
ENGROSSED SENATE BILL 5991

State of Washington

58th Legislature

2003 Regular Session

By Senators Stevens, Hargrove, Parlette, Regala, Carlson, McAuliffe and Winsley

Read first time 02/27/2003. Referred to Committee on Children & Family Services & Corrections.

1 AN ACT Relating to changing minimum requirements for the existing
2 secure community transition facility; amending RCW 71.09.300,
3 71.09.250, 71.09.275, and 71.09.290; reenacting and amending RCW
4 71.09.020; repealing RCW 71.09.270; providing an effective date; and
5 declaring an emergency.

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

7 **Sec. 1.** RCW 71.09.300 and 2001 2nd sp.s. c 12 s 216 are each
8 amended to read as follows:

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

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

17 (b) At any time the census of a facility that accepts its first
18 resident on or after July 1, 2003, is six or fewer residents, the
19 facility shall maintain a minimum staffing ratio of one staff per

1 resident during normal waking hours and two awake staff per three
2 residents during normal sleeping hours. In no case shall the staffing
3 ratio permit less than two staff per housing unit.

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

8 ~~((e))~~ (3) Before being assigned to a facility, all staff shall
9 have training in sex offender issues, self-defense, and crisis de-
10 escalation skills in addition to departmental orientation and, as
11 appropriate, management training. All staff with resident treatment or
12 care duties must participate in ongoing in-service training.

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

18 ~~((2) With respect to the facility established pursuant to RCW~~
19 ~~71.09.250(1), the department shall, no later than December 1, 2001,~~
20 ~~provide a staffing plan to the appropriate committees of the~~
21 ~~legislature that will cover the growth of that facility to its full~~
22 ~~capacity.))~~

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

25 Unless the context clearly requires otherwise, the definitions in
26 this section apply throughout this chapter.

27 (1) "Department" means the department of social and health
28 services.

29 (2) "Health care facility" means any hospital, hospice care center,
30 licensed or certified health care facility, health maintenance
31 organization regulated under chapter 48.46 RCW, federally qualified
32 health maintenance organization, federally approved renal dialysis
33 center or facility, or federally approved blood bank.

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

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

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

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

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

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

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

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

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

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

37 (13) "Secure facility" means a residential facility for persons
38 civilly confined under the provisions of this chapter that includes

1 security measures sufficient to protect the community. Such facilities
2 include total confinement facilities, secure community transition
3 facilities, and any residence used as a court-ordered placement under
4 RCW 71.09.096.

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

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

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

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

4 (17) "Total confinement facility" means a secure facility that
5 provides supervision and sex offender treatment services in a total
6 confinement setting. Total confinement facilities include the special
7 commitment center and any similar facility designated as a (~~secure~~)
8 total confinement facility by the secretary.

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

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

36 (b) For purposes of this subsection, "transitional beds" means beds

1 only for residents (~~in halfway house status~~) who are judged by a
2 qualified expert to be suitable to leave the island for treatment,
3 education, and employment.

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

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

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

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

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

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

32 (6) The department must:

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

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

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

15 (7)(a) The total number of secure community transition facility
16 beds that may be required to be sited in a county between June 26,
17 2001, and June 30, 2008, may be no greater than the total number of
18 persons civilly committed from that county, or detained at the special
19 commitment center under a pending civil commitment petition from that
20 county where a finding of probable cause had been made on April 1,
21 2001. The total number of secure community transition facility beds
22 required to be sited in each county between July 1, 2008, and June 30,
23 2015, may be no greater than the total number of persons civilly
24 committed from that county or detained at the special commitment center
25 under a pending civil commitment petition from that county where a
26 finding of probable cause had been made as of July 1, 2008.

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

34 (c) No secure community transition facilities in addition to the
35 one established in subsection (1) of this section may be required to be
36 sited in the county where the special commitment center is located
37 until after June 30, 2008, provided however, that the county and its
38 cities may elect to site additional secure community transition

1 facilities and shall be eligible under the incentive provisions of RCW
2 71.09.255 for any additional facilities meeting the requirements of
3 that section.

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

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

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

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

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

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

27 (1) ~~((By August 1, 2001, the department must provide the
28 appropriate committees of the legislature with a transportation plan to
29 address the issues of coordinating the movement of residents of the
30 secure community transition facility established pursuant to RCW
31 71.09.250(1) between McNeil Island and the mainland with the movement
32 of others who must use the same docks or equipment within the funds
33 appropriated for this purpose.~~

34 (2)) If the department does not provide a separate vessel for
35 transporting residents of the secure community transition facility
36 established in RCW 71.09.250(1) between McNeil Island and the mainland,

1 the (~~plan~~) department shall (~~include at least the following~~
2 ~~components~~):

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

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

9 (~~(3)~~) (2) The department shall designate a separate waiting area
10 at the points of debarkation, and residents shall be required to remain
11 in this area while awaiting transportation.

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

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

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

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

27 (a) The proximity and response time criteria established under RCW
28 71.09.285;

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

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

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

35 (e) Appropriate permitting for a secure community transition
36 facility must be possible under the zoning code of the local
37 jurisdiction.

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

5 (3) Public safety and security criteria shall include at least the
6 following:

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

9 (b) The distance from, and number of, risk potential activities and
10 facilities, as measured using the (~~rules~~) policies adopted under RCW
11 71.09.285;

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

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

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

19 (4) Site characteristics criteria shall include at least the
20 following:

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

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

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

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

28 (5) Program characteristics criteria shall include at least the
29 following:

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

32 (b) Suitability of the location for programming, staffing, and
33 support considerations;

34 (c) Proximity to employment, educational, vocational, and other
35 treatment plan components.

36 (6) For purposes of this section "available" or "availability" of
37 qualified treatment providers includes provider qualifications and

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

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

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

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

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