
SUBSTITUTE SENATE BILL 5845

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Fraser, Costa, Long, Winsley and Kohl-Welles)

READ FIRST TIME 02/26/01.

1 AN ACT Relating to the siting and oversight of facilities for the
2 treatment and housing of sexually violent predators; amending RCW
3 71.09.020 and 36.70A.200; adding new sections to chapter 71.09 RCW;
4 adding a new section to chapter 36.70A RCW; adding a new section to
5 chapter 36.70 RCW; creating new sections; prescribing penalties; and
6 declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature recognizes that the
9 individualized treatment required for constitutional civil commitment
10 includes the realistic possibility of release to a less restrictive
11 alternative than total confinement in appropriate cases. The
12 legislature finds that most persons civilly committed under chapter
13 71.09 RCW who become eligible for release to a less restrictive
14 alternative do not have appropriate housing and that the lack of
15 housing may unduly restrict the person's ability to move to a less
16 restrictive alternative placement. The legislature also finds that
17 these facilities are essential public facilities, are subject to public
18 protest upon siting, and that some cities and counties have imposed
19 moratoriums on zoning and permitting processes. The legislature

1 further finds that this reaction hampers its ability and the ability of
2 the department of social and health services to comply with federal
3 court orders to create housing for less restrictive alternative
4 placements. The legislature, therefore, intends to provide statewide
5 guidance for the siting of less restrictive alternative housing for
6 persons placed on less restrictive alternative placements under chapter
7 71.09 RCW.

8 (2) It is the intent of the legislature to:

9 (a) Enhance public safety and maximize the potential for successful
10 treatment of sexually violent predators through the secure and tightly
11 controlled use of less restrictive alternatives in community-based
12 secure housing facilities;

13 (b) Maximize the safety of communities in which secure facilities
14 are located and ensure public input into secure housing facilities by
15 enabling community participation in decisions involving these essential
16 public facilities;

17 (c) Comply with federal court orders and require the siting of less
18 restrictive alternative housing facilities and to preclude the
19 possibility that the department of social and health services would be
20 unable to site a facility due to local moratoriums and requirements;

21 (d) Require the department to work with local jurisdictions to
22 address specific local concerns and develop zoning requirements and
23 development regulations that balance the need for siting with public
24 safety; and

25 (e) Improve public safety by strengthening the safeguards in
26 placement, oversight, and monitoring of the persons released to a less
27 restrictive alternative in a secure residential facility, and by
28 establishing minimum standards for the siting and operation of secure
29 residential facilities.

30 (3) The legislature finds that community participation in siting
31 and oversight is vital to the success of secure facilities for less
32 restrictive alternatives.

33 **Sec. 2.** RCW 71.09.020 and 1995 c 216 s 1 are each amended to read
34 as follows:

35 Unless the context clearly requires otherwise, the definitions in
36 this section apply throughout this chapter.

37 (1) (~~"Sexually violent predator" means any person who has been~~
38 ~~convicted of or charged with a crime of sexual violence and who suffers~~

1 from a mental abnormality or personality disorder which makes the
2 person likely to engage in predatory acts of sexual violence if not
3 confined in a secure facility.

4 (2) ~~"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 "Department" means the department of social and health services.

9 (2) "Less restrictive alternative" means court-ordered treatment in
10 a setting less restrictive than total confinement.

11 (3) "Likely to engage in predatory acts of sexual violence" means
12 that the person more probably than not will engage in such acts. Such
13 likelihood must be evidenced by a recent overt act if the person is not
14 totally confined at the time the petition is filed under RCW 71.09.030.

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

19 (5) "Predatory" means acts directed towards strangers or
20 individuals with whom a relationship has been established or promoted
21 for the primary purpose of victimization.

22 ((+5)) (6) "Recent overt act" means any act that has either caused
23 harm of a sexually violent nature or creates a reasonable apprehension
24 of such harm.

25 ((+6)) (7) "Risk potential activity" or "risk potential facility"
26 means an activity or facility that provides a higher incidence of risk
27 to the public from persons conditionally released from the special
28 commitment center. Risk potential activities and facilities include:
29 Public and private schools, school bus stops, licensed day care and
30 preschool facilities, public parks, publicly dedicated trails, sports
31 fields, playgrounds, recreational and community centers, churches,
32 synagogues, temples, mosques, and public libraries.

33 (8) "Secretary" means the secretary of social and health services
34 or the secretary's designee.

35 (9) "Secure facility" or "secure residential facility" means a
36 residential facility for one or more persons civilly committed under
37 this chapter that has supervision, perimeter controls, and either
38 provides or ensures the provision of sex offender treatment services.
39 Secure facilities include but are not limited to the special commitment

1 center, any step-down facility, and any community-based housing
2 established under this chapter and operated by the secretary or under
3 contract with the secretary for the housing or residential treatment of
4 persons conditionally released from the special commitment center.

5 (10) "Sexually violent offense" means an act committed on, before,
6 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as
7 rape in the first degree, rape in the second degree by forcible
8 compulsion, rape of a child in the first or second degree, statutory
9 rape in the first or second degree, indecent liberties by forcible
10 compulsion, indecent liberties against a child under age fourteen,
11 incest against a child under age fourteen, or child molestation in the
12 first or second degree; (b) a felony offense in effect at any time
13 prior to July 1, 1990, that is comparable to a sexually violent offense
14 as defined in (a) of this subsection, or any federal or out-of-state
15 conviction for a felony offense that under the laws of this state would
16 be a sexually violent offense as defined in this subsection; (c) an act
17 of murder in the first or second degree, assault in the first or second
18 degree, assault of a child in the first or second degree, kidnapping in
19 the first or second degree, burglary in the first degree, residential
20 burglary, or unlawful imprisonment, which act, either at the time of
21 sentencing for the offense or subsequently during civil commitment
22 proceedings pursuant to chapter 71.09 RCW, has been determined beyond
23 a reasonable doubt to have been sexually motivated, as that term is
24 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28
25 RCW, that is an attempt, criminal solicitation, or criminal conspiracy
26 to commit one of the felonies designated in (a), (b), or (c) of this
27 subsection.

28 ~~((7) "Less restrictive alternative" means court-ordered treatment~~
29 ~~in a setting less restrictive than total confinement.~~

30 ~~(8) "Secretary" means the secretary of social and health services~~
31 ~~or his or her designee.))~~

32 (11) "Sexually violent predator" means any person who has been
33 convicted of or charged with a crime of sexual violence and who suffers
34 from a mental abnormality or personality disorder which makes the
35 person likely to engage in predatory acts of sexual violence if not
36 confined in a secure facility.

37 (12) "Step-down facility" means any secure facility that provides
38 residence for more than five persons as a transition from the special
39 commitment center to a less restrictive placement in the community.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 71.09 RCW
2 to read as follows:

3 (1) The secretary shall adopt rules that balance the average
4 response time of emergency services to the general area of the proposed
5 facility against the proximity of the proposed site to risk potential
6 activities and facilities in existence at the time the site is listed
7 for consideration.

8 (2) In balancing the competing criteria of proximity and response
9 time the rule shall endeavor to achieve an average law enforcement
10 response time not greater than five minutes and in no case shall the
11 rule permit location of a facility adjacent to, immediately across a
12 street or parking lot from, or within the line of sight of a risk
13 potential activity or facility in existence at the time a site is
14 listed for consideration. "Within the line of sight" means that it is
15 possible to reasonably visually distinguish and recognize individuals.

16 (3) The rule shall require that great weight be given to sites that
17 are the farthest removed from any risk potential activity.

18 (4) The rule shall specify how distance from the location is
19 measured and any variations in the measurement based on the size of the
20 property within which a proposed facility is to be located.

21 (5) The rule shall establish a method to analyze and compare the
22 criteria for each site in terms of public safety and security, site
23 characteristics, and program components. In making a decision
24 regarding a site following the analysis and comparison, the secretary
25 shall give priority to public safety and security considerations. The
26 analysis and comparison of the criteria are to be documented and made
27 available at the public hearings prescribed in section 7 of this act.

28 (6) The rule shall contain a schedule of monetary penalties for
29 contractors operating secure facilities, not to exceed the total
30 compensation set forth in the contract, and include provisions for
31 termination of all contracts with a service provider that has repeated
32 or serious violations of this section.

33 NEW SECTION. **Sec. 4.** By December 1, 2001, the secretary of the
34 department of social and health services shall determine and report to
35 the legislature whether there is a significant group of potential
36 locations that are outside of a five-minute law enforcement response
37 time zone that are more than two miles from any risk potential
38 activities and whether, in the secretary's judgment, the legislature

1 should require the rule to be revised to permit consideration of these
2 properties.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 71.09 RCW
4 to read as follows:

5 The secretary shall establish criteria for the siting of secure
6 residential facilities which shall include at least the following
7 minimum requirements:

8 (1) Any real property listed for consideration for the location of
9 or use as a secure facility must meet all of the following criteria:

10 (a) The proximity and response time criteria established under
11 section 3 of this act;

12 (b) The site or building is available for lease for the anticipated
13 use period or for purchase;

14 (c) Security monitoring services and appropriate back-up systems
15 are available and reliable;

16 (d) Appropriate mental health and sex offender treatment providers
17 must be available within a reasonable commute; and

18 (e) Appropriate permitting for a secure facility must be possible
19 under the zoning code of the local jurisdiction.

20 (2) For sites which meet the criteria of subsection (1) of this
21 section, the department shall analyze and compare the criteria in
22 subsections (3) through (5) of this section using the method
23 established in section 3 of this act.

24 (3) Public safety and security criteria shall include at least the
25 following:

26 (a) Whether limited visibility between the facility and adjacent
27 properties can be achieved prior to placement of any person;

28 (b) The distance from, and number of, risk potential activities and
29 facilities, as measured using the rules adopted under section 3 of this
30 act;

31 (c) The existence of or ability to establish barriers between the
32 site and the risk potential facilities and activities;

33 (d) Suitability of the buildings to be used for the secure facility
34 with regard to existing or feasibly modified features; and

35 (e) The availability of electronic monitoring that allows a
36 resident's location to be determined with specificity.

37 (4) Site characteristics criteria shall include at least the
38 following:

1 (a) Reasonableness of rental, lease, or sale terms including length
2 and renewability of a lease or rental agreement;

3 (b) Traffic and access patterns associated with the real property;

4 (c) Feasibility of complying with zoning requirements within the
5 necessary time frame; and

6 (d) A contractor or contractors are available to install, monitor,
7 and repair the necessary security and alarm systems.

8 (5) Program characteristics criteria shall include at least the
9 following:

10 (a) Reasonable proximity to available medical, mental health, sex
11 offender, and chemical dependency treatment providers and facilities;

12 (b) Suitability of the location for programming, staffing, and
13 support considerations;

14 (c) Proximity to employment, educational, vocational, and other
15 treatment plan components; and

16 (d) In facilities housing five or fewer residents, a minimum
17 staffing ratio of one staff per resident during normal waking hours and
18 two awake staff during normal sleeping hours. In no case shall all
19 staff on a shift be persons classified as entry or trainee level staff.

20 (6) Unless otherwise ordered by the court, at least one staff
21 member, or other court-authorized and department-approved person must
22 escort each resident when the resident leaves the site for
23 appointments, employment, or other approved activities. Escorting
24 persons must supervise the resident closely and maintain close
25 proximity to the resident.

26 (7) For purposes of this section "available" or "availability" of
27 qualified treatment providers includes provider qualifications and
28 willingness to provide services, average commute time, and cost of
29 services.

30 NEW SECTION. **Sec. 6.** A new section is added to chapter 71.09 RCW
31 to read as follows:

32 Security systems for secure residential facilities housing five or
33 fewer residents shall meet the following minimum qualifications:

34 (1)(a) The security panel must be a commercial grade panel with
35 tamper-proof switches and a key-lock to prevent unauthorized access.

36 (b) There must be an emergency electrical supply system which shall
37 include a battery back-up system and a generator.

38 (2) The system must include personal panic devices for all staff.

1 (3) The security system must be capable of being monitored and
2 signaled either by telephone through either a land or cellular
3 telephone system or by private radio network in the event of a total
4 dial-tone failure or through equivalent technologies.

5 (4) The department shall issue photo-identification badges to all
6 staff which must be worn at all times.

7 NEW SECTION. **Sec. 7.** A new section is added to chapter 71.09 RCW
8 to read as follows:

9 (1) Whenever the department of social and health services operates,
10 or the secretary enters a contract to operate, a secure facility, the
11 secure facility may be operated only after the public notification and
12 opportunities for review and comment as required by this section.

13 (2) The secretary shall establish a process for early and
14 continuous public participation in establishing or relocating secure
15 facilities. The process shall include, at a minimum, public meetings
16 in the local communities affected, as well as opportunities for written
17 and oral comments, in the following manner:

18 (a) If there are more than three sites initially selected as
19 potential locations and the selection process by the secretary or a
20 service provider reduces the number of possible sites for a secure
21 facility to no fewer than three, the secretary or the chief operating
22 officer of the service provider shall notify the public of the possible
23 siting and hold at least two public hearings in each community where a
24 secure facility may be sited.

25 (b) When the secretary or service provider has determined the
26 secure facility's location, the secretary or the chief operating
27 officer of the service provider shall hold at least one additional
28 public hearing in the community where the secure facility will be
29 sited.

30 (c) When the secretary has entered negotiations with a service
31 provider and only one site is under consideration, then at least two
32 public hearings shall be held.

33 (d) To provide adequate notice of, and opportunity for interested
34 persons to comment on, a proposed location, the secretary or the chief
35 operating officer of the service provider shall provide at least
36 fourteen days' advance notice of the meeting to all newspapers of
37 general circulation in the community, all radio and television stations
38 generally available to persons in the community, any school district in

1 which the secure facility would be sited or whose boundary is within
2 two miles of a proposed secure facility, any library district in which
3 the secure facility would be sited, local business or fraternal
4 organizations that request notification from the secretary or agency,
5 and any person or property owner within a one-half mile radius of the
6 proposed secure facility. Before initiating this process, the
7 department of social and health services shall contact local government
8 planning agencies in the communities containing the proposed secure
9 facility. The department of social and health services shall
10 coordinate with local government agencies to ensure that opportunities
11 are provided for effective citizen input and to reduce the duplication
12 of notice and meetings.

13 (3) This section applies only to secure facilities sited after the
14 effective date of this act.

15 NEW SECTION. **Sec. 8.** A new section is added to chapter 71.09 RCW
16 to read as follows:

17 (1) The secretary shall develop a process with local governments
18 that allows each community in which a secure residential facility is
19 located to establish operational advisory boards for the secure
20 facilities. The department of social and health services may conduct
21 community awareness activities to publicize this opportunity. The
22 operational advisory boards developed under this section shall be
23 implemented following the decision to locate a secure facility in a
24 particular community.

25 (2) The operational advisory boards may review and make
26 recommendations regarding the security and operations of the secure
27 facility and conditions or modifications necessary with relation to any
28 person who the secretary proposes to place in the secure facility.

29 (3) The operational advisory boards, their members, and any agency
30 represented by a member shall not be liable in any cause of action as
31 a result of its recommendations unless the advisory board acts with
32 gross negligence or bad faith in making a recommendation.

33 (4) Members of a board shall be reimbursed for travel expenses as
34 provided in RCW 43.03.050 and 43.03.060.

35 NEW SECTION. **Sec. 9.** A new section is added to chapter 71.09 RCW
36 to read as follows:

1 (1) The secretary shall adopt a violation reporting policy for
2 persons conditionally released to secure placements in secure
3 facilities. The policy shall require written documentation by the
4 department of social and health services and service providers of all
5 violations of conditions set by the department of social and health
6 services, the department of corrections, or the court and establish
7 criteria for returning a violator to the special commitment center or
8 a step-down facility. Any conditionally released person who commits a
9 serious violation of conditions shall be returned to the special
10 commitment center and the court shall be notified immediately and the
11 court shall initiate proceedings under RCW 71.09.098 to revoke or
12 modify the less restrictive alternative placement unless the department
13 makes a good cause showing why proceedings should not be initiated.
14 For the purposes of this section, "serious violation" includes but is
15 not limited to:

- 16 (a) The commission of any criminal offense;
- 17 (b) Any unlawful use or possession of a controlled substance; and
- 18 (c) Any violation of conditions targeted to address the person's
19 documented pattern of offense that increases the risk to public safety.

20 When a person is released to a less restrictive alternative in a
21 secure residential facility under this chapter and is under the
22 supervision of the department of corrections, notice of any violation
23 of the person's conditions of release must also be made to the
24 department of corrections.

25 (2) Whenever the secretary contracts with a service provider to
26 operate a secure facility, the contract shall include a requirement
27 that the service provider must report to the department of social and
28 health services any known violation of conditions committed by any
29 resident of the secure facility.

30 (3) The secretary shall document in writing all violations,
31 penalties, actions by the department of social and health services to
32 remove persons from a secure residential facility, and contract
33 terminations. The secretary shall give great weight to a service
34 provider's record of violations, penalties, actions by the department
35 of social and health services or the department of corrections to
36 remove persons from a secure facility, and contract terminations in
37 determining to execute, renew, or renegotiate a contract with a service
38 provider.

1 NEW SECTION. **Sec. 10.** A new section is added to chapter 36.70A
2 RCW to read as follows:

3 (1) On or before September 1, 2002, the legislative authority of
4 each county in the state shall adopt a countywide planning policy to
5 establish the process for siting and to provide for an equitable
6 distribution of secure residential facilities as defined in RCW
7 71.09.020 within the county and the cities located in whole or in part
8 within the county. The countywide planning policy required by this
9 section shall be adopted in cooperation with the cities located in
10 whole or in part within the county. Counties planning under the growth
11 management act may integrate the planning policy required in the
12 section with their growth management act planning process.

13 (2) The department of social and health services shall be notified
14 by each county of its intent to begin the countywide planning policy
15 process required by this section and the department shall be invited to
16 participate in this process.

17 (3) The countywide planning policy required by this section shall,
18 at a minimum, address the following:

19 (a) The location of existing secure residential facilities;

20 (b) The social, economic, and other impacts of the existing secure
21 residential facilities on the communities in which they are located and
22 the incremental impacts of siting additional secure residential
23 facilities in these communities;

24 (c) A proposed allocation for the siting of future secure
25 residential facilities among the county and the cities located in whole
26 or in part within the county; and

27 (d) Coordination of development regulations, including but not
28 limited to zoning regulations and design standards, to ensure that the
29 proposed allocation of future secure residential facilities can be
30 achieved.

31 (4) The countywide planning policy required by this section shall:

32 (a) Be consistent with the siting criteria established pursuant to
33 sections 3 and 5 through 7 of this act;

34 (b) Require any local conditional use permit or other development
35 application process not to exceed sixty days in length and provide for
36 an appeal process.

37 (5) Within six months of the date the countywide planning policy
38 required by subsection (1) of this section is adopted, the county and
39 each city within the county shall adopt development regulations

1 implementing the policy adopted under this section through appropriate
2 revisions to their comprehensive plan and development regulations.

3 NEW SECTION. **Sec. 11.** A new section is added to chapter 36.70 RCW
4 to read as follows:

5 Counties planning under this chapter must adopt a countywide
6 planning policy for the siting of secure residential facilities that
7 complies with the timelines and requirements of section 10 of this act.

8 **Sec. 12.** RCW 36.70A.200 and 1998 c 171 s 3 are each amended to
9 read as follows:

10 (1) The comprehensive plan of each county and city that is planning
11 under this chapter shall include a process for identifying and siting
12 essential public facilities. Essential public facilities include those
13 facilities that are typically difficult to site, such as airports,
14 state education facilities and state or regional transportation
15 facilities as defined in RCW 47.06.140, state and local correctional
16 facilities, solid waste handling facilities, and in-patient facilities
17 including substance abuse facilities, mental health facilities, ((and))
18 group homes, and secure residential facilities as defined in RCW
19 71.09.020.

20 (2) The office of financial management shall maintain a list of
21 those essential state public facilities that are required or likely to
22 be built within the next six years. The office of financial management
23 may at any time add facilities to the list. No local comprehensive
24 plan or development regulation may preclude the siting of essential
25 public facilities.

26 NEW SECTION. **Sec. 13.** A new section is added to chapter 71.09 RCW
27 to read as follows:

28 Nothing in this act shall operate to restrict a court's authority
29 to make less restrictive alternative placements to a committed person's
30 individual residence. A court-ordered less restrictive alternative
31 placement to a committed person's individual residence is not a less
32 restrictive placement to a secure facility.

33 NEW SECTION. **Sec. 14.** This act is necessary for the immediate
34 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.

--- END ---