
SUBSTITUTE SENATE BILL 6630

State of Washington

59th Legislature

2006 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Kline, Prentice, Keiser, Fairley, Regala, McAuliffe and Kohl-Welles)

READ FIRST TIME 02/01/06.

1 AN ACT Relating to protecting communities from individuals with
2 behaviors that pose a threat of violence or sexual violence; adding new
3 sections to chapter 71A.12 RCW; creating a new section; and declaring
4 an emergency.

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

6 NEW SECTION. **Sec. 1.** The department of social and health services
7 is providing a structured, therapeutic environment for persons who are
8 eligible for placement in the community protection program in order for
9 them to live safely and successfully in the community while minimizing
10 the risk to public safety.

11 The legislature approves of steps already taken by the department
12 to create a community protection program within the division of
13 developmental disabilities.

14 NEW SECTION. **Sec. 2.** Sections 3 through 9 of this act apply to a
15 person:

16 (1)(a) Who: (i) Has been charged with or convicted of a crime of
17 sexual violence as defined in chapter 9A.44 or 71.09 RCW, including,
18 but not limited to, rape, rape of a child, and child molestation, or

1 who has been charged with or convicted of sexual acts directed toward:
2 Strangers, individuals with whom a relationship has been established or
3 promoted for the primary purpose of victimization, or persons of casual
4 acquaintance with whom no substantial personal relationship exists or
5 who has committed one or more violent offenses, as defined by RCW
6 9.94A.030; and (ii) constitutes a current risk to others as determined
7 by a qualified professional. Charges or crimes that resulted in
8 acquittal must be excluded; or

9 (b) Who has not been charged with and/or convicted of a crime, but
10 has a history of stalking, sexually violent, predatory, and/or
11 opportunistic behavior, which demonstrates a likelihood to commit a
12 sexually violent and/or predatory act based on current behaviors, and
13 constitutes a current risk to others as determined by a qualified
14 professional; and

15 (2) Who has been determined to have a developmental disability as
16 defined by RCW 71A.10.020(3).

17 NEW SECTION. **Sec. 3.** The definitions in this section apply
18 throughout this chapter unless the context clearly requires otherwise.

19 (1) "Assessment" means the written opinion of a qualified
20 professional stating, at a minimum:

21 (a) Whether a person meets the criteria established in section 2 of
22 this act;

23 (b) What restrictions are necessary.

24 (2) "Certified community protection program intensive supported
25 living services" means access to twenty-four-hour supervision,
26 instruction, and support services as identified in the person's plan of
27 care.

28 (3) "Community protection program" means services specifically
29 designed to support persons who meet the criteria of section 2 of this
30 act.

31 (4) "Constitutes a risk to others" means a determination of a
32 person's risk and/or dangerousness based upon a thorough assessment by
33 a qualified professional.

34 (5) "Department" means the department of social and health
35 services.

36 (6) "Developmental disability" means that condition defined in RCW
37 71A.10.020(3).

1 (7) "Disclosure" means providing copies of professional
2 assessments, incident reports, legal documents, and other information
3 pertaining to community protection issues to ensure the provider has
4 all relevant information. Polygraph and plethysmograph reports are
5 excluded from disclosure.

6 (8) "Division" means the division of developmental disabilities.

7 (9) "Managed successfully" means that a person supported by a
8 community protection program does not engage in the behavior identified
9 in section 2 of this act.

10 (10) "Opportunistic behavior" means an act committed on impulse,
11 which is not premeditated.

12 (11) "Predatory" means acts directed toward strangers, individuals
13 with whom a relationship has been established or promoted for the
14 primary purpose of victimization, or casual acquaintances with whom no
15 substantial personal relationship exists. Predatory behavior may be
16 characterized by planning and/or rehearsing the act, stalking, and/or
17 grooming the victim.

18 (12) "Qualified professional" means a person with at least three
19 years' prior experience working with individuals with developmental
20 disabilities, and: (a) If the person being assessed has demonstrated
21 sexually aggressive or sexually violent behavior, that person must be
22 assessed by a qualified professional who is a certified sex offender
23 treatment provider, or affiliate sex offender treatment provider
24 working under the supervision of a certified sex offender treatment
25 provider; or (b) If the person being assessed has demonstrated violent,
26 dangerous, or aggressive behavior, that person must be assessed by a
27 licensed psychologist or psychiatrist who has received specialized
28 training in the treatment of or has at least three years' prior
29 experience treating violent or aggressive behavior.

30 (13) "Treatment team" means the program participant and the group
31 of people responsible for the development, implementation, and
32 monitoring of the person's individualized supports and services. This
33 group may include, but is not limited to, the case resource manager,
34 therapist, residential provider, employment/day program provider, and
35 the person's legal representative and/or family, provided the person
36 consents to the family member's involvement.

37 (14) "Violent offense" means any felony defined as a violent
38 offense in RCW 9.94A.030.

1 NEW SECTION. **Sec. 4.** (1) Prior to receiving services through the
2 community protection program, a person must first receive an assessment
3 of risk and/or dangerousness by a qualified professional. The
4 assessment must be consistent with the guidelines for risk assessments
5 and psychosexual evaluations developed by the department. The person
6 requesting services and the person's legal representative have the
7 right to choose the qualified professional who will perform the
8 assessment from a list of state contracted qualified professionals.
9 The assessment must contain, at a minimum, a determination by the
10 qualified professional whether the person can be managed successfully
11 in the community with reasonably available safeguards and that lesser
12 restrictive residential placement alternatives have been considered and
13 would not be reasonable for the person seeking services. The
14 department may request an additional evaluation by a qualified
15 professional evaluator who is contracted with the state.

16 (2) Any person being considered for placement in the community
17 protection program and his or her legal representative must be informed
18 in writing of the following: (a) Limitations regarding the services
19 that will be available due to the person's community protection issues;
20 (b) disclosure requirements as a condition of receiving services other
21 than case management; (c) the requirement to engage in therapeutic
22 treatment may be a condition of receiving certain services; (d)
23 anticipated restrictions that may be provided including, but not
24 limited to intensive supervision, limited access to television viewing,
25 reading material, videos; (e) the right to accept or decline services;
26 (f) the anticipated consequences of declining services such as the loss
27 of existing services and removal from waiver services; (g) the right to
28 an administrative fair hearing in accordance with department and
29 division policy; (h) the requirement to sign a preplacement agreement
30 as a condition of receiving community protection intensive supported
31 living services; (i) the right to retain current services during the
32 pendency of any challenge to the department's decision; (j) the right
33 to refuse to participate in the program.

34 (3)(a) If the department determines that a person is appropriate
35 for placement in the community protection program, the individual and
36 his or her legal representative shall receive in writing a
37 determination by the department that the person meets the criteria for
38 placement within the community protection program.

1 (b) If the department determines that a person cannot be managed
2 successfully in the community protection program with reasonably
3 available safeguards, the department must notify the person and his or
4 her legal representative in writing.

5 NEW SECTION. **Sec. 5.** (1) An applicant or eligible person who is
6 dissatisfied with a decision, action, or inaction made by the
7 department or its agents regarding that person's eligibility, or
8 department services provided to that person is entitled to an
9 administrative hearing. Such administrative hearings shall be
10 conducted pursuant to chapter 34.05 RCW by an administrative law judge.

11 (2) The applicant or eligible individual may appeal final decisions
12 issued following administrative hearings under RCW 34.05.510 through
13 34.05.598.

14 NEW SECTION. **Sec. 6.** (1) Community protection program
15 participants shall have appropriate opportunities to receive services
16 in the least restrictive manner and in the least restrictive
17 environments possible. When considering requests or recommendations
18 for lessening program restrictions, reducing supervision, or
19 terminating services, careful consideration to the safety and welfare
20 of both the individual and the community must be given.

21 (2) There must be a review by the treatment team every ninety days
22 to assess each participant's progress, evaluate use of less restrictive
23 measures, and make changes in the participant's program as necessary.
24 The team must review all restrictions and recommend reductions if
25 appropriate. The therapist must write a report annually evaluating the
26 participant's risk of offense and/or risk of behaviors that are
27 dangerous to self or others. The department shall have rules in place
28 describing this process. If a treatment team member has reason to be
29 concerned that circumstances have changed significantly, the team
30 member may request that a complete reassessment be conducted at any
31 time.

32 NEW SECTION. **Sec. 7.** A participant who demonstrates success in
33 complying with reduced restrictions and remains free of offenses that
34 may indicate a relapse for at least twelve months, may be considered
35 for placement in a less restrictive community residential setting. The

1 participant must show, at a minimum that he or she is complying with
2 reduced restrictions and remains free of offense that would indicate
3 relapse for at least twelve months.

4 The process to move a participant to a less restrictive residential
5 placement shall include:

6 (1) Written verification of the person's treatment progress,
7 assessment of low risk of reoffense, and a recommendation as to
8 suitable placement by the treatment team;

9 (2) Development of a gradual phase out plan by the treatment team,
10 projected over a reasonable period of time and includes specific
11 criteria for evaluating reductions in restrictions, especially
12 supervision;

13 (3) The absence of any incidents that may indicate relapse for a
14 minimum of twelve months;

15 (4) A written plan that details what supports and services,
16 including the level of supervision the person will receive from the
17 division upon exiting the community protection program;

18 (5) An assessment consistent with the guidelines for risk
19 assessments and psychosexual evaluations developed by the division,
20 conducted by a qualified professional, evaluating the participant's
21 risk of reoffense and/or dangerousness, including an opinion as to
22 whether or not the person can be managed successfully in a less
23 restrictive community residential setting;

24 (6) Recommendation by the treatment team that the participant is
25 ready to move to a less restrictive community residential placement.

26 NEW SECTION. **Sec. 8.** (1) The department is authorized to take one
27 or more of the enforcement actions listed in subsection (2) of this
28 section when the department finds that a provider of residential
29 services and support with whom the department entered into an agreement
30 with under this chapter has:

31 (a) Failed or refused to comply with the requirements of this
32 chapter or the rules adopted under it;

33 (b) Failed or refused to cooperate with the certification process;

34 (c) Prevented or interfered with a certification, inspection, or
35 investigation by the department;

36 (d) Failed to comply with any applicable requirements regarding
37 vulnerable adults under chapter 74.34 RCW;

1 (e) Knowingly, or with reason to know, made a false statement of
2 material fact related to certification or contracting with the
3 department or in any matter under investigation by the department.

4 (2) The department may:

5 (a) Decertify or refuse to renew the certification of a provider;

6 (b) Impose conditions on the provider's certification;

7 (c) Suspend department referrals to the provider; or

8 (d) Require a provider to implement a plan of correction developed
9 by the department, and to cooperate with subsequent monitoring of the
10 provider's progress.

11 (3) When determining the appropriate enforcement action or actions
12 to take under subsection (2) of this section, the department must
13 select actions commensurate with the seriousness of the harm or threat
14 of harm, to the persons being served by the provider. Further, the
15 department may take enforcement actions that are more severe for
16 violations that are uncorrected, repeated, pervasive, or present a
17 serious threat of harm to the health, safety, or welfare of persons
18 served by the provider.

19 (4) The provisions of chapter 34.05 RCW apply to enforcement
20 actions under this section. The effective date of enforcement actions
21 shall not be delayed or suspended pending any hearing or informal
22 review.

23 (5) The enforcement actions authorized in this section are not
24 exclusive and nothing in this section prohibits the department from
25 taking any other action authorized in statute or rule or under the
26 terms of a contract with the provider.

27 NEW SECTION. **Sec. 9.** The department shall develop and maintain
28 rules, guidelines, or policy manuals, as appropriate, for implementing
29 and maintaining the community protection program under this chapter.

30 NEW SECTION. **Sec. 10.** Sections 2 through 9 of this act are each
31 added to chapter 71A.12 RCW.

32 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
33 preservation of the public peace, health, or safety, or support of the

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

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