

SENATE BILL REPORT

SB 5404

As Reported by Senate Committee On:
Human Services & Corrections, February 14, 2013

Title: An act relating to introduction of contraband into or possession of contraband in a secure facility.

Brief Description: Concerning the introduction of contraband into or possession of contraband in a secure facility.

Sponsors: Senators Carrell, Hargrove, Pearson and Darneille; by request of Department of Social and Health Services.

Brief History:

Committee Activity: Human Services & Corrections: 1/22/13, 2/14/13 [DPS].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5404 be substituted therefor, and the substitute bill do pass.

Signed by Senators Carrell, Chair; Pearson, Vice Chair; Darneille, Ranking Member; Hargrove, Harper and Padden.

Staff: Joan Miller (786-7784)

Background: The Department of Social and Health Services operates the Special Commitment Center (SCC) on McNeil Island to provide mental health treatment to civilly committed sexually violent predators after they have been released from criminal incarceration. The SCC is a secure facility, which is defined as a residential facility for persons civilly confined under the provisions of chapter 71.09 RCW that includes security measures sufficient to protect the community.

For approximately 30 years, the Department of Corrections (DOC) also operated a detention facility on the island. Detention facility means any place used for the confinement of a person: (1) arrested for, charged with, or convicted of an offense; (2) charged with being or adjudicated to be a juvenile offender; (3) held for extradition as a material witness; (4) otherwise confined pursuant to a court order; or (5) in any work release, furlough, or other such facility or program. The definition does not include secure facilities, such as the SCC.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In December 2010, state law mandated closure of the DOC facility on McNeil Island, and it was closed in April 2011. Prior to its closure, any person who went to the SCC was required to pass through DOC security checkpoints. Criminal penalties had already been established for distributing or possessing contraband in detention facilities.

Summary of Bill (Recommended Substitute): Criminal penalties are established for the distribution or possession of contraband in secure facilities. Contraband means any article or thing that a person confined in a detention facility or a secure facility under chapter 71.09 RCW is prohibited from obtaining or possessing by statute, rule, regulation, or order of a court.

A person who knowingly provides any deadly weapon to a person confined in a detention facility or a secure facility is guilty of introducing contraband in the first degree. A person who knowingly and unlawfully provides contraband to any person confined in a detention facility or secure facility with the intent that such contraband be used in an escape or commission of a crime is guilty of introducing contraband in the second degree. A person who knowingly and unlawfully provides contraband to any person confined in a detention facility or secure facility is guilty of introducing contraband in the third degree.

Criminal penalties for introducing contraband in the third degree do not apply to an attorney representing a client confined in a secure facility for the purposes of bringing discovery or other legal materials to assist the client in the civil commitment process under chapter 71.09 RCW, provided that the attorney is present when the materials are being reviewed or handled by the client, and the attorney takes the materials and any or all copies of the materials when leaving the facility. DSHS must adopt rules establishing guidelines for attorneys to follow when bringing legal materials into secure facilities. The rules may not interfere with attorney-client privilege.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute): Language is added that exempts attorneys from criminal penalties for introducing contraband in the third degree if the material is for the purpose of bringing discovery or other legal materials to assist a client in the civil commitment process. DSHS must write rules establishing procedures for attorneys to follow when bringing materials into secure facilities. The rules may not interfere with attorney-client privilege.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: To enter the SCC, a person would always have to pass through a DOC checkpoint. If a person introduced contraband into the SCC, then that person would have violated the law by passing through that checkpoint. The definitional correction is needed. The SCC has had a number of legal

battles, and based on the legal issues it has had over the years, the definition piece is important because the SCC needs to be defined as a secure facility and not a place of detention. The change in law would allow prosecutors to support the SCC when contraband is introduced into the facility.

Persons Testifying: PRO: Don Gauntz, Interim CEO DSHS SCC.