

SENATE BILL REPORT

SB 6151

As Reported By Senate Committee On:
Human Services & Corrections, April 5, 2001

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

Brief Description: Revising provisions relating to high-risk sex offenders.

Sponsors: Senators Long and Hargrove.

Brief History:

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

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 of sex offenders 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 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 for crimes occurring after that date.

Summary of Substitute Bill: DSHS is authorized to site and operate a 36-bed facility on McNeil Island to house persons conditionally released to a less restrictive alternative. To the extent that siting the facility conflicts with local comprehensive plans or development regulations, the plans and regulations are preempted and superceded with regard to this facility until December 31, 2003. 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 this facility, state agencies must comply with those plans and regulations. No additional secure community transition facilities designed to house more than three persons may be sited in Pierce County.

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. 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 step-down facility 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 facility by August 1. DSHS must provide the Legislature with a transportation plan by July 1 and must separate residents from minors and vulnerable adults. DSHS must facilitate local operational advisory boards. DSHS staff at the SCC and the step-down facility 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. 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, residents must have 24-hour electronic monitoring and be escorted 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.

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 whose current crime was predatory, is subject to sentencing to a minimum and maximum term sentence. The minimum term is whatever 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. Predatory— means that the victim was a stranger or that the offender established a relationship with the victim for the purpose of victimizing him or her.

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. 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.

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.

Substitute Bill Compared to Original Bill: The original bill had no conditions, requirements or specifications with regard to the planning, mitigation, or operations of the McNeil Island site or any requirements with regard to future sites.

The scope of offenders subject to determinate-plus sentencing is narrowed to exclude certain offenses that are neither forcible nor predatory. Forcible compulsion and predatory allegations must be pled and proved. The provision that DOC provide an opportunity for sex offender treatment is clarified to limit that requirement to offenders sentenced under this act. The standard for release at the end of the minimum term no longer includes a determination about the predatory nature of future offenses. The ISRB must consider DOC recommendations with regard to release conditions and may impose additional conditions. The End of Sentence Review Committee reviews sex offenders under ISRB authority, establishes the presumptive risk level and notifies law enforcement of the release. If DOC or the ISRB cause a person who violates community custody conditions to be arrested and detained in a local jail for a violation that is not a new crime, DOC or ISRB is financially responsible. Jail costs are reimbursed at the rate established under the Offender Accountability Act.

Appropriation: None.

Fiscal Note: Requested on March 27, 2001.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2001, except sections 1 through 3, which take effect immediately.

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. Non-compliant 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 re-integration. 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).