

2SSB 6630 - S AMD 55

By Senators Kline, Prentice

PULLED 02/13/2006

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The department of social and health  
4 services is providing a structured, therapeutic environment for persons  
5 who are eligible for placement in the community protection program in  
6 order for them to live safely and successfully in the community while  
7 minimizing the risk to public safety.

8 The legislature approves of steps already taken by the department  
9 to create a community protection program within the division of  
10 developmental disabilities.

11 NEW SECTION. **Sec. 2.** Sections 3 through 9 of this act apply to a  
12 person:

13 (1)(a) Who: (i) Has been charged with or convicted of a crime of  
14 sexual violence as defined in chapter 9A.44 or 71.09 RCW, including,  
15 but not limited to, rape, rape of a child, and child molestation, or  
16 who has been charged with or convicted of sexual acts directed toward:  
17 Strangers, individuals with whom a relationship has been established or  
18 promoted for the primary purpose of victimization, or persons of casual  
19 acquaintance with whom no substantial personal relationship exists or  
20 who has committed one or more violent offenses, as defined by RCW  
21 9.94A.030; and (ii) constitutes a current risk to others as determined  
22 by a qualified professional. Charges or crimes that resulted in  
23 acquittal must be excluded; or

24 (b) Who has not been charged with and/or convicted of a crime, but  
25 has a history of stalking, sexually violent, predatory, and/or  
26 opportunistic behavior, which demonstrates a likelihood to commit a  
27 sexually violent and/or predatory act based on current behaviors, and  
28 constitutes a current risk to others as determined by a qualified  
29 professional; and

1 (2) Who has been determined to have a developmental disability as  
2 defined by RCW 71A.10.020(3).

3 NEW SECTION. **Sec. 3.** The definitions in this section apply  
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Assessment" means the written opinion of a qualified  
6 professional stating, at a minimum:

7 (a) Whether a person meets the criteria established in section 2 of  
8 this act;

9 (b) What restrictions are necessary.

10 (2) "Certified community protection program intensive supported  
11 living services" means access to twenty-four-hour supervision,  
12 instruction, and support services as identified in the person's plan of  
13 care.

14 (3) "Community protection program" means services specifically  
15 designed to support persons who meet the criteria of section 2 of this  
16 act.

17 (4) "Constitutes a risk to others" means a determination of a  
18 person's risk and/or dangerousness based upon a thorough assessment by  
19 a qualified professional.

20 (5) "Department" means the department of social and health  
21 services.

22 (6) "Developmental disability" means that condition defined in RCW  
23 71A.10.020(3).

24 (7) "Disclosure" means providing copies of professional  
25 assessments, incident reports, legal documents, and other information  
26 pertaining to community protection issues to ensure the provider has  
27 all relevant information. Polygraph and plethysmograph reports are  
28 excluded from disclosure.

29 (8) "Division" means the division of developmental disabilities.

30 (9) "Managed successfully" means that a person supported by a  
31 community protection program does not engage in the behavior identified  
32 in section 2 of this act.

33 (10) "Opportunistic behavior" means an act committed on impulse,  
34 which is not premeditated.

35 (11) "Predatory" means acts directed toward strangers, individuals  
36 with whom a relationship has been established or promoted for the  
37 primary purpose of victimization, or casual acquaintances with whom no

1 substantial personal relationship exists. Predatory behavior may be  
2 characterized by planning and/or rehearsing the act, stalking, and/or  
3 grooming the victim.

4 (12) "Qualified professional" means a person with at least three  
5 years' prior experience working with individuals with developmental  
6 disabilities, and: (a) If the person being assessed has demonstrated  
7 sexually aggressive or sexually violent behavior, that person must be  
8 assessed by a qualified professional who is a certified sex offender  
9 treatment provider, or affiliate sex offender treatment provider  
10 working under the supervision of a certified sex offender treatment  
11 provider; or (b) If the person being assessed has demonstrated violent,  
12 dangerous, or aggressive behavior, that person must be assessed by a  
13 licensed psychologist or psychiatrist who has received specialized  
14 training in the treatment of or has at least three years' prior  
15 experience treating violent or aggressive behavior.

16 (13) "Treatment team" means the program participant and the group  
17 of people responsible for the development, implementation, and  
18 monitoring of the person's individualized supports and services. This  
19 group may include, but is not limited to, the case resource manager,  
20 therapist, residential provider, employment/day program provider, and  
21 the person's legal representative and/or family, provided the person  
22 consents to the family member's involvement.

23 (14) "Violent offense" means any felony defined as a violent  
24 offense in RCW 9.94A.030.

25 NEW SECTION. **Sec. 4.** (1) Prior to receiving services through the  
26 community protection program, a person must first receive an assessment  
27 of risk and/or dangerousness by a qualified professional. The  
28 assessment must be consistent with the guidelines for risk assessments  
29 and psychosexual evaluations developed by the department. The person  
30 requesting services and the person's legal representative have the  
31 right to choose the qualified professional who will perform the  
32 assessment from a list of state contracted qualified professionals.  
33 The assessment must contain, at a minimum, a determination by the  
34 qualified professional whether the person can be managed successfully  
35 in the community with reasonably available safeguards and that lesser  
36 restrictive residential placement alternatives have been considered and

1 would not be reasonable for the person seeking services. The  
2 department may request an additional evaluation by a qualified  
3 professional evaluator who is contracted with the state.

4 (2) Any person being considered for placement in the community  
5 protection program and his or her legal representative must be informed  
6 in writing of the following: (a) Limitations regarding the services  
7 that will be available due to the person's community protection issues;  
8 (b) disclosure requirements as a condition of receiving services other  
9 than case management; (c) the requirement to engage in therapeutic  
10 treatment may be a condition of receiving certain services; (d)  
11 anticipated restrictions that may be provided including, but not  
12 limited to intensive supervision, limited access to television viewing,  
13 reading material, videos; (e) the right to accept or decline services;  
14 (f) the anticipated consequences of declining services such as the loss  
15 of existing services and removal from waiver services; (g) the right to  
16 an administrative fair hearing in accordance with department and  
17 division policy; (h) the requirement to sign a preplacement agreement  
18 as a condition of receiving community protection intensive supported  
19 living services; (i) the right to retain current services during the  
20 pendency of any challenge to the department's decision; (j) the right  
21 to refuse to participate in the program.

22 (3)(a) If the department determines that a person is appropriate  
23 for placement in the community protection program, the individual and  
24 his or her legal representative shall receive in writing a  
25 determination by the department that the person meets the criteria for  
26 placement within the community protection program.

27 (b) If the department determines that a person cannot be managed  
28 successfully in the community protection program with reasonably  
29 available safeguards, the department must notify the person and his or  
30 her legal representative in writing.

31 NEW SECTION. **Sec. 5.** (1) Individuals receiving services through  
32 the department's community protection waiver retain all appeal rights  
33 provided for in RCW 71A.10.050. In addition, such individuals have a  
34 right to an administrative hearing pursuant to chapter 34.05 RCW to  
35 appeal the following decisions by the department:

- 36 (a) Termination of community protection waiver eligibility;
- 37 (b) Assignment of the applicant to the community protection waiver;

1 (c) Denial of a request for less restrictive community residential  
2 placement.

3 (2) Final administrative decisions may be appealed pursuant to the  
4 provisions of RCW 34.05.510.

5 (3) The secretary shall adopt rules concerning the procedure  
6 applicable to requests for hearings under this section and governing  
7 the conduct thereof.

8 (4) When the department takes any action described in subsection  
9 (1) of this section it shall give notice as provided by RCW 71A.10.060.  
10 The notice must include a statement advising the person enrolled on the  
11 community protection waiver of the right to an adjudicative proceeding  
12 and the time limits for filing an application for an adjudicative  
13 proceeding. Notice must also include a statement advising the  
14 recipient of the right to file a petition for judicial review of a  
15 final administrative decision as provided in chapter 34.05 RCW.

16 (5) Nothing in this section creates an entitlement to placement on  
17 the community protection waiver nor does it create a right to an  
18 administrative hearing on department decisions denying placement on the  
19 community protection waiver.

20 NEW SECTION. **Sec. 6.** (1) Community protection program  
21 participants shall have appropriate opportunities to receive services  
22 in the least restrictive manner and in the least restrictive  
23 environments possible. When considering requests or recommendations  
24 for lessening program restrictions, reducing supervision, or  
25 terminating services, careful consideration to the safety and welfare  
26 of both the individual and the community must be given.

27 (2) There must be a review by the treatment team every ninety days  
28 to assess each participant's progress, evaluate use of less restrictive  
29 measures, and make changes in the participant's program as necessary.  
30 The team must review all restrictions and recommend reductions if  
31 appropriate. The therapist must write a report annually evaluating the  
32 participant's risk of offense and/or risk of behaviors that are  
33 dangerous to self or others. The department shall have rules in place  
34 describing this process. If a treatment team member has reason to be  
35 concerned that circumstances have changed significantly, the team  
36 member may request that a complete reassessment be conducted at any  
37 time.

1        NEW SECTION.    **Sec. 7.** A participant who demonstrates success in  
2 complying with reduced restrictions and remains free of offenses that  
3 may indicate a relapse for at least twelve months, may be considered  
4 for placement in a less restrictive community residential setting. The  
5 participant must show, at a minimum that he or she is complying with  
6 reduced restrictions and remains free of offense that would indicate  
7 relapse for at least twelve months.

8        The process to move a participant to a less restrictive residential  
9 placement shall include:

10        (1) Written verification of the person's treatment progress,  
11 assessment of low risk of reoffense, and a recommendation as to  
12 suitable placement by the treatment team;

13        (2) Development of a gradual phase out plan by the treatment team,  
14 projected over a reasonable period of time and includes specific  
15 criteria for evaluating reductions in restrictions, especially  
16 supervision;

17        (3) The absence of any incidents that may indicate relapse for a  
18 minimum of twelve months;

19        (4) A written plan that details what supports and services,  
20 including the level of supervision the person will receive from the  
21 division upon exiting the community protection program;

22        (5) An assessment consistent with the guidelines for risk  
23 assessments and psychosexual evaluations developed by the division,  
24 conducted by a qualified professional, evaluating the participant's  
25 risk of reoffense and/or dangerousness, including an opinion as to  
26 whether or not the person can be managed successfully in a less  
27 restrictive community residential setting;

28        (6) Recommendation by the treatment team that the participant is  
29 ready to move to a less restrictive community residential placement.

30        NEW SECTION.    **Sec. 8.** (1) The department is authorized to take one  
31 or more of the enforcement actions listed in subsection (2) of this  
32 section when the department finds that a provider of residential  
33 services and support with whom the department entered into an agreement  
34 with under this chapter has:

35        (a) Failed or refused to comply with the requirements of this  
36 chapter or the rules adopted under it;

37        (b) Failed or refused to cooperate with the certification process;

1 (c) Prevented or interfered with a certification, inspection, or  
2 investigation by the department;

3 (d) Failed to comply with any applicable requirements regarding  
4 vulnerable adults under chapter 74.34 RCW;

5 (e) Knowingly, or with reason to know, made a false statement of  
6 material fact related to certification or contracting with the  
7 department or in any matter under investigation by the department.

8 (2) The department may:

9 (a) Decertify or refuse to renew the certification of a provider;

10 (b) Impose conditions on the provider's certification;

11 (c) Suspend department referrals to the provider;

12 (d) Impose civil penalties of not more than three hundred dollars  
13 per day per violation. Each day during which the same or similar  
14 action or inaction occurs constitutes a separate violation; or

15 (e) Require a provider to implement a plan of correction developed  
16 by the department, and to cooperate with subsequent monitoring of the  
17 provider's progress.

18 (3) When determining the appropriate enforcement action or actions  
19 to take under subsection (2) of this section, the department must  
20 select actions commensurate with the seriousness of the harm or threat  
21 of harm, to the persons being served by the provider. Further, the  
22 department may take enforcement actions that are more severe for  
23 violations that are uncorrected, repeated, pervasive, or present a  
24 serious threat of harm to the health, safety, or welfare of persons  
25 served by the provider.

26 (4) The provisions of chapter 34.05 RCW apply to enforcement  
27 actions under this section. Except for the imposition of civil  
28 penalties, the effective date of enforcement actions shall not be  
29 delayed or suspended pending any hearing or informal review.

30 (5) The enforcement actions authorized in this section are not  
31 exclusive and nothing in this section prohibits the department from  
32 taking any other action authorized in statute or rule or under the  
33 terms of a contract with the provider.

34 NEW SECTION. **Sec. 9.** The department shall develop and maintain  
35 rules, guidelines, or policy manuals, as appropriate, for implementing  
36 and maintaining the community protection program under this chapter.

1        NEW SECTION.    **Sec. 10.**    Sections 2 through 9 of this act are each  
2 added to chapter 71A.12 RCW.

3        NEW SECTION.    **Sec. 11.**    This act is necessary for the immediate  
4 preservation of the public peace, health, or safety, or support of the  
5 state government and its existing public institutions, and takes effect  
6 immediately."

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7        On page 1, line 2 of the title, after "disabilities;" strike the  
8 remainder of the title and insert "adding new sections to chapter  
9 71A.12 RCW; creating a new section; prescribing penalties; and  
10 declaring an emergency."

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