

2 **SSB 6594** - S AMD 605

3 By Senators Carlson, Hargrove, Costa and Long

4 ADOPTED 02/19/02

5 Strike everything after the enacting clause and insert the
6 following:

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

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

14 (1) The comprehensive plan of each county and city that is planning
15 under RCW 36.70A.040 shall include a process for identifying and siting
16 essential public facilities. Essential public facilities include those
17 facilities that are typically difficult to site, such as airports,
18 state education facilities and state or regional transportation
19 facilities as defined in RCW 47.06.140, state and local correctional
20 facilities, solid waste handling facilities, and in-patient facilities
21 including substance abuse facilities, mental health facilities, group
22 homes, and secure community transition facilities as defined in RCW
23 71.09.020.

24 (2) Each county and city planning under RCW 36.70A.040 shall, not
25 later than (~~the deadline specified in RCW 36.70A.130~~) September 1,
26 2002, establish a process, or amend its existing process, for
27 identifying and siting essential public facilities, and adopt or amend
28 its development regulations as necessary to provide for the siting of
29 secure community transition facilities consistent with statutory
30 requirements applicable to these facilities.

31 (3) Any city or county not planning under RCW 36.70A.040 shall, not
32 later than (~~the deadline specified in RCW 36.70A.130~~) September 1,
33 2002, establish a process for siting secure community transition
34 facilities and adopt or amend its development regulations as necessary

1 to provide for the siting of such facilities consistent with statutory
2 requirements applicable to these facilities.

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

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

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

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

18 NEW SECTION. Sec. 3. A new section is added to chapter 4.24 RCW
19 to read as follows:

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

22 (2) No law enforcement officer responding reasonably and in good
23 faith to a call regarding a resident of a secure community transition
24 facility shall be held liable nor shall the city or county employing
25 the officer be held liable, in any cause of action for civil damages
26 based on the acts of the resident or the actions of the officer during
27 the response.

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

30 Unless the context clearly requires otherwise, the definitions in
31 this section apply throughout this chapter.

32 (1) "Department" means the department of social and health
33 services.

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

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

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

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

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

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

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

33 (9) "Secure facility" means a residential facility for persons
34 civilly confined under the provisions of this chapter that includes
35 security measures sufficient to protect the community. Such facilities
36 include total confinement facilities, secure community transition
37 facilities, and any residence used as a court-ordered placement under
38 RCW 71.09.096.

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

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

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

38 (13) "Total confinement facility" means a facility that provides
39 supervision and sex offender treatment services in a total confinement

1 setting. Total confinement facilities include the special commitment
2 center and any similar facility designated as a secure facility by the
3 secretary.

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

6 (1) Except with respect to the secure community transition facility
7 established pursuant to RCW 71.09.250, the secretary shall develop
8 policy guidelines that balance the average response time of emergency
9 services to the general area of a proposed secure community transition
10 facility against the proximity of the proposed site to risk potential
11 activities and facilities in existence at the time the site is listed
12 for consideration.

13 (2) In ~~((balancing the competing criteria of proximity and response~~
14 ~~time the policy guidelines shall endeavor to achieve an average law~~
15 ~~enforcement response time not greater than five minutes and in))~~ no
16 case shall the policy guidelines permit location of a facility adjacent
17 to, immediately across a street or parking lot from, or within the line
18 of sight of a risk potential activity or facility in existence at the
19 time a site is listed for consideration. "Within the line of sight"
20 means that it is possible to reasonably visually distinguish and
21 recognize individuals.

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

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

28 (5) The policy guidelines shall establish a method to analyze and
29 compare the criteria for each site in terms of public safety and
30 security, site characteristics, and program components. In making a
31 decision regarding a site following the analysis and comparison, the
32 secretary shall give priority to public safety and security
33 considerations. The analysis and comparison of the criteria are to be
34 documented and made available at the public hearings prescribed in RCW
35 71.09.315.

36 (6) Policy guidelines adopted by the secretary under this section
37 shall be considered by counties and cities when providing for the

1 siting of secure community transition facilities as required under RCW
2 36.70A.200.

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

5 (1) Unless otherwise ordered by the court:

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

11 (b) At least one staff member, or other court-authorized and
12 department-approved person must escort each resident when the resident
13 leaves the secure community transition facility for appointments,
14 employment, or other approved activities. Escorting persons must
15 supervise the resident closely and maintain close proximity to the
16 resident. The escort must immediately notify the department of any
17 serious violation, as defined in RCW 71.09.325, by the resident and
18 must immediately notify law enforcement of any violation of law by the
19 resident. The escort may not be a relative of the resident or a person
20 with whom the resident has, or has had, a dating relationship as
21 defined in RCW 26.50.010.

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

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

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

36 NEW SECTION. **Sec. 7.** A new section is added to chapter 71.09 RCW
37 to read as follows:

1 The minimum requirements set out in RCW 71.09.285 through 71.09.340
2 are minimum requirements to be applied by the department. Nothing in
3 this section is intended to prevent a city or county from adopting
4 development regulations, as defined in RCW 36.70A.030, unless the
5 proposed regulation imposes requirements more restrictive than those
6 specifically addressed in RCW 71.09.285 through 71.09.340. Regulations
7 that impose requirements more restrictive than those specifically
8 addressed in these sections are void. Nothing in these sections
9 prevents the department from adding requirements to enhance public
10 safety.

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

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

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

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

22 (b) Development regulations, ordinances, plans, laws, and criteria
23 established for siting must be consistent with statutory requirements
24 and rules applicable to siting and operating secure community
25 transition facilities;

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

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

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

33 (4) Any county or city that has issued all necessary permits by May
34 1, 2003, for one or more secure community transition facilities that
35 comply with the requirements of this section shall receive an incentive
36 grant in the amount of fifty thousand dollars for each bed sited.

37 (5) To encourage the rapid permitting of sites, any county or city
38 that has issued all necessary permits by January 1, 2003, for one or

1 more secure community transition facilities that comply with the
2 requirements of this section shall receive a bonus in the amount of
3 twenty percent of the amount provided under subsection (4) of this
4 section.

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

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

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

14 NEW SECTION. Sec. 9. A new section is added to chapter 71.09 RCW
15 to read 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) Chelan, Clark, Cowlitz, Franklin, Grays Harbor, King, Kitsap,
23 Snohomish, Spokane, Thurston, Whatcom, and Yakima counties, if the
24 department determines that the county has not met the requirements of
25 RCW 36.70A.200 with respect to secure community transition facilities;
26 and

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

31 (2) The department's determination under subsection (1)(a) or (b)
32 of this section is final and is not subject to appeal under chapter
33 34.05 or 36.70A RCW.

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

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

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

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

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

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

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

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

22 (c) If the city or county finds that the department's response is
23 inadequate, the city or county may notify the department in writing
24 within fifteen business days of the specific items which it finds
25 inadequate. If the city or county does not notify the department of a
26 finding that the response is inadequate within fifteen business days,
27 the department's response shall be final.

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

33 (e) The governor's designee shall hear a petition filed under this
34 subsection and shall make a determination within thirty days of hearing
35 the petition. The governor's designee shall consider the department's
36 response, and the effectiveness and cost of the proposed measures, in
37 relation to the purposes of this chapter. The determination by the
38 governor's designee shall be final and may not be the basis for any
39 cause of action in civil court.

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

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

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

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

15 A petition brought pursuant to section 9(5) of this act shall be
16 heard under the provisions of RCW 34.05.479 except that the decision of
17 the Washington state patrol shall be final and is not subject to
18 judicial review.

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

21 For purposes of RCW 71.09.250 and section 9 of this act, "all other
22 laws" means the state environmental policy act, the shoreline
23 management act, the hydraulics code, and all other state laws
24 regulating the protection and use of the water, land, and air.

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

27 Secure community transition facilities sited pursuant to the
28 preemption provisions of section 9 of this act and secure facilities
29 sited pursuant to the preemption provisions of RCW 71.09.250 are not
30 subject to the provisions of this chapter.

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

33 Secure community transition facilities sited pursuant to the
34 preemption provisions of section 9 of this act and secure facilities

1 sited pursuant to the preemption provisions of RCW 71.09.250 are not
2 subject to the provisions of this chapter.

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

5 Secure community transition facilities sited pursuant to the
6 preemption provisions of section 9 of this act and secure facilities
7 sited pursuant to the preemption provisions of RCW 71.09.250 are not
8 subject to the provisions of this chapter.

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

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

15 The provisions of chapter 12, Laws of 2001 2nd sp. sess. do not
16 affect the state's authority to site any other essential public
17 facility under RCW 36.70A.200 in conformance with local comprehensive
18 plans and development regulations adopted pursuant to chapter 36.70A
19 RCW.

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

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

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

31 (b) The operation of any secure community transition facility is
32 contingent upon sufficient appropriation by the legislature. If
33 sufficient funds are not appropriated, the department is not obligated
34 to operate the secure community transition facility and may close it;
35 and

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

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

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

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

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

11 (b) Each community in which the persons from those facilities will
12 reside or regularly spend time, pursuant to court orders, for regular
13 work or education, or to receive social services, or through which the
14 person or persons will regularly be transported to reach other
15 communities; and

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

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

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

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

25 (ii) Reimbursement for training under this subsection is limited
26 to:

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

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

32 (b) Information coordination:

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

36 (ii) Reimbursement for information coordination is limited to
37 start-up costs;

38 (c) One-time capital costs:

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

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

5 (d) Incident response:

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

9 (ii) Reimbursement for incident response does not include private
10 causes of action.

11 NEW SECTION. **Sec. 18.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 19.** This act is necessary for the immediate
16 preservation of the public peace, health, or safety, or support of the
17 state government and its existing public institutions, and takes effect
18 immediately."

19 **SSB 6594** - S AMD 605

20 By Senators Carlson, Hargrove, Costa and Long

21 ADOPTED 02/19/02

22 On page 1, line 3 of the title, after "facilities;" strike the
23 remainder of the title and insert "amending RCW 36.70A.200, 71.09.020,
24 71.09.285, 71.09.305, 71.09.255, and 36.70A.103; adding a new section
25 to chapter 4.24 RCW; adding new sections to chapter 71.09 RCW; adding
26 a new section to chapter 34.05 RCW; adding a new section to chapter
27 43.21C RCW; adding a new section to chapter 90.58 RCW; adding a new
28 section to chapter 77.55 RCW; creating a new section; and declaring an
29 emergency."

EFFECT: Clarifies that a preempted jurisdiction's proposed public safety measures may not result in the loss of a selected site or in the imposition of requirements inconsistent with the purposes of chapter 71.09 RCW. Changes the entity hearing the appeal from the Washington state patrol to the governor's designee. The determination that a

jurisdiction is preempted is not subject to appeal under chapter 34.05 or 36.70A RCW.

Makes a technical correction to maintain date consistency.

--- **END** ---