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ENGROSSED SUBSTITUTE SENATE BILL 5465

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State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Costa, Hargrove and Long)

READ FIRST TIME 02/26/01.

1 AN ACT Relating to sex offender treatment providers; reenacting and  
2 amending RCW 18.155.020 and 18.155.030; adding a new section to chapter  
3 4.24 RCW; adding a new section to chapter 71.09 RCW; and creating a new  
4 section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the state needs  
7 an increasing number of certified sex offender treatment providers to  
8 treat sexually violent predators and meet the state's commitment to  
9 long-term treatment, help reduce recidivism, and more adequately  
10 provide for the community. The legislature recognizes that these  
11 treatment providers offer a valuable service to the people of  
12 Washington and may experience difficulty maintaining adequate liability  
13 protection given the inherent uncertainties of providing treatment to  
14 sexually violent predators. The legislature intends to provide very  
15 limited immunity, for instances of simple negligence only, to certified  
16 sex offender treatment providers for their treatment decisions  
17 involving sexually violent predators released to a less restrictive  
18 alternative under chapter 71.09 RCW.

1       **Sec. 2.** RCW 18.155.020 and 2000 c 171 s 33 and 2000 c 28 s 38 are  
2 each reenacted and amended to read as follows:

3       Unless the context clearly requires otherwise, the definitions in  
4 this section apply throughout this chapter:

5       (1) "Certified sex offender treatment provider" means a licensed,  
6 certified, or registered health professional who is certified to  
7 examine and treat sex offenders pursuant to chapters 9.94A and 13.40  
8 RCW ((9.94A.670 and 13.40.160)) and sexually violent predators under  
9 chapter 71.09 RCW.

10       (2) "Department" means the department of health.

11       (3) "Secretary" means the secretary of health.

12       (4) "Sex offender treatment provider" means a person who counsels  
13 or treats sex offenders accused of or convicted of a sex offense as  
14 defined by RCW 9.94A.030.

15       **Sec. 3.** RCW 18.155.030 and 2000 c 171 s 34 and 2000 c 28 s 39 are  
16 each reenacted and amended to read as follows:

17       (1) No person shall represent himself or herself as a certified sex  
18 offender treatment provider without first applying for and receiving a  
19 certificate pursuant to this chapter.

20       (2) Only a certified sex offender treatment provider may perform or  
21 provide the following services:

22       (a) Evaluations conducted for the purposes of and pursuant to RCW  
23 9.94A.670 and 13.40.160;

24       (b) Treatment of convicted sex offenders who are sentenced and  
25 ordered into treatment pursuant to ((RCW 9.94A.670)) chapter 9.94A RCW  
26 and adjudicated juvenile sex offenders who are ordered into treatment  
27 pursuant to ((RCW 13.40.160)) chapter 13.40 RCW;

28       (c) Except as provided under subsection (3) of this section,  
29 treatment of sexually violent predators who are conditionally released  
30 to a less restrictive alternative pursuant to chapter 71.09 RCW.

31       (3) A certified sex offender treatment provider may not perform or  
32 provide treatment of sexually violent predators under subsection (2)(c)  
33 of this section if the certified sex offender treatment provider has  
34 been:

35       (a) Convicted of a sex offense, as defined in RCW 9.94A.030;

36       (b) Convicted in any other jurisdiction of an offense that under  
37 the laws of this state would be classified as a sex offense as defined  
38 in RCW 9.94A.030; or

1        (c) Suspended or otherwise restricted from practicing any health  
2 care profession by competent authority in any state, federal, or  
3 foreign jurisdiction.

4        NEW SECTION. Sec. 4. A new section is added to chapter 4.24 RCW  
5 to read as follows:

6        (1) A certified sex offender treatment provider, acting in the  
7 course of his or her duties, providing treatment to a person who has  
8 been released to a less restrictive alternative under chapter 71.09 RCW  
9 or to a level III sex offender on community custody as a court or  
10 department ordered condition of sentence is not negligent because he or  
11 she treats a high risk offender; sex offenders are known to have a risk  
12 of reoffense. The treatment provider is not liable for civil damages  
13 resulting from the reoffense of a client unless the treatment  
14 provider's acts or omissions constituted gross negligence or willful or  
15 wanton misconduct. This limited liability provision does not eliminate  
16 the treatment provider's duty to warn of and protect from a client's  
17 threatened violent behavior if the client communicates a serious threat  
18 of physical violence against a reasonably ascertainable victim or  
19 victims. This limited liability provision applies only to the conduct  
20 of certified sex offender treatment providers and not the conduct of  
21 the state.

22        (2) Sex offender treatment providers who provide services to the  
23 department of corrections by identifying risk factors and notifying the  
24 department of risks for the subset of high risk offenders who are not  
25 amenable to treatment and who are under court order for treatment or  
26 supervision are practicing within the scope of their profession.

27        NEW SECTION. Sec. 5. A new section is added to chapter 71.09 RCW  
28 to read as follows:

29        (1) Examinations and treatment of sexually violent predators who  
30 are conditionally released to a less restrictive alternative under this  
31 chapter shall be conducted only by sex offender treatment providers  
32 certified by the department of health under chapter 18.155 RCW unless  
33 the court or the department of social and health services finds that:  
34 (a) The court-ordered less restrictive alternative placement is located  
35 in another state; (b) the treatment provider is employed by the  
36 department; or (c)(i) all certified treatment providers become  
37 unavailable to provide treatment within a reasonable geographic

1 distance of the person's home, as determined in rules adopted by the  
2 department of social and health services; and (ii) the evaluation and  
3 treatment plan comply with the rules adopted by the department of  
4 social and health services.

5 A treatment provider approved by the department of social and  
6 health services under (c) of this subsection, who is not certified by  
7 the department of health, shall consult with a certified provider  
8 during the person's period of treatment to ensure compliance with the  
9 rules adopted by the department of health. The frequency and content  
10 of the consultation shall be based on the recommendation of the  
11 certified provider.

12 (2) A treatment provider, whether or not he or she is employed or  
13 approved by the department of social and health services under  
14 subsection (1) of this section or otherwise certified, may not perform  
15 or provide treatment of sexually violent predators under this section  
16 if the treatment provider has been:

17 (a) Convicted of a sex offense, as defined in RCW 9.94A.030;

18 (b) Convicted in any other jurisdiction of an offense that under  
19 the laws of this state would be classified as a sex offense as defined  
20 in RCW 9.94A.030; or

21 (c) Suspended or otherwise restricted from practicing any health  
22 care profession by competent authority in any state, federal, or  
23 foreign jurisdiction.

24 (3) Nothing in this section prohibits a qualified expert from  
25 examining or evaluating a sexually violent predator who has been  
26 conditionally released for purposes of presenting an opinion in court  
27 proceedings.

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