

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE SENATE BILL 6630

59th Legislature
2006 Regular Session

Passed by the Senate March 7, 2006
YEAS 46 NAYS 0

President of the Senate

Passed by the House March 1, 2006
YEAS 98 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 6630** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 6630

AS AMENDED BY THE HOUSE

Passed Legislature - 2006 Regular Session

State of Washington 59th Legislature 2006 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Kline, Prentice, Keiser, Fairley, Regala, McAuliffe and Kohl-Welles)

READ FIRST TIME 02/7/06.

1 AN ACT Relating to establishing the community protection program
2 for persons with developmental disabilities; amending RCW 71.09.060;
3 reenacting and amending RCW 71.09.020; adding new sections to chapter
4 71A.12 RCW; creating a new section; and prescribing penalties.

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 has been charged with or convicted of a crime and meets
17 the following criteria:

18 (i) Has been convicted of one of the following:

1 (A) A crime of sexual violence as defined in chapter 9A.44 or 71.09
2 RCW including, but not limited to, rape, rape of a child, and child
3 molestation;

4 (B) Sexual acts directed toward strangers, individuals with whom a
5 relationship has been established or promoted for the primary purpose
6 of victimization, or persons of casual acquaintance with whom no
7 substantial personal relationship exists; or

8 (C) One or more violent offenses, as defined by RCW 9.94A.030; and

9 (ii) Constitutes a current risk to others as determined by a
10 qualified professional. Charges or crimes that resulted in acquittal
11 must be excluded; or

12 (b) Who has not been charged with and/or convicted of a crime, but
13 meets the following criteria:

14 (i) Has a history of stalking, violent, sexually violent,
15 predatory, and/or opportunistic behavior which demonstrates a
16 likelihood to commit a violent, sexually violent, and/or predatory act;
17 and

18 (ii) Constitutes a current risk to others as determined by a
19 qualified professional; and

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

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

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

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

28 (b) What restrictions are necessary.

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.

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

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

36 (13) "Treatment team" means the program participant and the group
37 of people responsible for the development, implementation, and
38 monitoring of the person's individualized supports and services. This

1 group may include, but is not limited to, the case resource manager,
2 therapist, residential provider, employment/day program provider, and
3 the person's legal representative and/or family, provided the person
4 consents to the family member's involvement.

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

7 (15) "Waiver" means the community-based funding under section 1915
8 of Title XIX of the federal social security act.

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

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

1 as a condition of receiving community protection intensive supported
2 living services; (i) the right to retain current services during the
3 pendency of any challenge to the department's decision; (j) the right
4 to refuse to participate in the program.

5 (3)(a) If the department determines that a person is appropriate
6 for placement in the community protection program, the individual and
7 his or her legal representative shall receive in writing a
8 determination by the department that the person meets the criteria for
9 placement within the community protection program.

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

14 NEW SECTION. **Sec. 5.** (1) Individuals receiving services through
15 the department's community protection waiver retain all appeal rights
16 provided for in RCW 71A.10.050. In addition, such individuals have a
17 right to an administrative hearing pursuant to chapter 34.05 RCW to
18 appeal the following decisions by the department:

19 (a) Termination of community protection waiver eligibility;

20 (b) Assignment of the applicant to the community protection waiver;

21 (c) Denial of a request for less restrictive community residential
22 placement.

23 (2) Final administrative decisions may be appealed pursuant to the
24 provisions of RCW 34.05.510.

25 (3) The secretary shall adopt rules concerning the procedure
26 applicable to requests for hearings under this section and governing
27 the conduct thereof.

28 (4) When the department takes any action described in subsection
29 (1) of this section it shall give notice as provided by RCW 71A.10.060.
30 The notice must include a statement advising the person enrolled on the
31 community protection waiver of the right to an adjudicative proceeding
32 and the time limits for filing an application for an adjudicative
33 proceeding. Notice must also include a statement advising the
34 recipient of the right to file a petition for judicial review of a
35 final administrative decision as provided in chapter 34.05 RCW.

36 (5) Nothing in this section creates an entitlement to placement on

1 the community protection waiver nor does it create a right to an
2 administrative hearing on department decisions denying placement on the
3 community protection waiver.

4 NEW SECTION. **Sec. 6.** (1) Community protection program
5 participants shall have appropriate opportunities to receive services
6 in the least restrictive manner and in the least restrictive
7 environments possible.

8 (2) There must be a review by the treatment team every ninety days
9 to assess each participant's progress, evaluate use of less restrictive
10 measures, and make changes in the participant's program as necessary.
11 The team must review all restrictions and recommend reductions if
12 appropriate. The therapist must write a report annually evaluating the
13 participant's risk of offense and/or risk of behaviors that are
14 dangerous to self or others. The department shall have rules in place
15 describing this process. If a treatment team member has reason to be
16 concerned that circumstances have changed significantly, the team
17 member may request that a complete reassessment be conducted at any
18 time.

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

23 The process to move a participant to a less restrictive residential
24 placement shall include, at a minimum:

25 (1) Written verification of the person's treatment progress,
26 compliance with reduced restrictions, an assessment of low risk of
27 reoffense, and a recommendation as to suitable placement by the
28 treatment team;

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

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

35 (4) A written plan that details what supports and services,

1 including the level of supervision the person will receive from the
2 division upon exiting the community protection program;

3 (5) An assessment consistent with the guidelines for risk
4 assessments and psychosexual evaluations developed by the division,
5 conducted by a qualified professional. At a minimum, the assessment
6 shall include:

7 (a) An evaluation of the participant's risk of reoffense and/or
8 dangerousness; and

9 (b) An opinion as to whether or not the person can be managed
10 successfully in a less restrictive community residential setting;

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

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

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

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

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

23 (d) Failed to comply with any applicable requirements regarding
24 vulnerable adults under chapter 74.34 RCW; or

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

28 (2) The department may:

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

30 (b) Impose conditions on a provider's certification status;

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

32 (d) Require a provider to implement a plan of correction developed
33 by the department and to cooperate with subsequent monitoring of the
34 provider's progress. In the event a provider fails to implement the
35 plan of correction or fails to cooperate with subsequent monitoring,
36 the department may impose civil penalties of not more than one hundred

1 fifty dollars per day per violation. Each day during which the same or
2 similar action or inaction occurs constitutes a separate violation.

3 (3) When determining the appropriate enforcement action or actions
4 under subsection (2) of this section, the department must select
5 actions commensurate with the seriousness of the harm or threat of harm
6 to the persons being served by the provider. Further, the department
7 may take enforcement actions that are more severe for violations that
8 are uncorrected, repeated, pervasive, or which present a serious threat
9 of harm to the health, safety, or welfare of persons served by the
10 provider. The department shall by rule develop criteria for the
11 selection and implementation of enforcement actions authorized in
12 subsection (2) of this section. Rules adopted under this section shall
13 include a process for an informal review upon request by a provider.

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

18 (5) The enforcement actions and penalties authorized in this
19 section are not exclusive or exhaustive and nothing in this section
20 prohibits the department from taking any other action authorized in
21 statute or rule or under the terms of a contract with the provider.

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

25 **Sec. 10.** RCW 71.09.020 and 2003 c 216 s 2 and 2003 c 50 s 1 are
26 each reenacted and amended to read as follows:

27 Unless the context clearly requires otherwise, the definitions in
28 this section apply throughout this chapter.

29 (1) "Department" means the department of social and health
30 services.

31 (2) "Health care facility" means any hospital, hospice care center,
32 licensed or certified health care facility, health maintenance
33 organization regulated under chapter 48.46 RCW, federally qualified
34 health maintenance organization, federally approved renal dialysis
35 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. A less restrictive alternative
10 may not include placement in the community protection program as
11 pursuant to section 4 of this act.

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

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

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

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

30 (11) "Risk potential activity" or "risk potential facility" means
31 an activity or facility that provides a higher incidence of risk to the
32 public from persons conditionally released from the special commitment
33 center. Risk potential activities and facilities include: Public and
34 private schools, school bus stops, licensed day care and licensed
35 preschool facilities, public parks, publicly dedicated trails, sports
36 fields, playgrounds, recreational and community centers, churches,
37 synagogues, temples, mosques, public libraries, public and private
38 youth camps, and others identified by the department following the

1 hearings on a potential site required in RCW 71.09.315. For purposes
2 of this chapter, "school bus stops" does not include bus stops
3 established primarily for public transit.

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

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

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

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

1 reasonable doubt to have been sexually motivated, as that term is
2 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28
3 RCW, that is an attempt, criminal solicitation, or criminal conspiracy
4 to commit one of the felonies designated in (a), (b), or (c) of this
5 subsection.

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

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

16 **Sec. 11.** RCW 71.09.060 and 2001 c 286 s 7 are each amended to read
17 as follows:

18 (1) The court or jury shall determine whether, beyond a reasonable
19 doubt, the person is a sexually violent predator. In determining
20 whether or not the person would be likely to engage in predatory acts
21 of sexual violence if not confined in a secure facility, the fact
22 finder may consider only placement conditions and voluntary treatment
23 options that would exist for the person if unconditionally released
24 from detention on the sexually violent predator petition. The
25 community protection program under section 4 of this act may not be
26 considered as a placement condition or treatment option available to
27 the person if unconditionally released from detention on a sexually
28 violent predator petition. When the determination is made by a jury,
29 the verdict must be unanimous.

30 If, on the date that the petition is filed, the person was living
31 in the community after release from custody, the state must also prove
32 beyond a reasonable doubt that the person had committed a recent overt
33 act. If the state alleges that the prior sexually violent offense that
34 forms the basis for the petition for commitment was an act that was
35 sexually motivated as provided in RCW 71.09.020(~~(+6)~~) (15)(c), the
36 state must prove beyond a reasonable doubt that the alleged sexually
37 violent act was sexually motivated as defined in RCW 9.94A.030.

1 If the court or jury determines that the person is a sexually
2 violent predator, the person shall be committed to the custody of the
3 department of social and health services for placement in a secure
4 facility operated by the department of social and health services for
5 control, care, and treatment until such time as: (a) The person's
6 condition has so changed that the person no longer meets the definition
7 of a sexually violent predator; or (b) conditional release to a less
8 restrictive alternative as set forth in RCW 71.09.092 is in the best
9 interest of the person and conditions can be imposed that would
10 adequately protect the community.

11 If the court or unanimous jury decides that the state has not met
12 its burden of proving that the person is a sexually violent predator,
13 the court shall direct the person's release.

14 If the jury is unable to reach a unanimous verdict, the court shall
15 declare a mistrial and set a retrial within forty-five days of the date
16 of the mistrial unless the prosecuting agency earlier moves to dismiss
17 the petition. The retrial may be continued upon the request of either
18 party accompanied by a showing of good cause, or by the court on its
19 own motion in the due administration of justice provided that the
20 respondent will not be substantially prejudiced. In no event may the
21 person be released from confinement prior to retrial or dismissal of
22 the case.

23 (2) If the person charged with a sexually violent offense has been
24 found incompetent to stand trial, and is about to or has been released
25 pursuant to RCW 10.77.090(4), and his or her commitment is sought
26 pursuant to subsection (1) of this section, the court shall first hear
27 evidence and determine whether the person did commit the act or acts
28 charged if the court did not enter a finding prior to dismissal under
29 RCW 10.77.090(4) that the person committed the act or acts charged.
30 The hearing on this issue must comply with all the procedures specified
31 in this section. In addition, the rules of evidence applicable in
32 criminal cases shall apply, and all constitutional rights available to
33 defendants at criminal trials, other than the right not to be tried
34 while incompetent, shall apply. After hearing evidence on this issue,
35 the court shall make specific findings on whether the person did commit
36 the act or acts charged, the extent to which the person's incompetence
37 or developmental disability affected the outcome of the hearing,
38 including its effect on the person's ability to consult with and assist

1 counsel and to testify on his or her own behalf, the extent to which
2 the evidence could be reconstructed without the assistance of the
3 person, and the strength of the prosecution's case. If, after the
4 conclusion of the hearing on this issue, the court finds, beyond a
5 reasonable doubt, that the person did commit the act or acts charged,
6 it shall enter a final order, appealable by the person, on that issue,
7 and may proceed to consider whether the person should be committed
8 pursuant to this section.

9 (3) The state shall comply with RCW 10.77.220 while confining the
10 person pursuant to this chapter, except that during all court
11 proceedings the person shall be detained in a secure facility. The
12 department shall not place the person, even temporarily, in a facility
13 on the grounds of any state mental facility or regional habilitation
14 center because these institutions are insufficiently secure for this
15 population.

16 (4) A court has jurisdiction to order a less restrictive
17 alternative placement only after a hearing ordered pursuant to RCW
18 71.09.090 following initial commitment under this section and in accord
19 with the provisions of this chapter.

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

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