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**SUBSTITUTE SENATE BILL 5217**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** Senate Committee on Children & Family Services & Corrections  
(originally sponsored by Senators Stevens and Hargrove)

READ FIRST TIME 02/12/03.

1 AN ACT Relating to technical, clarifying, and nonsubstantive  
2 amendments to chapter 12, Laws of 2001 2nd sp. sess.; amending RCW  
3 71.09.250, 71.09.255, 71.09.265, 71.09.275, 71.09.290, 71.09.300,  
4 71.09.325, 71.09.342, 9.95.017, 9.95.055, 9.95.070, 9.95.110, 9.95.120,  
5 9.95.435, 9.95.440, 18.155.030, and 71.09.270; reenacting and amending  
6 RCW 71.09.020; and adding a new section to chapter 72.09 RCW.

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

8 **Sec. 1.** RCW 71.09.020 and 2002 c 68 s 4 and 2002 c 58 s 2 are each  
9 reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

28 (11) "Risk potential activity" or "risk potential facility" means  
29 an activity or facility that provides a higher incidence of risk to the  
30 public from persons conditionally released from the special commitment  
31 center. Risk potential activities and facilities include: Public and  
32 private schools, school bus stops, licensed day care and licensed  
33 preschool facilities, public parks, publicly dedicated trails, sports  
34 fields, playgrounds, recreational and community centers, churches,  
35 synagogues, temples, mosques, public libraries, and others identified  
36 by the department following the hearings on a potential site required  
37 in RCW 71.09.315. For purposes of this chapter, "school bus stops"  
38 does not include bus stops established primarily for public transit.

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

3 (13) "Secure facility" means a residential facility for persons  
4 civilly confined under the provisions of this chapter that includes  
5 security measures sufficient to protect the community. Such facilities  
6 include total confinement facilities, secure community transition  
7 facilities, and any residence used as a court-ordered placement under  
8 RCW 71.09.096.

9 (14) "Secure community transition facility" means a residential  
10 facility for persons civilly committed and conditionally released to a  
11 less restrictive alternative under this chapter. A secure community  
12 transition facility has supervision and security, and either provides  
13 or ensures the provision of sex offender treatment services. Secure  
14 community transition facilities include but are not limited to the  
15 (~~facilities~~) facility established pursuant to RCW 71.09.250(1)(a)(i)  
16 and any community-based facilities established under this chapter and  
17 operated by the secretary or under contract with the secretary.

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

1 RCW, that is an attempt, criminal solicitation, or criminal conspiracy  
2 to commit one of the felonies designated in (a), (b), or (c) of this  
3 subsection.

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

9 (17) "Total confinement facility" means a secure facility that  
10 provides supervision and sex offender treatment services in a total  
11 confinement setting. Total confinement facilities include the special  
12 commitment center and any similar facility designated as a (~~secure~~)  
13 total confinement facility by the secretary.

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

16 (1)(a) The secretary is authorized to site, construct, occupy, and  
17 operate (i) a secure community transition facility on McNeil Island for  
18 persons authorized to petition for a less restrictive alternative under  
19 RCW 71.09.090(1) and who are conditionally released; and (ii) a special  
20 commitment center on McNeil Island with up to four hundred four beds as  
21 a total confinement facility under this chapter, subject to  
22 appropriated funding for those purposes. The secure community  
23 transition facility shall be authorized for the number of beds needed  
24 to ensure compliance with the orders of the superior courts under this  
25 chapter and the federal district court for the western district of  
26 Washington. The total number of beds in the secure community  
27 transition facility shall be limited to twenty-four, consisting of up  
28 to fifteen transitional beds (~~shall be limited to fifteen~~) and up to  
29 nine pretransitional beds. The residents occupying (~~these~~) the  
30 transitional beds shall be the only residents eligible for transitional  
31 services occurring in Pierce county. In no event shall more than  
32 fifteen residents of the secure community transition facility be  
33 participating in off-island transitional, educational, or employment  
34 activity at the same time in Pierce county. The department shall  
35 provide the Pierce county sheriff, or his or her designee, with a list  
36 of the fifteen residents so designated, along with their photographs  
37 and physical descriptions, and (~~it~~) the list shall be immediately

1 updated whenever a residential change occurs. The Pierce county  
2 sheriff, or his or her designee, shall be provided an opportunity to  
3 confirm the residential status of each resident leaving McNeil Island.

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

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

12 (b) Residents assigned to pretransitional beds shall not be  
13 permitted to leave McNeil Island for education, employment, treatment,  
14 or community activities in Pierce county.

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

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

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

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

36 (6) The department must:

37 (a) Identify the minimum and maximum number of secure community  
38 transition facility beds in addition to the facility established under

1 subsection (1) of this section that may be necessary for the period of  
2 May 2004 through May 2007 and provide notice of these numbers to all  
3 counties by August 31, 2001; and

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

8 ~~(c) Provide a status report to the appropriate committees of the~~  
9 ~~legislature by December 1, 2002, on the development of facilities under~~  
10 ~~the incentive program established in RCW 71.09.255. The report shall~~  
11 ~~include a projection of the anticipated number of secure community~~  
12 ~~transition facility beds that will become operational between May 2004~~  
13 ~~and May 2007. If it appears that an insufficient number of beds will~~  
14 ~~be operational, the department's report shall recommend a progression~~  
15 ~~of methods to facilitate siting in counties and cities including, if~~  
16 ~~necessary, preemption of local land use planning process and other~~  
17 ~~laws)).~~

18 (7)(a) The total number of secure community transition facility  
19 beds that may be required to be sited in a county between June 26,  
20 2001, and June 30, 2008, may be no greater than the total number of  
21 persons civilly committed from that county, or detained at the special  
22 commitment center under a pending civil commitment petition from that  
23 county where a finding of probable cause had been made on April 1,  
24 2001. The total number of secure community transition facility beds  
25 required to be sited in each county between July 1, 2008, and June 30,  
26 2015, may be no greater than the total number of persons civilly  
27 committed from that county or detained at the special commitment center  
28 under a pending civil commitment petition from that county where a  
29 finding of probable cause had been made as of July 1, 2008.

30 (b) Counties and cities that provide secure community transition  
31 facility beds above the maximum number that they could be required to  
32 site under this subsection are eligible for a bonus grant under the  
33 incentive provisions in RCW 71.09.255. The county where the special  
34 commitment center is located shall receive this bonus grant for the  
35 number of beds in the facility established in subsection (1) of this  
36 section in excess of the maximum number established by this subsection.

37 (c) No secure community transition facilities in addition to the  
38 one established in subsection (1) of this section may be required to be

1 sited in the county where the special commitment center is located  
2 until after June 30, 2008, provided however, that the county and its  
3 cities may elect to site additional secure community transition  
4 facilities and shall be eligible under the incentive provisions of RCW  
5 71.09.255 for any additional facilities meeting the requirements of  
6 that section.

7 (8) In identifying potential sites within a county for the location  
8 of a secure community transition facility, the department shall work  
9 with and assist local governments to provide for the equitable  
10 distribution of such facilities. In coordinating and deciding upon the  
11 siting of secure community transition facilities, great weight shall be  
12 given by the county and cities within the county to:

13 (a) The number and location of existing residential facility beds  
14 operated by the department of corrections or the mental health division  
15 of the department of social and health services in each jurisdiction in  
16 the county; and

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

20 (9)(a) "Equitable distribution" means siting or locating secure  
21 community transition facilities in a manner that will not cause a  
22 disproportionate grouping of similar facilities either in any one  
23 county, or in any one jurisdiction or community within a county, as  
24 relevant; and

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

28 **Sec. 3.** RCW 71.09.255 and 2002 c 68 s 8 are each amended to read  
29 as follows:

30 (1) Upon receiving the notification required by RCW 71.09.250,  
31 counties must promptly notify the cities within the county of the  
32 maximum number of secure community transition facility beds that may be  
33 required and the projected number of beds to be needed in that county.

34 (2) The incentive grants and payments provided under this section  
35 are subject to the following provisions:

36 (a) Counties and the cities within the county must notify each

1 other of siting plans to promote the establishment and equitable  
2 distribution of secure community transition facilities;

3 (b) Development regulations, ordinances, plans, laws, and criteria  
4 established for siting must be consistent with statutory requirements  
5 and (~~rules~~) policies applicable to siting and operating secure  
6 community transition facilities;

7 (c) The minimum size for any facility is three beds; and

8 (d) The department must approve any sites selected.

9 (3) Any county or city that makes a commitment to initiate the  
10 process to site one or more secure community transition facilities by  
11 one hundred twenty days after March 21, 2002, shall receive a planning  
12 grant as proposed and approved by the department of community, trade,  
13 and economic development.

14 (4) Any county or city that has issued all necessary permits by May  
15 1, 2003, for one or more secure community transition facilities that  
16 comply with the requirements of this section shall receive an incentive  
17 grant in the amount of fifty thousand dollars for each bed sited.

18 (5) To encourage the rapid permitting of sites, any county or city  
19 that has issued all necessary permits by January 1, 2003, for one or  
20 more secure community transition facilities that comply with the  
21 requirements of this section shall receive a bonus in the amount of  
22 twenty percent of the amount provided under subsection (4) of this  
23 section.

24 (6) Any county or city that establishes secure community transition  
25 facility beds in excess of the maximum number that could be required to  
26 be sited in that county shall receive a bonus payment of one hundred  
27 thousand dollars for each bed established in excess of the maximum  
28 requirement.

29 (7) No payment shall be made under subsection (4), (5), or (6) of  
30 this section until all necessary permits have been issued.

31 (8) The funds available to counties and cities under this section  
32 are contingent upon funds being appropriated by the legislature.

33 **Sec. 4.** RCW 71.09.265 and 2001 2nd sp.s. c 12 s 208 are each  
34 amended to read as follows:

35 (1) The department shall make reasonable efforts to distribute the  
36 impact of the employment, education, and social services needs of the  
37 residents of the secure community transition facility established



1 pursuant to RCW 71.09.250(1)(a)(i) among the adjoining counties and not  
2 to concentrate the residents' use of resources in any one community.  
3 The department's efforts to distribute the impact is limited to  
4 locations within a reasonable commute.

5 (2) The department shall develop policies to ensure that, to the  
6 extent possible, placement of persons eligible in the future for  
7 conditional release to a setting less restrictive than the facility  
8 established pursuant to RCW 71.09.250(1)(a)(i) will be equitably  
9 distributed among the counties and within jurisdictions in the county.

10 **Sec. 5.** RCW 71.09.275 and 2001 2nd sp.s. c 12 s 211 are each  
11 amended to read as follows:

12 (1) ~~((By August 1, 2001, the department must provide the~~  
13 ~~appropriate committees of the legislature with a transportation plan to~~  
14 ~~address the issues of coordinating the movement of residents of the~~  
15 ~~secure community transition facility established pursuant to RCW~~  
16 ~~71.09.250(1) between McNeil Island and the mainland with the movement~~  
17 ~~of others who must use the same docks or equipment within the funds~~  
18 ~~appropriated for this purpose.~~

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

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

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

30 ~~((3))~~ (2) The department shall designate a separate waiting area  
31 at the points of debarkation, and residents shall be required to remain  
32 in this area while awaiting transportation.

33 ~~((4))~~ (3) The department shall provide law enforcement agencies  
34 in the counties and cities in which residents of the secure community  
35 transition facility established pursuant to RCW 71.09.250(1)(a)(i)  
36 regularly participate in employment, education, or social services, or

1 through which these persons are regularly transported, with a copy of  
2 the court's order of conditional release with respect to these persons.

3 **Sec. 6.** RCW 71.09.290 and 2001 2nd sp.s. c 12 s 214 are each  
4 amended to read as follows:

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

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

12 (a) The proximity and response time criteria established under RCW  
13 71.09.285;

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

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

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

20 (e) Appropriate permitting for a secure community transition  
21 facility must be possible under the zoning code of the local  
22 jurisdiction.

23 (2) For sites which meet the criteria of subsection (1) of this  
24 section, the department shall analyze and compare the criteria in  
25 subsections (3) through (5) of this section using the method  
26 established in RCW 71.09.285.

27 (3) Public safety and security criteria shall include at least the  
28 following:

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

31 (b) The distance from, and number of, risk potential activities and  
32 facilities, as measured using the (~~rules~~) policies adopted under RCW  
33 71.09.285;

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

36 (d) Suitability of the buildings to be used for the secure

1 community transition facility with regard to existing or feasibly  
2 modified features; and

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

5 (4) Site characteristics criteria shall include at least the  
6 following:

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

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

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

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

14 (5) Program characteristics criteria shall include at least the  
15 following:

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

18 (b) Suitability of the location for programming, staffing, and  
19 support considerations;

20 (c) Proximity to employment, educational, vocational, and other  
21 treatment plan components.

22 (6) For purposes of this section "available" or "availability" of  
23 qualified treatment providers includes provider qualifications and  
24 willingness to provide services, average commute time, and cost of  
25 services.

26 **Sec. 7.** RCW 71.09.300 and 2001 2nd sp.s. c 12 s 216 are each  
27 amended to read as follows:

28 ((+1)) Secure community transition facilities shall meet the  
29 following minimum staffing requirements:

30 ((+a)) (1) At any time the census of a facility is six or fewer  
31 residents, the facility shall maintain a minimum staffing ratio of one  
32 staff per resident during normal waking hours and two awake staff per  
33 three residents during normal sleeping hours.

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

1        ~~((e))~~ (3) Before being assigned to a facility, all staff shall  
2 have training in sex offender issues, self-defense, and crisis  
3 deescalation skills in addition to departmental orientation and, as  
4 appropriate, management training. All staff with resident treatment or  
5 care duties must participate in ongoing in-service training.

6        ~~((d))~~ (4) All staff must pass a departmental background check and  
7 the check is not subject to the limitations in chapter 9.96A RCW. A  
8 person who has been convicted of a felony, or any sex offense, may not  
9 be employed at the secure community transition facility or be approved  
10 as an escort for a resident of the facility.

11        ~~((2) With respect to the facility established pursuant to RCW  
12 71.09.250(1), the department shall, no later than December 1, 2001,  
13 provide a staffing plan to the appropriate committees of the  
14 legislature that will cover the growth of that facility to its full  
15 capacity.))~~

16        **Sec. 8.** RCW 71.09.325 and 2001 2nd sp.s. c 12 s 221 are each  
17 amended 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. The policy shall require written documentation by the  
21 department and service providers of all violations of conditions set by  
22 the department, the department of corrections, or the court and  
23 establish criteria for returning a violator to the special commitment  
24 center or a secure community transition facility with a higher degree  
25 of security. Any conditionally released person who commits a serious  
26 violation of conditions shall be returned to the special commitment  
27 center, unless arrested by a law enforcement officer, and the court  
28 shall be notified immediately and shall initiate proceedings under RCW  
29 71.09.098 to revoke or modify the less restrictive alternative  
30 placement. Nothing in this section limits the authority of the  
31 department to return a person to the special commitment center based on  
32 a violation that is not a serious violation as defined in this section.  
33 For the purposes of this section, "serious violation" includes but is  
34 not limited to:

35        (a) The commission of any criminal offense;

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

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

3 (2) When a person is conditionally released to a less restrictive  
4 alternative under this chapter and is under the supervision of the  
5 department of corrections, notice of any violation of the person's  
6 conditions of release must also be made to the department of  
7 corrections.

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

14 (4) The secretary shall document in writing all violations,  
15 penalties, actions by the department (~~(of social and health services)~~)  
16 to remove persons from a secure community transition facility, and  
17 contract terminations. The secretary shall compile this information  
18 and submit it to the appropriate committees of the legislature on an  
19 annual basis. The secretary shall give great weight to a service  
20 provider's record of violations, penalties, actions by the department  
21 (~~(of social and health services)~~) or the department of corrections to  
22 remove persons from a secure community transition facility, and  
23 contract terminations in determining whether to execute, renew, or  
24 renegotiate a contract with a service provider.

25 **Sec. 9.** RCW 71.09.342 and 2002 c 68 s 9 are each amended to read  
26 as follows:

27 (1) After October 1, 2002, notwithstanding RCW 36.70A.103 or any  
28 other law, this section preempts and supersedes local plans,  
29 development regulations, permitting requirements, inspection  
30 requirements, and all other laws as necessary to enable the department  
31 to site, construct, renovate, occupy, and operate secure community  
32 transition facilities within the borders of the following:

33 (a) Any county that had five or more persons civilly committed from  
34 that county, or detained at the special commitment center under a  
35 pending civil commitment petition from that county where a finding of  
36 probable cause has been made, on April 1, 2001, if the department  
37 determines that the county has not met the requirements of RCW

1 36.70A.200 with respect to secure community transition facilities.  
2 This subsection does not apply to the county in which the secure  
3 community transition facility authorized under RCW 71.09.250(1) is  
4 located; and

5 (b) Any city located within a county listed in (a) of this  
6 subsection that the department determines has not met the requirements  
7 of RCW 36.70A.200 with respect to secure community transition  
8 facilities.

9 (2) The department's determination under subsection (1)(a) or (b)  
10 of this section is final and is not subject to appeal under chapter  
11 34.05 or 36.70A RCW.

12 (3) When siting a facility in a county or city that has been  
13 preempted under this section, the department shall consider the policy  
14 guidelines established under RCW (~~71.09.275~~) 71.09.285 and 71.09.290  
15 and shall hold the hearings required in RCW 71.09.315.

16 (4) Nothing in this section prohibits the department from:

17 (a) Siting a secure community transition facility in a city or  
18 county that has complied with the requirements of RCW 36.70A.200 with  
19 respect to secure community transition facilities, including a city  
20 that is located within a county that has been preempted. If the  
21 department sites a secure community transition facility in such a city  
22 or county, the department shall use the process established by the city  
23 or county for siting such facilities; or

24 (b) Consulting with a city or county that has been preempted under  
25 this section regarding the siting of a secure community transition  
26 facility.

27 (5)(a) A preempted city or county may propose public safety  
28 measures specific to any finalist site to the department. The measures  
29 must be consistent with the location of the facility at that finalist  
30 site. The proposal must be made in writing by the date of:

31 (i) The second hearing under RCW 71.09.315(2)(a) when there are  
32 three finalist sites; or

33 (ii) The first hearing under RCW 71.09.315(2)(b) when there is only  
34 one site under consideration.

35 (b) The department shall respond to the city or county in writing  
36 within fifteen business days of receiving the proposed measures. The  
37 response shall address all proposed measures.

1 (c) If the city or county finds that the department's response is  
2 inadequate, the city or county may notify the department in writing  
3 within fifteen business days of the specific items which it finds  
4 inadequate. If the city or county does not notify the department of a  
5 finding that the response is inadequate within fifteen business days,  
6 the department's response shall be final.

7 (d) If the city or county notifies the department that it finds the  
8 response inadequate and the department does not revise its response to  
9 the satisfaction of the city or county within seven business days, the  
10 city or county may petition the governor to designate a person with law  
11 enforcement expertise to review the response under RCW 34.05.479.

12 (e) The governor's designee shall hear a petition filed under this  
13 subsection and shall make a determination within thirty days of hearing  
14 the petition. The governor's designee shall consider the department's  
15 response, and the effectiveness and cost of the proposed measures, in  
16 relation to the purposes of this chapter. The determination by the  
17 governor's designee shall be final and may not be the basis for any  
18 cause of action in civil court.

19 (f) The city or county shall bear the cost of the petition to the  
20 governor's designee. If the city or county prevails on all issues, the  
21 department shall reimburse the city or county costs incurred, as  
22 provided under chapter 34.05 RCW.

23 (g) Neither the department's consideration and response to public  
24 safety conditions proposed by a city or county nor the decision of the  
25 governor's designee shall affect the preemption under this section or  
26 the department's authority to site, construct, renovate, occupy, and  
27 operate the secure community transition facility at that finalist site  
28 or at any finalist site.

29 (6) Until June 30, 2009, the secretary shall site, construct,  
30 occupy, and operate a secure community transition facility sited under  
31 this section in an environmentally responsible manner that is  
32 consistent with the substantive objectives of chapter 43.21C RCW, and  
33 shall consult with the department of ecology as appropriate in carrying  
34 out the planning, construction, and operations of the facility. The  
35 secretary shall make a threshold determination of whether a secure  
36 community transition facility sited under this section would have a  
37 probable significant, adverse environmental impact. If the secretary  
38 determines that the secure community transition facility has such an

1 impact, the secretary shall prepare an environmental impact statement  
2 that meets the requirements of RCW 43.21C.030 and 43.21C.031 and the  
3 rules promulgated by the department of ecology relating to such  
4 statements. Nothing in this subsection shall be the basis for any  
5 civil cause of action or administrative appeal.

6 (7) This section does not apply to the secure community transition  
7 facility established pursuant to RCW 71.09.250(1).

8 **Sec. 10.** RCW 9.95.017 and 2001 2nd sp.s. c 12 s 321 are each  
9 amended to read as follows:

10 (1) The board shall cause to be prepared criteria for duration of  
11 confinement, release on parole, and length of parole for persons  
12 committed to prison for crimes committed before July 1, 1984.

13 The proposed criteria should take into consideration RCW  
14 9.95.009(2). Before submission to the governor, the board shall  
15 solicit comments and review on their proposed criteria for parole  
16 release. ~~((These proposed criteria shall be submitted for  
17 consideration by the 1987 legislature.))~~

18 (2) Persons committed to the department of corrections and who are  
19 under the authority of the board for crimes committed on or after  
20 ~~((July))~~ September 1, 2001, are subject to the provisions for duration  
21 of confinement, release to community custody, and length of community  
22 custody established in RCW 9.94A.712, 9.94A.713, 72.09.335, and  
23 9.95.420 through 9.95.440.

24 **Sec. 11.** RCW 9.95.055 and 2001 2nd sp.s. c 12 s 325 are each  
25 amended to read as follows:

26 The indeterminate sentence review board is hereby granted  
27 authority, in the event of a declaration by the governor that a war  
28 emergency exists, including a general mobilization, and for the  
29 duration thereof only, to reduce downward the minimum term, as set by  
30 the board, of any inmate under the jurisdiction of the board confined  
31 in a state correctional facility, who will be accepted by and inducted  
32 into the armed services: PROVIDED, That a reduction downward shall not  
33 be made under this section for those inmates who: (1) Are confined for  
34 (a) treason, (b) murder in the first degree, or ~~((earnal knowledge of~~  
35 ~~a female child under ten years: AND PROVIDED FURTHER, That no such~~  
36 ~~inmate shall be released under this section who is))~~ (c) rape of a



1 child in the first degree where the victim is under ten years of age or  
2 an equivalent offense under prior law; (2) are being considered for  
3 civil commitment as a sexually violent predator under chapter 71.09  
4 RCW; or (~~was~~) (3) were sentenced under RCW 9.94A.712 for a crime  
5 committed on or after (~~July~~) September 1, 2001.

6 **Sec. 12.** RCW 9.95.070 and 2001 2nd sp.s. c 12 s 327 are each  
7 amended to read as follows:

8 (1) Every prisoner, convicted of a crime committed before July 1,  
9 1984, who has a favorable record of conduct at (~~the penitentiary or~~  
10 ~~the reformatory~~) a state correctional institution, and who performs in  
11 a faithful, diligent, industrious, orderly and peaceable manner the  
12 work, duties, and tasks assigned to him or her to the satisfaction of  
13 the superintendent of the (~~penitentiary or reformatory~~) institution,  
14 and in whose behalf the superintendent of the (~~penitentiary or~~  
15 ~~reformatory~~) institution files a report certifying that his or her  
16 conduct and work have been meritorious and recommending allowance of  
17 time credits to him or her, shall upon, but not until, the adoption of  
18 such recommendation by the indeterminate sentence review board, be  
19 allowed time credit reductions from the term of imprisonment fixed by  
20 the board.

21 (2) Offenders sentenced under RCW 9.94A.712 for a crime committed  
22 on or after (~~July~~) September 1, 2001, are subject to the earned  
23 release provisions for sex offenders established in RCW 9.94A.728.

24 **Sec. 13.** RCW 9.95.110 and 2001 2nd sp.s. c 12 s 331 are each  
25 amended to read as follows:

26 (1) The board may permit an offender convicted of a crime committed  
27 before July 1, 1984, to leave the buildings and enclosures of a state  
28 correctional institution on parole, after such convicted person has  
29 served the period of confinement fixed for him or her by the board,  
30 less time credits for good behavior and diligence in work: PROVIDED,  
31 That in no case shall an inmate be credited with more than one-third of  
32 his or her sentence as fixed by the board.

33 The board may establish rules and regulations under which an  
34 offender may be allowed to leave the confines of a state correctional  
35 institution on parole, and may return such person to the confines of  
36 the institution from which he or she was paroled, at its discretion.

1 (2) The board may permit an offender convicted of a crime committed  
2 on or after (~~July~~) September 1, 2001, and sentenced under RCW  
3 9.94A.712, to leave a state correctional institution on community  
4 custody according to the provisions of RCW 9.94A.712, 9.94A.713,  
5 72.09.335, and 9.95.420 through 9.95.440. The person may be returned  
6 to the institution following a violation of his or her conditions of  
7 release to community custody pursuant to the hearing provisions of RCW  
8 9.95.435.

9 **Sec. 14.** RCW 9.95.120 and 2001 2nd sp.s. c 12 s 333 are each  
10 amended to read as follows:

11 Whenever the board or a community corrections officer of this state  
12 has reason to believe a person convicted of a crime committed before  
13 July 1, 1984, has breached a condition of his or her parole or violated  
14 the law of any state where he or she may then be or the rules and  
15 regulations of the board, any community corrections officer of this  
16 state may arrest or cause the arrest and detention and suspension of  
17 parole of such convicted person pending a determination by the board  
18 whether the parole of such convicted person shall be revoked. All  
19 facts and circumstances surrounding the violation by such convicted  
20 person shall be reported to the board by the community corrections  
21 officer, with recommendations. The board, after consultation with the  
22 secretary of corrections, shall make all rules and regulations  
23 concerning procedural matters, which shall include the time when state  
24 community corrections officers shall file with the board reports  
25 required by this section, procedures pertaining thereto and the filing  
26 of such information as may be necessary to enable the board to perform  
27 its functions under this section. On the basis of the report by the  
28 community corrections officer, or at any time upon its own discretion,  
29 the board may revise or modify the conditions of parole or order the  
30 suspension of parole by the issuance of a written order bearing its  
31 seal, which order shall be sufficient warrant for all peace officers to  
32 take into custody any convicted person who may be on parole and retain  
33 such person in their custody until arrangements can be made by the  
34 board for his or her return to a state correctional institution for  
35 convicted felons. Any such revision or modification of the conditions  
36 of parole or the order suspending parole shall be personally served  
37 upon the parolee.

1 Any parolee arrested and detained in physical custody by the  
2 authority of a state community corrections officer, or upon the written  
3 order of the board, shall not be released from custody on bail or  
4 personal recognizance, except upon approval of the board and the  
5 issuance by the board of an order of reinstatement on parole on the  
6 same or modified conditions of parole.

7 All chiefs of police, marshals of cities and towns, sheriffs of  
8 counties, and all police, prison, and peace officers and constables  
9 shall execute any such order in the same manner as any ordinary  
10 criminal process.

11 Whenever a paroled prisoner is accused of a violation of his or her  
12 parole, other than the commission of, and conviction for, a felony or  
13 misdemeanor under the laws of this state or the laws of any state where  
14 he or she may then be, he or she shall be entitled to a fair and  
15 impartial hearing of such charges within thirty days from the time that  
16 he or she is served with charges of the violation of conditions of  
17 parole after his or her arrest and detention. The hearing shall be  
18 held before one or more members of the board at a place or places,  
19 within this state, reasonably near the site of the alleged violation or  
20 violations of parole.

21 In the event that the board suspends a parole by reason of an  
22 alleged parole violation or in the event that a parole is suspended  
23 pending the disposition of a new criminal charge, the board shall have  
24 the power to nullify the order of suspension and reinstate the  
25 individual to parole under previous conditions or any new conditions  
26 that the board may determine advisable. Before the board shall nullify  
27 an order of suspension and reinstate a parole they shall have  
28 determined that the best interests of society and the individual shall  
29 best be served by such reinstatement rather than a return to a  
30 (~~penal~~) correctional institution.

31 **Sec. 15.** RCW 9.95.435 and 2002 c 175 s 17 are each amended to read  
32 as follows:

33 (1) If an offender released by the board under RCW 9.95.420  
34 violates any condition or requirement of community custody, the board  
35 may transfer the offender to a more restrictive confinement status to  
36 serve up to the remaining portion of the sentence, less credit for any

1 period actually spent in community custody or in detention awaiting  
2 disposition of an alleged violation and subject to the limitations of  
3 subsection (2) of this section.

4 (2) Following the hearing specified in subsection (3) of this  
5 section, the board may impose sanctions such as work release, home  
6 detention with electronic monitoring, work crew, community restitution,  
7 inpatient treatment, daily reporting, curfew, educational or counseling  
8 sessions, supervision enhanced through electronic monitoring, or any  
9 other sanctions available in the community, or may suspend or revoke  
10 the release to community custody whenever an offender released by the  
11 board under RCW 9.95.420 violates any condition or requirement of  
12 community custody.

13 (3) If an offender released by the board under RCW 9.95.420 is  
14 accused of violating any condition or requirement of community custody,  
15 he or she is entitled to a hearing before the board or its designee  
16 prior to the imposition of sanctions. The hearing shall be considered  
17 as offender disciplinary proceedings and shall not be subject to  
18 chapter 34.05 RCW. The board shall develop hearing procedures and a  
19 structure of graduated sanctions consistent with the hearing procedures  
20 and graduated sanctions developed pursuant to RCW 9.94A.737. The board  
21 may suspend the offender's release to community custody and confine the  
22 offender in a correctional institution owned, operated by, or operated  
23 under contract with the state prior to the hearing unless the offender  
24 has been arrested and confined for a new criminal offense.

25 (4) The hearing procedures required under subsection (3) of this  
26 section shall be developed by rule and include the following:

27 (a) Hearings shall be conducted by members of the board unless the  
28 board enters into an agreement with the department to use the hearing  
29 officers established under RCW 9.94A.737;

30 (b) The board shall provide the offender with written notice of the  
31 violation, the evidence relied upon, and the reasons the particular  
32 sanction was imposed. The notice shall include a statement of the  
33 rights specified in this subsection, and the offender's right to file  
34 a personal restraint petition under court rules after the final  
35 decision of the board;

36 (c) The hearing shall be held unless waived by the offender, and  
37 shall be electronically recorded. For offenders not in total  
38 confinement, the hearing shall be held within fifteen working days, but

1 not less than twenty-four hours after notice of the violation. For  
2 offenders in total confinement, the hearing shall be held within five  
3 working days, but not less than twenty-four hours after notice of the  
4 violation;

5 (d) The offender shall have the right to: (i) Be present at the  
6 hearing; (ii) have the assistance of a person qualified to assist the  
7 offender in the hearing, appointed by the hearing examiner if the  
8 offender has a language or communications barrier; (iii) testify or  
9 remain silent; (iv) call witnesses and present documentary evidence;  
10 (v) question witnesses who appear and testify; and (vi) be represented  
11 by counsel if revocation of the release to community custody is a  
12 possible sanction for the violation; and

13 (e) The sanction shall take effect if affirmed by the hearing  
14 examiner.

15 (5) Within seven days after the hearing examiner's decision, the  
16 offender may appeal the decision to a panel of three reviewing  
17 examiners designated by the chair of the board or by the chair's  
18 designee. The sanction shall be reversed or modified if a majority of  
19 the panel finds that the sanction was not reasonably related to any of  
20 the following: ~~((+i+))~~ (a) The crime of conviction; ~~((+ii+))~~ (b) the  
21 violation committed; ~~((+iii+))~~ (c) the offender's risk of reoffending;  
22 or ~~((+iv+))~~ (d) the safety of the community.

23 ~~((+5+))~~ (6) For purposes of this section, no finding of a violation  
24 of conditions may be based on unconfirmed or unconfirmable allegations.

25 **Sec. 16.** RCW 9.95.440 and 2001 2nd sp.s. c 12 s 310 are each  
26 amended to read as follows:

27 In the event the board suspends the release status of an offender  
28 released under RCW 9.95.420 by reason of an alleged violation of a  
29 condition of release, or pending disposition of a new criminal charge,  
30 the board may nullify the suspension order and reinstate release under  
31 previous conditions or any new conditions the board determines  
32 advisable pursuant to RCW 9.94A.713(5). Before the board may nullify  
33 a suspension order and reinstate release, it shall determine that the  
34 best interests of society and the offender shall be served by such  
35 reinstatement rather than return to confinement.

1       **Sec. 17.** RCW 18.155.030 and 2001 2nd sp.s. c 12 s 402 are each  
2 amended to read as follows:

3       (1) No person shall represent himself or herself as a certified sex  
4 offender treatment provider without first applying for and receiving a  
5 certificate pursuant to this chapter.

6       (2) Except as provided under RCW 9.94A.820 and 71.09.350, only a  
7 certified sex offender treatment provider may perform or provide the  
8 following services:

9       (a) Evaluations conducted for the purposes of and pursuant to RCW  
10 9.94A.670 and 13.40.160;

11       (b) Treatment of convicted sex offenders who are sentenced and  
12 ordered into treatment pursuant to chapter 9.94A RCW and adjudicated  
13 juvenile sex offenders who are ordered into treatment pursuant to  
14 chapter 13.40 RCW;

15       (c) ~~((Except as provided under subsection (3) of this section,))~~  
16 Treatment of sexually violent predators who are conditionally released  
17 to a less restrictive alternative pursuant to chapter 71.09 RCW.

18       (3) A certified sex offender treatment provider or a treatment  
19 provider authorized under RCW 71.09.350 may not perform or provide  
20 treatment of sexually violent predators under subsection (2)(c) of this  
21 section if the certified sex offender treatment provider has been:

22       (a) Convicted of a sex offense, as defined in RCW 9.94A.030;

23       (b) Convicted in any other jurisdiction of an offense that under  
24 the laws of this state would be classified as a sex offense as defined  
25 in RCW 9.94A.030; or

26       (c) Suspended or otherwise restricted from practicing any health  
27 care profession by competent authority in any state, federal, or  
28 foreign jurisdiction.

29       **Sec. 18.** RCW 71.09.270 and 2001 2nd sp.s. c 12 s 210 are each  
30 amended to read as follows:

31       The secretary of social and health services shall coordinate with  
32 the secretary of corrections and the appropriate local or state law  
33 enforcement agency or agencies to establish a twenty-four-hour law  
34 enforcement presence on McNeil Island before any person is admitted to  
35 the secure community transition facility established under RCW  
36 71.09.250(1)(a)(i). Law enforcement shall coordinate with the

1 emergency response team for McNeil Island to provide planning and  
2 coordination in the event of an escape from the special commitment  
3 center or the secure community transition facility.

4 ~~((In addition, or if no law enforcement agency will provide a law  
5 enforcement presence on the island, not more than ten correctional  
6 employees, as selected by the secretary of corrections, who are members  
7 of the emergency response team for the McNeil Island correctional  
8 facility, shall have the powers and duties of a general authority peace  
9 officer while acting in a law enforcement capacity. If there is no law  
10 enforcement agency to provide the law enforcement presence, those  
11 correctional employees selected as peace officers shall provide a  
12 twenty-four-hour presence and shall not have correctional duties at the  
13 correctional facility in addition to the emergency response team while  
14 acting in a law enforcement capacity.))~~

15 NEW SECTION. **Sec. 19.** A new section is added to chapter 72.09 RCW  
16 to read as follows:

17 If no law enforcement agency will provide a law enforcement  
18 presence on the island, not more than ten correctional employees, as  
19 selected by the secretary of corrections, who are members of the  
20 emergency response team for the McNeil Island correctional facility,  
21 shall have the powers and duties of a general authority peace officer  
22 while acting in a law enforcement capacity. If there is no law  
23 enforcement agency to provide the law enforcement presence, those  
24 correctional employees selected as peace officers shall provide a  
25 twenty-four-hour presence and shall not have correctional duties at the  
26 correctional facility in addition to the emergency response team while  
27 acting in a law enforcement capacity.

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