

# HOUSE BILL REPORT

## EHB 2168

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### As Amended by the Senate

**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.

### Brief Summary of Engrossed Bill

- Creates a category of facilities defined as "essential state community justice facilities" to include less restrictive alternative facilities for sexually violent predators, the Department of Social and Health Services (DSHS) juvenile group home facilities, and the Department of Corrections (DOC) work release facilities.
- Requires the DSHS and the DOC to consider certain factors to ensure equitable distribution of essential state community justice facilities among the counties, among jurisdictions within the counties, and among economic segments within the counties.
- Establishes public notice and hearing requirements for essential state community justice facilities.
- Provides that essential state community justice facilities are essential public facilities under the Growth Management Act (GMA) and cannot be precluded by a GMA comprehensive plan or development regulation.
- Allows local governments to require conditional use or special use permits before the siting of an essential state community justice facility.
- Establishes specific siting criteria for less restrictive alternative housing facilities for sexually violent predators.

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### 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).

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### 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:**

Essential Public Facilities. The GMA requires a county and its cities to plan if the county meets certain population and growth criteria and allows counties not meeting these criteria to choose to plan under the GMA. Currently, 29 of 39 counties plan under the GMA. The GMA requires all counties and cities in the state to take certain actions and requires jurisdictions planning under its major requirements (GMA jurisdictions) to satisfy other requirements, including adoption of comprehensive plans and development regulations. The GMA jurisdictions must include a process for identifying and siting essential public facilities. Essential public facilities are described in the GMA as those public facilities that are typically difficult to site and include, among other facilities, state and local correctional facilities, mental health facilities, and group homes. The Office of Financial Management is required to maintain a list of essential state public facilities that are required or likely to be built within six years. No GMA plan or development regulation may preclude the siting of essential public facilities.

Public Notification. 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.

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.

Conditional Use and Special Use Permits. 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.

Less Restrictive Alternatives for Sexually Violent Predators. 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 of, 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 DSHS and confined at the Special Commitment Center (SCC) for control, care, and individualized treatment.

A person who has been civilly committed is 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. Before the court can order that a person be conditionally released to a LRA, the court must find that certain requirements are met, including the requirement that housing is available that is sufficiently secure to protect the community.

Since 1994, the SCC has been operating under a federal court injunction requiring that steps be taken to ensure that constitutionally adequate mental health treatment is being provided to SCC residents. In November 1999, the state was held in contempt of court for failing to take all reasonable steps toward this goal and for intentionally disregarding the requirements of the injunction. The court ordered sanctions of \$50 per day per SCC resident beginning in May of 2000. To date, the court has deferred imposition of these sanctions, finding that the SCC is making genuine efforts to bring the program into compliance. One area that continues to be of concern to the court, however, is the lack of arrangements for the transition of qualified residents into LRAs in the community.

### **Summary:**

Essential State Community Justice Facilities. Less restrictive alternative housing facilities for sexually violent predators, the DOC work/training release facilities, and DSHS juvenile rehabilitation administration community facilities are defined as "essential state community justice facilities," whether owned and operated by the respective departments, or operated under contract with such departments. Essential state community justice facilities are "essential public facilities" under the GMA. No GMA plan or development regulation may preclude the siting of essential state community justice facilities.

The DSHS and the DOC (departments) must make every effort to ensure that essential state community justice facilities are distributed equitably among the counties, and within each county, among each jurisdiction within the county, and among economic segments within the county, considering at least the following:

- The locations of existing and projected essential state community justice facilities;
- The number of adult and juvenile registered sex offenders in the jurisdiction;
- The number of adult and juvenile violent offenders under community custody, community placement, community supervision, or parole in the jurisdiction; and
- The number of adult and juvenile offenders sentenced or adjudicated in the jurisdiction.

The departments are required to develop a mapping system to identify the locations of existing and projected essential state community justice facilities and to maintain a joint list of the numbers of offenders described above in each jurisdiction.

Public Notification. The departments, or an entity under contract with the departments, must follow a process for public notification and involvement prior to establishing or relocating any essential state community justice facility. 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.
- The public hearings must be conducted at least 90 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.
- Any interested person is invited to submit written comments, including comments on whether the department has complied with the equitable distribution requirement.
- The departments 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.
- A complaint or grievance concerning the process is to be adjudicated in accordance with the Administrative Procedure Act.

Conditional Use and Special Use Permits. Local jurisdictions are not precluded from requiring the departments to obtain a special use permit or conditional use permit before siting an essential state community justice facility.

Less Restrictive Alternatives for Sexually Violent Predators. A "less restrictive alternative secure housing facility" is defined to mean a facility owned and operated by the DSHS, or under contract with the DSHS, for the housing of one to three persons who have been ordered conditionally released to a less restrictive alternative. The facility is required to meet the following minimum siting requirements:

- It must be located within 30 miles of a city or town of 25,000 or more that has potential employment opportunities.
- Three or more full-time certified sex offender treatment providers must be available within a 30-mile radius.
- It must allow for an average response time of five minutes or less by law enforcement officers.
- It must allow for an average response time by fire safety and emergency medical personnel that is no longer than the average of the local community.
- It must not be located within line of sight of, nor closer than 1/4 mile of schools, school bus stops, preschools, licensed child care centers, parks, playgrounds and recreational centers, or places of worship.

It also must contain specified security devices, such as alarm systems, sirens, cellular phone services, listening devices and camera systems, and maintain certain staffing ratios. Staff must be residential rehabilitation counselors and complete certain training requirements. Upon initial release to a LRA secure housing facility, residents must wear electronic monitoring or global positioning system (GPS) devices at all times and be escorted when leaving the premises. The court may relax these requirements if the court finds, in writing, that the resident has made significant progress in treatment.

If the DSHS decides to establish a larger LRA housing facility, the DSHS must first receive legislative approval of department-proposed criteria for such a facility. Additionally, any resident released to a three-bed facility this year would be transferred to the larger facility.

This act is null and void if funding is not provided in the Omnibus Appropriations Act.

#### **EFFECT OF SENATE AMENDMENT(S):**

All provisions related to the siting, securing, staffing, and equitable distribution of LRA facilities for sexually violent predators are deleted. The fair share– analysis is required to be conducted separately for DOC work release facilities (other DOC community-based facilities, such as prerelease facilities are not included) and JRA community facilities. Separate mapping systems and offender lists must be developed. Each department is required to make reasonable efforts to distribute their respective facilities equitably among the counties, and work with the counties according to the regular county planning process to achieve equitable distribution within each county. In conducting this analysis, the consideration of the number of sex offenders in the jurisdiction is limited to level II, III, or homeless offenders (either adults or juveniles depending on which department is conducting the analysis). The departments are authorized to use catchment areas instead of counties in certain circumstances. The departments are to adopt facility criteria by rule. A public hearing must be held, and local governments consulted, before the adoption of a distribution of these facilities. After adoption of a distribution plan, the facility is to be added to the list of essential public facilities maintained by the Office of

Financial Management. The time for the public hearings that must be held prior to final selection is shortened, as is the comment period. A GMA county affected by a distribution plan must revise its countywide planning policy if necessary and implement the policies through revisions to its comprehensive plan and development regulations. Local governments must establish timelines for processing permits for these facilities that are no longer than those established for comparable projects. The provision authorizing complaints to be adjudicated according to the Administrative Procedure Act is deleted.

**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.