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**SUBSTITUTE HOUSE BILL 2168**

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**State of Washington**

**57th Legislature**

**2002 Regular Session**

**By** House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Conway, Schoesler, O'Brien, Ballasiotes, Darneille, Kirby and Hunt)

Read first time 02/06/2002. Referred to Committee on .

1 AN ACT Relating to essential state community justice facilities;  
2 amending RCW 72.05.020, 72.05.400, 72.65.010, 72.65.220, and  
3 36.70A.200; adding a new section to chapter 72.05 RCW; adding a new  
4 section to chapter 72.65 RCW; adding a new section to chapter 36.70A  
5 RCW; adding a new section to chapter 36.70 RCW; and declaring an  
6 emergency.

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

8 **Sec. 1.** RCW 72.05.020 and 1998 c 269 s 2 are each amended to read  
9 as follows:

10 As used in this chapter, unless the context requires otherwise:

11 (1) "Community facility" means a group care facility operated for  
12 the care of juveniles committed to the department under RCW 13.40.185.  
13 A county detention facility that houses juveniles committed to the  
14 department under RCW 13.40.185 pursuant to a contract with the  
15 department is not a community facility.

16 (2) "Department" means the department of social and health  
17 services.

18 (3) "Equitable distribution" or "distribute equitably" means siting  
19 or locating community facilities in a manner that reasonably reflects

1 the proportion of juveniles sentenced to the department from each  
2 county or rural multicounty geographic area designated by the  
3 department, and, to the extent practicable, the proportion of such  
4 juveniles residing in particular jurisdictions or communities within  
5 such counties or geographic areas. Equitable distribution is a policy  
6 goal, not a basis for any legal challenge to the siting, construction,  
7 occupancy, or operation of any facility anywhere in the state.

8 (4) "Juvenile" means a person under the age of twenty-one who has  
9 been sentenced to a term of confinement under the supervision of the  
10 department under RCW 13.40.185.

11 (~~(4)~~) (5) "Service provider" means the entity that operates a  
12 community facility.

13 NEW SECTION. Sec. 2. A new section is added to chapter 72.05 RCW  
14 to read as follows:

15 (1) The department shall prepare a projected list of counties and  
16 rural multicounty geographic areas in which community facilities need  
17 to be sited over the biennium beginning July 1, 2003, and every  
18 biennium thereafter, and transmit the list to the office of financial  
19 management and the counties on the list. The list may be updated as  
20 needed. In preparing the list, the department shall make substantial  
21 efforts to provide for the equitable distribution of community  
22 facilities among counties. The department shall give great weight to  
23 the following factors in determining equitable distribution:

24 (a) The locations of existing community facilities owned or  
25 operated by, or operated under contract with, the department in each  
26 county; and

27 (b) The number and proportion of juvenile offenders committed to  
28 the department residing in the county or rural multicounty geographic  
29 area.

30 (2)(a) In preparing the list required under subsection (1) of this  
31 section, the department shall:

32 (i) Give great weight to the factors identified in subsection (1)  
33 of this section;

34 (ii) Use the information contained in the most recent edition of  
35 the report required under subsection (4) of this section; and

36 (iii) Use the criteria adopted under subsection (7) of this  
37 section.

1 (b) Prior to finalizing the list of projected community facilities  
2 required under subsection (1) of this section, the department shall  
3 consult with the county legislative authorities of each county  
4 identified on the list. The department shall also hold at least one  
5 public hearing within each such county or rural multicounty geographic  
6 area, including, if known, the affected part of the county.

7 (3) The department shall submit, along with the list required under  
8 subsection (1) of this section, the operational requirements for the  
9 facilities on the list to the office of financial management and the  
10 counties on the list.

11 (4) To carry out the purposes of subsection (1) of this section,  
12 the department shall, no later than July 1, 2003, develop a map of the  
13 state that identifies the locations of existing facilities and the  
14 counties or rural multicounty geographic areas needing projected  
15 facilities identified in subsection (1) of this section during the  
16 biennium. The department shall update the map at least once per  
17 biennium. The department shall also maintain data on the number and  
18 proportion of juvenile offenders identified in subsection (1)(b) of  
19 this section and shall biennially publish a report including the most  
20 recent version of the map and offender data for the counties and rural  
21 multicounty geographic areas.

22 (5) A county, and any county designated by the department within a  
23 rural multicounty geographic area, that is included on the list  
24 required under subsection (1) of this section planning under RCW  
25 36.70A.040 shall adopt development regulations that designate areas or  
26 zones that allow the siting of each projected community facility on the  
27 list within the county using its process for siting essential public  
28 facilities under RCW 36.70A.200 and section 8 of this act.

29 (6) A county, and any county designated by the department within a  
30 rural multicounty geographic area, that is included on the list  
31 required under subsection (1) of this section not planning under RCW  
32 36.70A.040 shall adopt development regulations that designate areas or  
33 zones that allow the siting of each projected community facility on the  
34 list within the county using the procedures established in section 9 of  
35 this act.

36 (7) The department shall, by rule, adopt facility criteria and  
37 shall consult with local governments in such rule making.

1       **Sec. 3.** RCW 72.05.400 and 1998 c 269 s 5 are each amended to read  
2 as follows:

3       (1) Whenever the department operates, or the secretary enters a  
4 contract to operate, a community facility, the community facility may  
5 be operated only after the public notification and opportunities for  
6 review and comment as required by this section.

7       (2) The secretary shall establish a process for early and  
8 continuous public participation in establishing or relocating community  
9 facilities. The process shall include, at a minimum, public meetings  
10 in the local communities affected, as well as opportunities for written  
11 and oral comments, in the following manner:

12       (a) If there are more than three sites initially selected as  
13 potential locations and the selection process by the secretary or a  
14 service provider reduces the number of possible sites for a community  
15 facility to no fewer than three, the secretary or the chief operating  
16 officer of the service provider shall notify the public of the possible  
17 siting and hold at least two public hearings in each community where a  
18 community facility may be sited at least forty-five days before a final  
19 selection is made.

20       (b) When the secretary or service provider has determined the  
21 community facility's location, the secretary or the chief operating  
22 officer of the service provider shall hold at least one additional  
23 public hearing in the community where the community facility will be  
24 sited.

25       (c) When the secretary has entered negotiations with a service  
26 provider and only one site is under consideration, then at least two  
27 public hearings shall be held.

28       (d) To provide adequate notice of((~~7~~)) and opportunity for  
29 interested persons to comment on((~~7~~)) a proposed location, the  
30 secretary or the chief operating officer of the service provider shall  
31 make a good faith effort to provide at least fourteen days' advance  
32 notice of the ((~~meeting to~~)) public hearings to at least the following:

33       (i) The appropriate legislative authorities of the affected  
34 counties, cities, and towns;

35       (ii) Local government planning agencies in the affected  
36 communities;

37       (iii) All newspapers of general circulation in the ((~~community~~))  
38 local area and all radio stations and television stations generally

1 available to persons in the community(~~(7)~~) where the potential site is  
2 located;

3 (iv) Any school district, private school, or kindergarten in which  
4 the community facility would be sited or whose boundary is within two  
5 miles of a proposed community facility, any institution of higher  
6 education, any library district (~~(in which the community facility would~~  
7 be sited, local business or fraternal organizations that request  
8 notification from the secretary or agency, and any person or property  
9 owner within a one-half mile radius of the proposed community  
10 facility)), and all other local government offices within a one-half  
11 mile radius of the proposed site or sites;

12 (v) The local chamber of commerce, local economic development  
13 agencies, and any other local organizations that request such  
14 notification from the department; and

15 (vi) Written notification to all residents and property owners  
16 within a one-half mile radius of the proposed site or sites.

17 (3) The notice required under subsection (2) of this section must  
18 also inform the public that any interested person or entity, including  
19 a local government entity, is invited to submit written comments  
20 regarding a proposed location, including comments regarding whether the  
21 site meets the equitable distribution and other statutory requirements  
22 for the facility. Written comments must be submitted not later than  
23 thirty days following the date notice is issued pursuant to subsection  
24 (2) of this section.

25 (4) The department must consider the testimony received at the  
26 public hearings and any written comments submitted before making a  
27 final selection of the site for the location or relocation of a  
28 community facility. The department shall issue a written analysis of  
29 the final selection, including how the selection was consistent with  
30 the requirements of section 2 of this act.

31 (5) Before initiating (~~this~~) the process in subsection (2) of  
32 this section, the department shall contact local government planning  
33 agencies in the communities containing the proposed community facility.  
34 The department shall coordinate with local government agencies to  
35 ensure that opportunities are provided for effective citizen input and  
36 to reduce the duplication of notice and meetings.

37 (~~(3)~~) (6) The secretary shall not issue a license to any service  
38 provider until the service provider submits proof that the requirements  
39 of this section have been met.

1       ~~((4))~~ (7) If local government land use regulations require that  
2 a special use or conditional use permit be submitted and approved  
3 before a community facility can be sited, and the process for obtaining  
4 the permit includes public notice and hearing requirements similar to  
5 those required under this section, the requirements of this section  
6 shall not apply to the extent they would duplicate requirements under  
7 the local land use regulations.

8       (8) This section shall apply only to community facilities sited  
9 after September 1, 1998.

10       **Sec. 4.** RCW 72.65.010 and 1992 c 7 s 56 are each amended to read  
11 as follows:

12       As used in this chapter, the following terms shall have the  
13 following meanings:

14       (1) "Department" ~~((shall))~~ means the department of corrections.

15       (2) "Equitable distribution" or "distribute equitably" means siting  
16 or locating work release facilities in a manner that reasonably  
17 reflects the proportion of offenders sentenced to the custody or  
18 supervision of the department by the courts of each county or rural  
19 multicounty geographic area designated by the department, and, to the  
20 extent practicable, the proportion of such offenders residing in  
21 particular jurisdictions or communities within such counties or rural  
22 multicounty geographic areas. Equitable distribution is a policy goal,  
23 not a basis for any legal challenge to the siting, construction,  
24 occupancy, or operation of any facility anywhere in the state.

25       (3) "Prisoner" means a person either male or female, convicted of  
26 a felony and sentenced by the superior court to a term of confinement  
27 and treatment in a state correctional institution under the  
28 jurisdiction of the department.

29       (4) "Secretary" ~~((shall))~~ means the secretary of corrections.

30       ~~((3))~~ (5) "State correctional institutions" shall mean and  
31 include all state adult correctional facilities established pursuant to  
32 law under the jurisdiction of the department for the treatment of  
33 convicted felons sentenced to a term of confinement.

34       ~~((4))~~ "Prisoner" shall mean a person either male or female,  
35 convicted of a felony and sentenced by the superior court to a term of  
36 confinement and treatment in a state correctional institution under the  
37 jurisdiction of the department.

1       (5)) (6) "Superintendent" (~~shall~~) means the superintendent of a  
2 state correctional institution, camp or other facility now or hereafter  
3 established under the jurisdiction of the department pursuant to law.

4       NEW SECTION.   **Sec. 5.** A new section is added to chapter 72.65 RCW  
5 to read as follows:

6       (1) The department shall prepare a projected list of counties and  
7 rural multicounty geographic areas in which work release facilities  
8 need to be sited over the biennium beginning July 1, 2003, and every  
9 biennium thereafter, and transmit the list to the office of financial  
10 management and the counties on the list. The list may be updated as  
11 needed. In preparing the list, the department shall make substantial  
12 efforts to provide for the equitable distribution of work release  
13 facilities among counties. The department shall give great weight to  
14 the following factors in determining equitable distribution:

15       (a) The locations of existing residential facilities owned or  
16 operated by, or operated under contract with, the department in each  
17 county; and

18       (b) The number and proportion of adult offenders sentenced to the  
19 custody or supervision of the department by the courts of the county or  
20 rural multicounty geographic area.

21       (2)(a) In preparing the list required under subsection (1) of this  
22 section, the department shall:

23       (i) Give great weight to the factors identified in subsection (1)  
24 of this section;

25       (ii) Use the information contained in the most recent edition of  
26 the report required under subsection (4) of this section; and

27       (iii) Use the criteria adopted under subsection (7) of this  
28 section.

29       (b) Prior to finalizing the list of projected work release  
30 facilities required under subsection (1) of this section, the  
31 department shall consult with the county legislative authorities of  
32 each county identified on the list. The department also shall hold at  
33 least one public hearing within each such county or rural multicounty  
34 geographic area, including, if known, the affected part of the county  
35 or rural multicounty geographic area.

36       (3) The department shall submit, along with the list required under  
37 subsection (1) of this section, the operational requirements for the

1 facilities on the list to the office of financial management and the  
2 counties on the list.

3 (4) To carry out the purposes of subsection (1) of this section,  
4 the department shall, no later than July 1, 2003, develop a map of the  
5 state that identifies the locations of existing facilities and the  
6 counties or rural multicounty geographic areas needing projected  
7 facilities identified in subsection (1) of this section during the  
8 biennium. The department shall update the map at least once per  
9 biennium. The department shall also maintain data on the number and  
10 proportion of offenders identified in subsection (1)(b) of this section  
11 and shall biennially publish a report including the most recent version  
12 of the map and offender data for the counties and rural multicounty  
13 geographic areas.

14 (5) A county, and any county designated by the department within a  
15 rural multicounty geographic area, that is included on the list  
16 required under subsection (1) of this section planning under RCW  
17 36.70A.040 shall adopt development regulations that designate areas or  
18 zones that allow the siting of each projected work release facility on  
19 the list within the county using its process for siting essential  
20 public facilities under RCW 36.70A.200 and section 8 of this act.

21 (6) A county, and any county designated by the department within a  
22 rural multicounty geographic area, that is included on the list  
23 required under subsection (1) of this section not planning under RCW  
24 36.70A.040 shall adopt development regulations that designate areas or  
25 zones that allow the siting of each projected work release facility on  
26 the list within the county using the procedures established in section  
27 9 of this act.

28 (7) The department shall, by rule, adopt facility criteria and  
29 shall consult with local governments in such rule making.

30 **Sec. 6.** RCW 72.65.220 and 1997 c 348 s 1 are each amended to read  
31 as follows:

32 (1) The department or a private or public entity under contract  
33 with the department may establish or relocate for the operation of a  
34 work release or other community-based facility only after (~~public~~  
35 ~~notifications and local public meetings have been completed consistent~~  
36 ~~with~~) meeting the requirements of this section.

37 (2) The department and other state agencies responsible for siting  
38 department-owned, operated, or contracted facilities shall establish a

1 process for early and continuous public participation in establishing  
2 or relocating work release or other community-based facilities. This  
3 process shall include public meetings in the local communities  
4 affected, opportunities for written and oral comments, and wide  
5 dissemination of proposals and alternatives, including at least the  
6 following:

7 (a) When the department or a private or public entity under  
8 contract with the department has selected three or fewer sites for  
9 final consideration of a department-owned, operated, or contracted work  
10 release or other community-based facility, the department or  
11 contracting organization shall make public notification and conduct at  
12 least two public hearings in each of the local communities (~~of the~~  
13 ~~final three or fewer proposed sites~~) where such a facility may be  
14 sited at least forty-five days before a final selection is made. An  
15 additional public hearing after public notification shall also be  
16 conducted in the local community selected as the final proposed site.

17 (b) (~~Notifications required under this section shall be provided~~  
18 ~~to~~) To provide adequate notice of and opportunity for interested  
19 persons to comment on a proposed location, the department or  
20 contracting entity shall make a good faith effort to provide at least  
21 fourteen days' advance notice of the public hearings to at least the  
22 following:

23 (i) The appropriate legislative authorities of the affected  
24 counties, cities, and towns;

25 (ii) Local government planning agencies in the affected  
26 communities;

27 (iii) All newspapers of general circulation in the local area and  
28 all (~~local~~) radio stations(~~(,)~~) and television stations(~~(, and cable~~  
29 networks)) generally available to persons in the community where the  
30 potential site is located;

31 (~~(ii)~~) (iv) Appropriate school districts, private schools,  
32 kindergartens, institutions of higher education, city and county  
33 libraries, and all other local government offices within a one-half  
34 mile radius of the proposed site or sites;

35 (~~(iii)~~) (v) The local chamber of commerce, local economic  
36 development agencies, and any other local organizations that request  
37 such notification from the department; and

1       (~~(iv) In writing~~) (vi) Written notification to all residents  
2 (~~and/or~~) and property owners within a one-half mile radius of the  
3 proposed site or sites.

4       (3) The notice required under subsection (2) of this section must  
5 also inform the public that any interested person or entity, including  
6 a local government entity, is invited to submit written comments  
7 regarding a proposed location, including comments regarding whether the  
8 site meets the equitable distribution and other statutory requirements  
9 for the facility. Written comments must be submitted not later than  
10 thirty days following the date notice is issued pursuant to subsection  
11 (2) of this section.

12       (4) The department must consider the testimony received at the  
13 public hearings and any written comments submitted before making a  
14 final selection of the site for the location or relocation of a work  
15 release facility. The department shall issue a written analysis of the  
16 final selection, including how the selection was consistent with the  
17 requirements of section 5 of this act.

18       (5) When the department contracts for the operation of a work  
19 release or other community-based facility that is not owned or operated  
20 by the department, the department shall require as part of its contract  
21 that the contracting entity comply with all the public notification and  
22 public hearing requirements as provided in this section for each  
23 located and relocated work release or other community-based facility.

24       (6) If local government regulations require that a special use or  
25 conditional use permit be submitted and approved before a work release  
26 facility can be sited, and the process for obtaining the permit  
27 includes public notice and hearing requirements similar to those  
28 required under this section, the requirements of this section shall not  
29 apply to the extent they would duplicate requirements under the local  
30 land use regulations.

31       **Sec. 7.** RCW 36.70A.200 and 2001 2nd sp.s. c 12 s 205 are each  
32 amended to read as follows:

33       (1) The comprehensive plan of each county and city that is planning  
34 under RCW 36.70A.040 shall include a process for identifying and siting  
35 essential public facilities. Essential public facilities include those  
36 facilities that are typically difficult to site, such as airports,  
37 state education facilities and state or regional transportation  
38 facilities as defined in RCW 47.06.140, state and local correctional

1 facilities, solid waste handling facilities, and in-patient facilities  
2 including substance abuse facilities, mental health facilities, group  
3 homes, and secure community transition facilities as defined in RCW  
4 71.09.020.

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

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

18 (4) Each county planning under RCW 36.70A.040, in cooperation with  
19 the cities located in whole or in part within the county, and each city  
20 planning under RCW 36.70A.040 shall, when it next amends its  
21 comprehensive plan, but in no case later than the deadline specified in  
22 RCW 36.70A.130, establish a process, or amend its existing process, for  
23 identifying and siting essential public facilities, and adopt or amend  
24 its development regulations as necessary to provide for the siting of  
25 community facilities as defined in RCW 72.05.020 and work release and  
26 other facilities operated by or under contract with the department of  
27 corrections. When siting a community facility under chapter 72.05 RCW  
28 or a work release facility under chapter 72.65 RCW, a county or city  
29 shall follow, in addition to requirements of the process for siting  
30 essential public facilities established under this section, the  
31 requirements established in section 8 of this act.

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

36 ~~((+5))~~ (6) No local comprehensive plan or development regulation  
37 may preclude the siting of essential public facilities.

1        NEW SECTION.    **Sec. 8.**    A new section is added to chapter 36.70A RCW  
2 to read as follows:

3        (1) When providing for the siting of an essential public facility  
4 that is a community facility under chapter 72.05 RCW, a county or city  
5 planning under this chapter shall:

6        (a) Involve the department of social and health services in the  
7 siting process;

8        (b) Make a substantial effort to provide for the equitable  
9 distribution of community facilities by giving great weight to the  
10 factors in section 2(1) (a) and (b) of this act; and

11       (c) Ensure that any location identified is consistent with the  
12 operational requirements established by the department of social and  
13 health services under section 2(3) of this act.

14       (2) When providing for the siting of an essential public facility  
15 that is a work release facility under chapter 72.65 RCW, a county or  
16 city planning under this chapter shall:

17       (a) Involve the department of corrections in the siting process;

18       (b) Make a substantial effort to provide for the equitable  
19 distribution of work release facilities by giving great weight to the  
20 factors in section 5(1) (a) and (b) of this act; and

21       (c) Ensure that any location identified is consistent with the  
22 operational requirements established by the department of corrections  
23 under section 5(3) of this act.

24       (3)(a) As part of the permitting process for a community facility  
25 under chapter 72.05 RCW, a county or city may not impose upon the  
26 department of social and health services any requirements beyond the  
27 operational requirements established under section 2(3) of this act and  
28 the facility criteria established under section 2(7) of this act.

29       (b) As part of the permitting process for a work release facility  
30 under chapter 72.65 RCW, a county or city may not impose upon the  
31 department of corrections any requirements beyond the operational  
32 requirements established under section 5(3) of this act and the  
33 facility criteria established under section 5(7) of this act.

34       (4) Any conditional use permit, special use permit, or any other  
35 development application process necessary to site a community facility  
36 or work release facility may not exceed one hundred twenty days and  
37 must include an appeal process.

1        NEW SECTION.    **Sec. 9.**    A new section is added to chapter 36.70 RCW  
2 to read as follows:

3        (1) When providing for the siting of a community facility under  
4 chapter 72.05 RCW, a county or city planning under this chapter shall:

5        (a) Involve the department of social and health services in the  
6 siting process;

7        (b) Make a substantial effort to provide for the equitable  
8 distribution of community facilities by giving great weight to the  
9 factors in section 2(1) (a) and (b) of this act; and

10       (c) Ensure that any location identified is consistent with the  
11 operational requirements established by the department of social and  
12 health services under section 2(3) of this act.

13       (2) When providing for the siting of a work release facility under  
14 chapter 72.65 RCW, a county and city planning under this chapter shall:

15       (a) Involve the department of corrections in the siting process;

16       (b) Make a substantial effort to provide for the equitable  
17 distribution of work release facilities by giving great weight to the  
18 factors in section 5(1) (a) and (b) of this act; and

19       (c) Ensure that any location identified is consistent with the  
20 operational requirements established by the department of corrections  
21 under section 5(3) of this act.

22       (3)(a) As part of the permitting process for a community facility  
23 under chapter 72.05 RCW, a county or city may not impose upon the  
24 department of social and health services any requirements beyond the  
25 operational requirements established under section 2(3) of this act and  
26 the facility criteria established under section 2(7) of this act.

27       (b) As part of the permitting process for a work release facility  
28 under chapter 72.65 RCW, a county or city may not impose upon the  
29 department of corrections any requirements beyond the operational  
30 requirements established under section 5(3) of this act and the  
31 facility criteria established under section 5(7) of this act.

32       (4) Any conditional use permit, special use permit, or any other  
33 development application process necessary to site a community facility  
34 or work release facility may not exceed one hundred twenty days and  
35 must include an appeal process.

36       NEW SECTION.    **Sec. 10.**    If any provision of this act or its  
37 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

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

--- END ---