

***Criminal Justice & Corrections
Committee***

HB 2168

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

Sponsors: *Representatives Conway (co-prime sponsor), Schoesler (co-prime sponsor), O'Brien, Ballasiotes, Darneille, Kirby and Hunt.*

Brief Summary of 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/training 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 and among jurisdictions 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.

Hearing Date: *2/21/01*

Staff: *Jean Ann Quinn (786-7310).*

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 an 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 a concern for the court, however, is the lack of arrangements for the transition of qualified residents into LRAs in the community. The act has been in place long enough now that a growing number of civilly committed persons are nearing the need for a LRA placement.

In August 2000, the DSHS formed a Secure Placement Advisory Committee and, with the assistance of this committee and other public input, established criteria for the siting of LRAs housing up to three SCC residents on conditional release status. Using this criteria, 11 state- owned properties were then selected as potential sites for the location of the first such LRA. The DSHS made a final selection from among those 11 potential sites, and also selected three possible alternatives. The local governments of some of the affected locations have since taken legal action attempting to halt the siting of these LRAs in their respective jurisdictions.

Summary of Bill:

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, 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.

Appropriation: *None.*

Fiscal Note: *Requested on February 20, 2001.*

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