

---

HOUSE BILL 2598

---

State of Washington

57th Legislature

2002 Regular Session

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 01/22/2002. Referred to Committee on Criminal Justice & Corrections.

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; creating  
6 a new section; and declaring an emergency.

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

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

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

15 (1) The comprehensive plan of each county and city that is planning  
16 under RCW 36.70A.040 shall include a process for identifying and siting  
17 essential public facilities. Essential public facilities include those  
18 facilities that are typically difficult to site, such as airports,

1 state education facilities and state or regional transportation  
2 facilities as defined in RCW 47.06.140, state and local correctional  
3 facilities, solid waste handling facilities, and in-patient facilities  
4 including substance abuse facilities, mental health facilities, group  
5 homes, and secure community transition facilities as defined in RCW  
6 71.09.020.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (7) "Risk potential activity" or "risk potential facility" means an  
35 activity or facility that provides a higher incidence of risk to the  
36 public from persons conditionally released from the special commitment  
37 center. Risk potential activities and facilities include: Public and  
38 private schools, school bus stops, licensed day care and licensed

1 preschool facilities, public parks, publicly dedicated trails, sports  
2 fields, playgrounds, recreational and community centers, churches,  
3 synagogues, temples, mosques, and public libraries. For purposes of  
4 this chapter, "school bus stops" does not include bus stops established  
5 primarily for public transit.

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

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

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

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

1 proceedings pursuant to this chapter, has been determined beyond a  
2 reasonable doubt to have been sexually motivated, as that term is  
3 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28  
4 RCW, that is an attempt, criminal solicitation, or criminal conspiracy  
5 to commit one of the felonies designated in (a), (b), or (c) of this  
6 subsection.

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

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

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

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

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

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

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

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

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

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

18 (1) Unless otherwise ordered by the court:

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

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

35 (2) Staff members of the special commitment center and any other  
36 total confinement facility and any secure community transition facility  
37 must be trained in self-defense and appropriate crisis responses  
38 including incident de-escalation. Prior to escorting a person outside

1 of a facility, staff members must also have training in the offense  
2 pattern of the offender they are escorting. (~~The escort may not be a~~  
3 ~~relative of the resident.~~)

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

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

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

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

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

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

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

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

33 (b) Development regulations, ordinances, plans, laws, and criteria  
34 established for siting must be consistent with statutory requirements  
35 and rules applicable to siting and operating secure community  
36 transition facilities;

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

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

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

7 (4) Any county or city that has issued all necessary permits by May  
8 1, 2003, for one or more secure community transition facilities that  
9 comply with the requirements of this section shall receive an incentive  
10 grant in the amount of fifty thousand dollars for each bed sited.

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

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

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

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

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

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

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

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

5 (2) When siting a facility in a county or city that has been  
6 preempted under this section, the department shall consider the policy  
7 guidelines established under RCW 71.09.275 and 71.09.290.

8 (3) Nothing in this section prohibits the department from:

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

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

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

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

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

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

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

34 (1) At the request of the local government of the city or county in  
35 which a secure community transition facility is initially sited after  
36 January 1, 2002, the department shall enter into a long-term contract  
37 memorializing the agreements between the state and the city or county

1 for the operation of the facility. This contract shall be separate  
2 from any contract regarding mitigation due to the facility. The  
3 contract shall include a clause that states:

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

6 (b) The operation of any secure community transition facility is  
7 contingent upon sufficient appropriation by the legislature. If  
8 sufficient funds are not appropriated, the department is not obligated  
9 to operate the secure community transition facility and may close it;  
10 and

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

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

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

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

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

21 (b) Each community in which the persons from those facilities will  
22 reside or regularly spend time, pursuant to court orders, for regular  
23 work or education, or to receive social services, or through which the  
24 person or persons will regularly be transported to reach other  
25 communities; and

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

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

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

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

35 (ii) Reimbursement for training under this subsection is limited  
36 to:

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

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

4 (b) Information coordination:

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

8 (ii) Reimbursement for information coordination is limited to  
9 start-up costs;

10 (c) One-time capital costs:

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

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

15 (d) Incident response:

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

19 (ii) Reimbursement for incident response does not include private  
20 causes of action.

21 NEW SECTION. **Sec. 13.** If any provision of this act or its  
22 application to any person or circumstance is held invalid, the  
23 remainder of the act or the application of the provision to other  
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 14.** This act is necessary for the immediate  
26 preservation of the public peace, health, or safety, or support of the  
27 state government and its existing public institutions, and takes effect  
28 immediately.

--- END ---