

SENATE BILL REPORT

3ESSB 6151

As Passed Senate, June 20, 2001

Title: An act relating to the management of sex offenders in the civil commitment and criminal justice systems.

Brief Description: Revising provisions relating to sex offenders.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Long and Hargrove).

Brief History:

Committee Activity: Human Services & Corrections: 3/28/01, 4/5/01 [DPS, DNP].

Passed Senate: 4/12/01, 35-11.

First Special Session: Passed Senate: 4/30/01, 39-8.

Reconsidered: Passed Senate: 4/30/01, 38-9.

Second Special Session: Passed Senate: 6/20/01, 29-11.

Brief Summary of Bill

- DSHS may site and operate a 24-bed secure community transition facility and relocate the 404-bed Special Commitment Center on McNeil Island exempt from inconsistent comprehensive plans or development regulations.
- Additional secure community transition facilities that meet the siting criteria may be located after coordination with local governments related to comprehensive plans and development regulations and public participation in the siting decision. There is an incentive plan to encourage rapid siting.
- Operational requirements are established for facilities both on McNeil Island and in other parts of the state.
- Indeterminate sentencing for certain high-risk sex offenders is restored with a minimum term equal to the current determinate sentence and a maximum term equal to the statutory maximum for the crime. The ISRB has authority for these offenders and they are subject to the Offender Accountability Act provisions, except that in some cases community custody may be revoked or not granted.
- Several strike offenses and their attempts become Class A felonies. A new Class A felony of sexually violent predator escape is created under indeterminate sentencing. The elements of sexual misconduct with a minor are modified.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6151 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Costa, Vice Chair; Hewitt, Kohl-Welles, Long and Stevens.

Minority Report: Do not pass.

Signed by Senators Carlson, Franklin and Kastama.

Staff: Fara Daun (786-7459)

Background: The presence of risk level III sex offenders and civilly committed sex offenders on court ordered less restrictive alternatives in the community has created considerable concern about the risks these high risk offenders present for community safety. There is concern that the state needs to address both the issues of appropriate housing and reintegration of persons being released from civil commitment and of the appropriate sentencing of sex offenders in a comprehensive manner so that both the civil and criminal processes effectively address the need to protect the community and permit the state to meet its constitutional and statutory duties.

The Department of Social and Health Services (DSHS) is required by its constitutional and statutory duty as well as by court order to find less restrictive alternative placements for persons civilly committed to the Special Commitment Center (SCS) who have progressed in treatment to the point that they no longer need a total confinement setting. Lack of appropriate housing in the community and opposition to this sub-population has presented a barrier to the release to a less restrictive alternative setting for some of the committed persons. As the commitment center continues, this barrier would increase without the state's assistance in creating appropriate housing. Consequently, DSHS has attempted, without success, to site three-bed units in the community while requesting funds from the Legislature for a larger 36-bed facility which would normally be a step toward conditional release to a three-bed facility.

Crimes committed prior to July 1, 1984 are under an indeterminate sentencing structure that permits the Indeterminate Sentence Review Board (ISRB) to return a paroled offender to prison for the remainder of his or her maximum term. The current determinate sentencing structure states a sentence in terms of a specific number of months and not a range of time. Determinate sentencing does not allow the state to return a person to prison beyond the end of his or her defined term. In addition, the ability of the Department of Corrections (DOC) to supervise sex offenders in the community or place conditions on their behavior upon supervised release to the community varies dependent on the date of the person's crime. Not until July 1, 2000 could DOC adjust conditions to address a person's changing risk level to the community for crimes occurring after that date.

Summary of Bill: DSHS is authorized to site and operate a 404-bed relocation of the SCC and a secure community transition facility (SCTF) to house persons conditionally released to a less restrictive alternative on McNeil Island. This SCTF is limited to 15 transitional and nine long-term beds. The McNeil Island SCTF is available to those persons receiving less restrictive alternative orders under RCW 71.09.090(1). The Department of Corrections is authorized to continue operating a prison for sex offenders and other offenders on McNeil Island. Local comprehensive plans, development regulations, and other laws are preempted and superceded with regard to these two facilities. The state's authority to site an essential public facility in conformance with comprehensive plans and development regulations is not affected and with the exception of these two facilities, state agencies must comply with those plans and regulations. No additional SCTFs may be sited in Pierce County before 2008 and to the greatest extent possible, persons who were not residents of Pierce County must not be

further released to Pierce County until after 2003. In addition to its other determinations, the court must consider whether a person is able to withstand changes in routine and situation without regressing to the point that the person presents a danger that cannot reasonably be addressed in the proposed placement.

DSHS must enter negotiations for a mitigation agreement with the county and affected cities. There is a \$5,000 incentive grant for any employer or educational institution that hires or enrolls a resident that is court-authorized or court-ordered to obtain work or education. The employer or educational institution is immune from liability in cases of simple negligence but must notify all other employees of the person's status. Notification at educational institutions is accomplished through existing statutes. DSHS must make reasonable efforts to distribute the impact of the employment, education, and social services needs of the residents among the adjacent counties and not concentrate the impact in any one county.

Before any person is placed in the SCTF on McNeil Island, there must be a 24-hour law enforcement presence on the island which must coordinate with the prison Emergency Response Team.

DSHS must hold three public hearings on the operations and security of the McNeil Island SCTF by August 1, 2001. Additional SCTFs may only be operated following appropriate public participation. This includes two public hearings in each of the three finalist communities and at least one more public hearing in the selected community. If only one site is under consideration, at least two public hearings must be held in that community. Fourteen days notice of the hearing must be given through radio, television and newspapers of general circulation, and to local persons and organizations.

DSHS must provide the Legislature with a transportation plan by August 1 and must separate residents from minors and vulnerable adults who are not sexually violent predators when traveling between McNeil Island and the mainland. DSHS must facilitate local operational advisory boards. DSHS staff at the SCC and the McNeil SCTF must have self-defense and crisis response training. Escorts must also have training in the offender's pattern of offense. Until the facility reaches seven residents there must be a one-to-one staff to resident ratio during waking hours and two staff for every three residents at night. Staff must be trained in self-defense and incident de-escalation. DSHS must provide the Legislature with a staffing plan for the anticipated growth of the facility to its maximum capacity.

Unless otherwise ordered by the court, all SCTF residents must have 24-hour electronic monitoring, based on the global positioning system where available and funded. Residents must be escorted by trained escorts within close proximity and under close supervision when away from the facility. DSHS must adopt a violation policy for returning residents to the SCC or a higher level of security. The policy must include a mandatory immediate return to the SCC, unless the person is arrested, for any serious violation and may include returns to the SCC for other violations. Serious violations must include the commission of any crime, any unlawful use of a controlled substance, and any violation of a condition targeted at the person's documented pattern of offense. Where DSHS contracts with a provider to operate a secure community transition facility, great weight must be given to the provider's record with regard to violations.

A joint select committee reviews and makes recommendations on equitable distribution criteria for SCTFs, the siting criteria for these facilities, and a method for determining possible mitigation for future SCTFs.

With the exception of the SCTF at McNeil Island, no county may be required to provide more SCTF beds than the aggregate total number of persons committed from or with pending commitment petitions from that county. Counties and cities may choose to site beds in excess of the required number and those that do would be eligible for a bonus incentive. The essential public facilities planning provisions for SCTFs are extended to non-GMA counties. No county may preclude siting of SCTFs.

By August 31, 2001, DSHS must notify counties of the maximum number of beds that could be sited in the county and the projected minimum and maximum number of beds needed for the period of May 2004 through May 2007. Upon notification, counties must promptly notify the cities in the county.

Counties and cities are eligible to participate in an incentive program for siting SCTFs. To participate in the incentive program, counties and cities must give great weight to the equitable distribution of SCTFs, development regulations, comprehensive plans and other laws must be consistent with the criteria in statute and rule, facilities must have at least three beds, and sites must be approved by the department. The incentive program has four components:

- Counties and cities who commit to initiate the siting process for one or more SCTFs by February 1, 2002 shall receive a planning grant from DCTED.
- Any county or city that has issued all needed permits for an approved site by May 1, 2003 shall receive an incentive grant of \$50,000 for each bed sited.
- Any county or city that has issued all needed permits for an approved site before January 1, 2003 shall receive an additional incentive bonus of 20 percent of the incentive grant.
- Any county or city that sites and permits SCTFs with beds in excess of the maximum that the county could be required to site shall receive a bonus of \$100,000 per bed.

Pierce County is eligible for the excess bed bonus for three beds at the SCTF on McNeil Island. Despite the prohibition on requiring siting in addition to this facility, Pierce County and its cities are eligible for the incentive program should they decide to site and actually permit additional facilities.

In siting additional secure community transition facilities, the Secretary of DSHS must adopt a rule that balances average law enforcement response time against distance from risk potential activities and endeavors to achieve a maximum five minute response time. Sites may not be in direct proximity to risk potential activities or facilities in existence at the time the site is listed for consideration. The rule must specify how DSHS will measure distance and establish a method for analyzing and comparing the remaining criteria. DSHS must have its analysis available at public hearings related to siting.

To be considered, a potential site must meet the distance requirements set out in rule, the property must be available for lease or purchase in the required time, reliable security and back-up systems must be available, and appropriate permitting must be available under the local zoning laws. DSHS must analyze and compare sites that meet the minimum consideration criteria according to the method established in rule. Minimum public safety, site, and program criteria based on the DSHS final criteria published in November 2000 are specified. Entry level or trainee personnel must be supervised by more experienced personnel. The facility must have minimum security, alarm, and back-up systems including generator systems. The systems must be commercial grade, tamper-proof, and have panic devices for staff. There must be land and cellular telephone access and radio back-up.

DSHS must work with local jurisdictions to develop locations for secure community transition facilities. Secure community transition facilities are essential public facilities. DSHS must project the need for and location of new facilities and the Office of Financial Management must add these to the list of essential public facilities. Affected counties and cities must review their county-wide plan, comprehensive plans and development regulations and if necessary revise them in coordination with DSHS to provide siting that is consistent with the siting criteria in statute and rule. Affected counties and cities may use their normal review processes but the review must not occur later than the date specified in RCW 36.70A.130(1). Local governments may require conditional use or special use permits for facilities that do not comply with the local plan or development regulations if the plan and regulations are in conformance with the statute.

Any person convicted of a first two-strikes sex offense committed after the effective date of the act and any person who has a prior two-strikes offense who is convicted of any other felony sex offense committed after the effective date of the act is subject to sentencing to a minimum and maximum term sentence. The minimum term is the term the offender would be subject to under the existing statute. The maximum term is the statutory maximum sentence for the offense. Class A felonies have a statutory maximum sentence of life. The statutory maximum sentence for Class B felonies is ten years and for Class C felonies is five years. Persons convicted of rape of a child in the first or second degree or child molestation in the first degree who were under 18 at the time of the crime are subject to a determinate sentence.

As the end of his or her minimum term approaches, the offender is subject to the standard review by the End of Sentence Review Committee that assesses his or her risk level and that report is given to the ISRB and to law enforcement prior to the offender's release. DOC must make recommendations related to conditions of release to the ISRB based on methods recognized by experts in risk prediction. The ISRB decides whether to release the person to community custody or retain the person in prison. The ISRB must release the offender unless he or she is likelier than not to commit a predatory sex offense. If not released, the ISRB must set a new minimum term not to exceed two years and review the person again at the end of that period under the same standard. If the person is released, the ISRB must impose conditions of community custody on the person. The person remains under community custody for the maximum term. DOC must supervise the person in the community.

If the person violates a condition of community custody, the person is entitled to an administrative hearing and a sanction based on a graduated sanction system that became effective July 1, 2000, under the Offender Accountability Act except that the graduated

sanctions must be amended to permit community custody revocation to the full extent of the maximum term. Hearings, with the same procedures and time lines established under the Offender Accountability Act, are conducted by the ISRB unless the ISRB otherwise contracts with DOC to conduct the hearings. The rights of the offender are the same as those in existing law under the Offender Accountability Act, except that if community custody revocation is a possible sanction, the person has a right to an attorney. In the case of a person convicted of a Class A felony, community custody revocation could result in lifetime incarceration in prison.

The crimes of assault in the second degree and kidnaping in the second degree when there is a finding of sexual motivation, the crime of indecent liberties with a finding of forcible compulsion, and the attempted crimes of child molestation in the first degree, indecent liberties by forcible compulsion, rape in the first or second degree, and rape of a child in the first or second degree are all Class A felonies. A person is guilty of sexually violent predator escape if he or she escapes from the SCC, a less restrictive alternative, an authorized absence, his or her escort, or if he or she tampers with is or her electronic monitor. Sexually violent predator escape is a Class A felony with a five-year minimum term and is sentenced under the indeterminate sentencing provisions. The crime of sexual misconduct with a minor is modified to include a broader spectrum of school employees.

The ISRB is a member of the review team established under the dangerous mentally ill offender legislation from 1999. The provisions of law related to the ISRB have been amended with regard to this population of offenders to make them consistent with this act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately, except sections 301 through 363 and 501, which take effect September 1, 2001.

Testimony For: This is the fifth year that the Legislature has considered a similar sentencing provision. It is consistent with the product of the Sentencing Guidelines Commission task force on the issue over five years ago. It is important to proceed carefully and focus this change to address its relative impact on public safety. The Legislature should be aware that this broadens the net and not include too many offenders. Look at the interaction between this legislation and SB 5014. The standard for release should be whether the offender is likely to commit a new sex offense rather than a new predatory sex offense. In addition, the ESRC should do law enforcement notifications because their notification includes the information that law enforcement needs and that is not presently included in the ISRB notifications.

To meet its constitutional and statutory duties the state must provide housing for less restrictive alternative placements for persons conditionally released from the SCC. Development of the housing is the most important remaining item on the district court's order. DSHS has tried to site without legislation and without preempting local planning and has been blocked in every place it has attempted. The Governor does not take preemption lightly, but is faced with a crisis. This is neither a complete nor a long-term solution. The state must still need to site smaller facilities around the state. This siting was not part of the

original plan, it is being done by necessity. The state is under the gun and the most frightening possibility is to let them out with no supervision or conditions and that is possible if the state can't meet its constitutional obligations.

These residents will be supervised at a higher level than any other persons under any kind of release in the state. They will have 24-hour supervision and will have a one-on-one escort when away from the facility for work and other appointments. The escort will be in close proximity to the resident at all times. Noncompliant persons will be returned to the SCC. DSHS is working to create an advisory committee. DOC is in discussions with WASPC to develop security on the Island and address law enforcement issues.

Testimony Against: McNeil Island is the wrong site and it is inappropriate to exempt this from local planning control. An island does not provide the right mix of security and reintegration. It is in Pierce County which already bears more than its fair share of state correctional and mental health facilities and has more than its share of sex offenders. The county is institutionally overloaded. This puts a significant burden on the county as these persons do not leave the county after their treatment or sentence is over. They tend to stay where there are services. Pierce County already houses the SCC and should not also have to house a 36-bed LRA facility as well. There are concerns about the training of the DSHS staff based on incidents that have occurred in the SCC and in transporting civilly committed individuals. These persons must be separated in traveling between the island and the mainland. There are 80 children on the island and an elementary school less than a mile from the facility. There is no law enforcement presence on the island except with regard to prisoners. There has been no coordination with the Emergency Response Team of the prison. These people need to be behind razor wire. Time is short and there is not time to implement the changes that need to be made. While this is an easy solution, it is not fiscally responsible to place this facility on the island because of the additional transportation and capital costs.

Pierce County was blind-sided by this. These policy decisions need to be tied to other policy decisions such as the reductions in mental health beds at the state hospital, the cuts to Pierce County's mental health budget and state bed allocations, the impact of a lower I-695 backfill and the fact that Pierce County has lower law enforcement ratios than other counties. There is no provision to mitigate the impact to Pierce County and this will just create a stream of dangerous persons and undesirable families flowing into Lakewood.

The sentencing provisions are a major shift away from the Sentencing Reform Act. The reinvigoration of the ISRB is not a good idea. Lifetime parole is very expensive. This moves too fast and too far.

Testified: Senator Jeanine Long, prime sponsor; Senator Hewitt; Joe Lehman, Secretary of Corrections (pro with concerns); Sherry Appleton, Washington Defenders' Association, Washington Association of Criminal Defense Lawyers (con); Detective Bob Schilling, Seattle Police Department (pro); TESTIFYING ONLY WITH REGARD TO THE SITING: Dick Van Wagenen, Office of Financial Management (pro); Bruce Claussen, Office of the Attorney General (pro); Tim Brown, Assistant Secretary, Department of Social and Health Services (pro); Bill Armstrong, McNeil Island resident (con); Tina Boettcher, McNeil Island resident (con); Helen McGovern, McNeil Island Community Advisory Board (con); Lyle Quasim, Pierce County (con); Bill Harrison, Mayor, City of Lakewood (con); Representative Mike

Carrell (con); Pat O'Malley, Pierce County Council (con); Heather Lechner, Washington Defenders' Association, Washington Association of Criminal Defense Lawyers (con).