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HOUSE BILL 1107

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State of Washington                      58th Legislature                      2003 Regular Session

By Representatives Nixon, Shabro, Cairnes, Benson, Simpson, Mielke, Pflug, McCoy, Upthegrove and McMahan

Read first time 01/17/2003.            Referred to Committee on Criminal Justice & Corrections.

1            AN ACT Relating to siting secure community transition facilities  
2 away from campgrounds, youth camps, and private residences; amending  
3 RCW 71.09.285 and 71.09.342; reenacting and amending RCW 71.09.020;  
4 adding a new section to chapter 71.09 RCW; and creating a new section.

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 campgrounds and youth camps, private homes, apartments, condominiums,  
35 and others identified by the department following the hearings on a  
36 potential site required in RCW 71.09.315. For purposes of this  
37 chapter, "school bus stops" does not include bus stops established  
38 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 71.09.285 and 2002 c 68 s 5 are each amended to read  
15 as follows:

16 (1) Except with respect to the secure community transition facility  
17 established pursuant to RCW 71.09.250, the secretary shall develop  
18 policy guidelines that balance the average response time of emergency  
19 services to the general area of a proposed secure community transition  
20 facility against the proximity of the proposed site to risk potential  
21 activities and facilities in existence at the time the site is listed  
22 for consideration.

23 ~~(2) ((In no case shall the policy guidelines permit location of a  
24 facility adjacent to, immediately across a street or parking lot from,  
25 or within the line of sight of a risk potential activity or facility in  
26 existence at the time a site is listed for consideration. "Within the  
27 line of sight" means that it is possible to reasonably visually  
28 distinguish and recognize individuals.~~

29 ~~(3))~~ The policy guidelines shall require that great weight be  
30 given to sites that are the farthest removed from any risk potential  
31 activity.

32 ~~((4))~~ (3) The policy guidelines shall specify how distance from  
33 the location is measured and any variations in the measurement based on  
34 the size of the property within which a proposed facility is to be  
35 located.

36 ~~((5))~~ (4) The policy guidelines shall establish a method to  
37 analyze and compare the criteria for each site in terms of public

1 safety and security, site characteristics, and program components. In  
2 making a decision regarding a site following the analysis and  
3 comparison, the secretary shall give priority to public safety and  
4 security considerations. The analysis and comparison of the criteria  
5 are to be documented and made available at the public hearings  
6 prescribed in RCW 71.09.315.

7 ((+6+)) (5) Policy guidelines adopted by the secretary under this  
8 section shall be considered by counties and cities when providing for  
9 the siting of secure community transition facilities as required under  
10 RCW 36.70A.200.

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

13 (1) In no case may a secure community transition facility be sited:

14 (a) Adjacent to, immediately across a street or parking lot from,  
15 or within the line of sight of a risk potential activity or facility in  
16 existence at the time a site is listed for consideration; or

17 (b) Within twenty-five hundred feet of a public or private  
18 campground or youth camp.

19 (2) "Within the line of sight" means that it is possible to  
20 reasonably visually distinguish and recognize individuals.

21 (3) This section does not apply to the secure community transition  
22 facility established pursuant to RCW 71.09.250(1).

23 **Sec. 4.** RCW 71.09.342 and 2002 c 68 s 9 are each amended to read  
24 as follows:

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

31 (a) Any county that had five or more persons civilly committed from  
32 that county, or detained at the special commitment center under a  
33 pending civil commitment petition from that county where a finding of  
34 probable cause has been made, on April 1, 2001, if the department  
35 determines that the county has not met the requirements of RCW  
36 36.70A.200 with respect to secure community transition facilities.

1 This subsection does not apply to the county in which the secure  
2 community transition facility authorized under RCW 71.09.250(1) is  
3 located; and

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

8 (2) The department's determination under subsection (1)(a) or (b)  
9 of this section is final and is not subject to appeal under chapter  
10 34.05 or 36.70A RCW.

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

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

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

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

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

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

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

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

37 (c) If the city or county finds that the department's response is  
38 inadequate, the city or county may notify the department in writing

1 within fifteen business days of the specific items which it finds  
2 inadequate. If the city or county does not notify the department of a  
3 finding that the response is inadequate within fifteen business days,  
4 the department's response shall be final.

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

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

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

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

27 (6) Until June 30, 2009, the secretary shall site, construct,  
28 occupy, and operate a secure community transition facility sited under  
29 this section in an environmentally responsible manner that is  
30 consistent with the substantive objectives of chapter 43.21C RCW, and  
31 shall consult with the department of ecology as appropriate in carrying  
32 out the planning, construction, and operations of the facility. The  
33 secretary shall make a threshold determination of whether a secure  
34 community transition facility sited under this section would have a  
35 probable significant, adverse environmental impact. If the secretary  
36 determines that the secure community transition facility has such an  
37 impact, the secretary shall prepare an environmental impact statement  
38 that meets the requirements of RCW 43.21C.030 and 43.21C.031 and the

1 rules promulgated by the department of ecology relating to such  
2 statements. Nothing in this subsection shall be the basis for any  
3 civil cause of action or administrative appeal.

4 (7)(a) In no case may a secure community transition facility be  
5 sited:

6 (i) Adjacent to, immediately across a street or parking lot from,  
7 or within the line of sight of a risk potential activity or facility in  
8 existence at the time a site is listed for consideration; or

9 (ii) Within twenty-five hundred feet of a public or private  
10 campground or youth camp.

11 (b) "Within the line of sight" means that it is possible to  
12 reasonably visually distinguish and recognize individuals.

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

15 NEW SECTION. Sec. 5. The provisions of this act are retroactive  
16 and apply to all sites and possible sites for secure community  
17 transition facilities selected prior to the effective date of this act  
18 except for the facility sited under RCW 71.09.250(1).

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