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**SENATE BILL 6436**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senators Rolfes, O'Ban, Randall, and Wilson, C.

Read first time 01/16/20. Referred to Committee on Human Services, Reentry & Rehabilitation.

1 AN ACT Relating to the conditional release of sexually violent  
2 predators to less restrictive alternatives; amending RCW 4.24.550,  
3 71.09.092, 71.09.096, and 71.09.345; reenacting and amending RCW  
4 71.09.020; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature declares that public  
7 safety and well-being shall be a primary concern regarding placement  
8 of sexually violent predators in any community. The legislature finds  
9 that current housing and public notification processes are  
10 insufficient to ensure that the public is on notice and prepared for  
11 an instance where a sexually violent predator locates into a  
12 community. The legislature therefore resolves to increase the  
13 transparency around the location of sexually violent predators and to  
14 restrict the types of housing that sexually violent predators may  
15 utilize to better ensure public safety.

16 **Sec. 2.** RCW 4.24.550 and 2015 c 261 s 1 are each amended to read  
17 as follows:

18 (1) In addition to the disclosure under subsection (5) of this  
19 section, public agencies are authorized to release information to the  
20 public regarding sex offenders and kidnapping offenders when the

1 agency determines that disclosure of the information is relevant and  
2 necessary to protect the public and counteract the danger created by  
3 the particular offender. This authorization applies to information  
4 regarding: (a) Any person adjudicated or convicted of a sex offense  
5 as defined in RCW 9A.44.128 or a kidnapping offense as defined by RCW  
6 9A.44.128; (b) any person under the jurisdiction of the indeterminate  
7 sentence review board as the result of a sex offense or kidnapping  
8 offense; (c) any person committed as a sexually violent predator  
9 under chapter 71.09 RCW or as a sexual psychopath under chapter 71.06  
10 RCW; (d) any person found not guilty of a sex offense or kidnapping  
11 offense by reason of insanity under chapter 10.77 RCW; and (e) any  
12 person found incompetent to stand trial for a sex offense or  
13 kidnapping offense and subsequently committed under chapter 71.05 or  
14 71.34 RCW.

15 (2) Except for the information specifically required under  
16 subsection (5) of this section, the extent of the public disclosure  
17 of relevant and necessary information shall be rationally related to:  
18 (a) The level of risk posed by the offender to the community; (b) the  
19 locations where the offender resides, expects to reside, or is  
20 regularly found; and (c) the needs of the affected community members  
21 for information to enhance their individual and collective safety.

22 (3) Except for the information specifically required under  
23 subsection (5) of this section, local law enforcement agencies shall  
24 consider the following guidelines in determining the extent of a  
25 public disclosure made under this section: (a) For offenders  
26 classified as risk level I, the agency shall share information with  
27 other appropriate law enforcement agencies and, if the offender is a  
28 student, the public or private school regulated under Title 28A RCW  
29 or chapter 72.40 RCW which the offender is attending, or planning to  
30 attend. The agency may disclose, upon request, relevant, necessary,  
31 and accurate information to any victim or witness to the offense, any  
32 individual community member who lives near the residence where the  
33 offender resides, expects to reside, or is regularly found, and any  
34 individual who requests information regarding a specific offender;  
35 (b) for offenders classified as risk level II, the agency may also  
36 disclose relevant, necessary, and accurate information to public and  
37 private schools, child day care centers, family day care providers,  
38 public libraries, businesses and organizations that serve primarily  
39 children, women, or vulnerable adults, and neighbors and community  
40 groups near the residence where the offender resides, expects to

1 reside, or is regularly found; (c) for offenders classified as risk  
2 level III, the agency may also disclose relevant, necessary, and  
3 accurate information to the public at large; (d) for offenders  
4 classified as risk level III and committed under chapter 71.09 RCW,  
5 the agency shall disclose information regarding civil commitment to  
6 the public at large including, but not limited to, status of total  
7 confinement, conditional release, and unconditional release, and hold  
8 a community notification meeting pursuant to the guidelines  
9 established under RCW 4.24.5501; and ((-d)) (e) because more  
10 localized notification is not feasible and homeless and transient  
11 offenders may present unique risks to the community, the agency may  
12 also disclose relevant, necessary, and accurate information to the  
13 public at large for offenders registered as homeless or transient.

14 (4) The county sheriff with whom an offender classified as risk  
15 level III is registered shall release a sex offender community  
16 notification that conforms to the guidelines established under RCW  
17 4.24.5501.

18 (5) (a) When funded by federal grants or other sources, the  
19 Washington association of sheriffs and police chiefs shall create and  
20 maintain a statewide registered kidnapping and sex offender web site,  
21 which shall be available to the public. The web site shall post all  
22 level III and level II registered sex offenders, level I registered  
23 sex offenders only during the time they are out of compliance with  
24 registration requirements under RCW 9A.44.130 or if lacking a fixed  
25 residence as provided in RCW 9A.44.130, and all registered kidnapping  
26 offenders in the state of Washington.

27 (i) For level III offenders, the web site shall contain, but is  
28 not limited to, the registered sex offender's name, relevant criminal  
29 convictions, description of prior sexual offenses, address by hundred  
30 block, physical description, civil commitment status and history, and  
31 photograph. The web site shall provide mapping capabilities that  
32 display the sex offender's address by hundred block on a map. The web  
33 site shall allow citizens to search for registered sex offenders  
34 within the state of Washington by county, city, zip code, last name,  
35 and address by hundred block.

36 (ii) For level II offenders, and level I sex offenders during the  
37 time they are out of compliance with registration requirements under  
38 RCW 9A.44.130, the web site shall contain, but is not limited to, the  
39 same information and functionality as described in (a)(i) of this  
40 subsection, provided that it is permissible under state and federal

1 law. If it is not permissible, the web site shall be limited to the  
2 information and functionality that is permissible under state and  
3 federal law.

4 (iii) For kidnapping offenders, the web site shall contain, but  
5 is not limited to, the same information and functionality as  
6 described in (a)(i) of this subsection, provided that it is  
7 permissible under state and federal law. If it is not permissible,  
8 the web site shall be limited to the information and functionality  
9 that is permissible under state and federal law.

10 (b) Law enforcement agencies must provide information requested  
11 by the Washington association of sheriffs and police chiefs to  
12 administer the statewide registered kidnapping and sex offender web  
13 site.

14 (c)(i) Within five business days of the Washington association of  
15 sheriffs and police chiefs receiving any public record request under  
16 chapter 42.56 RCW for sex offender and kidnapping offender  
17 information, records or web site data it holds or maintains pursuant  
18 to this section or a unified sex offender registry, the Washington  
19 association of sheriffs and police chiefs shall refer the requester  
20 in writing to the appropriate law enforcement agency or agencies for  
21 submission of such a request. The Washington association of sheriffs  
22 and police chiefs shall have no further obligation under chapter  
23 42.56 RCW for responding to such a request.

24 (ii) This ~~((subparagraph))~~ subsection (5)(c) ~~((of this section))~~  
25 is remedial and applies retroactively.

26 (6)(a) Law enforcement agencies responsible for the registration  
27 and dissemination of information regarding offenders required to  
28 register under RCW 9A.44.130 shall assign a risk level classification  
29 to all offenders after consideration of: (i) Any available risk level  
30 classifications provided by the department of corrections, the  
31 department of social and health services, and the indeterminate  
32 sentence review board; (ii) the agency's own application of a sex  
33 offender risk assessment tool; and (iii) other information and  
34 aggravating or mitigating factors known to the agency and deemed  
35 rationally related to the risk posed by the offender to the community  
36 at large.

37 (b) A sex offender shall be classified as a risk level I if his  
38 or her risk assessment and other information or factors deemed  
39 relevant by the law enforcement agency indicate he or she is at a low  
40 risk to sexually reoffend within the community at large. A sex

1 offender shall be classified as a risk level II if his or her risk  
2 assessment and other information or factors deemed relevant by the  
3 law enforcement agency indicate he or she is at a moderate risk to  
4 sexually reoffend within the community at large. A sex offender shall  
5 be classified as a risk level III if his or her risk assessment and  
6 other information or factors deemed relevant by the law enforcement  
7 agency indicate he or she is at a high risk to sexually reoffend  
8 within the community at large.

9 (c) The agency shall make a good faith effort to notify the  
10 public and residents within a reasonable period of time after the  
11 offender registers with the agency.

12 (d) Agencies may develop a process to allow an offender to  
13 petition for review of the offender's assigned risk level  
14 classification. The timing, frequency, and process for review are at  
15 the sole discretion of the agency.

16 (7) An appointed or elected public official, public employee, or  
17 public agency as defined in RCW 4.24.470, or units of local  
18 government and its employees, as provided in RCW 36.28A.010, are  
19 immune from civil liability for damages for any discretionary risk  
20 level classification decisions or release of relevant and necessary  
21 information, unless it is shown that the official, employee, or  
22 agency acted with gross negligence or in bad faith. The immunity in  
23 this section applies to risk level classification decisions and the  
24 release of relevant and necessary information regarding any  
25 individual for whom disclosure is authorized. The decision of a law  
26 enforcement agency or official to classify an offender to a risk  
27 level other than the one assigned by the department of corrections,  
28 the department of social and health services, or the indeterminate  
29 sentence review board, or the release of any relevant and necessary  
30 information based on that different classification shall not, by  
31 itself, be considered gross negligence or bad faith. The immunity  
32 provided under this section applies to the release of relevant and  
33 necessary information to other public officials, public employees, or  
34 public agencies, and to the general public.

35 (8) Except as may otherwise be provided by law, nothing in this  
36 section shall impose any liability upon a public official, public  
37 employee, or public agency for failing to release information  
38 authorized under this section.

1 (9) Nothing in this section implies that information regarding  
2 persons designated in subsection (1) of this section is confidential  
3 except as may otherwise be provided by law.

4 (10) When a law enforcement agency or official classifies an  
5 offender differently than the offender is classified by the end of  
6 sentence review committee at the time of the offender's release from  
7 confinement, the law enforcement agency or official shall notify the  
8 end of sentence review committee and the Washington state patrol and  
9 submit its reasons supporting the change in classification.

10 (11) As used in this section, "law enforcement agency" means a  
11 general authority Washington law enforcement agency as defined in RCW  
12 10.93.020.

13 **Sec. 3.** RCW 71.09.020 and 2015 c 278 s 2 are each reenacted and  
14 amended to read as follows:

15 Unless the context clearly requires otherwise, the definitions in  
16 this section apply throughout this chapter.

17 (1) "Department" means the department of social and health  
18 services.

19 (2) "Health care facility" means any hospital, hospice care  
20 center, licensed or certified health care facility, health  
21 maintenance organization regulated under chapter 48.46 RCW, federally  
22 qualified health maintenance organization, federally approved renal  
23 dialysis center or facility, or federally approved blood bank.

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

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

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

31 (6) "Less restrictive alternative" means court-ordered treatment  
32 in a setting less restrictive than total confinement which satisfies  
33 the conditions set forth in RCW 71.09.092. A less restrictive  
34 alternative may not include placement in the community protection  
35 program as pursuant to RCW 71A.12.230 or placement to an adult family  
36 home as defined in RCW 70.128.010.

37 (7) "Likely to engage in predatory acts of sexual violence if not  
38 confined in a secure facility" means that the person more probably  
39 than not will engage in such acts if released unconditionally from

1 detention on the sexually violent predator petition. Such likelihood  
2 must be evidenced by a recent overt act if the person is not totally  
3 confined at the time the petition is filed under RCW 71.09.030.

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

8 (9) "Personality disorder" means an enduring pattern of inner  
9 experience and behavior that deviates markedly from the expectations  
10 of the individual's culture, is pervasive and inflexible, has onset  
11 in adolescence or early adulthood, is stable over time and leads to  
12 distress or impairment. Purported evidence of a personality disorder  
13 must be supported by testimony of a licensed forensic psychologist or  
14 psychiatrist.

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

19 (11) "Prosecuting agency" means the prosecuting attorney of the  
20 county where the person was convicted or charged or the attorney  
21 general if requested by the prosecuting attorney, as provided in RCW  
22 71.09.030.

23 (12) "Recent overt act" means any act, threat, or combination  
24 thereof that has either caused harm of a sexually violent nature or  
25 creates a reasonable apprehension of such harm in the mind of an  
26 objective person who knows of the history and mental condition of the  
27 person engaging in the act or behaviors.

28 (13) "Risk potential activity" or "risk potential facility" means  
29 an activity or facility that provides a higher incidence of risk to  
30 the public from persons conditionally released from the special  
31 commitment center. Risk potential activities and facilities include:  
32 Public and private schools, school bus stops, licensed day care and  
33 licensed preschool facilities, public parks, publicly dedicated  
34 trails, sports fields, playgrounds, recreational and community  
35 centers, churches, synagogues, temples, mosques, public libraries,  
36 public and private youth camps, and others identified by the  
37 department following the hearings on a potential site required in RCW  
38 71.09.315. For purposes of this chapter, "school bus stops" does not  
39 include bus stops established primarily for public transit.

1 (14) "Secretary" means the secretary of social and health  
2 services or the secretary's designee.

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

14 (16) "Secure facility" means a residential facility for persons  
15 civilly confined under the provisions of this chapter that includes  
16 security measures sufficient to protect the community. Such  
17 facilities include total confinement facilities, secure community  
18 transition facilities, and (~~any residence~~) individual residences  
19 used as a court-ordered placement under RCW 71.09.096.

20 (17) "Sexually violent offense" means an act committed on,  
21 before, or after July 1, 1990, that is: (a) An act defined in Title  
22 9A RCW as rape in the first degree, rape in the second degree by  
23 forcible compulsion, rape of a child in the first or second degree,  
24 statutory rape in the first or second degree, indecent liberties by  
25 forcible compulsion, indecent liberties against a child under age  
26 fourteen, incest against a child under age fourteen, or child  
27 molestation in the first or second degree; (b) a felony offense in  
28 effect at any time prior to July 1, 1990, that is comparable to a  
29 sexually violent offense as defined in (a) of this subsection, or any  
30 federal or out-of-state conviction for a felony offense that under  
31 the laws of this state would be a sexually violent offense as defined  
32 in this subsection; (c) an act of murder in the first or second  
33 degree, assault in the first or second degree, assault of a child in  
34 the first or second degree, kidnapping in the first or second degree,  
35 burglary in the first degree, residential burglary, or unlawful  
36 imprisonment, which act, either at the time of sentencing for the  
37 offense or subsequently during civil commitment proceedings pursuant  
38 to this chapter, has been determined beyond a reasonable doubt to  
39 have been sexually motivated, as that term is defined in RCW  
40 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is



1 an attempt, criminal solicitation, or criminal conspiracy to commit  
2 one of the felonies designated in (a), (b), or (c) of this  
3 subsection.

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

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

14 (20) "Treatment" means the sex offender specific treatment  
15 program at the special commitment center or a specific course of sex  
16 offender treatment pursuant to RCW 71.09.092 (1) (~~(and (2))~~) through  
17 (3).

18 (21) "Individual residence" means a court-ordered placement to a  
19 secure facility under RCW 71.09.096 that houses not more than one  
20 sexually violent predator who is conditionally released to a single-  
21 family residence, multifamily residence, or group dwelling.

22 **Sec. 4.** RCW 71.09.092 and 2009 c 409 s 9 are each amended to  
23 read as follows:

24 Before the court may enter an order directing conditional release  
25 to a less restrictive alternative, it must find the following: (1)  
26 The person has progressed in the treatment provided at the special  
27 commitment center and the person's conditional release would not  
28 unduly place the community at risk; (2) if conditionally released,  
29 the person will be treated by a treatment provider who is qualified  
30 to provide such treatment in the state of Washington under chapter  
31 18.155 RCW; (~~(2)~~) (3) the treatment provider has presented a  
32 specific course of treatment and has agreed to assume responsibility  
33 for such treatment and will report progress to the court on a regular  
34 basis, and will report violations immediately to the court, the  
35 prosecutor, the supervising community corrections officer, and the  
36 superintendent of the special commitment center; (~~(3)~~) (4) housing  
37 exists in Washington that is sufficiently secure to protect the  
38 community, and the person or agency providing housing to the  
39 conditionally released person has agreed in writing to accept the

1 person, to provide the level of security required by the court, and  
2 immediately to report to the court, the prosecutor, the supervising  
3 community corrections officer, and the superintendent of the special  
4 commitment center if the person leaves the housing to which he or she  
5 has been assigned without authorization; ~~((4))~~ (5) the person is  
6 willing to comply with the treatment provider and all requirements  
7 imposed by the treatment provider and by the court; and ~~((5))~~ (6)  
8 the person will be under the supervision of the department of  
9 corrections and is willing to comply with supervision requirements  
10 imposed by the department of corrections.

11 **Sec. 5.** RCW 71.09.096 and 2015 c 278 s 3 are each amended to  
12 read as follows:

13 (1) If the court or jury determines that conditional release to a  
14 less restrictive alternative is in the best interest of the person  
15 and includes conditions that would adequately protect the community,  
16 and the court determines that the minimum conditions set forth in RCW  
17 71.09.092 and in this section are met, the court shall enter judgment  
18 and direct a conditional release.

19 (2) A person who is granted conditional release shall be placed  
20 into a secure community transition facility before the person may be  
21 conditionally released to any other placement. If conditional release  
22 to a less restrictive alternative is revoked under RCW 71.09.098 or  
23 71.09.112, and the person is remanded to the custody of the secretary  
24 in a total confinement facility under RCW 71.09.098(8), and the  
25 person becomes eligible and is subsequently granted another  
26 conditional release to a less restrictive alternative, the person  
27 shall be placed into a secure community transition facility before  
28 the person may be conditionally released to any other placement.

29 (3) The court shall impose any additional conditions necessary to  
30 ensure compliance with treatment and to protect the community. If the  
31 court finds that conditions do not exist that will both ensure the  
32 person's compliance with treatment and protect the community, then  
33 the person shall be remanded to the custody of the department of  
34 social and health services for control, care, and treatment in a  
35 secure facility as designated in RCW 71.09.060(1).

36 ~~((3))~~ (4) If the service provider designated by the court to  
37 provide inpatient or outpatient treatment or to monitor or supervise  
38 any other terms and conditions of a person's placement in a less  
39 restrictive alternative is other than the department of social and

1 health services or the department of corrections, then the service  
2 provider so designated must agree in writing to provide such  
3 treatment, monitoring, or supervision in accord with this section.  
4 Any person providing or agreeing to provide treatment, monitoring, or  
5 supervision services pursuant to this chapter may be compelled to  
6 testify and any privilege with regard to such person's testimony is  
7 deemed waived.

8 ~~((4))~~ (5) Prior to authorizing any release to a less  
9 restrictive alternative, the court shall impose such conditions upon  
10 the person as are necessary to ensure the safety of the community.  
11 The court shall order the department of corrections to investigate  
12 the less restrictive alternative and recommend any additional  
13 conditions to the court. These conditions shall include, but are not  
14 limited to the following: Specification of residence, prohibition of  
15 contact with potential or past victims, prohibition of alcohol and  
16 other drug use, participation in a specific course of inpatient or  
17 outpatient treatment that may include monitoring by the use of  
18 polygraph and plethysmograph, monitoring through the use of global  
19 positioning ~~((satellite—[global—positioning—system]))~~ system  
20 technology, supervision by a department of corrections community  
21 corrections officer, a requirement that the person remain within the  
22 state unless the person receives prior authorization by the court,  
23 and any other conditions that the court determines are in the best  
24 interest of the person or others. A copy of the conditions of release  
25 shall be given to the person and to any designated service providers.

26 ~~((5))~~ (6)(a) Prior to authorizing release to a less restrictive  
27 alternative, the court shall consider whether it is appropriate to  
28 release the person to the person's county of commitment. To ensure  
29 equitable distribution of releases, and prevent the disproportionate  
30 grouping of persons subject to less restrictive orders in any one  
31 county, or in any one jurisdiction or community within a county, the  
32 legislature finds it is appropriate for releases to a less  
33 restrictive alternative to occur in the person's county of  
34 commitment, unless the court determines that the person's return to  
35 his or her county of commitment would be inappropriate considering  
36 any court-issued protection orders, victim safety concerns, the  
37 availability of appropriate treatment or facilities that would  
38 adequately protect the community, negative influences on the person,  
39 or the location of family or other persons or organizations offering  
40 support to the person. When the department or court assists in

1 developing a placement under this section which is outside of the  
2 county of commitment, and there are two or more options for  
3 placement, it shall endeavor to develop the placement in a manner  
4 that does not have a disproportionate effect on a single county.

5 (b) If the committed person is not conditionally released to his  
6 or her county of commitment, the department shall provide the law and  
7 justice council of the county in which the person is conditionally  
8 released with notice and a written explanation.

9 (c) For purposes of this section, the person's county of  
10 commitment means the county of the court which ordered the person's  
11 commitment.

12 (d) This subsection (~~((5))~~) (6) does not apply to releases to a  
13 secure community transition facility under RCW 71.09.250.

14 (~~((6))~~) (7) Any service provider designated to provide inpatient  
15 or outpatient treatment shall monthly, or as otherwise directed by  
16 the court, submit to the court, to the department of social and  
17 health services facility from which the person was released, to the  
18 prosecuting agency, and to the supervising community corrections  
19 officer, a report stating whether the person is complying with the  
20 terms and conditions of the conditional release to a less restrictive  
21 alternative.

22 (~~((7))~~) (8) Each person released to a less restrictive  
23 alternative shall have his or her case reviewed by the court that  
24 released him or her no later than one year after such release and  
25 annually thereafter until the person is unconditionally discharged.  
26 Review may occur in a shorter time or more frequently, if the court,  
27 in its discretion on its own motion, or on motion of the person, the  
28 secretary, or the prosecuting agency so determines. The sole question  
29 to be determined by the court is whether the person shall continue to  
30 be conditionally released to a less restrictive alternative. The  
31 court in making its determination shall be aided by the periodic  
32 reports filed pursuant to subsection (~~((6))~~) (7) of this section and  
33 the opinions of the secretary and other experts or professional  
34 persons.

35 **Sec. 6.** RCW 71.09.345 and 2001 2nd sp.s. c 12 s 226 are each  
36 amended to read as follows:

37 Nothing in chapter 12, Laws of 2001 2nd sp. sess. shall operate  
38 to restrict a court's authority to make less restrictive alternative  
39 placements to a committed person's individual residence (~~(or to a~~

1 ~~setting less restrictive than a secure community transition~~  
2 ~~facility~~). A court-ordered less restrictive alternative placement to  
3 a committed person's individual residence (~~is not a less restrictive~~  
4 ~~alternative~~) constitutes a placement to a secure community  
5 transition facility.

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