

HOUSE BILL REPORT

SB 5218

As Reported by House Committee On:
Public Safety & Emergency Preparedness

Title: An act relating to controlling computer access by residents at the special commitment center and persons released to less restrictive alternatives.

Brief Description: Controlling computer access by residents at the special commitment center and persons released to less restrictive alternatives.

Sponsors: Senators Carrell, Hargrove, Swecker, Regala, Brandland, Hewitt, King, Stevens, Schoesler, Pridemore, Delvin, Pflug, Tom, Kilmer and Shin.

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 3/18/09, 3/24/09 [DPA].

**Brief Summary of Bill
(As Amended by House)**

- Prohibits any person civilly committed or detained as a sexually violent predator from accessing a personal computer unless access is necessary or beneficial in bringing about a positive response to a specific and certain phase or course of treatment.
- Provides that certain residents must be given access, subject to time and resource limitations of the facility, to a state-owned computer in a computer lab located at the facility.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: Do pass as amended. Signed by 7 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Goodman, Kirby and Ross.

Staff: Lara Zarowsky (786-7123)

Background:

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.

Civil Commitment.

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. Because they are civilly committed (as opposed to criminally committed), residents of the SCC are not subject to as many restrictions as persons confined pursuant to a criminal conviction.

Less Restrictive Alternative.

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 release to a 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 Secure Community Transition Facilities (SCTF) to serve as a LRA for qualified residents. There are currently two SCTFs – one located on McNeil Island, and the other located in King County. The court may order a sexually violent predator to an LRA if it finds: (1) the person will be treated by a qualified treatment provider; (2) the treatment provider has presented a specific course of treatment and has agreed to assume treatment responsibility and provide progress reports to the court; (3) housing exists that is sufficiently secure to protect the community; (4) the person is willing to comply with the treatment plan; and (5) the person is willing to comply with supervision requirements imposed by the Department of Corrections.

Computer Access.

The Department restricts computer usage by residents of the SCC and SCTFs. Residents who are involved in treatment often utilize computers to complete treatment assignments. Residents are permitted to own a specific type of Department-approved personal computer that does not have wireless Internet capabilities, is not capable of reading thumbnail drives, and is capable only of reading (not writing) compact discs. Those on conditional release to a SCTF may access the Internet while outside the SCTF for limited purposes (e.g., job searches), as long as the access is approved by the resident's transition team, and such usage is monitored at all times. Most residents of the SCC and SCTFs are under court order to refrain from accessing the Internet.

Summary of Amended Bill:

Any sexually violent predator committed to or detained at the SCC is prohibited from accessing a personal computer unless his or her individualized treatment plan states that access to a computer is necessary or beneficial in bringing about a positive response to a specific and certain phase or course of treatment.

Certain residents who are prohibited from possessing or accessing a personal computer must be given access to a state-owned computer in a computer lab located at the facility, for periods and at times established by the facility. Access is to be determined considering the resident's status of compliance and need to access a computer, and the resources available at the facility.

Amended Bill Compared to Original Bill:

The amended bill allows a resident access to a personal computer if the resident's individualized treatment plan indicates that access would be *beneficial* to the resident's treatment.

Depending on the resident's compliance status and need, a resident who is prohibited from accessing or possessing a personal computer must be given access to a state-owned computer in a computer lab located at the facility. This requirement is subject to the resource limitations of the facility, and access will be granted to the resident for periods and at times determined by the facility.

The prohibition against accessing a personal computer or the Internet by those found eligible for conditional release to a LRA is deleted.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Over a number of years some sex predators have found ways to get thousands of depictions of children in sex acts. Some individuals are so driven to do this that they will access this kind of material on their computers right in front of staff. Staff has indicated that it would be more appropriate for them to determine when residents should have access to a computer and make it part of the residents' treatment plan. The only way to prevent this conduct is to not allow residents to have computer access unless they're ready. If this bill passes the residents will get access only when programmatically appropriate.

Each year local law enforcement is contacted for a computer-related incident at the SCC. A couple of residents are currently serving federal time as a result of crimes utilizing personal computers. In addition to the crimes, there are weekly incidents of residents being out of

compliance with the SCC computer policy. The universal serial bus (USB) ports are sealed when computers arrive in the facility, and the residents are not permitted to order a computer with a USB port. However, after the order is placed, the resident may place a call to the manufacturer to add unauthorized software or hardware. Two full-time employees are dedicated to computer searches. A forensic computer assists in searching the computers which takes 40 man hours per computer. The SCC evidence room is currently full of computers waiting to be searched by staff. The professional staff at the SCC feel that the presence of computers on McNeil Island is counter-therapeutic to the residents. The goal is to have residents participate in treatment and reach a point where they can safely transition into the community. Treatment work can be done through word processors with some memory but no capacity to store images or other software. As with every secure facility, contraband gets into the institution by various means.

(Opposed) This bill represents a tremendous over-reaction and a very invasive solution to a problem that is limited to a certain number of residents at the SCC. There has been only one incident where a resident of the SCC has been convicted of possessing child pornography. The computers are necessary for a variety of reasons. There are two classes of people at the SCC — pretrial detainees and those who have been committed by stipulation or by losing their trials. Clients are provided thousands of pages of documents in preparation for their trials so that they may assist in their own defense. This information is provided on a compact disc. Without a computer, the defense would have to make copies of these thousands of pages at the SCC and the resident or detainee would have to find a way to store the documents, and storage is already limited. It is much more efficient for the residents to have access to a computer. If someone commits a crime or misuses a computer, the SCC should certainly take reasonable means to punish them or modify their treatment by taking their computer away. However, the action that would be taken under the bill is a "taking" by the state because the residents own their computers and the state will be taking them away. This is a treatment facility, not a prison, and the residents should have access to a personal computer.

This bill is the equivalent of a cast where a band-aid is needed. Many of these residents have spent up to 20 years in prison and have a prison mentality. This bill is extremely punitive by requiring the state to take something these residents have worked hard to get. Many residents have no resources in the community. The SCC has policies on the books which it simply needs to enforce. Child pornography is illegal for anyone to possess. Taking computers from the residents will result in management difficulties and the issue will be litigated—not necessarily by defense attorneys, but very likely by residents who represent themselves pro se. The court holds tight reigns over residents conditionally released on a LRA regarding their access to computers. This legislation is not necessary.

Persons Testifying: (In support) Senator Carrell, prime sponsor; and Kelly Cunningham, Department of Social and Health Services, Special Commitment Center.

(Opposed) Pete McDonald and Leslie Garrison, Washington Criminal Defense Lawyers and Washington Defenders Association.

Persons Signed In To Testify But Not Testifying: None.