
SENATE BILL 6630

State of Washington

59th Legislature

2006 Regular Session

By Senators Kline, Prentice, Keiser, Fairley, Regala, McAuliffe and Kohl-Welles

Read first time 01/17/2006. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to protecting communities from individuals with
2 behaviors that pose a threat of violence or sexual violence; amending
3 RCW 43.190.020, 43.190.030, and 43.190.040; adding new sections to
4 chapter 71A.12 RCW; creating a new section; prescribing penalties; and
5 declaring an emergency.

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

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

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

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

17 (1)(a) Who: (i) Has been charged with or convicted of a crime of
18 sexual violence as defined in chapter 9A.44 or 71.09 RCW, including,

1 but not limited to, rape, rape of a child, and child molestation, or
2 who has been charged with or convicted of sexual acts directed toward:
3 Strangers, individuals with whom a relationship has been established or
4 promoted for the primary purpose of victimization, or persons of casual
5 acquaintance with whom no substantial personal relationship exists or
6 who has committed one or more violent offenses, as defined by RCW
7 9.94A.030; and (ii) constitutes a current risk to others as determined
8 by a qualified professional. Charges or crimes that resulted in
9 acquittal must be excluded; or

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

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

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

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

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

24 (b) The appropriateness of the community protection program for the
25 person;

26 (c) What restrictions are necessary;

27 (d) A plan for identifying successful use of restrictive procedures
28 and a plan for reducing restrictions.

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

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

36 (4) "Constitutes a risk to others" means a determination of a

1 person's risk and/or dangerousness based upon a thorough assessment by
2 a qualified professional.

3 (5) "Department" means the department of social and health
4 services.

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

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

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

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

16 (10) "Opportunistic behavior" means an act committed on impulse,
17 which is not premeditated. Consider what was the original motive or
18 intent of the offense/crime.

19 (11) "Predatory" means acts directed toward strangers, individuals
20 with whom a relationship has been established or promoted for the
21 primary purpose of victimization, or casual acquaintances with whom no
22 substantial personal relationship exists. Predatory behavior may be
23 characterized by planning and/or rehearsing the act, stalking, and/or
24 grooming the victim.

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

37 (13) "Treatment team" means the program participant and the group
38 of people responsible for the development, implementation, and

1 monitoring of the person's individualized supports and services. This
2 group may include, but is not limited to, the case resource manager,
3 therapist, residential provider, employment/day program provider, and
4 the person's legal representative and/or family.

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

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

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

36 (3)(a) If the department determines that a person is appropriate
37 for placement in the community protection program, the individual and

1 his or her legal representative shall receive in writing a
2 determination by the department that the person meets the criteria for
3 placement within the community protection program.

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

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

14 (2) The applicant or eligible individual may appeal final decisions
15 issued following administrative hearings under RCW 34.05.510 through
16 34.05.598.

17 (3) The department shall develop rules governing other processes
18 for dispute resolution as required under the federal rehabilitation act
19 of 1973.

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

27 (2) Every participant in the community protection program shall
28 receive a reassessment at least once every twelve months. The
29 reassessment shall be consistent with the guidelines for risk
30 assessments and psychosexual evaluations developed by the division and
31 shall incorporate the best available science at any given time. The
32 reassessment shall be conducted by a qualified professional and shall
33 include a written report addressing, at a minimum, the participant's
34 risk to reoffend and/or dangerousness and an opinion as to whether or
35 not the participant can continue to be managed successfully in the
36 community with reasonably available safeguards. If a treatment team

1 member has reason to be concerned that circumstances have changed
2 significantly, the team member may request that a reassessment be
3 conducted at any time.

4 NEW SECTION. **Sec. 7.** A participant who demonstrates success in
5 complying with reduced restrictions and remains free of offenses that
6 may indicate a relapse for at least twelve months, may be considered
7 for placement in a less restrictive community residential setting. The
8 participant or any member of the treatment team may request to be
9 considered for a less restrictive placement.

10 The process to move a participant to a less restrictive residential
11 placement shall include:

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

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

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

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

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

30 (6) Consensus by the treatment team that the participant is ready
31 to move to a less restrictive community residential placement.

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

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

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

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

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

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

11 (2) The department may:

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

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

14 (c) Impose civil penalties of not more than five hundred dollars
15 per day per violation. Each day during which the same or similar
16 action or inaction occurs constitutes a separate violation;

17 (d) Suspend department referrals to the provider; or

18 (e) Require a provider to implement a plan of correction developed
19 by the department, and to cooperate with subsequent monitoring of the
20 provider's progress.

21 (3) When determining the appropriate enforcement action or actions
22 to take under subsection (2) of this section, the department must
23 select actions commensurate with the seriousness of the harm or threat
24 of harm, to the persons being served by the provider. Further, the
25 department may take enforcement actions that are more severe for
26 violations that are uncorrected, repeated, pervasive, or present a
27 serious threat of harm to the health, safety, or welfare of persons
28 served by the provider.

29 (4) The provisions of chapter 34.05 RCW apply to enforcement
30 actions under this section. Except for imposition of civil penalties,
31 the effective date of enforcement actions shall not be delayed or
32 suspended pending any hearing or informal review.

33 (5) The enforcement actions and penalties authorized in this
34 section are not exclusive and nothing in this section prohibits the
35 department from taking any other action authorized in statute or rule
36 or under the terms of a contract with the provider.

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

4 **Sec. 10.** RCW 43.190.020 and 1995 1st sp.s. c 18 s 32 are each
5 amended to read as follows:

6 As used in this chapter, "long-term care facility" means any of the
7 following:

8 (1) A facility which:

9 (a) Maintains and operates twenty-four hour skilled nursing
10 services for the care and treatment of chronically ill or convalescent
11 patients, including mental, emotional, or behavioral problems, mental
12 retardation, or alcoholism;

13 (b) Provides supportive, restorative, and preventive health
14 services in conjunction with a socially oriented program to its
15 residents, and which maintains and operates twenty-four hour services
16 including board, room, personal care, and intermittent nursing care.
17 "Long-term health care facility" includes nursing homes and nursing
18 facilities, but does not include acute care hospital or other licensed
19 facilities except for that distinct part of the hospital or facility
20 which provides nursing facility services.

21 (2) Any family home, group care facility, or similar facility
22 determined by the secretary, for twenty-four hour nonmedical care of
23 persons, including persons with developmental disabilities, in need of
24 personal services, supervision, or assistance essential for sustaining
25 the activities of daily living or for the protection of the individual
26 or community.

27 (3) Any swing bed in an acute care facility.

28 **Sec. 11.** RCW 43.190.030 and 1997 c 194 s 1 are each amended to
29 read as follows:

30 There is created the office of the state long-term care ombudsman.
31 The department of community, trade, and economic development shall
32 contract with a private nonprofit organization to provide long-term
33 care ombudsman services as specified under, and consistent with, the
34 federal older Americans act as amended, federal mandates, the goals of
35 the state, and the needs of its citizens. The department of community,
36 trade, and economic development shall ensure that all program and staff

1 support necessary to enable the ombudsman to effectively protect the
2 interests of residents, patients, and clients of all long-term care
3 facilities, including long-term care facilities serving persons with
4 developmental disabilities, is provided by the nonprofit organization
5 that contracts to provide long-term care ombudsman services. The
6 department of community, trade, and economic development shall adopt
7 rules to carry out this chapter and the long-term care ombudsman
8 provisions of the federal older Americans act, as amended, and
9 applicable federal regulations. The long-term care ombudsman program
10 shall have the following powers and duties:

11 (1) To provide services for coordinating the activities of long-
12 term care ombudsmen throughout the state;

13 (2) Carry out such other activities as the department of community,
14 trade, and economic development deems appropriate;

15 (3) Establish procedures consistent with RCW 43.190.110 for
16 appropriate access by long-term care ombudsmen to long-term care
17 facilities and patients' records, including procedures to protect the
18 confidentiality of the records and ensure that the identity of any
19 complainant or resident will not be disclosed without the written
20 consent of the complainant or resident, or upon court order;

21 (4) Establish a statewide uniform reporting system to collect and
22 analyze data relating to complaints and conditions in long-term care
23 facilities for the purpose of identifying and resolving significant
24 problems, with provision for submission of such data to the department
25 of social and health services and to the federal department of health
26 and human services, or its successor agency, on a regular basis; and

27 (5) Establish procedures to assure that any files maintained by
28 ombudsman programs shall be disclosed only at the discretion of the
29 ombudsman having authority over the disposition of such files, except
30 that the identity of any complainant or resident of a long-term care
31 facility shall not be disclosed by such ombudsman unless:

32 (a) Such complainant or resident, or the complainant's or
33 resident's legal representative, consents in writing to such
34 disclosure; or

35 (b) Such disclosure is required by court order.

36 **Sec. 12.** RCW 43.190.040 and 2002 c 100 s 1 are each amended to
37 read as follows:

1 (1) Any long-term care ombudsman authorized by this chapter or a
2 local governmental authority shall have training or experience or both
3 in the following areas:

4 (a) Gerontology, long-term care, or other related social services
5 programs, including programs that serve persons with developmental
6 disabilities.

7 (b) The legal system.

8 (c) Dispute or problem resolution techniques, including
9 investigation, mediation, and negotiation.

10 (2) A long-term care ombudsman shall not have been employed by or
11 participated in the management of any long-term care facility within
12 the past year.

13 (3) A long-term care ombudsman shall not have been employed in a
14 governmental position with direct involvement in the licensing,
15 certification, or regulation of long-term care facilities within the
16 past year.

17 (4) No long-term care ombudsman or any member of his or her
18 immediate family shall have, or have had within the past year, any
19 significant ownership or investment interest in one or more long-term
20 care facilities.

21 (5) A long-term care ombudsman shall not be assigned to a long-term
22 care facility in which a member of that ombudsman's immediate family
23 resides.

24 NEW SECTION. Sec. 13. Sections 2 through 9 of this act are each
25 added to chapter 71A.12 RCW.

26 NEW SECTION. Sec. 14. This act is necessary for the immediate
27 preservation of the public peace, health, or safety, or support of the
28 state government and its existing public institutions, and takes effect
29 immediately.

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