

# HOUSE BILL REPORT

## HB 1912

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### As Passed House:

March 6, 2009

**Title:** An act relating to maintenance and construction activities in support of facilities used to house sexually violent predators.

**Brief Description:** Concerning facilities to house sexually violent predators.

**Sponsors:** Representatives Armstrong, Hunt and Moeller; by request of Department of Social and Health Services.

### Brief History:

#### Committee Activity:

Public Safety & Emergency Preparedness: 2/11/09, 2/17/09 [DP];

Capital Budget: 2/24/09, 2/27/09 [DP].

#### Floor Activity

Passed House: 3/6/09, 89-7.

### Brief Summary of Bill

- Extends the state's authority to pre-empt and supersede local plans, development, regulations, permitting and inspection requirements, and all other laws necessary to enable the Department of Social and Health Services (Department) to construct and operate facilities at the Special Commitment Center on McNeil Island and Secure Community Transition Facilities to June 30, 2017.
- Replaces emergency language in the pre-emption provisions with statements of the Department's need to site and construct facilities to house sexually violent predators.

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### HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

**Majority Report:** Do pass. Signed by 6 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Goodman and Ross.

**Minority Report:** Do not pass. Signed by 1 member: Representative Appleton.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Lara Zarowsky (786-7123)

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## HOUSE COMMITTEE ON CAPITAL BUDGET

**Majority Report:** Do pass. Signed by 15 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Warnick, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Anderson, Blake, Chase, Grant-Herriot, Hope, Jacks, Maxwell, McCune, Orwall, Smith and White.

**Staff:** Steve Masse (786-7115)

### **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, 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 (Department) and confined at the Special Commitment Center (SCC) for control, care, and individualized treatment.

A person who has been civilly committed is statutorily 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. The person is also entitled to consideration of an LRA at his or her probable cause and commitment hearings.

From 1994 until 2007, the SCC operated under a federal court injunction requiring that steps be taken to ensure that constitutionally adequate mental health treatment was being provided to the residents of the SCC. One substantial area of concern for the court in issuing and maintaining the injunction was the availability of LRAs for qualified residents of the SCC.

In 2001 the Legislature authorized the Department to build the existing SCC and the Secure Community Transition Facility (SCTF) on McNeil Island, and enacted provisions relating to the siting of future SCTFs. There are currently two SCTFs – one located on McNeil Island, and the other located in King County.

In 2002 the Legislature enacted a comprehensive bill relating to construction at the SCC and the siting of SCTFs to house sexually violent predators, extending civil liability protection to any county or city acting in good faith in siting an SCTF. The bill also provided special siting procedures, and limitations regarding the size and location of SCTFs. For purposes of siting, constructing, and operating SCTFs and facilities at the SCC, the law specifically superseded and pre-empted local plans, development regulations, permitting and inspection requirements, and “all other laws” including the State Environmental Policy Act, the Shoreline Management Act, and the Construction Projects in State Waters Act. These pre-emption provisions expire June 30, 2009.

By statute, capacity at the SCC may not exceed a total of 400 beds. The Governor's 2009 - 2011 budget includes funding for an underground utility project, and for design of a 40-bed housing addition for the SCC to be completed in 2011 - 2013. A second 40-bed housing project is proposed for construction in 2015 - 2017.

**Summary of Bill:**

The state's authority to pre-empt and supersede local plans, development regulations, permitting and inspection requirements, and all other laws necessary to enable the Department to construct and operate the SCTF's and facilities at the SCC, currently set to expire on June 30, 2009, is extended to June 30, 2017.

Language identifying an emergency in the existing pre-emption provisions in the Sexually Violent Predator Act, State Environmental Protection Act, Shoreline Management Act, and Construction Projects in State Waters Act chapters is deleted and replaced with language identifying the Department's "need" to construct facilities to house sexually violent predators.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony (Public Safety & Emergency Preparedness):**

(In support) The Department does not anticipate the need to site facilities in other counties at this time. The current capacity at the SCC is well within the projected needs of the Department for the next 10 years. However, there is a need to expand the current secure facility on McNeil Island which is already included in the Governor's budget. The addition will take the total capacity at the secure facility on McNeil Island to about 380 beds which should be sufficient to handle the population at the SCC for the next six to eight years. The population is expected to decline after that time due to a change in the sexually violent predator law.

(Neutral) The cities do not like being pre-empted in this area. This approach seems to have worked for the moment and hopefully this will continue if another pre-emption period is created. In the future, the cities should be consulted in a more upfront manner regarding what is being planned by the Department. Dispersal of these units in the future was brought up previously in recognition of Pierce County's position. There should be a dispersal plan, although for the next planning period it does not appear that would be necessary. In the normal course of things, there should be more formal communication between the Department and the cities.

(Opposed) None.

**Staff Summary of Public Testimony (Capital Budget):**

(In support) There are two 40 bed projects that are planned. The Department of Social and Health Services (Department) does not have any other plans for locating facilities at other locations in the state. This becomes an insurance policy that projects can move forward. All requirements are still pursued by the Department.

(Opposed) None.

**Persons Testifying** (Public Safety & Emergency Preparedness): (In support) Chris Olsen and Robert Hubenthal, Department of Social and Health Services.

(Neutral) Dave Williams, Association of Washington Cities.

**Persons Testifying** (Capital Budget): Representative Armstrong, prime sponsor; and Chris Olsen and Robert Hubenthal, Department of Social and Health Services.

**Persons Signed In To Testify But Not Testifying** (Public Safety & Emergency Preparedness): None.

**Persons Signed In To Testify But Not Testifying** (Capital Budget): None.