

HOUSE BILL REPORT

EHB 2168

As Passed House - Amended:

May 22, 2001

Title: An act relating to essential state community justice facilities.

Brief Description: Regulating siting of essential state community justice facilities.

Sponsors: By Representatives Conway, Schoesler, O'Brien, Ballasiotes, Darneille, Kirby and Hunt.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/21/01, 2/26/01 [DP];

Capital Budget: 3/7/01, 3/8/01 [DPA].

Floor Activity:

Passed House: 3/13/01, 96-0.

Senate Amended.

Passed Senate: 4/9/01, 47-0.

First Special Session

Floor Activity:

Passed House - Amended: 5/22/01, 94-0.

Brief Summary of Engrossed Bill

- Requires the Department of Social and Health Services (DSHS) and the Department of Corrections (DOC) to make substantial efforts to provide for the equitable distribution of juvenile group homes and DOC work release facilities among the counties, considering specified factors.
- Requires the DSHS and the DOC to work with local governments to provide for the equitable distribution of juvenile group homes and DOC work release facilities among jurisdictions and neighborhoods within counties, considering specified factors.
- Expands the public notice and hearing requirements for the siting of juvenile group homes and DOC work release and other community-based facilities.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Ahern, Republican Vice Chair; Lovick, Democratic Vice Chair; Cairnes, Kagi, Kirby and Morell.

Staff: Jean Ann Quinn (786-7310).

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: Do pass as amended. Signed by 18 members: Representatives Alexander, Republican Co-Chair; Murray, Democratic Co-Chair; Armstrong, Republican Vice Chair; Esser, Republican Vice Chair; McIntire, Democratic Vice Chair; Barlean, Bush, Casada, Hankins, Hunt, Lantz, O'Brien, Ogden, Poulsen, Reardon, Schoesler, Veloria and Woods.

Staff: Susan Howson (786-7142).

Background:

The DSHS operates, either through the Juvenile Rehabilitation Administration (JRA) or through a service provider under contract with the DSHS, community facilities or group homes for the care of certain juveniles committed to the JRA as a result of a criminal offense. The DSHS, or any entity operating under contract with the DSHS, is required to have a process for community involvement in the siting of JRA group homes. This includes public notification, public meetings, and an opportunity for public comment whenever the DSHS establishes or relocates a community facility. Each community also has a community placement oversight committee to review and make recommendations regarding the placement of juveniles in these facilities.

The DOC operates work/training release programs at various locations around the state. The DOC also contracts with a number of private sector businesses to operate several of the programs. The DOC, or any entity operating under contract with the DOC, is required to provide sufficient notice to the public relating to the establishment or relocation of a work release or other community-based facility. The process requires public notification, public meetings, opportunity for public comment, and the wide dissemination of proposals.

Local governments are authorized by the state constitution to make and enforce all local police, sanitary, and other regulations not in conflict with state general laws. This "police power" includes authority to adopt and enforce ordinances to regulate property development, including permit requirements, and to impose fines for violation of ordinances.

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:

The DSHS must prepare a projected list of counties in which juvenile group homes need to be sited over the next six years, and every six years thereafter, and transmit that list to the Office of Financial Management (OFM). In preparing the list, the DSHS must make substantial efforts to provide for the equitable distribution of these facilities among the counties and, working with local governments, among jurisdictions and neighborhoods within the counties, giving great weight to the following factors.

- The locations of existing and projected residential facilities owned or operated by, or operated under contract with, the DSHS and located in the county, jurisdiction, or neighborhood;
- The number of juvenile sex offenders classified as level II or III or registered as homeless per thousand persons residing in the county, jurisdiction, or neighborhood;
- The number of juvenile violent offenders under parole or probation per thousand persons residing in the county, jurisdiction, or neighborhood; and
- The number of juvenile offenders sentenced or adjudicated per thousand persons residing in the county, jurisdiction, or neighborhood.

Before the list is finalized, the department must consult with county legislative authorities, and hold at least one public hearing in the county. The department is required to adopt facility criteria by rule.

The DOC must prepare a projected list of counties in which work release facilities need to be sited during 2002-2008, and every six years thereafter, and transmit that list to the Office of Financial Management (OFM). In preparing the list, the DSHS must make substantial efforts to provide for the equitable distribution of these facilities among the counties and, working with local governments, among jurisdictions and neighborhoods within the counties, giving great weight to the following factors.

- The locations of existing and projected residential facilities owned or operated by, or operated under contract with, the DOC and located in the county, jurisdiction, or neighborhood;
- The number of adult sex offenders classified as level II or III or registered as homeless per thousand persons residing in the county, jurisdiction, or neighborhood;
- The number of adult violent offenders under parole or probation per thousand persons residing in the county, jurisdiction, or neighborhood; and
- The number of adult offenders sentenced or adjudicated per thousand persons residing in the county, jurisdiction, or neighborhood.

Before the list is finalized, the department must consult with county legislative authorities, and hold at least one public hearing in the county.

Both DSHS and DOC are required to develop a mapping system to identify the locations of existing and projected facilities within their respective jurisdictions and to maintain a list of the numbers of offenders identified above in the counties, jurisdictions, and neighborhoods.

The DSHS and the DOC, or any entity under contract with one of these departments, must follow a process for public notification and involvement prior to establishing or relocating a juvenile group home (in the case of DSHS) or work release or other community-based facility (in the case of DOC). The process must include the following:

- Once three or fewer sites are chosen, at least two public hearings must be held in each of the affected local communities at least 45 days before a final selection is made.
- At least 14 days advance notice of the hearings must be provided to the media; affected local governments and planning agencies; schools, libraries, and other government offices within a one-half mile radius of the proposed site; local chambers of commerce and economic development agencies; and all residents and property owners within a one-half mile radius of the proposed sites.
- The notice must inform the public that any interested person is invited to submit written comments, including comments on whether the department has complied with the equitable distribution requirement.
- The department must consider the testimony and written comments received and issue a written decision stating the reasons for the final selection, including a statement as to how the decision meets the equitable distribution requirement.
- An additional public hearing must be conducted in the local community where the final selection is located.

If local government regulations require a special use or conditional use permit for the siting of a facility, and that process requires similar public notice and hearings, duplication is not required.

Appropriation: None.

Fiscal Note: Requested on February 20, 2001.

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

Testimony For: (Criminal Justice & Corrections) This bill reflects a collaborative effort among four legislators who were working separately on these issues and all came together to craft this compromise bill. If dangerous predators are going to be sited in neighborhoods, it is imperative that there be a meaningful public participation process.

The process that the DSHS has used so far to site these facilities has been regrettable. These kind of requirements need to be in statute, not in rules that can be changed as soon as the elected officials go home for the interim. We need strong public notice, public participation, and a system for the equitable distribution of these facilities. Public safety is also critical.

The bill is the outgrowth of an ongoing dialogue with the DOC about the siting of work release and other types of community facilities. Out of this dialogue came the concept of fair share— “ the idea that all communities in the state need to share the responsibility for these types of facilities. The fact that there is a willing landlord cannot be the only criteria for the DOC or the DSHS placement of offenders. Communities should not be able to preclude essential facilities, but it is time for this state to start looking at a geographic distribution of these facilities. If the state believes the facilities are essential, all areas of the state should share in the responsibility.

(Concerns) Equitable distribution is something to achieve, but there are concerns with the criteria language in the bill. The DOC currently looks for equitable distribution in catchman areas.— They look at population numbers, the percentage of people in the system, the percentage of people released into an area, job availability, unemployment, and the availability of community services. The new bill contains a time frame for public involvement that is somewhat protracted and appears to delay siting. The use of the Administrative Procedure Act introduces some obstacles to the siting process and appears to encourage challenges.

Funding is needed for the local impacts of the bill. If offenders reoffend when in these facilities, the DOC should reimburse local governments for those related judicial costs. Also, there is no need for more layering with regard to the planning aspects of essential public facilities. A mathematical approach to the equitable distribution of facilities will not take into account specific victims and specific offenders, law enforcement response time, and the availability of treatment providers and supervision services. In addition to a meaningful public involvement process, it is very important to maintain maximum distances from vulnerable populations and ensure the best possible response time from law enforcement.

(Comments) Washington was the first state to begin notifying communities when sex offenders are released into neighborhoods. It was intended to create safer communities by letting the public know where sex offenders were living. It was not intended to create such barriers to housing and community justice facilities that we are now actually increasing the risk to the public. The scarcity of housing for sex offenders is reaching a crises proportion. It can't be expected that the DOC and the DSHS can solve the problem because only 6 percent of registered sex offenders are supervised. We must look for novel solutions.

Testimony For: (Capital Budget) Communities have been left out of the siting process

for housing sexually violent predators and the process has not been adequate to ensure public safety. Siting criteria must be in statute, rather than in administrative rules that can change without legislative oversight. The public expects and demands firm public safety requirements for these facilities and an equitable distribution of these facilities statewide.

This bill reflects a collaborative effort among four legislators who were working separately on these issues and who came together to craft this compromise bill. Members of the Legislature have been working on the concept of fair share equitable distribution for about three years and this bill is a tool to make it happen. One particular community should not be required to house an excessive number of community justice facilities. A citizen committee appointed by the Governor developed the criteria for siting LRAs. This bill puts the recommended criteria in statute.

Testimony Against: (Criminal Justice & Corrections) This is one of the most difficult issues facing the Legislature this session. The DSHS is still constrained by a federal court injunction. Under that injunction, there needs to be an LRA in place, or at least well defined, by the next court hearing on July 9. Otherwise, there is a risk that the court will invoke the current fines, which would go to the SCC residents, or that the court would begin prereleasing people into nonsecure or less secure settings. Ultimately, if the state can't find LRA placements, there is a concern that the court will declare the act unconstitutional.

Testimony Against: (Capital Budget) The Department of Corrections (DOC) is concerned about the criteria related to the equitable distribution of facilities among counties and cities and feels the language is too prescriptive. In addition, the bill prescribes distinct time frames for public notification that may cause undue staff work. The DOC has a current work release siting process that works well. Also, the use of the Administrative Procedure Act may encourage challenges to the process and cause delays in siting work release facilities.

The Department of Social and Health Services supports a strong public review process, but must also be able to ensure that they will actually have LRA housing facilities available for occupancy. As written, this bill could inadvertently preclude the siting of LRA housing. This could lead to the federal court finding our state law to be unconstitutional. The state may end up with no Special Commitment Center program and little or no supervision of sexual offenders in the community. In addition, the Department has serious concerns about combining juvenile facility siting with LRA housing and adult work release facilities.

Testified: (Criminal Justice & Corrections) (In support) Representative Conway and Schoesler, co-prime sponsors; Representative Romero; and Kevin Phelps, member of Tacoma City Council.

(Concerns) Gary Nelson, Snohomish County Council; Bill Phillips, Department of Corrections; and Suzanne Brown, Washington Coalition of Sexual Assault Programs.

(Comments) Victoria Roberts, Department of Corrections.

(Opposed) Tim Brown, Department of Social and Health Services.

Testified: (Capital Budget) (In support) Representatives Steve Conway, co-prime sponsor; Rep. Mark Schoesler, co-prime sponsor; and Randy Lewis, city of Tacoma.

(Opposed) Bill Phillips, Department of Corrections; and Beverly Wilson, Department of Social and Health Services.