
ENGROSSED SUBSTITUTE SENATE BILL 6594

State of Washington 57th Legislature

2002 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Carlson, Costa, Hargrove and Long; by request of Jt Select Comm on the Equitable Distrib of Secure Community Transition Facil)

READ FIRST TIME 02/08/2002.

1 AN ACT Relating to the implementation of the recommendations of the
2 joint select committee on the equitable distribution of secure
3 community transition facilities; amending RCW 36.70A.200, 71.09.020,
4 71.09.285, 71.09.305, 71.09.255, and 36.70A.103; adding a new section
5 to chapter 4.24 RCW; adding new sections to chapter 71.09 RCW; adding
6 a new section to chapter 34.05 RCW; adding a new section to chapter
7 43.21C RCW; adding a new section to chapter 90.58 RCW; adding a new
8 section to chapter 77.55 RCW; creating a new section; and declaring an
9 emergency.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

11 NEW SECTION. **Sec. 1.** The purpose of this act is to enable the
12 legislature to act upon the recommendations of the joint select
13 committee on the equitable distribution of secure community transition
14 facilities established in section 225, chapter 12, Laws of 2001 2nd sp.
15 sess.

16 **Sec. 2.** RCW 36.70A.200 and 2001 2nd sp.s. c 12 s 205 are each
17 amended to read as follows:

1 (1) The comprehensive plan of each county and city that is planning
2 under RCW 36.70A.040 shall include a process for identifying and siting
3 essential public facilities. Essential public facilities include those
4 facilities that are typically difficult to site, such as airports,
5 state education facilities and state or regional transportation
6 facilities as defined in RCW 47.06.140, state and local correctional
7 facilities, solid waste handling facilities, and in-patient facilities
8 including substance abuse facilities, mental health facilities, group
9 homes, and secure community transition facilities as defined in RCW
10 71.09.020.

11 (2) Each county and city planning under RCW 36.70A.040 shall, not
12 later than ~~((the deadline specified in RCW 36.70A.130))~~ September 1,
13 2002, establish a process, or amend its existing process, for
14 identifying and siting essential public facilities, and adopt or amend
15 its development regulations as necessary to provide for the siting of
16 secure community transition facilities consistent with statutory
17 requirements applicable to these facilities.

18 (3) Any city or county not planning under RCW 36.70A.040 shall, not
19 later than ~~((the deadline specified in RCW 36.70A.130))~~ September 1,
20 2002, establish a process for siting secure community transition
21 facilities and adopt or amend its development regulations as necessary
22 to provide for the siting of such facilities consistent with statutory
23 requirements applicable to these facilities.

24 (4) The office of financial management shall maintain a list of
25 those essential state public facilities that are required or likely to
26 be built within the next six years. The office of financial management
27 may at any time add facilities to the list.

28 (5) No local comprehensive plan or development regulation may
29 preclude the siting of essential public facilities.

30 (6) No person may bring a cause of action for civil damages based
31 on the good faith actions of any county or city to provide for the
32 siting of secure community transition facilities in accordance with
33 this section and with the requirements of chapter 12, Laws of 2001 2nd
34 sp. sess. For purposes of this subsection, "person" includes, but is
35 not limited to, any individual, agency as defined in RCW 42.17.020,
36 corporation, partnership, association, and limited liability entity.

37 (7) Counties or cities siting facilities pursuant to subsection (2)
38 or (3) of this section shall comply with section 7 of this act.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 4.24 RCW
2 to read as follows:

3 (1) Law enforcement shall respond to a call regarding a resident of
4 a secure community transition facility as a high priority call.

5 (2) No law enforcement officer responding reasonably and in good
6 faith to a call regarding a resident of a secure community transition
7 facility shall be held liable nor shall the city or county employing
8 the officer be held liable, in any cause of action for civil damages
9 based on the acts of the resident or the actions of the officer during
10 the response.

11 **Sec. 4.** RCW 71.09.020 and 2001 2nd sp.s. c 12 s 102 are each
12 amended to read as follows:

13 Unless the context clearly requires otherwise, the definitions in
14 this section apply throughout this chapter.

15 (1) "Department" means the department of social and health
16 services.

17 (2) "Less restrictive alternative" means court-ordered treatment in
18 a setting less restrictive than total confinement which satisfies the
19 conditions set forth in RCW 71.09.092.

20 (3) "Likely to engage in predatory acts of sexual violence if not
21 confined in a secure facility" means that the person more probably than
22 not will engage in such acts if released unconditionally from detention
23 on the sexually violent predator petition. Such likelihood must be
24 evidenced by a recent overt act if the person is not totally confined
25 at the time the petition is filed under RCW 71.09.030.

26 (4) "Mental abnormality" means a congenital or acquired condition
27 affecting the emotional or volitional capacity which predisposes the
28 person to the commission of criminal sexual acts in a degree
29 constituting such person a menace to the health and safety of others.

30 (5) "Predatory" means acts directed towards: (a) Strangers; (b)
31 individuals with whom a relationship has been established or promoted
32 for the primary purpose of victimization; or (c) persons of casual
33 acquaintance with whom no substantial personal relationship exists.

34 (6) "Recent overt act" means any act or threat that has either
35 caused harm of a sexually violent nature or creates a reasonable
36 apprehension of such harm in the mind of an objective person who knows
37 of the history and mental condition of the person engaging in the act.

1 (7) "Risk potential activity" or "risk potential facility" means an
2 activity or facility that provides a higher incidence of risk to the
3 public from persons conditionally released from the special commitment
4 center. Risk potential activities and facilities include: Public and
5 private schools, school bus stops, licensed day care and licensed
6 preschool facilities, public parks, publicly dedicated trails, sports
7 fields, playgrounds, recreational and community centers, churches,
8 synagogues, temples, mosques, ~~((and))~~ public libraries, and others
9 identified by the department following the hearings on a potential site
10 required in RCW 71.09.315. For purposes of this chapter, "school bus
11 stops" does not include bus stops established primarily for public
12 transit.

13 (8) "Secretary" means the secretary of social and health services
14 or the secretary's designee.

15 (9) "Secure facility" means a residential facility for persons
16 civilly confined under the provisions of this chapter that includes
17 security measures sufficient to protect the community. Such facilities
18 include total confinement facilities, secure community transition
19 facilities, and any residence used as a court-ordered placement under
20 RCW 71.09.096.

21 (10) "Secure community transition facility" means a residential
22 facility for persons civilly committed and conditionally released to a
23 less restrictive alternative under this chapter. A secure community
24 transition facility has supervision and security, and either provides
25 or ensures the provision of sex offender treatment services. Secure
26 community transition facilities include but are not limited to the
27 facilities established pursuant to RCW 71.09.250 and any
28 community-based facilities established under this chapter and operated
29 by the secretary or under contract with the secretary.

30 (11) "Sexually violent offense" means an act committed on, before,
31 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as
32 rape in the first degree, rape in the second degree by forcible
33 compulsion, rape of a child in the first or second degree, statutory
34 rape in the first or second degree, indecent liberties by forcible
35 compulsion, indecent liberties against a child under age fourteen,
36 incest against a child under age fourteen, or child molestation in the
37 first or second degree; (b) a felony offense in effect at any time
38 prior to July 1, 1990, that is comparable to a sexually violent offense
39 as defined in (a) of this subsection, or any federal or out-of-state

1 conviction for a felony offense that under the laws of this state would
2 be a sexually violent offense as defined in this subsection; (c) an act
3 of murder in the first or second degree, assault in the first or second
4 degree, assault of a child in the first or second degree, kidnapping in
5 the first or second degree, burglary in the first degree, residential
6 burglary, or unlawful imprisonment, which act, either at the time of
7 sentencing for the offense or subsequently during civil commitment
8 proceedings pursuant to this chapter, has been determined beyond a
9 reasonable doubt to have been sexually motivated, as that term is
10 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28
11 RCW, that is an attempt, criminal solicitation, or criminal conspiracy
12 to commit one of the felonies designated in (a), (b), or (c) of this
13 subsection.

14 (12) "Sexually violent predator" means any person who has been
15 convicted of or charged with a crime of sexual violence and who suffers
16 from a mental abnormality or personality disorder which makes the
17 person likely to engage in predatory acts of sexual violence if not
18 confined in a secure facility.

19 (13) "Total confinement facility" means a facility that provides
20 supervision and sex offender treatment services in a total confinement
21 setting. Total confinement facilities include the special commitment
22 center and any similar facility designated as a secure facility by the
23 secretary.

24 **Sec. 5.** RCW 71.09.285 and 2001 2nd sp.s. c 12 s 213 are each
25 amended to read as follows:

26 (1) Except with respect to the secure community transition facility
27 established pursuant to RCW 71.09.250, the secretary shall develop
28 policy guidelines that balance the average response time of emergency
29 services to the general area of a proposed secure community transition
30 facility against the proximity of the proposed site to risk potential
31 activities and facilities in existence at the time the site is listed
32 for consideration.

33 (2) In (~~balancing the competing criteria of proximity and response~~
34 ~~time the policy guidelines shall endeavor to achieve an average law~~
35 ~~enforcement response time not greater than five minutes and in~~) no
36 case shall the policy guidelines permit location of a facility adjacent
37 to, immediately across a street or parking lot from, or within the line
38 of sight of a risk potential activity or facility in existence at the

1 time a site is listed for consideration. "Within the line of sight"
2 means that it is possible to reasonably visually distinguish and
3 recognize individuals.

4 (3) The policy guidelines shall require that great weight be given
5 to sites that are the farthest removed from any risk potential
6 activity.

7 (4) The policy guidelines shall specify how distance from the
8 location is measured and any variations in the measurement based on the
9 size of the property within which a proposed facility is to be located.

10 (5) The policy guidelines shall establish a method to analyze and
11 compare the criteria for each site in terms of public safety and
12 security, site characteristics, and program components. In making a
13 decision regarding a site following the analysis and comparison, the
14 secretary shall give priority to public safety and security
15 considerations. The analysis and comparison of the criteria are to be
16 documented and made available at the public hearings prescribed in RCW
17 71.09.315.

18 (6) Policy guidelines adopted by the secretary under this section
19 shall be considered by counties and cities when providing for the
20 siting of secure community transition facilities as required under RCW
21 36.70A.200.

22 **Sec. 6.** RCW 71.09.305 and 2001 2nd sp.s. c 12 s 217 are each
23 amended to read as follows:

24 (1) Unless otherwise ordered by the court:

25 (a) Residents of a secure community transition facility shall wear
26 electronic monitoring devices at all times. To the extent that
27 electronic monitoring devices that employ global positioning system
28 technology are available and funds for this purpose are appropriated by
29 the legislature, the department shall use these devices.

30 (b) At least one staff member, or other court-authorized and
31 department-approved person must escort each resident when the resident
32 leaves the secure community transition facility for appointments,
33 employment, or other approved activities. Escorting persons must
34 supervise the resident closely and maintain close proximity to the
35 resident. The escort must immediately notify the department of any
36 serious violation, as defined in RCW 71.09.325, by the resident and
37 must immediately notify law enforcement of any violation of law by the
38 resident. The escort may not be a relative of the resident or a person

1 with whom the resident has, or has had, a dating relationship as
2 defined in RCW 26.50.010.

3 (2) Staff members of the special commitment center and any other
4 total confinement facility and any secure community transition facility
5 must be trained in self-defense and appropriate crisis responses
6 including incident de-escalation. Prior to escorting a person outside
7 of a facility, staff members must also have training in the offense
8 pattern of the offender they are escorting. (~~The escort may not be a~~
9 ~~relative of the resident.~~)

10 (3) Any escort must carry a cellular telephone or a similar device
11 at all times when escorting a resident of a secure community transition
12 facility.

13 (4) The department shall require training in offender pattern,
14 self-defense, and incident response for all court-authorized escorts
15 who are not employed by the department or the department of
16 corrections.

17 NEW SECTION. Sec. 7. A new section is added to chapter 71.09 RCW
18 to read as follows:

19 The minimum requirements set out in RCW 71.09.285 through 71.09.340
20 are minimum requirements to be applied by the department. Nothing in
21 this section is intended to prevent a city or county from adopting
22 development regulations, as defined in RCW 36.70A.030, unless the
23 proposed regulation imposes requirements more restrictive than those
24 specifically addressed in RCW 71.09.285 through 71.09.340. Regulations
25 that impose requirements more restrictive than those specifically
26 addressed in these sections are void. Nothing in these sections
27 prevents the department from adding requirements to enhance public
28 safety.

29 **Sec. 8.** RCW 71.09.255 and 2001 2nd sp.s. c 12 s 204 are each
30 amended to read as follows:

31 (1) Upon receiving the notification required by RCW 71.09.250,
32 counties must promptly notify the cities within the county of the
33 maximum number of secure community transition facility beds that may be
34 required and the projected number of beds to be needed in that county.

35 (2) The incentive grants and payments provided under this section
36 are subject to the following provisions:

1 (a) Counties and the cities within the county must notify each
2 other of siting plans to promote the establishment and equitable
3 distribution of secure community transition facilities;

4 (b) Development regulations, ordinances, plans, laws, and criteria
5 established for siting must be consistent with statutory requirements
6 and rules applicable to siting and operating secure community
7 transition facilities;

8 (c) The minimum size for any facility is three beds; and

9 (d) The department must approve any sites selected.

10 (3) Any county or city that makes a commitment to initiate the
11 process to site one or more secure community transition facilities by
12 (~~February 1, 2002~~) one hundred twenty days after the effective date
13 of this act, shall receive a planning grant as proposed and approved by
14 the department of community, trade, and economic development.

15 (4) Any county or city that has issued all necessary permits by May
16 1, 2003, for one or more secure community transition facilities that
17 comply with the requirements of this section shall receive an incentive
18 grant in the amount of fifty thousand dollars for each bed sited.

19 (5) To encourage the rapid permitting of sites, any county or city
20 that has issued all necessary permits by January 1, 2003, for one or
21 more secure community transition facilities that comply with the
22 requirements of this section shall receive a bonus in the amount of
23 twenty percent of the amount provided under subsection (4) of this
24 section.

25 (6) Any county or city that establishes secure community transition
26 facility beds in excess of the maximum number that could be required to
27 be sited in that county shall receive a bonus payment of one hundred
28 thousand dollars for each bed established in excess of the maximum
29 requirement.

30 (7) No payment shall be made under subsection (4), (5), or (6) of
31 this section until all necessary permits have been issued.

32 (8) The funds available to counties and cities under this section
33 are contingent upon funds being appropriated by the legislature.

34 NEW SECTION. Sec. 9. A new section is added to chapter 71.09 RCW
35 to read as follows:

36 (1) After October 1, 2002, notwithstanding RCW 36.70A.103 or any
37 other law, this section preempts and supersedes local plans,
38 development regulations, permitting requirements, inspection

1 requirements, and all other laws as necessary to enable the department
2 to site, construct, renovate, occupy, and operate secure community
3 transition facilities within the borders of the following:

4 (a) Chelan, Clark, Cowlitz, Franklin, Grays Harbor, King, Kitsap,
5 Snohomish, Spokane, Thurston, Whatcom, and Yakima counties, if the
6 department determines that the county has not met the requirements of
7 RCW 36.70A.200 with respect to secure community transition facilities;
8 and

9 (b) Any city located within a county listed in (a) of this
10 subsection that the department determines has not met the requirements
11 of RCW 36.70A.200 with respect to secure community transition
12 facilities.

13 (2) The department's determination under subsection (1)(a) or (b)
14 of this section is final and is not subject to appeal under chapter
15 34.05 or 36.70A RCW.

16 (3) When siting a facility in a county or city that has been
17 preempted under this section, the department shall consider the policy
18 guidelines established under RCW 71.09.275 and 71.09.290 and shall hold
19 the hearings required in RCW 71.09.315.

20 (4) Nothing in this section prohibits the department from:

21 (a) Siting a secure community transition facility in a city or
22 county that has complied with the requirements of RCW 36.70A.200 with
23 respect to secure community transition facilities, including a city
24 that is located within a county that has been preempted. If the
25 department sites a secure community transition facility in such a city
26 or county, the department shall use the process established by the city
27 or county for siting such facilities; or

28 (b) Consulting with a city or county that has been preempted under
29 this section regarding the siting of a secure community transition
30 facility.

31 (5)(a) A preempted city or county may propose public safety
32 measures specific to any finalist site to the department. The measures
33 must be consistent with the location of the facility at that finalist
34 site. The proposal must be made in writing by the date of:

35 (i) The second hearing under RCW 71.09.315(2)(a) when there are
36 three finalist sites; or

37 (ii) The first hearing under RCW 71.09.315(2)(b) when there is only
38 one site under consideration.

1 (b) The department shall respond to the city or county in writing
2 within fifteen business days of receiving the proposed measures. The
3 response shall address all proposed measures.

4 (c) If the city or county finds that the department's response is
5 inadequate, the city or county may notify the department in writing
6 within fifteen business days of the specific items which it finds
7 inadequate. If the city or county does not notify the department of a
8 finding that the response is inadequate within fifteen business days,
9 the department's response shall be final.

10 (d) If the city or county notifies the department that it finds the
11 response inadequate and the department does not revise its response to
12 the satisfaction of the city or county within seven business days, the
13 city or county may petition the governor to designate a person with law
14 enforcement expertise to review the response under RCW 34.05.479.

15 (e) The governor's designee shall hear a petition filed under this
16 subsection and shall make a determination within thirty days of hearing
17 the petition. The governor's designee shall consider the department's
18 response, and the effectiveness and cost of the proposed measures, in
19 relation to the purposes of this chapter. The determination by the
20 governor's designee shall be final and may not be the basis for any
21 cause of action in civil court.

22 (f) The city or county shall bear the cost of the petition to the
23 governor's designee. If the city or county prevails on all issues, the
24 department shall reimburse the city or county costs incurred, as
25 provided under chapter 34.05 RCW.

26 (g) Neither the department's consideration and response to public
27 safety conditions proposed by a city or county nor the decision of the
28 governor's designee shall affect the preemption under this section or
29 the department's authority to site, construct, renovate, occupy, and
30 operate the secure community transition facility at that finalist site
31 or at any finalist site.

32 (6) This section does not apply to the secure community transition
33 facility established pursuant to RCW 71.09.250(1).

34 NEW SECTION. **Sec. 10.** A new section is added to chapter 34.05 RCW
35 to read as follows:

36 A petition brought pursuant to section 9(5) of this act shall be
37 heard under the provisions of RCW 34.05.479 except that the decision of

1 the Washington state patrol shall be final and is not subject to
2 judicial review.

3 NEW SECTION. **Sec. 11.** A new section is added to chapter 71.09 RCW
4 to read as follows:

5 For purposes of RCW 71.09.250 and section 9 of this act, "all other
6 laws" means the state environmental policy act, the shoreline
7 management act, the hydraulics code, and all other state laws
8 regulating the protection and use of the water, land, and air.

9 NEW SECTION. **Sec. 12.** A new section is added to chapter 43.21C
10 RCW to read as follows:

11 Secure community transition facilities sited pursuant to the
12 preemption provisions of section 9 of this act and secure facilities
13 sited pursuant to the preemption provisions of RCW 71.09.250 are not
14 subject to the provisions of this chapter.

15 NEW SECTION. **Sec. 13.** A new section is added to chapter 90.58 RCW
16 to read as follows:

17 Secure community transition facilities sited pursuant to the
18 preemption provisions of section 9 of this act and secure facilities
19 sited pursuant to the preemption provisions of RCW 71.09.250 are not
20 subject to the provisions of this chapter.

21 NEW SECTION. **Sec. 14.** A new section is added to chapter 77.55 RCW
22 to read as follows:

23 Secure community transition facilities sited pursuant to the
24 preemption provisions of section 9 of this act and secure facilities
25 sited pursuant to the preemption provisions of RCW 71.09.250 are not
26 subject to the provisions of this chapter.

27 **Sec. 15.** RCW 36.70A.103 and 2001 2nd sp.s. c 12 s 203 are each
28 amended to read as follows:

29 State agencies shall comply with the local comprehensive plans and
30 development regulations and amendments thereto adopted pursuant to this
31 chapter except as otherwise provided in RCW 71.09.250 (1) through (3),
32 section 9 of this act, and 72.09.333.

33 The provisions of chapter 12, Laws of 2001 2nd sp. sess. do not
34 affect the state's authority to site any other essential public

1 facility under RCW 36.70A.200 in conformance with local comprehensive
2 plans and development regulations adopted pursuant to chapter 36.70A
3 RCW.

4 NEW SECTION. **Sec. 16.** A new section is added to chapter 71.09 RCW
5 to read as follows:

6 (1) At the request of the local government of the city or county in
7 which a secure community transition facility is initially sited after
8 January 1, 2002, the department shall enter into a long-term contract
9 memorializing the agreements between the state and the city or county
10 for the operation of the facility. This contract shall be separate
11 from any contract regarding mitigation due to the facility. The
12 contract shall include a clause that states:

13 (a) The contract does not obligate the state to continue operating
14 any aspect of the civil commitment program under this chapter;

15 (b) The operation of any secure community transition facility is
16 contingent upon sufficient appropriation by the legislature. If
17 sufficient funds are not appropriated, the department is not obligated
18 to operate the secure community transition facility and may close it;
19 and

20 (c) This contract does not obligate the city or county to operate
21 a secure community transition facility.

22 (2) Any city or county may, at their option, contract with the
23 department to operate a secure community transition facility.

24 NEW SECTION. **Sec. 17.** A new section is added to chapter 71.09 RCW
25 to read as follows:

26 (1) Subject to funds appropriated by the legislature, the
27 department may enter into negotiation for a mitigation agreement with:

28 (a) The county and/or city in which a secure community transition
29 facility sited after January 1, 2002, is located;

30 (b) Each community in which the persons from those facilities will
31 reside or regularly spend time, pursuant to court orders, for regular
32 work or education, or to receive social services, or through which the
33 person or persons will regularly be transported to reach other
34 communities; and

35 (c) Educational institutions in the communities identified in (a)
36 and (b) of this subsection.

37 (2) Mitigation agreements are limited to the following:

1 (a) One-time training for local law enforcement and administrative
2 staff, upon the establishment of a secure community transition
3 facility.

4 (i) Training between local government staff and the department
5 includes training in coordination, emergency procedures, program and
6 facility information, legal requirements, and resident profiles.

7 (ii) Reimbursement for training under this subsection is limited
8 to:

9 (A) The salaries or hourly wages and benefits of those persons who
10 receive training directly from the department; and

11 (B) Costs associated with preparation for, and delivery of,
12 training to the department or its contracted staff by local government
13 staff or contractors;

14 (b) Information coordination:

15 (i) Information coordination includes data base infrastructure
16 establishment and programming for the dissemination of information
17 among law enforcement and the department related to facility residents.

18 (ii) Reimbursement for information coordination is limited to
19 start-up costs;

20 (c) One-time capital costs:

21 (i) One-time capital costs are off-site costs associated with the
22 need for increased security in specific locations.

23 (ii) Reimbursement for one-time capital costs is limited to actual
24 costs; and

25 (d) Incident response:

26 (i) Incident response costs are law enforcement and criminal
27 justice costs associated with violations of conditions of release or
28 crimes by residents of the secure community transition facility.

29 (ii) Reimbursement for incident response does not include private
30 causes of action.

31 NEW SECTION. **Sec. 18.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

35 NEW SECTION. **Sec. 19.** This act is necessary for the immediate
36 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 immediately.

--- END ---