
ENGROSSED SECOND SUBSTITUTE SENATE BILL 6630

State of Washington

59th Legislature

2006 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Kline, Prentice, Keiser, Fairley, Regala, McAuliffe and Kohl-Welles)

READ FIRST TIME 02/7/06.

1 AN ACT Relating to establishing the community protection program
2 for persons with developmental disabilities; adding new sections to
3 chapter 71A.12 RCW; creating a new section; prescribing penalties; and
4 declaring an emergency.

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

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

11 The legislature approves of steps already taken by the department
12 to create a community protection program within the division of
13 developmental disabilities.

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

16 (1)(a) Who: (i)(A) Has been charged with or convicted of a crime
17 of sexual violence as defined in chapter 9A.44 or 71.09 RCW, including,
18 but not limited to, rape, rape of a child, and child molestation; or

1 (B) has been charged with or convicted of one or more violent offenses,
2 as defined by RCW 9.94A.030; and (ii) constitutes a current risk to
3 others as determined by a qualified professional. Charges or crimes
4 that resulted in acquittal must be excluded, except where admission to
5 the community protection program is initiated by the individual; or

6 (b) Who has not been charged with and/or convicted of a crime, but
7 has a history of stalking, sexually violent, predatory, and/or
8 opportunistic behavior, which demonstrates a likelihood to commit a
9 sexually violent and/or predatory act based on current behaviors, and
10 constitutes a current risk to others as determined by a qualified
11 professional; and

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

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

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

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

20 (b) What restrictions are necessary.

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

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

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

31 (5) "Department" means the department of social and health
32 services.

33 (6) "Developmental disability" means that condition defined in RCW
34 71A.10.020(3).

35 (7) "Disclosure" means providing copies of professional
36 assessments, incident reports, legal documents, and other information

1 pertaining to community protection issues to ensure the provider has
2 all relevant information. Polygraph and plethysmograph reports are
3 excluded from disclosure.

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

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

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

10 (11) "Predatory" means acts directed toward strangers, individuals
11 with whom a relationship has been established or promoted for the
12 primary purpose of victimization, or casual acquaintances with whom no
13 substantial personal relationship exists. Predatory behavior may be
14 characterized by planning and/or rehearsing the act, stalking, and/or
15 grooming the victim.

16 (12) "Qualified professional" means a person with at least three
17 years' prior experience working with individuals with developmental
18 disabilities, and: (a) If the person being assessed has demonstrated
19 sexually aggressive or sexually violent behavior, that person must be
20 assessed by a qualified professional who is a certified sex offender
21 treatment provider, or affiliate sex offender treatment provider
22 working under the supervision of a certified sex offender treatment
23 provider; or (b) If the person being assessed has demonstrated violent,
24 dangerous, or aggressive behavior, that person must be assessed by a
25 licensed psychologist or psychiatrist who has received specialized
26 training in the treatment of or has at least three years' prior
27 experience treating violent or aggressive behavior.

28 (13) "Treatment team" means the program participant and the group
29 of people responsible for the development, implementation, and
30 monitoring of the person's individualized supports and services. This
31 group may include, but is not limited to, the case resource manager,
32 therapist, residential provider, employment/day program provider, and
33 the person's legal representative and/or family, provided the person
34 consents to the family member's involvement.

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

1 NEW SECTION. **Sec. 4.** (1) Prior to receiving services through the
2 community protection program, a person must first receive an assessment
3 of risk and/or dangerousness by a qualified professional. The
4 assessment must be consistent with the guidelines for risk assessments
5 and psychosexual evaluations developed by the department. The person
6 requesting services and the person's legal representative have the
7 right to choose the qualified professional who will perform the
8 assessment from a list of state contracted qualified professionals.
9 The assessment must contain, at a minimum, a determination by the
10 qualified professional whether the person can be managed successfully
11 in the community with reasonably available safeguards and that lesser
12 restrictive residential placement alternatives have been considered and
13 would not be reasonable for the person seeking services. The
14 department may request an additional evaluation by a qualified
15 professional evaluator who is contracted with the state.

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

34 (3)(a) If the department determines that a person is appropriate
35 for placement in the community protection program, the individual and
36 his or her legal representative shall receive in writing a
37 determination by the department that the person meets the criteria for
38 placement within the community protection program.

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

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

- 10 (a) Termination of community protection waiver eligibility;
- 11 (b) Assignment of the applicant to the community protection waiver;
- 12 (c) Denial of a request for less restrictive community residential
13 placement.

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

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

19 (4) When the department takes any action described in subsection
20 (1) of this section it shall give notice as provided by RCW 71A.10.060.
21 The notice must include a statement advising the person enrolled on the
22 community protection waiver of the right to an adjudicative proceeding
23 and the time limits for filing an application for an adjudicative
24 proceeding. Notice must also include a statement advising the
25 recipient of the right to file a petition for judicial review of a
26 final administrative decision as provided in chapter 34.05 RCW.

27 (5) Nothing in this section creates an entitlement to placement on
28 the community protection waiver nor does it create a right to an
29 administrative hearing on department decisions denying placement on the
30 community protection waiver.

31 NEW SECTION. **Sec. 6.** (1) Community protection program
32 participants shall have appropriate opportunities to receive services
33 in the least restrictive manner and in the least restrictive
34 environments possible. When considering requests or recommendations
35 for lessening program restrictions, reducing supervision, or

1 terminating services, careful consideration to the safety and welfare
2 of both the individual and the community must be given.

3 (2) There must be a review by the treatment team every ninety days
4 to assess each participant's progress, evaluate use of less restrictive
5 measures, and make changes in the participant's program as necessary.
6 The team must review all restrictions and recommend reductions if
7 appropriate. The therapist must write a report annually evaluating the
8 participant's risk of offense and/or risk of behaviors that are
9 dangerous to self or others. The department shall have rules in place
10 describing this process. If a treatment team member has reason to be
11 concerned that circumstances have changed significantly, the team
12 member may request that a complete reassessment be conducted at any
13 time.

14 NEW SECTION. **Sec. 7.** A participant who demonstrates success in
15 complying with reduced restrictions and remains free of offenses that
16 may indicate a relapse for at least twelve months, may be considered
17 for placement in a less restrictive community residential setting. The
18 participant must show, at a minimum that he or she is complying with
19 reduced restrictions and remains free of offense that would indicate
20 relapse for at least twelve months.

21 The process to move a participant to a less restrictive residential
22 placement shall include:

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

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

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

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

35 (5) An assessment consistent with the guidelines for risk
36 assessments and psychosexual evaluations developed by the division,
37 conducted by a qualified professional, evaluating the participant's

1 risk of reoffense and/or dangerousness, including an opinion as to
2 whether or not the person can be managed successfully in a less
3 restrictive community residential setting;

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

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

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

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

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

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

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

21 (2) The department may:

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

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

24 (c) Suspend department referrals to the provider;

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

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

31 (3) When determining the appropriate enforcement action or actions
32 to take under subsection (2) of this section, the department must
33 select actions commensurate with the seriousness of the harm or threat
34 of harm, to the persons being served by the provider. Further, the
35 department may take enforcement actions that are more severe for
36 violations that are uncorrected, repeated, pervasive, or present a

1 serious threat of harm to the health, safety, or welfare of persons
2 served by the provider.

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

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

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

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

16 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and takes effect
19 immediately.

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