
SUBSTITUTE HOUSE BILL 1099

State of Washington

58th Legislature

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By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives O'Brien, Nixon, Kagi, Hunt, Wallace, Benson, Cox, Anderson, Pflug, Dunshee, Fromhold, Dickerson, Ruderman, Romero, Kessler, Chase, Pearson, Kenney and Conway)

READ FIRST TIME 02/25/03.

1 AN ACT Relating to prohibiting secure community transition
2 facilities from being sited near public and private youth camps;
3 amending RCW 71.09.342; reenacting and amending RCW 71.09.020; creating
4 a new section; and declaring an emergency.

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

6 **Sec. 1.** RCW 71.09.020 and 2002 c 68 s 4 and 2002 c 58 s 2 are each
7 reenacted and amended to read as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

10 (1) "Department" means the department of social and health
11 services.

12 (2) "Health care facility" means any hospital, hospice care center,
13 licensed or certified health care facility, health maintenance
14 organization regulated under chapter 48.46 RCW, federally qualified
15 health maintenance organization, federally approved renal dialysis
16 center or facility, or federally approved blood bank.

17 (3) "Health care practitioner" means an individual or firm licensed
18 or certified to engage actively in a regulated health profession.

1 (4) "Health care services" means those services provided by health
2 professionals licensed pursuant to RCW 18.120.020(4).

3 (5) "Health profession" means those licensed or regulated
4 professions set forth in RCW 18.120.020(4).

5 (6) "Less restrictive alternative" means court-ordered treatment in
6 a setting less restrictive than total confinement which satisfies the
7 conditions set forth in RCW 71.09.092.

8 (7) "Likely to engage in predatory acts of sexual violence if not
9 confined in a secure facility" means that the person more probably than
10 not will engage in such acts if released unconditionally from detention
11 on the sexually violent predator petition. Such likelihood must be
12 evidenced by a recent overt act if the person is not totally confined
13 at the time the petition is filed under RCW 71.09.030.

14 (8) "Mental abnormality" means a congenital or acquired condition
15 affecting the emotional or volitional capacity which predisposes the
16 person to the commission of criminal sexual acts in a degree
17 constituting such person a menace to the health and safety of others.

18 (9) "Predatory" means acts directed towards: (a) Strangers; (b)
19 individuals with whom a relationship has been established or promoted
20 for the primary purpose of victimization; or (c) persons of casual
21 acquaintance with whom no substantial personal relationship exists.

22 (10) "Recent overt act" means any act or threat that has either
23 caused harm of a sexually violent nature or creates a reasonable
24 apprehension of such harm in the mind of an objective person who knows
25 of the history and mental condition of the person engaging in the act.

26 (11) "Risk potential activity" or "risk potential facility" means
27 an activity or facility that provides a higher incidence of risk to the
28 public from persons conditionally released from the special commitment
29 center. Risk potential activities and facilities include: Public and
30 private schools, school bus stops, licensed day care and licensed
31 preschool facilities, public parks, publicly dedicated trails, sports
32 fields, playgrounds, recreational and community centers, churches,
33 synagogues, temples, mosques, public libraries, public and private
34 youth camps, and others identified by the department following the
35 hearings on a potential site required in RCW 71.09.315. For purposes
36 of this chapter, "school bus stops" does not include bus stops
37 established primarily for public transit.

1 (12) "Secretary" means the secretary of social and health services
2 or the secretary's designee.

3 (13) "Secure facility" means a residential facility for persons
4 civilly confined under the provisions of this chapter that includes
5 security measures sufficient to protect the community. Such facilities
6 include total confinement facilities, secure community transition
7 facilities, and any residence used as a court-ordered placement under
8 RCW 71.09.096.

9 (14) "Secure community transition facility" means a residential
10 facility for persons civilly committed and conditionally released to a
11 less restrictive alternative under this chapter. A secure community
12 transition facility has supervision and security, and either provides
13 or ensures the provision of sex offender treatment services. Secure
14 community transition facilities include but are not limited to the
15 facilities established pursuant to RCW 71.09.250 and any
16 community-based facilities established under this chapter and operated
17 by the secretary or under contract with the secretary.

18 (15) "Sexually violent offense" means an act committed on, before,
19 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as
20 rape in the first degree, rape in the second degree by forcible
21 compulsion, rape of a child in the first or second degree, statutory
22 rape in the first or second degree, indecent liberties by forcible
23 compulsion, indecent liberties against a child under age fourteen,
24 incest against a child under age fourteen, or child molestation in the
25 first or second degree; (b) a felony offense in effect at any time
26 prior to July 1, 1990, that is comparable to a sexually violent offense
27 as defined in (a) of this subsection, or any federal or out-of-state
28 conviction for a felony offense that under the laws of this state would
29 be a sexually violent offense as defined in this subsection; (c) an act
30 of murder in the first or second degree, assault in the first or second
31 degree, assault of a child in the first or second degree, kidnapping in
32 the first or second degree, burglary in the first degree, residential
33 burglary, or unlawful imprisonment, which act, either at the time of
34 sentencing for the offense or subsequently during civil commitment
35 proceedings pursuant to this chapter, has been determined beyond a
36 reasonable doubt to have been sexually motivated, as that term is
37 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28

1 RCW, that is an attempt, criminal solicitation, or criminal conspiracy
2 to commit one of the felonies designated in (a), (b), or (c) of this
3 subsection.

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

9 (17) "Total confinement facility" means a facility that provides
10 supervision and sex offender treatment services in a total confinement
11 setting. Total confinement facilities include the special commitment
12 center and any similar facility designated as a secure facility by the
13 secretary.

14 **Sec. 2.** RCW 71.09.342 and 2002 c 68 s 9 are each amended to read
15 as follows:

16 (1) After October 1, 2002, notwithstanding RCW 36.70A.103 or any
17 other law, this section preempts and supersedes local plans,
18 development regulations, permitting requirements, inspection
19 requirements, and all other laws as necessary to enable the department
20 to site, construct, renovate, occupy, and operate secure community
21 transition facilities within the borders of the following:

22 (a) Any county that had five or more persons civilly committed from
23 that county, or detained at the special commitment center under a
24 pending civil commitment petition from that county where a finding of
25 probable cause has been made, on April 1, 2001, if the department
26 determines that the county has not met the requirements of RCW
27 36.70A.200 with respect to secure community transition facilities.
28 This subsection does not apply to the county in which the secure
29 community transition facility authorized under RCW 71.09.250(1) is
30 located; and

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

35 (2) The department's determination under subsection (1)(a) or (b)
36 of this section is final and is not subject to appeal under chapter
37 34.05 or 36.70A RCW.

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

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

6 (a) Siting a secure community transition facility in a city or
7 county that has complied with the requirements of RCW 36.70A.200 with
8 respect to secure community transition facilities, including a city
9 that is located within a county that has been preempted. If the
10 department sites a secure community transition facility in such a city
11 or county, the department shall use the process established by the city
12 or county for siting such facilities; or

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

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

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

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

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

27 (c) If the city or county finds that the department's response is
28 inadequate, the city or county may notify the department in writing
29 within fifteen business days of the specific items which it finds
30 inadequate. If the city or county does not notify the department of a
31 finding that the response is inadequate within fifteen business days,
32 the department's response shall be final.

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

1 (e) The governor's designee shall hear a petition filed under this
2 subsection and shall make a determination within thirty days of hearing
3 the petition. The governor's designee shall consider the department's
4 response, and the effectiveness and cost of the proposed measures, in
5 relation to the purposes of this chapter. The determination by the
6 governor's designee shall be final and may not be the basis for any
7 cause of action in civil court.

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

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

18 (6) Until June 30, 2009, the secretary shall site, construct,
19 occupy, and operate a secure community transition facility sited under
20 this section in an environmentally responsible manner that is
21 consistent with the substantive objectives of chapter 43.21C RCW, and
22 shall consult with the department of ecology as appropriate in carrying
23 out the planning, construction, and operations of the facility. The
24 secretary shall make a threshold determination of whether a secure
25 community transition facility sited under this section would have a
26 probable significant, adverse environmental impact. If the secretary
27 determines that the secure community transition facility has such an
28 impact, the secretary shall prepare an environmental impact statement
29 that meets the requirements of RCW 43.21C.030 and 43.21C.031 and the
30 rules promulgated by the department of ecology relating to such
31 statements. Nothing in this subsection shall be the basis for any
32 civil cause of action or administrative appeal.

33 (7) In no case may a secure community transition facility be sited
34 adjacent to, immediately across a street or parking lot from, or within
35 the line of sight of a risk potential activity or facility in existence
36 at the time a site is listed for consideration unless the site that the
37 department has chosen in a particular county or city was identified
38 pursuant to a process for siting secure community transition facilities

1 adopted by that county or city in compliance with RCW 36.70A.200.
2 "Within the line of sight" means that it is possible to reasonably
3 visually distinguish and recognize individuals.

4 (8) This section does not apply to the secure community transition
5 facility established pursuant to RCW 71.09.250(1).

6 NEW SECTION. Sec. 3. This act applies prospectively only and not
7 retroactively and does not apply to development regulations adopted or
8 amended prior to the effective date of this act.

9 NEW SECTION. Sec. 4. This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of the
11 state government and its existing public institutions, and takes effect
12 immediately.

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