

SB 5991 - S AMD 284

By Senators Stevens, Hargrove

ADOPTED 04/10/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 71.09.300 and 2001 2nd sp.s. c 12 s 216 are each
4 amended to read as follows:

5 ~~((1))~~ Secure community transition facilities shall meet the
6 following minimum staffing requirements:

7 (1)(a) At any time the census of a facility that accepts its first
8 resident before July 1, 2003, is six or fewer residents, the facility
9 shall maintain a minimum staffing ratio of one staff per three
10 residents during normal waking hours and one awake staff per four
11 residents during normal sleeping hours. In no case shall the staffing
12 ratio permit less than two staff per housing unit.

13 (b) At any time the census of a facility that accepts its first
14 resident on or after July 1, 2003, is six or fewer residents, the
15 facility shall maintain a minimum staffing ratio of one staff per
16 resident during normal waking hours and two awake staff per three
17 residents during normal sleeping hours. In no case shall the staffing
18 ratio permit less than two staff per housing unit.

19 ~~((b))~~ (2) At any time the census of a facility is six or fewer
20 residents, all staff shall be classified as residential rehabilitation
21 counselor II or have a classification that indicates ((a)) an
22 equivalent or higher level of skill, experience, and training.

23 ~~((c))~~ (3) Before being assigned to a facility, all staff shall
24 have training in sex offender issues, self-defense, and crisis de-
25 escalation skills in addition to departmental orientation and, as
26 appropriate, management training. All staff with resident treatment or
27 care duties must participate in ongoing in-service training.

28 ~~((d))~~ (4) All staff must pass a departmental background check and
29 the check is not subject to the limitations in chapter 9.96A RCW. A

1 person who has been convicted of a felony, or any sex offense, may not
2 be employed at the secure community transition facility or be approved
3 as an escort for a resident of the facility.

4 ~~((2) With respect to the facility established pursuant to RCW
5 71.09.250(1), the department shall, no later than December 1, 2001,
6 provide a staffing plan to the appropriate committees of the
7 legislature that will cover the growth of that facility to its full
8 capacity.))~~

9 **Sec. 2.** RCW 71.09.020 and 2002 c 68 s 4 and 2002 c 58 s 2 are each
10 reenacted and amended to read as follows:

11 Unless the context clearly requires otherwise, the definitions in
12 this section apply throughout this chapter.

13 (1) "Department" means the department of social and health
14 services.

15 (2) "Health care facility" means any hospital, hospice care center,
16 licensed or certified health care facility, health maintenance
17 organization regulated under chapter 48.46 RCW, federally qualified
18 health maintenance organization, federally approved renal dialysis
19 center or facility, or federally approved blood bank.

20 (3) "Health care practitioner" means an individual or firm licensed
21 or certified to engage actively in a regulated health profession.

22 (4) "Health care services" means those services provided by health
23 professionals licensed pursuant to RCW 18.120.020(4).

24 (5) "Health profession" means those licensed or regulated
25 professions set forth in RCW 18.120.020(4).

26 (6) "Less restrictive alternative" means court-ordered treatment in
27 a setting less restrictive than total confinement which satisfies the
28 conditions set forth in RCW 71.09.092.

29 (7) "Likely to engage in predatory acts of sexual violence if not
30 confined in a secure facility" means that the person more probably than
31 not will engage in such acts if released unconditionally from detention
32 on the sexually violent predator petition. Such likelihood must be
33 evidenced by a recent overt act if the person is not totally confined
34 at the time the petition is filed under RCW 71.09.030.

35 (8) "Mental abnormality" means a congenital or acquired condition

1 affecting the emotional or volitional capacity which predisposes the
2 person to the commission of criminal sexual acts in a degree
3 constituting such person a menace to the health and safety of others.

4 (9) "Predatory" means acts directed towards: (a) Strangers; (b)
5 individuals with whom a relationship has been established or promoted
6 for the primary purpose of victimization; or (c) persons of casual
7 acquaintance with whom no substantial personal relationship exists.

8 (10) "Recent overt act" means any act or threat that has either
9 caused harm of a sexually violent nature or creates a reasonable
10 apprehension of such harm in the mind of an objective person who knows
11 of the history and mental condition of the person engaging in the act.

12 (11) "Risk potential activity" or "risk potential facility" means
13 an activity or facility that provides a higher incidence of risk to the
14 public from persons conditionally released from the special commitment
15 center. Risk potential activities and facilities include: Public and
16 private schools, school bus stops, licensed day care and licensed
17 preschool facilities, public parks, publicly dedicated trails, sports
18 fields, playgrounds, recreational and community centers, churches,
19 synagogues, temples, mosques, public libraries, and others identified
20 by the department following the hearings on a potential site required
21 in RCW 71.09.315. For purposes of this chapter, "school bus stops"
22 does not include bus stops established primarily for public transit.

23 (12) "Secretary" means the secretary of social and health services
24 or the secretary's designee.

25 (13) "Secure facility" means a residential facility for persons
26 civilly confined under the provisions of this chapter that includes
27 security measures sufficient to protect the community. Such facilities
28 include total confinement facilities, secure community transition
29 facilities, and any residence used as a court-ordered placement under
30 RCW 71.09.096.

31 (14) "Secure community transition facility" means a residential
32 facility for persons civilly committed and conditionally released to a
33 less restrictive alternative under this chapter. A secure community
34 transition facility has supervision and security, and either provides
35 or ensures the provision of sex offender treatment services. Secure
36 community transition facilities include but are not limited to the

1 ((~~facilities~~)) facility established pursuant to RCW 71.09.250(1)(a)(i)
2 and any community-based facilities established under this chapter and
3 operated by the secretary or under contract with the secretary.

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

27 (16) "Sexually violent predator" means any person who has been
28 convicted of or charged with a crime of sexual violence and who suffers
29 from a mental abnormality or personality disorder which makes the
30 person likely to engage in predatory acts of sexual violence if not
31 confined in a secure facility.

32 (17) "Total confinement facility" means a secure facility that
33 provides supervision and sex offender treatment services in a total
34 confinement setting. Total confinement facilities include the special
35 commitment center and any similar facility designated as a ((~~secure~~))
36 total confinement facility by the secretary.

1 **Sec. 3.** RCW 71.09.250 and 2001 2nd sp.s. c 12 s 201 are each
2 amended to read as follows:

3 (1)(a) The secretary is authorized to site, construct, occupy, and
4 operate (i) a secure community transition facility on McNeil Island for
5 persons authorized to petition for a less restrictive alternative under
6 RCW 71.09.090(1) and who are conditionally released; and (ii) a special
7 commitment center on McNeil Island with up to four hundred four beds as
8 a total confinement facility under this chapter, subject to
9 appropriated funding for those purposes. The secure community
10 transition facility shall be authorized for the number of beds needed
11 to ensure compliance with the orders of the superior courts under this
12 chapter and the federal district court for the western district of
13 Washington. The total number of beds in the secure community
14 transition facility shall be limited to twenty-four, consisting of up
15 to fifteen transitional beds (~~(shall be limited to fifteen)~~) and up to
16 nine pretransitional beds. The residents occupying (~~(these)~~) the
17 transitional beds shall be the only residents eligible for transitional
18 services occurring in Pierce county. In no event shall more than
19 fifteen residents of the secure community transition facility be
20 participating in off-island transitional, educational, or employment
21 activity at the same time in Pierce county. The department shall
22 provide the Pierce county sheriff, or his or her designee, with a list
23 of the fifteen residents so designated, along with their photographs
24 and physical descriptions, and (~~(it)~~) the list shall be immediately
25 updated whenever a residential change occurs. The Pierce county
26 sheriff, or his or her designee, shall be provided an opportunity to
27 confirm the residential status of each resident leaving McNeil Island.

28 (b) For purposes of this subsection, "transitional beds" means beds
29 only for residents (~~(in halfway house status)~~) who are judged by a
30 qualified expert to be suitable to leave the island for treatment,
31 education, and employment.

32 (2)(a) The secretary is authorized to site, either within the
33 secure community transition facility established pursuant to subsection
34 (1)(a)(i) of this section, or within the special commitment center, up
35 to nine pretransitional beds.

36 (b) Residents assigned to pretransitional beds shall not be

1 permitted to leave McNeil Island for education, employment, treatment,
2 or community activities in Pierce county.

3 (c) For purposes of this subsection, "pretransitional beds" means
4 beds for residents whose progress toward a less secure residential
5 environment and transition into more complete community involvement is
6 projected to take substantially longer than a typical resident of the
7 special commitment center.

8 (3) Notwithstanding RCW 36.70A.103 or any other law, this statute
9 preempts and supersedes local plans, development regulations,
10 permitting requirements, inspection requirements, and all other laws as
11 necessary to enable the secretary to site, construct, occupy, and
12 operate a secure community transition facility on McNeil Island and a
13 total confinement facility on McNeil Island.

14 (4) To the greatest extent possible, until June 30, 2003, persons
15 who were not civilly committed from the county in which the secure
16 community transition facility established pursuant to subsection (1) of
17 this section is located may not be conditionally released to a setting
18 in that same county less restrictive than that facility.

19 (5) As of June 26, 2001, the state shall immediately cease any
20 efforts in effect on such date to site secure community transition
21 facilities, other than the facility authorized by subsection (1) of
22 this section, and shall instead site such facilities in accordance with
23 the provisions of this section.

24 (6) The department must:

25 (a) Identify the minimum and maximum number of secure community
26 transition facility beds in addition to the facility established under
27 subsection (1) of this section that may be necessary for the period of
28 May 2004 through May 2007 and provide notice of these numbers to all
29 counties by August 31, 2001; and

30 ~~(b) ((In consultation with the joint select committee established~~
31 ~~in section 225, chapter 12, Laws of 2001 2nd sp. sess.,))~~ Develop and
32 publish policy guidelines for the siting and operation of secure
33 community transition facilities ((by October 1, 2001; and

34 ~~(c) Provide a status report to the appropriate committees of the~~
35 ~~legislature by December 1, 2002, on the development of facilities under~~
36 ~~the incentive program established in RCW 71.09.255. The report shall~~
37 ~~include a projection of the anticipated number of secure community~~

1 ~~transition facility beds that will become operational between May 2004~~
2 ~~and May 2007. If it appears that an insufficient number of beds will~~
3 ~~be operational, the department's report shall recommend a progression~~
4 ~~of methods to facilitate siting in counties and cities including, if~~
5 ~~necessary, preemption of local land use planning process and other~~
6 ~~laws)).~~

7 (7)(a) The total number of secure community transition facility
8 beds that may be required to be sited in a county between June 26,
9 2001, and June 30, 2008, may be no greater than the total number of
10 persons civilly committed from that county, or detained at the special
11 commitment center under a pending civil commitment petition from that
12 county where a finding of probable cause had been made on April 1,
13 2001. The total number of secure community transition facility beds
14 required to be sited in each county between July 1, 2008, and June 30,
15 2015, may be no greater than the total number of persons civilly
16 committed from that county or detained at the special commitment center
17 under a pending civil commitment petition from that county where a
18 finding of probable cause had been made as of July 1, 2008.

19 (b) Counties and cities that provide secure community transition
20 facility beds above the maximum number that they could be required to
21 site under this subsection are eligible for a bonus grant under the
22 incentive provisions in RCW 71.09.255. The county where the special
23 commitment center is located shall receive this bonus grant for the
24 number of beds in the facility established in subsection (1) of this
25 section in excess of the maximum number established by this subsection.

26 (c) No secure community transition facilities in addition to the
27 one established in subsection (1) of this section may be required to be
28 sited in the county where the special commitment center is located
29 until after June 30, 2008, provided however, that the county and its
30 cities may elect to site additional secure community transition
31 facilities and shall be eligible under the incentive provisions of RCW
32 71.09.255 for any additional facilities meeting the requirements of
33 that section.

34 (8) In identifying potential sites within a county for the location
35 of a secure community transition facility, the department shall work
36 with and assist local governments to provide for the equitable

1 distribution of such facilities. In coordinating and deciding upon the
2 siting of secure community transition facilities, great weight shall be
3 given by the county and cities within the county to:

4 (a) The number and location of existing residential facility beds
5 operated by the department of corrections or the mental health division
6 of the department of social and health services in each jurisdiction in
7 the county; and

8 (b) The number of registered sex offenders classified as level II
9 or level III and the number of sex offenders registered as homeless
10 residing in each jurisdiction in the county.

11 (9)(a) "Equitable distribution" means siting or locating secure
12 community transition facilities in a manner that will not cause a
13 disproportionate grouping of similar facilities either in any one
14 county, or in any one jurisdiction or community within a county, as
15 relevant; and

16 (b) "Jurisdiction" means a city, town, or geographic area of a
17 county in which ((~~district~~)) distinct political or judicial authority
18 may be exercised.

19 **Sec. 4.** RCW 71.09.275 and 2001 2nd sp.s. c 12 s 211 are each
20 amended to read as follows:

21 (1) ~~((By August 1, 2001, the department must provide the
22 appropriate committees of the legislature with a transportation plan to
23 address the issues of coordinating the movement of residents of the
24 secure community transition facility established pursuant to RCW
25 71.09.250(1) between McNeil Island and the mainland with the movement
26 of others who must use the same docks or equipment within the funds
27 appropriated for this purpose.~~

28 (2)) If the department does not provide a separate vessel for
29 transporting residents of the secure community transition facility
30 established in RCW 71.09.250(1) between McNeil Island and the mainland,
31 the ((~~plan~~)) department shall ((~~include at least the following
32 components~~)):

33 (a) ((~~The~~)) Separate residents ((~~shall be separated~~)) from minors
34 and vulnerable adults, except vulnerable adults who have been found to
35 be sexually violent predators.

1 (b) (~~The~~) Not transport residents (~~shall not be transported~~)
2 during times when children are normally coming to and from the mainland
3 for school.

4 (~~(3)~~) (2) The department shall designate a separate waiting area
5 at the points of debarkation, and residents shall be required to remain
6 in this area while awaiting transportation.

7 (~~(4)~~) (3) The department shall provide law enforcement agencies
8 in the counties and cities in which residents of the secure community
9 transition facility established pursuant to RCW 71.09.250(1)(a)(i)
10 regularly participate in employment, education, or social services, or
11 through which these persons are regularly transported, with a copy of
12 the court's order of conditional release with respect to these persons.

13 **Sec. 5.** RCW 71.09.290 and 2001 2nd sp.s. c 12 s 214 are each
14 amended to read as follows:

15 The secretary shall establish policy guidelines for the siting of
16 secure community transition facilities, other than the secure community
17 transition facility established pursuant to RCW 71.09.250(1)(a)(i),
18 which shall include at least the following minimum requirements:

19 (1) The following criteria must be considered prior to any real
20 property being listed for consideration for the location of or use as
21 a secure community transition facility:

22 (a) The proximity and response time criteria established under RCW
23 71.09.285;

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

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

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

30 (e) Appropriate permitting for a secure community transition
31 facility must be possible under the zoning code of the local
32 jurisdiction.

33 (2) For sites which meet the criteria of subsection (1) of this
34 section, the department shall analyze and compare the criteria in
35 subsections (3) through (5) of this section using the method
36 established in RCW 71.09.285.

1 (3) Public safety and security criteria shall include at least the
2 following:

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

5 (b) The distance from, and number of, risk potential activities and
6 facilities, as measured using the (~~rules~~) policies adopted under RCW
7 71.09.285;

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

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

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

15 (4) Site characteristics criteria shall include at least the
16 following:

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

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

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

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

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

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

28 (b) Suitability of the location for programming, staffing, and
29 support considerations;

30 (c) Proximity to employment, educational, vocational, and other
31 treatment plan components.

32 (6) For purposes of this section "available" or "availability" of
33 qualified treatment providers includes provider qualifications and
34 willingness to provide services, average commute time, and cost of
35 services.

1 NEW SECTION. **Sec. 6.** RCW 71.09.270 (Transition facility--Law
2 enforcement presence) and 2001 2nd sp.s. c 12 s 210 are each repealed.

3 NEW SECTION. **Sec. 7.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 July 1, 2003."

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11 On page 1, line 2 of the title, after "facility;" strike the
12 remainder of the title and insert "amending RCW 71.09.300, 71.09.250,
13 71.09.275, and 71.09.290; reenacting and amending RCW 71.09.020;
14 repealing RCW 71.09.270; providing an effective date; and declaring an
15 emergency."

EFFECT: Striking amendment makes technical, nonsubstantive changes
to sections related to the existing secure community transition
facility.

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