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SECOND SUBSTITUTE HOUSE BILL 2598

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State of Washington

57th Legislature

2002 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives O'Brien, Morell, Conway, Kagi and Kirby; by request of Jt Select Comm on the Equitable Distrib of Secure Community Transition Facil)

Read first time 02/12/2002. Referred to Committee on .

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 43.21C RCW; adding a new section to chapter  
7 77.55 RCW; adding a new section to chapter 90.58 RCW; creating a new  
8 section; and declaring an emergency.

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

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

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

17 (1) The comprehensive plan of each county and city that is planning  
18 under RCW 36.70A.040 shall include a process for identifying and siting

1 essential public facilities. Essential public facilities include those  
2 facilities that are typically difficult to site, such as airports,  
3 state education facilities and state or regional transportation  
4 facilities as defined in RCW 47.06.140, state and local correctional  
5 facilities, solid waste handling facilities, and in-patient facilities  
6 including substance abuse facilities, mental health facilities, group  
7 homes, and secure community transition facilities as defined in RCW  
8 71.09.020.

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

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

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

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

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

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

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

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

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

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

11 Unless the context clearly requires otherwise, the definitions in  
12 this section apply throughout this chapter.

13 (1) "Department" means the department of social and health  
14 services.

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

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

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

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

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

36 (7) "Risk potential activity" or "risk potential facility" means an  
37 activity or facility that provides a higher incidence of risk to the  
38 public from persons conditionally released from the special commitment

1 center. Risk potential activities and facilities include: Public and  
2 private schools, school bus stops, licensed day care and licensed  
3 preschool facilities, public parks, publicly dedicated trails, sports  
4 fields, playgrounds, recreational and community centers, churches,  
5 synagogues, temples, mosques, and public libraries. For purposes of  
6 this chapter, "school bus stops" does not include bus stops established  
7 primarily for public transit.

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

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

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

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

1 burglary, or unlawful imprisonment, which act, either at the time of  
2 sentencing for the offense or subsequently during civil commitment  
3 proceedings pursuant to this chapter, has been determined beyond a  
4 reasonable doubt to have been sexually motivated, as that term is  
5 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28  
6 RCW, that is an attempt, criminal solicitation, or criminal conspiracy  
7 to commit one of the felonies designated in (a), (b), or (c) of this  
8 subsection.

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

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

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

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

28 (2) In (~~balancing the competing criteria of proximity and response~~  
29 ~~time the policy guidelines shall endeavor to achieve an average law~~  
30 ~~enforcement response time not greater than five minutes and in)) no  
31 case shall the policy guidelines permit location of a facility adjacent  
32 to, immediately across a street or parking lot from, or within the line  
33 of sight of a risk potential activity or facility in existence at the  
34 time a site is listed for consideration. "Within the line of sight"  
35 means that it is possible to reasonably visually distinguish and  
36 recognize individuals.~~

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

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

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

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

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

21 (1) Unless otherwise ordered by the court:

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

27 (b) At least one staff member, or other court-authorized and  
28 department-approved person must escort each resident when the resident  
29 leaves the secure community transition facility for appointments,  
30 employment, or other approved activities. Escorting persons must  
31 supervise the resident closely and maintain close proximity to the  
32 resident. The escort must immediately notify the department of any  
33 serious violation, as defined in RCW 71.09.325, by the resident and  
34 must immediately notify law enforcement of any violation of law by the  
35 resident. The escort may not be a relative of the resident or a person  
36 with whom the resident has, or has had, a dating relationship as  
37 defined in RCW 26.50.010.

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

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

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

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

17 The minimum requirements set out in RCW 71.09.285 through 71.09.340  
18 are minimum requirements to be applied by the department. Nothing in  
19 these sections authorizes any county or city to impose additional  
20 requirements on the department or its contractors for siting or  
21 operating a secure community transition facility. Regulations that  
22 impose requirements more restrictive than those specifically addressed  
23 in these sections are deemed to be out of compliance with RCW  
24 36.70A.200. Nothing in these sections prevents the department from  
25 adding requirements to enhance public safety.

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

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

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

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

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

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

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

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

12 (4) Any county or city that has issued all necessary permits by May  
13 1, 2003, for one or more secure community transition facilities that  
14 comply with the requirements of this section shall receive an incentive  
15 grant in the amount of fifty thousand dollars for each bed sited.

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

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

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

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

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

33 (1) After October 1, 2002, notwithstanding RCW 36.70A.103 or any  
34 other law, this section preempts and supersedes local plans,  
35 development regulations, permitting requirements, inspection  
36 requirements, chapters 43.21C, 77.55, and 90.58 RCW, and all other laws  
37 as necessary to enable the department to site, construct, renovate,

1 occupy, and operate secure community transition facilities within the  
2 borders of the following:

3 (a) The four most populous counties in the state except for the  
4 county containing the secure community transition facility authorized  
5 under RCW 71.09.250(1), if the department determines that the county  
6 has not met the requirements of RCW 36.70A.200 with respect to secure  
7 community transition facilities; and

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

12 (2) The secretary shall site, construct, occupy, and operate a  
13 secure community transition facility sited under this section in an  
14 environmentally responsible manner that is consistent with the  
15 substantive objectives of chapter 43.21C RCW, and shall consult with  
16 the department of ecology as appropriate in carrying out the planning,  
17 construction, and operations of the facility. The secretary shall make  
18 a threshold determination of whether a secure community transition  
19 facility sited under this section would have a probable significant,  
20 adverse environmental impact. If the secretary determines that the  
21 secure community transition facility has such an impact, the secretary  
22 shall prepare an environmental impact statement that meets the  
23 requirements of RCW 43.21C.030 and 43.21C.031 and the rules promulgated  
24 by the department of ecology relating to such statements. The  
25 secretary's threshold determination under this section may be appealed  
26 only to the department of ecology. As a result of the appeal, the  
27 department of ecology may make nonbinding suggestions to the secretary  
28 with respect to the threshold determination required under this  
29 subsection.

30 (3) When siting a facility in a county or city that has been  
31 preempted under this section, the department shall consider the policy  
32 guidelines established under RCW 71.09.275 and 71.09.290.

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

34 (a) Siting a secure community transition facility in a city or  
35 county that has complied with the requirements of RCW 36.70A.200 with  
36 respect to secure community transition facilities, including a city  
37 that is located within a county that has been preempted. If the  
38 department sites a secure community transition facility in such a city

1 or county, the department shall use the process established by the city  
2 or county for siting such facilities; or

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

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

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

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

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

19 NEW SECTION. **Sec. 11.** A new section is added to chapter 43.21C  
20 RCW to read as follows:

21 Except as provided in section 9(2) of this act, secure community  
22 transition facilities sited pursuant to the preemption provisions of  
23 section 9 of this act are not subject to the provisions of this  
24 chapter.

25 NEW SECTION. **Sec. 12.** A new section is added to chapter 77.55 RCW  
26 to read as follows:

27 Secure community transition facilities sited pursuant to the  
28 preemption provisions in section 9 of this act are not subject to the  
29 provisions of this chapter.

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

32 Secure community transition facilities sited pursuant to the  
33 preemption provisions in section 9 of this act are not subject to the  
34 provisions of this chapter.

1        NEW SECTION.    **Sec. 14.**    A new section is added to chapter 71.09 RCW  
2 to read as follows:

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

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

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

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

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

21        NEW SECTION.    **Sec. 15.**    A new section is added to chapter 71.09 RCW  
22 to read as follows:

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

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

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

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

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

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

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

4 (ii) Reimbursement for training under this subsection is limited  
5 to:

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

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

11 (b) Information coordination:

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

15 (ii) Reimbursement for information coordination is limited to  
16 start-up costs;

17 (c) One-time capital costs:

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

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

22 (d) Incident response:

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

26 (ii) Reimbursement for incident response does not include private  
27 causes of action.

28 NEW SECTION. **Sec. 16.** If any provision of this act or its  
29 application to any person or circumstance is held invalid, the  
30 remainder of the act or the application of the provision to other  
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 17.** This act is necessary for the immediate  
33 preservation of the public peace, health, or safety, or support of the  
34 state government and its existing public institutions, and takes effect  
35 immediately.

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