" or "risk potential facility" means an  
36 activity or facility that provides a higher incidence of risk to the  
37 public from persons conditionally released from the special commitment  
38 center. Risk potential activities and facilities include: Public and

1 private schools, school bus stops, licensed day care and preschool  
2 facilities, public parks, publicly dedicated trails, sports fields,  
3 playgrounds, recreational and community centers, churches, synagogues,  
4 temples, mosques, and public libraries.

5 (7) "Secretary" means the secretary of social and health services  
6 or the secretary's designee.

7 (8) "Secure facility" or "secure residential facility" means a  
8 residential facility for one or more persons civilly committed under  
9 this chapter that has supervision, perimeter controls, and either  
10 provides or ensures the provision of sex offender treatment services.  
11 Secure facilities include but are not limited to the special commitment  
12 center, any step-down facility, and any community-based housing  
13 established under this chapter and operated by the secretary or under  
14 contract with the secretary for the housing or residential treatment of  
15 persons conditionally released from the special commitment center.

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

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

3       (~~(8) "Secretary" means the secretary of social and health services~~  
4 ~~or his or her designee.~~) (10) "Sexually violent predator" means any  
5 person who has been convicted of or charged with a crime of sexual  
6 violence and who suffers from a mental abnormality or personality  
7 disorder which makes the person likely to engage in predatory acts of  
8 sexual violence if not confined in a secure facility.

9       (11) "Step-down facility" means any secure facility that provides  
10 residence for more than five persons as a transition from the special  
11 commitment center to a less restrictive placement in the community.

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

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

19       (2) In balancing the competing criteria of proximity and response  
20 time the rule shall not select an average law enforcement response time  
21 greater than five minutes and in no case shall the rule permit location  
22 of a facility adjacent to, immediately across a street or parking lot  
23 from, or within the line of site of a risk potential activity or  
24 facility.

25       (3) The rule-making process shall determine whether a goal of  
26 siting facilities in locations with an average law enforcement response  
27 time of not greater than three minutes is feasible and document its  
28 findings.

29       (4) Within the selected law enforcement response time, the rule  
30 shall require that preference be given to sites that are the farthest  
31 removed from any risk potential activity.

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

35       (6) By December 1, 2001, the secretary shall determine and report  
36 to the legislature whether there is a significant group of potential  
37 locations that are outside of a five-minute law enforcement response  
38 time zone that are more than two miles from any risk potential

1 activities and whether, in the secretary's judgment, the legislature  
2 should require the rule to be revised to permit consideration of these  
3 properties.

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

6 The secretary shall establish criteria for the siting of secure  
7 residential facilities which shall include at least the following  
8 minimum requirements:

9 (1) Any real property considered for the location of or use as a  
10 secure facility must meet all of the following criteria:

11 (a) The criteria set forth in section 3 of this act;

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

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

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

18 (e) Appropriate permitting for a secure facility must be possible  
19 under the zoning code of the local jurisdiction.

20 (2) For sites which meet the criteria of subsection (1) of this  
21 section, the department of social and health services shall establish  
22 a method for analyzing and comparing the criteria for each site in  
23 terms of public safety and security, site characteristics, and program  
24 components. In making a decision regarding a site following the  
25 analysis and comparison, priority shall be given to public safety and  
26 security. The analysis and comparison of the criteria are to be  
27 documented and made available at the public hearings prescribed in  
28 section 6 of this act.

29 (3) Public safety and security criteria shall include at least the  
30 following:

31 (a) Whether the site has limited visibility between the facility  
32 and adjacent properties;

33 (b) Whether unsupervised contact with the public can be limited;

34 (c) Whether the location has, or can be modified to have visual and  
35 physical barriers such as trees, fencing, or freeways to assure privacy  
36 and security of neighbors and facility residents;

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

6 (f) Average response time by fire safety and emergency medical  
7 personnel is not longer than the average of the local community;

8 (g) Suitability of the buildings to be used for the secure facility  
9 with regard to existing or feasibly modified security precautions,  
10 including size, floor plan, and staff accommodations; and

11 (h) The availability of electronic monitoring that allows a  
12 resident's location to be determined with specificity.

13 (4) Site characteristics criteria shall include at least the  
14 following:

15 (a) Overall condition of the buildings related to the health and  
16 safety of the residents and staff;

17 (b) Reasonableness of rental, lease, or sale terms including length  
18 and renewability of a lease or rental agreement;

19 (c) Traffic and access patterns associated with the real property;

20 (d) Feasibility of complying with zoning requirements within the  
21 necessary time frame; and

22 (e) A contractor or contractors are available to install, monitor,  
23 and repair security and alarm systems specified in section 5 of this  
24 act.

25 (5) Program characteristics criteria shall include at least the  
26 following:

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

29 (b) Suitability of the location for programming considerations;

30 (c) Suitability of the location for staffing considerations;

31 (d) Availability of support from the special commitment center or,  
32 in the case of facilities serving one to five conditionally released  
33 persons, support from the step-down facility;

34 (e) Proximity to employment, educational, vocational, and other  
35 treatment plan components;

36 (f) Reasonable access to community support groups;

37 (g) Program staffing by trained professionals with minimum  
38 qualifications equivalent to those specified by the state residential  
39 rehabilitation counselor I, II, or III job classes. Prior to

1 assignment to duties in a residential less restrictive alternative  
2 under this chapter, each staff member must successfully complete a  
3 department-approved training curriculum that includes programming and  
4 treatment requirements specific to sexually violent predators. All  
5 staff must participate in ongoing training in issues related to  
6 sexually violent predators. Training may take the form of in-service  
7 training programs;

8 (h) In facilities housing five or fewer residents, a minimum  
9 staffing ratio of one staff per resident during normal waking hours and  
10 two awake staff during normal sleeping hours. In no case shall all  
11 staff on a shift be persons classified as residential rehabilitation  
12 counselor I or persons with equivalent qualifications; and

13 (i) At least one staff member, or other court-appointed and  
14 department-approved person must escort each resident when the resident  
15 leaves the site for appointments, employment, or other approved  
16 activities. Escorting persons must supervise the resident closely and  
17 maintain close proximity to the resident.

18 (6) For purposes of this section "available" or "availability" of  
19 qualified treatment providers includes provider qualifications and  
20 willingness to provide services, average commute time, and cost of  
21 services.

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

24 Security systems for secure residential facilities housing five or  
25 fewer residents shall meet the following minimum qualifications.

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

28 (b) The panel and signal must report all local conditions and  
29 disturbances to the alarm center monitoring station including, but not  
30 limited to tampering with secured openings, doors, windows, attic and  
31 crawl space hatches, glass breakage, and motion detectors. The system  
32 must activate localized notification for all security breaches and  
33 report concurrently to the alarm center monitoring station for  
34 additional support.

35 (2)(a) There must be an emergency electrical supply system which  
36 shall include a generator and any converters needed to provide power  
37 for the security system and door locks, plumbing and sanitary systems,  
38 emergency lighting, and refrigerator.

1 (b) The security system must have back-up monitoring capability  
2 sufficient to provide twelve hours of standby capacity to protect  
3 against short power failures and maintain performance requirements.

4 (c) The back-up system must monitor reserve battery capacity and  
5 report low battery condition to the alarm system monitoring station  
6 with sufficient time to provide uninterrupted services for critical-  
7 path-functioning.

8 (d) The back-up system must include rechargeable batteries and an  
9 in-line emergency power generator to provide uncompromised security  
10 during extended power outages.

11 (3) The system must be computer controlled and password protected  
12 to permit off-site monitoring of secure access and levels of operation  
13 including, but not limited to arming and disarming the system,  
14 modification of codes and access levels, and ingress and egress of the  
15 facility.

16 (4) The system must include panic devices that provide listening  
17 and monitoring capabilities to an off-site station for summoning  
18 emergency support. Panic devices must be issued to all staff and be  
19 capable of being mounted on a desk or worn on the person as staff  
20 chooses.

21 (5)(a) Ingress and egress must be controlled through a computer  
22 controlled card-swipe and reader system capable of reading department-  
23 issued photo-identification cards. Each perimeter door and hatch must  
24 be secured with electronic locks and appropriate hardware, including  
25 card-swipe readers to secure the entry point. Card-swipe readers must  
26 record individual identification, time, and frequency of access.

27 (b) The card-swipe system must have a back-up system with twelve  
28 hours of power supply and be integrated with the back-up generator  
29 system for extended power outages.

30 (6)(a) All doors and windows must be electronically secured with a  
31 contact system to prevent unauthorized opening. All windows must be  
32 armor coated to reduce the risk of breakage and unauthorized use.

33 (b) All attic and crawl spaces must be fitted with secure lockable  
34 coverings and equipped with remote contacts for preventing unauthorized  
35 use.

36 (c) Only a departmentally issued employee identification badge with  
37 an appropriate access level coding may be used to arm or disarm the  
38 system.



1 (7) The security system must be capable of being monitored and  
2 signaled either by telephone through either a land or cellular  
3 telephone system or by private radio network in the event of a total  
4 dial-tone failure.

5 (8) The department will issue photo-identification badges to all  
6 staff which must be worn at all times.

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

9 (1) Whenever the department of social and health services operates,  
10 or the secretary enters a contract to operate, a secure facility, the  
11 secure facility may be operated only after the public notification and  
12 opportunities for review and comment as required by this section.

13 (2) The secretary shall establish a process for early and  
14 continuous public participation in establishing or relocating secure  
15 facilities. The process shall include, at a minimum, public meetings  
16 in the local communities affected, as well as opportunities for written  
17 and oral comments, in the following manner:

18 (a) If there are more than three sites initially selected as  
19 potential locations and the selection process by the secretary or a  
20 service provider reduces the number of possible sites for a secure  
21 facility to no fewer than three, the secretary or the chief operating  
22 officer of the service provider shall notify the public of the possible  
23 siting and hold at least two public hearings in each community where a  
24 secure facility may be sited.

25 (b) When the secretary or service provider has determined the  
26 secure facility's location, the secretary or the chief operating  
27 officer of the service provider shall hold at least one additional  
28 public hearing in the community where the secure facility will be  
29 sited.

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

33 (d) To provide adequate notice of, and opportunity for interested  
34 persons to comment on, a proposed location, the secretary or the chief  
35 operating officer of the service provider shall provide at least  
36 fourteen days' advance notice of the meeting to all newspapers of  
37 general circulation in the community, all radio and television stations  
38 generally available to persons in the community, any school district in

1 which the secure facility would be sited or whose boundary is within  
2 two miles of a proposed secure facility, any library district in which  
3 the secure facility would be sited, local business or fraternal  
4 organizations that request notification from the secretary or agency,  
5 and any person or property owner within a one-half mile radius of the  
6 proposed secure facility. Before initiating this process, the  
7 department of social and health services shall contact local government  
8 planning agencies in the communities containing the proposed secure  
9 facility. The department of social and health services shall  
10 coordinate with local government agencies to ensure that opportunities  
11 are provided for effective citizen input and to reduce the duplication  
12 of notice and meetings.

13 (3) This section applies only to secure facilities sited after the  
14 effective date of this act.

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

17 (1) The secretary shall develop a process with local governments  
18 that allows each community in which a secure residential facility is  
19 located to establish operational advisory boards for the secure  
20 facilities. The department of social and health services may conduct  
21 community awareness activities to publicize this opportunity. The  
22 operational advisory boards developed under this section shall be  
23 implemented following the decision to locate a secure facility in a  
24 particular community.

25 (2) The operational advisory boards may review and make  
26 recommendations regarding the security and operations of the secure  
27 facility and conditions or modifications necessary with relation to any  
28 person who the secretary proposes to place in the secure facility.

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

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

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

1       (1) The secretary shall adopt a violation reporting policy for  
2 persons conditionally released to secure placements in secure  
3 facilities. The policy shall require written documentation by the  
4 department of social and health services and service providers of all  
5 violations of conditions set by the department of social and health  
6 services, the department of corrections, or the court and establish  
7 criteria for returning a violator to the special commitment center or  
8 a step-down facility. Any conditionally released person who commits a  
9 serious violation of conditions shall be returned to the special  
10 commitment center and the court shall be notified. The secretary shall  
11 not return a person to a secure facility until a new assessment has  
12 been completed and the secretary reasonably believes that the person  
13 can adhere to the conditions or until ordered by a court. For the  
14 purposes of this section, "serious violation" includes but is not  
15 limited to:

- 16       (a) The commission of any criminal offense;
- 17       (b) Any unlawful use or possession of a controlled substance; and
- 18       (c) Any violation of conditions targeted to address the person's  
19 documented pattern of offense that increases the risk to public safety.

20       When a person is released to a less restrictive alternative in a  
21 secure residential facility under this chapter and is under the  
22 supervision of the department of corrections, notice of any violation  
23 of the person's conditions of release must also be made to the  
24 department of corrections.

25       (2) Whenever the secretary contracts with a service provider to  
26 operate a secure facility, the contract shall include a requirement  
27 that the service provider must report to the department of social and  
28 health services any known violation of conditions committed by any  
29 resident of the secure facility.

30       (3) The secretary shall document in writing all violations,  
31 penalties, actions by the department of social and health services to  
32 remove persons from a secure residential facility, and contract  
33 terminations. The secretary shall give great weight to a service  
34 provider's record of violations, penalties, actions by the department  
35 of social and health services or the department of corrections to  
36 remove persons from a secure facility, and contract terminations in  
37 determining to execute, renew, or renegotiate a contract with a service  
38 provider.

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

3        The department of social and health services shall work with local  
4 jurisdictions to establish zoning for secure residential facilities.  
5 Secure residential facilities are essential public facilities under RCW  
6 36.70A.200.

7        **Sec. 10.**    RCW 36.70A.200 and 1998 c 171 s 3 are each amended to  
8 read as follows:

9        (1) The comprehensive plan of each county and city that is planning  
10 under this chapter shall include a process for identifying and siting  
11 essential public facilities. Essential public facilities include those  
12 facilities that are typically difficult to site, such as airports,  
13 state education facilities and state or regional transportation  
14 facilities as defined in RCW 47.06.140, state and local correctional  
15 facilities, solid waste handling facilities, and in-patient facilities  
16 including substance abuse facilities, mental health facilities, ((and))  
17 group homes, and secure residential facilities as defined in RCW  
18 71.09.020.

19        (2) The office of financial management shall maintain a list of  
20 those essential state public facilities that are required or likely to  
21 be built within the next six years. The office of financial management  
22 may at any time add facilities to the list. No local comprehensive  
23 plan or development regulation may preclude the siting of essential  
24 public facilities.

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

27        The secretary shall adopt rules to implement this act. The rules  
28 shall contain a schedule of monetary penalties for contractors  
29 operating secure facilities, not to exceed the total compensation set  
30 forth in the contract, and include provisions for termination of all  
31 contracts with a service provider that has repeated or serious  
32 violations of this section.

33        NEW SECTION.    **Sec. 12.**    This act is necessary for the immediate  
34 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect  
2 immediately.

--- END ---