

HOUSE BILL REPORT

ESSB 5845

As Reported by House Committee On:
Criminal Justice & Corrections

Title: An act relating to the siting and oversight of facilities for the treatment and housing of sexually violent predators.

Brief Description: Regulating siting of sex offender treatment facilities.

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

Brief History:

Committee Activity:

Criminal Justice & Corrections: 3/26/01, 3/30/01 [DPA].

Brief Summary of Engrossed Substitute Bill
(As Amended by House Committee)

- Defines and sets criteria for secure community transition facilities for sexually violent predators conditionally released to a less restrictive alternative.
- Establishes a public notice and hearing process for the siting and operation of secure community transition facilities, and authorizes community operational advisory boards.
- Authorizes the siting and operation of a secure community transition facility on McNeil Island, and preempts any inconsistent local comprehensive plans or development regulations.
- Prohibits the siting of any additional secure community transition facilities in Pierce County and prohibits the subsequent placement of a sexually violent predator in Pierce County, except in limited circumstances.
- Requires the state to enter into negotiations with Pierce County and affected cities to provide state funding, as appropriated, for mitigation efforts.
- Requires local governments to plan for the siting and equitable distribution of secure community transition facilities.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass as amended. Signed by 5 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Ahern, Republican Vice Chair; Lovick, Democratic Vice Chair and Kagi.

Minority Report: Do not pass. Signed by 3 members: Representatives Cairnes; Kirby and Morell.

Staff: Jean Ann Quinn (786-7310).

Background:

Under the Community Protection Act of 1990, a sexually violent predator may be civilly committed upon the expiration of his or her criminal sentence. A sexually violent predator is a person who has been convicted of, charged with and found not guilty by reason of insanity of, or found to be incompetent to stand trial for, a crime of sexual violence and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory acts of sexual violence if not confined to a secure facility. Sexually violent predators are committed to the custody of the Department of Social and Health Services (DSHS) and confined at the Special Commitment Center (SCC) for control, care, and individualized treatment.

A person who has been civilly committed is entitled to an annual review of his or her mental condition, including consideration of whether conditional release to a less restrictive alternative (LRA) is in the best interest of the person and would adequately protect the community. Before the court can order that a person be conditionally released to an LRA, the court must find that certain requirements are met, including the requirement that housing is available that is sufficiently secure to protect the community.

Since 1994 the SCC has been operating under a federal court injunction requiring that steps be taken to ensure that constitutionally adequate mental health treatment is being provided to the SCC residents. In November 1999 the state was held in contempt of court for failing to take all reasonable steps toward this goal and for intentionally disregarding the requirements of the injunction. The court ordered sanctions of \$50 per day per SCC resident beginning in May of 2000. To date, the court has deferred imposition of these sanctions, finding that the SCC is making genuine efforts to bring the program into compliance. One area that continues to be of concern to the court, however, is the lack of arrangements for the transition of qualified residents into LRAs.

In August 2000 the DSHS formed a Secure Placement Advisory Committee and with the assistance of this committee and other public input, established criteria for the siting of LRAs housing up to three SCC residents on conditional release status. Using this criteria, 11 state- owned properties were then selected as potential sites for the location of

the first such LRA. The department made a final selection from among those 11 potential sites, and also selected three possible alternatives. The local governments of some of the affected locations have since taken legal action attempting to halt the siting of these LRAs in their respective jurisdictions.

The Growth Management Act (GMA) requires a county and its cities to plan if the county meets certain population and growth criteria and allows counties not meeting these criteria to choose to plan under the GMA. Currently, 29 of 39 counties plan under the GMA. The GMA requires all counties and cities in the state to take certain actions, including designation and protection of critical areas and designation of natural resource lands. The GMA imposes additional requirements on counties and cities planning under the GMA (GMA jurisdictions), including: (1) adoption of county-wide planning policies to coordinate comprehensive planning among counties and their cities; (2) designation of urban growth areas; (3) adoption of a comprehensive plan with certain required elements; and (4) adoption of implementing development regulations. By September 1, 2002, and every five years thereafter, the GMA jurisdictions must review their comprehensive plans and development regulations for consistency with the GMA requirements and must revise their plans and regulations if necessary.

GMA jurisdictions must have a process for identifying and siting essential public facilities. Essential public facilities are described in the GMA as those public facilities that are typically difficult to site and include, among other facilities, state and local correctional facilities, mental health facilities, and group homes. No GMA plan or development regulation may preclude the siting of essential public facilities.

A conditional use is a use permitted in a specific zone only after review by the appropriate permitting authority and the imposition of permit conditions making the use compatible with other permitted uses in the zone. Conditions and requirements for conditional use and special use permits are specified in local ordinances.

Summary of Amended Bill:

Secure Community Transition Facilities. A secure community transition facility is defined to mean a residential facility for sexually violent predators conditionally released to an LRA, operated either by the DSHS or under contract with the DSHS.

McNeil Island Secure Community Transition Facility. The DSHS is authorized to establish a secure community transition facility on McNeil Island, and any inconsistent local comprehensive plans or development regulations are pre-empted until December 31, 2003. The state must enter into negotiations with Pierce County, and with each city in Pierce County that is located within a 10-mile radius of the McNeil Island facility, for an agreement to provide state funding, as appropriated, to mitigate increased law enforcement costs resulting from the siting of that facility on McNeil Island. Before

operating the facility, the DSHS must hold three public meetings in the affected communities to received public input regarding operations of the facility and necessary security measures. No additional secure community transition facility may be sited in Pierce County.

Up to 10 correctional employees that are members of the Emergency Response Team for the McNeil Island Corrections Center shall have the powers and duties of a peace officer when apprehending a resident who has escaped from the SCC or the McNeil Island secure community transition facility.

The DSHS must submit a report to the Legislature by December 1, 2002, regarding policies for the subsequent placement of sexually violent predators residing in the McNeil Island secure community transition facility, including policies to ensure that such placements will be equitably distributed among the counties, and among jurisdictions within counties. A placement may not be made in Pierce County unless the person, or his or her family members, had an established long-term residence in the county at the time the person was civilly committed.

Criteria for Secure Community Transition Facilities. The DSHS is directed to establish criteria for the siting of secure community transition facilities, except the facility established on McNeil Island. At a minimum, the criteria must require that the property be available for lease, the required security systems be available, treatment providers be available within a reasonable commute, and appropriate permitting is possible under the local zoning regulations. Any site that meets these criteria must be analyzed and compared according to the method established in the rule considering the following:

- (1) Public safety and security criteria must include an analysis of whether limited visibility between the facility and adjacent properties can be achieved, the ability to establish barriers between the site and risk potential activities, the features of the facility, and the availability of electronic monitoring.
- (2) Site characteristics criteria must include the reasonableness of the rent, lease, or sale terms, traffic and access patterns associated with the property, the feasibility of complying with zoning requirements, and the availability of contractors to install, monitor, and repair the security systems.
- (3) Program characteristics criteria must include reasonable proximity to available medical and other treatment providers and facilities, suitability of the location for programming, staffing, and support considerations, proximity to employment, educational, vocational, and other treatment plan components. For facilities housing *five or fewer* residents, it also must include certain minimum staffing ratios. Residents must be escorted when leaving the facility, unless otherwise ordered by the court.

Response Time for Emergency Services. With the exception of the facility on McNeil

Island, the DSHS must establish rules that balance the average response time of emergency services to a proposed facility against the proximity of risk potential facilities, such as schools, daycare facilities, and public parks. The rule must endeavor to achieve a five-minute response time, and the rule may not permit the location of a facility adjacent to, immediately across the street or parking lot from, or within the line of sight of a risk potential activity. The rule must also establish a method for analyzing and comparing sites with regard to public safety and security, site characteristics, and program components.

Security Systems. A secure community transition facility housing *five or fewer* residents must have specified security, alarm, and back-up emergency systems, including generator systems.

Public Notice and Hearing Process. A secure community transition facility may only be operated after a public notice and hearing process. If three potential sites are identified, that process must include at least two public hearings in each affected community, and an additional hearing in the community where the final selection is made. If only one site is under consideration, at least two public hearings must be held in that community. Fourteen-day notice of the hearing must be given through radio, television, and newspapers of general circulation, and to school districts, library districts, local business organizations and any person or property owner within a one-half mile radius of the facility.

Operational Advisory Boards. The DSHS must work with local communities to develop and implement operational advisory boards to review and make recommendations regarding the security and operations of any secure community transition facility and conditions with respect to residents proposed to be placed in the facility.

Violations Policy. The DSHS must develop a reporting policy requiring written documentation by the DSHS and service providers of all violations, and establishing criteria for returning a violator to the SCC or a secure community transition facility. Serious violations require that the person be immediately returned to the SCC, and revocation or modification procedures initiated. Any contract with a service provider must include a requirement that the contractor report any known violations. The DSHS must adopt rules that contain a schedule of monetary penalties and contract termination provisions for contractors who fail to meet the requirements of the statute.

Local Government Planning Process. Other than Pierce County, each county must adopt a countywide planning policy by September 1, 2002, to establish a process for the siting and equitable distribution of secure community transition facilities within the county and the cities within the county. Counties planning under the GMA may integrate this requirement with their GMA planning process. The policy must include the coordination of development regulations to ensure that siting of these facilities can be achieved. The policy must be consistent with the siting criteria and require that any conditional use

permit or other development application process not exceed 60 days in length and provide for an appeal process. Within six months after the adoption of the county-wide planning policy, the county and each city within the county must adopt development regulations implementing the policy.

The definition of essential public facilities includes secure community transition facilities.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill: (1) authorizes the DSHS to establish a secure community transition facility on McNeil Island, and preempts inconsistent local comprehensive plans or development regulations; (2) requires the state to enter into negotiations for agreements with the affected county and cities to provide state funding, as appropriated for this purpose, in an amount adequate to mitigate increased law enforcement costs; (3) requires the DSHS to submit a report regarding policies for the equitable placement of sexually violent predators once they leave the McNeil Island facility; (4) prohibits any additional secure community transition facilities in Pierce County and prohibits the subsequent placement of a sexually violent predator in Pierce County unless the person, or his or her family member, was a long-time resident of the county at the time the person was committed; (5) exempts the McNeil Island facility from the criteria for secure community transition facilities established in the bill; (6) requires the DSHS to hold three public meetings before operating the McNeil Island facility to receive public input regarding operations and needed security measures; (7) exempts Pierce County from the requirement that counties adopt a planning policy for siting secure community transition facilities; and (8) grants peace officer powers to up to 10 members of the DOC McNeil Island Emergency Response Team when acting to apprehend residents who have escaped from the SCC or the secure community transition facility on McNeil Island.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: Siting these facilities is a difficult, challenging job. The main purpose of the bill is to establish statutory guidelines for the placement of these facilities, including a requirement for public notification and input. This did not happen when the DSHS attempted to site one of these facilities last year. The bill was carefully crafted with input from interested stakeholders. The state needs both short and long term solutions to this problem. Without these bills, sexually violent predators may be released without any supervision at all which is completely unacceptable. No community wants these facilities, but the bill helps ensure they aren't placed in the wrong backyards. The operational advisory boards should be more clearly delineated to include local citizen

participation.

(With concerns) The section of the bill that requires counties to reopen their comprehensive plans and begin another public process would be very expensive, inefficient, and get many cities and counties upset for no reason because they likely will never have one of these facilities. The section is also unnecessary because including them as essential public facilities already requires local governments to plan for them. There needs to be a date certain for the conditional use permitting process, and it should be clarified that the McNeil Island facility is exempt from this portion of the bill. Allowing monetary penalties for contractors who violate the provisions of the bill is problematic because the state will then be unable to find private providers to run the facilities. This will result in a markedly higher cost. The response time criteria should not be placed in statute because it limits the flexibility of the DSHS and invites more judicial intervention. The language in the bill requiring immediate revocation for serious violations of a conditional release is vague and unnecessary.

Testimony Against: None.

Testified: (In support) Senator Fraser, prime sponsor; Senator Costa; Senator Hewitt; Suzanne Brown, Washington Coalition of Sexual Assault Programs; and Steve Albrecht, M.D., Johnson Point resident.

(In support with concerns) William Armstrong, McNeil Island resident.

(Concerns) Kathy Gerke, Association of Washington Cities; Jean Wessman, Washington State Association of Counties; Tim Brown, Department of Social and Health Services; and Heather Lechner, Washington Association of Criminal Defense Lawyers and Washington Defenders Association.