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SENATE BILL 5718

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State of Washington

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2009 Regular Session

By Senators Regala, Stevens, Holmquist, Hobbs, Carrell, and Hatfield;  
by request of Attorney General

Read first time 01/29/09. Referred to Committee on Human Services &  
Corrections.

1 AN ACT Relating to the commitment of sexually violent predators;  
2 amending RCW 71.09.020, 71.09.025, 71.09.030, 71.09.040, 71.09.050,  
3 71.09.060, 71.09.080, 71.09.090, 71.09.092, 71.09.096, 71.09.098,  
4 71.09.112, and 71.09.350; and adding a new section to chapter 71.09  
5 RCW.

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

7 **Sec. 1.** RCW 71.09.020 and 2006 c 303 s 10 are each amended to read  
8 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) "Health care facility" means any hospital, hospice care center,  
14 licensed or certified health care facility, health maintenance  
15 organization regulated under chapter 48.46 RCW, federally qualified  
16 health maintenance organization, federally approved renal dialysis  
17 center or facility, or federally approved blood bank.

18 (3) "Health care practitioner" means an individual or firm licensed  
19 or certified to engage actively in a regulated health profession.

1 (4) "Health care services" means those services provided by health  
2 professionals licensed pursuant to RCW 18.120.020(4).

3 (5) "Health profession" means those licensed or regulated  
4 professions set forth in RCW 18.120.020(4).

5 (6) "Less restrictive alternative" means court-ordered treatment in  
6 a setting less restrictive than total confinement which satisfies the  
7 conditions set forth in RCW 71.09.092. A less restrictive alternative  
8 may not include placement in the community protection program as  
9 pursuant to RCW 71A.12.230.

10 (7) "Likely to engage in predatory acts of sexual violence if not  
11 confined in a secure facility" means that the person more probably than  
12 not will engage in such acts if released unconditionally from detention  
13 on the sexually violent predator petition before additional treatment  
14 in a secure facility, secure community transition facility, or other  
15 less restrictive alternative placement. Such likelihood must be  
16 evidenced by a recent overt act if the person is not totally confined  
17 at the time the petition is filed under RCW 71.09.030.

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

22 (9) "Personality disorder" means an enduring pattern of inner  
23 experience and behavior that deviates markedly from the expectations of  
24 the individual's culture, is pervasive and inflexible, has onset in  
25 adolescence or early adulthood, is stable over time and leads to  
26 distress or impairment.

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

31 ((+10+)) (11) "Prosecuting agency" means the prosecuting attorney  
32 of the county where the person was convicted or charged or the attorney  
33 general if requested by the prosecuting attorney, as provided in RCW  
34 71.09.030.

35 (12) "Recent overt act" means any act ((or)), threat, or  
36 combination thereof that has either caused harm of a sexually violent  
37 nature or creates a reasonable apprehension of such harm in the mind of

1 an objective person who knows of the history and mental condition of  
2 the person engaging in the act behaviors.

3 ~~((+11+))~~ (13) "Risk potential activity" or "risk potential  
4 facility" means an activity or facility that provides a higher  
5 incidence of risk to the public from persons conditionally released  
6 from the special commitment center. Risk potential activities and  
7 facilities include: Public and private schools, school bus stops,  
8 licensed day care and licensed preschool facilities, public parks,  
9 publicly dedicated trails, sports fields, playgrounds, recreational and  
10 community centers, churches, synagogues, temples, mosques, public  
11 libraries, public and private youth camps, and others identified by the  
12 department following the hearings on a potential site required in RCW  
13 71.09.315. For purposes of this chapter, "school bus stops" does not  
14 include bus stops established primarily for public transit.

15 ~~((+12+))~~ (14) "Secretary" means the secretary of social and health  
16 services or the secretary's designee.

17 ~~((+13+))~~ (15) "Secure facility" means a residential facility for  
18 persons civilly confined under the provisions of this chapter that  
19 includes security measures sufficient to protect the community. Such  
20 facilities include total confinement facilities, secure community  
21 transition facilities, and any residence used as a court-ordered  
22 placement under RCW 71.09.096.

23 ~~((+14+))~~ (16) "Secure community transition facility" means a  
24 residential facility for persons civilly committed and conditionally  
25 released to a less restrictive alternative under this chapter. A  
26 secure community transition facility has supervision and security, and  
27 either provides or ensures the provision of sex offender treatment  
28 services. Secure community transition facilities include but are not  
29 limited to the facility established pursuant to RCW 71.09.250(1)(a)(i)  
30 and any community-based facilities established under this chapter and  
31 operated by the secretary or under contract with the secretary.

32 ~~((+15+))~~ (17) "Sexually violent offense" means an act committed on,  
33 before, or after July 1, 1990, that is: (a) An act defined in Title 9A  
34 RCW as rape in the first degree, rape in the second degree by forcible  
35 compulsion, rape of a child in the first or second degree, statutory  
36 rape in the first or second degree, indecent liberties by forcible  
37 compulsion, indecent liberties against a child under age fourteen,  
38 incest against a child under age fourteen, or child molestation in the

1 first or second degree; (b) a felony offense in effect at any time  
2 prior to July 1, 1990, that is comparable to a sexually violent offense  
3 as defined in (a) of this subsection, or any federal or out-of-state  
4 conviction for a felony offense that under the laws of this state would  
5 be a sexually violent offense as defined in this subsection; (c) an act  
6 of murder in the first or second degree, assault in the first or second  
7 degree, assault of a child in the first or second degree, kidnapping in  
8 the first or second degree, burglary in the first degree, residential  
9 burglary, or unlawful imprisonment, which act, either at the time of  
10 sentencing for the offense or subsequently during civil commitment  
11 proceedings pursuant to this chapter, has been determined beyond a  
12 reasonable doubt to have been sexually motivated, as that term is  
13 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28  
14 RCW, that is an attempt, criminal solicitation, or criminal conspiracy  
15 to commit one of the felonies designated in (a), (b), or (c) of this  
16 subsection.

17 ((+16+)) (18) "Sexually violent predator" means any person who has  
18 been convicted of or charged with a crime of sexual violence and who  
19 suffers from a mental abnormality or personality disorder which makes  
20 the person likely to engage in predatory acts of sexual violence if not  
21 confined in a secure facility.

22 ((+17+)) (19) "Total confinement facility" means a secure facility  
23 that provides supervision and sex offender treatment services in a  
24 total confinement setting. Total confinement facilities include the  
25 special commitment center and any similar facility designated as a  
26 total confinement facility by the secretary.

27 **Sec. 2.** RCW 71.09.025 and 2008 c 213 s 11 are each amended to read  
28 as follows:

29 (1)(a) When it appears that a person may meet the criteria of a  
30 sexually violent predator as defined in RCW 71.09.020 (16), the agency  
31 with jurisdiction shall refer the person in writing to the prosecuting  
32 attorney of the county (~~where that person was charged~~) in which an  
33 action under this chapter may be filed pursuant to RCW 71.09.030 and  
34 the attorney general, three months prior to:

35 (i) The anticipated release from total confinement of a person who  
36 has been convicted of a sexually violent offense;

1 (ii) The anticipated release from total confinement of a person  
2 found to have committed a sexually violent offense as a juvenile;

3 (iii) Release of a person who has been charged with a sexually  
4 violent offense and who has been determined to be incompetent to stand  
5 trial pursuant to RCW 10.77.086(4); or

6 (iv) Release of a person who has been found not guilty by reason of  
7 insanity of a sexually violent offense pursuant to RCW 10.77.020(3).

8 (b) The agency shall provide the (~~prosecutor~~) prosecuting agency  
9 with all relevant information including but not limited to the  
10 following information:

11 (i) A complete copy of the institutional records compiled by the  
12 department of corrections relating to the person, and any such out-of-  
13 state department of corrections' records, if available;

14 (ii) A complete copy, if applicable, of any file compiled by the  
15 indeterminate sentence review board relating to the person;

16 (iii) All records relating to the psychological or psychiatric  
17 evaluation and/or treatment of the person;

18 (iv) A current record of all prior arrests and convictions, and  
19 full police case reports relating to those arrests and convictions; and

20 (v) A current mental health evaluation or mental health records  
21 review.

22 (c) The prosecuting agency has the authority, consistent with RCW  
23 72.09.345(3), to obtain all records relating to the person if the  
24 prosecuting agency deems such records are necessary to fulfill its  
25 duties under this chapter. The prosecuting agency may only disclose  
26 such records in the course of performing its duties pursuant to this  
27 chapter, unless otherwise authorized by law.

28 (d) The prosecuting agency has the authority to utilize the inquiry  
29 judge procedures of chapter 10.27 RCW prior to the filing of any action  
30 under this chapter to seek the issuance of compulsory process for the  
31 production of any records necessary for a determination of whether to  
32 seek the civil commitment of a person under this chapter. Any records  
33 obtained pursuant to this process may only be disclosed by the  
34 prosecuting agency in the course of performing its duties pursuant to  
35 this chapter, or unless otherwise authorized by law.

36 (2) (~~This section applies to acts committed before, on, or after~~  
37 ~~March 26, 1992.~~

1       ~~(3))~~) The agency, its employees, and officials shall be immune from  
2 liability for any good-faith conduct under this section.

3       ~~((4))~~) (3) As used in this section, "agency with jurisdiction"  
4 means that agency with the authority to direct the release of a person  
5 serving a sentence or term of confinement and includes the department  
6 of corrections, the indeterminate sentence review board, and the  
7 department of social and health services.

8       **Sec. 3.** RCW 71.09.030 and 2008 c 213 s 12 are each amended to read  
9 as follows:

10       (1) A petition may be filed alleging that a person is a sexually  
11 violent predator and stating sufficient facts to support such  
12 allegation when it appears that: ~~((1))~~) (a) A person who at any time  
13 previously has been convicted of a sexually violent offense is about to  
14 be released from total confinement ~~((on, before, or after July 1,~~  
15 ~~1990))~~; ~~((2))~~) (b) a person found to have committed a sexually violent  
16 offense as a juvenile is about to be released from total confinement  
17 ~~((on, before, or after July 1, 1990))~~; ~~((3))~~) (c) a person who has  
18 been charged with a sexually violent offense and who has been  
19 determined to be incompetent to stand trial is about to be released, or  
20 has been released ~~((on, before, or after July 1, 1990))~~, pursuant to  
21 RCW 10.77.086(4); ~~((4))~~) (d) a person who has been found not guilty by  
22 reason of insanity of a sexually violent offense is about to be  
23 released, or has been released ~~((on, before, or after July 1, 1990))~~,  
24 pursuant to RCW 10.77.020(3), 10.77.110 (1) or (3), or 10.77.150; or  
25 ~~((5))~~) (e) a person who at any time previously has been convicted of  
26 a sexually violent offense and has since been released from total  
27 confinement and has committed a recent overt act ~~((; and it appears that~~  
28 ~~the person may be a sexually violent predator, the prosecuting attorney~~  
29 ~~of the county where the person was convicted or charged or the attorney~~  
30 ~~general if requested by the prosecuting attorney may file a petition~~  
31 ~~alleging that the person is a "sexually violent predator" and stating~~  
32 ~~sufficient facts to support such allegation))~~.

33       (2) The petition may be filed by:

34       (a) The prosecuting attorney of a county in which:

35       (i) The person has been charged or convicted with a sexually  
36 violent offense;

1 (ii) A recent overt act occurred involving a person covered under  
2 subsection (1)(e) of this section; or

3 (iii) The person was charged or convicted of a criminal offense  
4 that would qualify as a recent overt act, if the only sexually violent  
5 offense charge or conviction occurred in a jurisdiction other than  
6 Washington; or

7 (b) The attorney general, if requested by the county prosecuting  
8 attorney identified in (a) of this subsection. If the county  
9 prosecuting attorney requests that the attorney general file and  
10 prosecute a case under this chapter, then the county shall charge the  
11 attorney general only the fees, including filing and jury fees, that  
12 would be charged and paid by the county prosecuting attorney, if the  
13 county prosecuting attorney retained the case.

14 **Sec. 4.** RCW 71.09.040 and 2001 c 286 s 6 are each amended to read  
15 as follows:

16 (1) Upon the filing of a petition under RCW 71.09.030, the judge  
17 shall determine whether probable cause exists to believe that the  
18 person named in the petition is a sexually violent predator. If such  
19 determination is made the judge shall direct that the person be taken  
20 into custody.

21 (2) Within seventy-two hours after a person is taken into custody  
22 pursuant to subsection (1) of this section, the court shall provide the  
23 person with notice of, and an opportunity to appear in person at, a  
24 hearing to contest probable cause as to whether the person is a  
25 sexually violent predator. In order to assist the person at the  
26 hearing, within twenty-four hours of service of the petition, the  
27 prosecuting agency shall provide to the person or his or her counsel a  
28 copy of all materials provided to the prosecuting agency by the  
29 referring agency pursuant to RCW 71.09.025, or obtained by the  
30 prosecuting agency pursuant to RCW 71.09.025(1) (c) and (d). At this  
31 hearing, the court shall (a) verify the person's identity, and (b)  
32 determine whether probable cause exists to believe that the person is  
33 a sexually violent predator. At the probable cause hearing, the state  
34 may rely upon the petition and certification for determination of  
35 probable cause filed pursuant to RCW 71.09.030. The state may  
36 supplement this with additional documentary evidence or live testimony.  
37 The person must be held in total confinement at the county jail until

1 the trial court renders a decision after the conclusion of the seventy-  
2 two hour probable cause hearing. The county shall be entitled to  
3 reimbursement for the cost of housing and transporting the person  
4 pursuant to rules adopted by the secretary.

5 (3) At the probable cause hearing, the person shall have the  
6 following rights in addition to the rights previously specified: (a)  
7 To be represented by counsel; (b) to present evidence on his or her  
8 behalf; (c) to cross-examine witnesses who testify against him or her;  
9 (d) to view and copy all petitions and reports in the court file. The  
10 court must permit a witness called by either party to testify by  
11 telephone. Because this is a special proceeding, discovery pursuant to  
12 the civil rules shall not occur until after the hearing has been held  
13 and the court has issued its decision.

14 (4) If the probable cause determination is made, the judge shall  
15 direct that the person be transferred to an appropriate facility for an  
16 evaluation as to whether the person is a sexually violent predator.  
17 The evaluation shall be conducted by a person deemed to be  
18 professionally qualified to conduct such an examination pursuant to  
19 rules developed by the department of social and health services. In  
20 adopting such rules, the department of social and health services shall  
21 consult with the department of health and the department of  
22 corrections. In no event shall the person be released from confinement  
23 prior to trial. (~~A witness called by either party shall be permitted~~  
24 ~~to testify by telephone.~~)

25 **Sec. 5.** RCW 71.09.050 and 1995 c 216 s 5 are each amended to read  
26 as follows:

27 (1) Within forty-five days after the completion of any hearing held  
28 pursuant to RCW 71.09.040, the court shall conduct a trial to determine  
29 whether the person is a sexually violent predator. The trial may be  
30 continued upon the request of either party and a showing of good cause,  
31 or by the court on its own motion in the due administration of justice,  
32 and when the respondent will not be substantially prejudiced. At all  
33 stages of the proceedings under this chapter, any person subject to  
34 this chapter shall be entitled to the assistance of counsel, and if the  
35 person is indigent, the court shall appoint counsel to assist him or  
36 her. The person shall be confined in a secure facility for the  
37 duration of the trial.

1 (2) Whenever any person is subjected to an examination under this  
2 chapter, he or she may retain experts or professional persons to  
3 perform an examination on their behalf. When the person wishes to be  
4 examined by a qualified expert or professional person of his or her own  
5 choice, such examiner shall be permitted to have reasonable access to  
6 the person for the purpose of such examination, as well as to all  
7 relevant medical and psychological records and reports. In the case of  
8 a person who is indigent, the court shall, upon the person's request,  
9 assist the person in obtaining an expert or professional person to  
10 perform an examination or participate in the trial on the person's  
11 behalf.

12 (3) The person, the prosecuting (~~attorney or attorney general~~)  
13 agency, or the judge shall have the right to demand that the trial be  
14 before a twelve-person jury. If no demand is made, the trial shall be  
15 before the court.

16 (4) The prosecuting agency shall have the right to have the person  
17 evaluated by experts chosen by the state.

18 **Sec. 6.** RCW 71.09.060 and 2008 c 213 s 13 are each amended to read  
19 as follows:

20 (1) The court or jury shall determine whether, beyond a reasonable  
21 doubt, the person is a sexually violent predator. In determining  
22 whether or not the person would be likely to engage in predatory acts  
23 of sexual violence if not confined in a secure facility, the fact  
24 finder may consider all admissible evidence, subject to the limitations  
25 in this chapter. A finder of fact may consider only placement  
26 conditions and voluntary treatment options that would exist for the  
27 person if unconditionally released from detention on the sexually  
28 violent predator petition. The community protection program under RCW  
29 71A.12.230 may not be considered as a placement condition or treatment  
30 option available to the person if unconditionally released from  
31 detention on a sexually violent predator petition. When the  
32 determination is made by a jury, the verdict must be unanimous. In  
33 evaluating a person's mental condition and future danger, the fact  
34 finder may consider evidence relating to the person's participation in  
35 treatment or treatment refusal, including observations of the person  
36 while awaiting trial in the custody of the department. The fact finder  
37 may also consider whether the person's mental condition and recidivism

1 risk are best ameliorated over the course of the person's expected  
2 lifetime by immediate release on the current petition, or through a  
3 continuing opportunity for treatment in a secure facility followed by  
4 the possibility of a less restrictive alternative or unconditional  
5 release at a later time. The finder of fact may not consider  
6 procedural details of the less restrictive alternative or unconditional  
7 release process, evidence addressing conditions of confinement, or the  
8 possibility of a future petition based on a recent overt act.

9 If, on the date that the petition is filed, the person was living  
10 in the community after release from custody, the state must also prove  
11 beyond a reasonable doubt that the person had committed a recent overt  
12 act. If the state alleges that the prior sexually violent offense that  
13 forms the basis for the petition for commitment was an act that was  
14 sexually motivated as provided in RCW 71.09.020(15)(c), the state must  
15 prove beyond a reasonable doubt that the alleged sexually violent act  
16 was sexually motivated as defined in RCW 9.94A.030.

17 If the court or jury determines that the person is a sexually  
18 violent predator, the person shall be committed to the custody of the  
19 department of social and health services for placement in a secure  
20 facility operated by the department of social and health services for  
21 control, care, and treatment until such time as: (a) The person's  
22 condition has so changed that the person no longer meets the definition  
23 of a sexually violent predator; or (b) conditional release to a less  
24 restrictive alternative as set forth in RCW 71.09.092 is in the best  
25 interest of the person and conditions can be imposed that would  
26 adequately protect the community.

27 If the court or unanimous jury decides that the state has not met  
28 its burden of proving that the person is a sexually violent predator,  
29 the court shall direct the person's release.

30 If the jury is unable to reach a unanimous verdict, the court shall  
31 declare a mistrial and set a retrial within forty-five days of the date  
32 of the mistrial unless the prosecuting agency earlier moves to dismiss  
33 the petition. The retrial may be continued upon the request of either  
34 party accompanied by a showing of good cause, or by the court on its  
35 own motion in the due administration of justice provided that the  
36 respondent will not be substantially prejudiced. In no event may the  
37 person be released from confinement prior to retrial or dismissal of  
38 the case.

1 (2) If the person charged with a sexually violent offense has been  
2 found incompetent to stand trial, and is about to (~~be~~) be or has  
3 been released pursuant to RCW 10.77.086(4), and his or her commitment  
4 is sought pursuant to subsection (1) of this section, the court shall  
5 first hear evidence and determine whether the person did commit the act  
6 or acts charged if the court did not enter a finding prior to dismissal  
7 under RCW 10.77.086(4) that the person committed the act or acts  
8 charged. The hearing on this issue must comply with all the procedures  
9 specified in this section. In addition, the rules of evidence  
10 applicable in criminal cases shall apply, and all constitutional rights  
11 available to defendants at criminal trials, other than the right not to  
12 be tried while incompetent, shall apply. After hearing evidence on  
13 this issue, the court shall make specific findings on whether the  
14 person did commit the act or acts charged, the extent to which the  
15 person's incompetence or developmental disability affected the outcome  
16 of the hearing, including its effect on the person's ability to consult  
17 with and assist counsel and to testify on his or her own behalf, the  
18 extent to which the evidence could be reconstructed without the  
19 assistance of the person, and the strength of the prosecution's case.  
20 If, after the conclusion of the hearing on this issue, the court finds,  
21 beyond a reasonable doubt, that the person did commit the act or acts  
22 charged, it shall enter a final order, appealable by the person, on  
23 that issue, and may proceed to consider whether the person should be  
24 committed pursuant to this section.

25 (3) Except as otherwise provided in this chapter, the state shall  
26 comply with RCW 10.77.220 while confining the person (~~pursuant to this~~  
27 ~~chapter, except that~~)). During all court proceedings where the person  
28 is present, the person shall be (~~detained in a secure facility~~)  
29 totally confined in the county jail. If the proceedings last more than  
30 one consecutive day, the person shall be held in the county jail for  
31 the duration of the proceedings, except the person may be returned to  
32 the department's custody on weekends and court holidays if the court  
33 deems such a transfer feasible. The county shall be entitled to  
34 reimbursement for the cost of housing and transporting the person  
35 pursuant to rules adopted by the secretary. The department shall not  
36 place the person, even temporarily, in a facility on the grounds of any  
37 state mental facility or regional habilitation center because these  
38 institutions are insufficiently secure for this population.

1 (4) A court has jurisdiction to order a less restrictive  
2 alternative placement only after a hearing ordered pursuant to RCW  
3 71.09.090 following initial commitment under this section and in accord  
4 with the provisions of this chapter.

5 **Sec. 7.** RCW 71.09.080 and 1995 c 216 s 8 are each amended to read  
6 as follows:

7 (1) Any person subjected to restricted liberty as a sexually  
8 violent predator pursuant to this chapter shall not forfeit any legal  
9 right or suffer any legal disability as a consequence of any actions  
10 taken or orders made, other than as specifically provided in this  
11 chapter, or as otherwise authorized by law.

12 (2) Any person committed pursuant to this chapter has the right to  
13 adequate care and individualized treatment. The department of social  
14 and health services shall keep records detailing all medical, expert,  
15 and professional care and treatment received by a committed person, and  
16 shall keep copies of all reports of periodic examinations made pursuant  
17 to this chapter. All such records and reports shall be made available  
18 upon request only to: The committed person, his or her attorney, the  
19 prosecuting attorney, the court, the protection and advocacy agency, or  
20 another expert or professional person who, upon proper showing,  
21 demonstrates a need for access to such records.

22 (3) At the time a person is taken into custody or transferred into  
23 a facility pursuant to a petition under this chapter, the professional  
24 person in charge of such facility or his or her designee shall take  
25 reasonable precautions to inventory and safeguard the personal property  
26 of the persons detained or transferred. A copy of the inventory,  
27 signed by the staff member making it, shall be given to the person  
28 detained and shall, in addition, be open to inspection to any  
29 responsible relative, subject to limitations, if any, specifically  
30 imposed by the detained person. For purposes of this subsection,  
31 "responsible relative" includes the guardian, conservator, attorney,  
32 spouse, parent, adult child, or adult brother or sister of the person.  
33 The facility shall not disclose the contents of the inventory to any  
34 other person without consent of the patient or order of the court.

35 (4) Nothing in this chapter prohibits a person presently committed  
36 from exercising a right presently available to him or her for the

1 purpose of obtaining release from confinement, including the right to  
2 petition for a writ of habeas corpus.

3 (5) No indigent person may be conditionally released or  
4 unconditionally discharged under this chapter without suitable  
5 clothing, and the secretary shall furnish the person with such sum of  
6 money as is required by RCW 72.02.100 for persons without ample funds  
7 who are released from correctional institutions. As funds are  
8 available, the secretary may provide payment to the indigent persons  
9 conditionally released pursuant to this chapter consistent with the  
10 optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules  
11 to do so.

12 (6) If a civil commitment petition is dismissed, or a trier of fact  
13 determines that a person does not meet civil commitment criteria, the  
14 person shall be released within twenty-four hours of service of the  
15 release order on the superintendent of the special commitment center,  
16 or later by agreement of the person who is the subject of the petition.  
17 The release order may be stayed by lawful court order pending an appeal  
18 by the state.

19 **Sec. 8.** RCW 71.09.090 and 2005 c 344 s 2 are each amended to read  
20 as follows:

21 (1) If the secretary determines that the person's condition has so  
22 changed that either: (a) The person no longer meets the definition of  
23 a sexually violent predator; or (b) conditional release to a less  
24 restrictive alternative is in the best interest of the person and  
25 conditions can be imposed that adequately protect the community, the  
26 secretary shall authorize the person to petition the court for  
27 conditional release to a less restrictive alternative or unconditional  
28 discharge. The petition shall be filed with the court and served upon  
29 the prosecuting agency responsible for the initial commitment. The  
30 court, upon receipt of the petition for conditional release to a less  
31 restrictive alternative or unconditional discharge, shall within forty-  
32 five days order a hearing.

33 (2)(a) Nothing contained in this chapter shall prohibit the person  
34 from otherwise petitioning the court for conditional release to a less  
35 restrictive alternative or unconditional discharge without the  
36 secretary's approval. The secretary shall provide the committed person  
37 with an annual written notice of the person's right to petition the

1 court for conditional release to a less restrictive alternative or  
2 unconditional discharge over the secretary's objection. The notice  
3 shall contain a waiver of rights. The secretary shall file the notice  
4 and waiver form and the annual report with the court. If the person  
5 does not affirmatively waive the right to petition, the court shall set  
6 a show cause hearing to determine whether probable cause exists to  
7 warrant a hearing on whether the person's condition has so changed  
8 that: (i) He or she no longer meets the definition of a sexually  
9 violent predator; or (ii) conditional release to a proposed less  
10 restrictive alternative would be in the best interest of the person and  
11 conditions can be imposed that would adequately protect the community.

12 (b) The committed person shall have a right to have an attorney  
13 represent him or her at the show cause hearing, which may be conducted  
14 solely on the basis of affidavits or declarations, but the person is  
15 not entitled to be present at the show cause hearing. At the show  
16 cause hearing, the prosecuting attorney or attorney general shall  
17 present prima facie evidence establishing that the committed person  
18 continues to meet the definition of a sexually violent predator and  
19 that a less restrictive alternative is not in the best interest of the  
20 person and conditions cannot be imposed that adequately protect the  
21 community. In making this showing, the state may rely exclusively upon  
22 the annual report prepared pursuant to RCW 71.09.070. The committed  
23 person may present responsive affidavits or declarations to which the  
24 state may reply. The court may authorize limited discovery before the  
25 annual review show cause hearing.

26 (c) If the court at the show cause hearing determines that either:  
27 (i) The state has failed to present prima facie evidence that the  
28 committed person continues to meet the definition of a sexually violent  
29 predator and that no proposed less restrictive alternative is in the  
30 best interest of the person and conditions cannot be imposed that would  
31 adequately protect the community; or (ii) probable cause exists to  
32 believe that the person's condition has so changed that: (A) The  
33 person no longer meets the definition of a sexually violent predator;  
34 or (B) release to a proposed less restrictive alternative would be in  
35 the best interest of the person and conditions can be imposed that  
36 would adequately protect the community, then the court shall set a  
37 hearing on either or both issues.

1 (d) If the court has not previously considered the issue of release  
2 to a less restrictive alternative, either through a trial on the merits  
3 or through the procedures set forth in RCW 71.09.094(1), the court  
4 shall consider whether release to a less restrictive alternative would  
5 be in the best interests of the person and conditions can be imposed  
6 that would adequately protect the community, without considering  
7 whether the person's condition has changed. The court may not find  
8 probable cause for a trial addressing less restrictive alternatives  
9 unless a proposed less restrictive alternative placement meeting the  
10 conditions of RCW 71.09.092 is presented to the court at the show cause  
11 hearing.

12 (3)(a) At the hearing resulting from subsection (1) or (2) of this  
13 section, the committed person shall be entitled to be present and to  
14 the benefit of all constitutional protections that were afforded to the  
15 person at the initial commitment proceeding. The prosecuting agency  
16 (~~(or the attorney general if requested by the county)~~) shall represent  
17 the state and shall have a right to a jury trial and to have the  
18 committed person evaluated by experts chosen by the state. The  
19 committed person shall also have the right to a jury trial and the  
20 right to have experts evaluate him or her on his or her behalf and the  
21 court shall appoint an expert if the person is indigent and requests an  
22 appointment.

23 (b) If the issue at the hearing is whether the person should be  
24 unconditionally discharged, the burden of proof shall be upon the state  
25 to prove beyond a reasonable doubt that the committed person's  
26 condition remains such that the person continues to meet the definition  
27 of a sexually violent predator. Evidence of the prior commitment trial  
28 and disposition is admissible. The recommitment proceeding shall  
29 otherwise proceed as set forth in RCW 71.09.050 and 71.09.060.

30 (c) If the issue at the hearing is whether the person should be  
31 conditionally released to a less restrictive alternative, the burden of  
32 proof at the hearing shall be upon the state to prove beyond a  
33 reasonable doubt that conditional release to any proposed less  
34 restrictive alternative either: (i) Is not in the best interest of the  
35 committed person; or (ii) does not include conditions that would  
36 adequately protect the community. Evidence of the prior commitment  
37 trial and disposition is admissible. In evaluating the proposed less  
38 restrictive alternative, the finder of fact may consider whether the

1 person's mental condition and recidivism risk is better ameliorated  
2 through completion of the special commitment center treatment program  
3 and eventual placement in a secure community transition facility,  
4 rather than the proposed less restrictive alternative.

5 (4)(a) Probable cause exists to believe that a person's condition  
6 has "so changed," under subsection (2) of this section, only when  
7 evidence exists, since the person's last commitment trial, or less  
8 restrictive alternative proceeding, of a substantial change in the  
9 person's physical or mental condition such that the person either no  
10 longer meets the definition of a sexually violent predator or that a  
11 conditional release to a less restrictive alternative is in the  
12 person's best interest and conditions can be imposed to adequately  
13 protect the community.

14 (b) A new trial proceeding under subsection (3) of this section may  
15 be ordered, or a trial proceeding may be held, only when there is  
16 current evidence from a Washington licensed professional of one of the  
17 following and the evidence presents a change in condition since the  
18 person's last commitment trial proceeding:

19 (i) An identified physiological change to the person, such as  
20 paralysis, stroke, or dementia, that renders the committed person  
21 unable to commit a sexually violent act and this change is permanent;  
22 or

23 (ii) A change in the person's mental condition brought about  
24 through positive response to continuing participation in treatment  
25 which indicates that the person meets the standard for conditional  
26 release to a less restrictive alternative or that the person would be  
27 safe to be at large if unconditionally released from commitment.

28 (c) For purposes of this section, a change in a single demographic  
29 factor, without more, does not establish probable cause for a new trial  
30 proceeding under subsection (3) of this section. As used in this  
31 section, a single demographic factor includes, but is not limited to,  
32 a change in the chronological age, marital status, or gender of the  
33 committed person.

34 (5) The jurisdiction of the court over a person civilly committed  
35 pursuant to this chapter continues until such time as the person is  
36 unconditionally discharged.

1       **Sec. 9.** RCW 71.09.092 and 1995 c 216 s 10 are each amended to read  
2 as follows:

3       Before the court may enter an order directing conditional release  
4 to a less restrictive alternative, it must find the following: (1) The  
5 person will be treated by a treatment provider who is qualified to  
6 provide such treatment in the state of Washington under chapter 18.155  
7 RCW; (2) the treatment provider has presented a specific course of  
8 treatment and has agreed to assume responsibility for such treatment  
9 and will report progress to the court on a regular basis, and will  
10 report violations immediately to the court, the prosecutor, the  
11 supervising community corrections officer, and the superintendent of  
12 the special commitment center; (3) housing exists in Washington that is  
13 sufficiently secure to protect the community, and the person or agency  
14 providing housing to the conditionally released person has agreed in  
15 writing to accept the person, to provide the level of security required  
16 by the court, and immediately to report to the court, the prosecutor,  
17 the supervising community corrections officer, and the superintendent  
18 of the special commitment center if the person leaves the housing to  
19 which he or she has been assigned without authorization; (4) the person  
20 is willing to comply with the treatment provider and all requirements  
21 imposed by the treatment provider and by the court; and (5) the person  
22 will be under the personal supervision of the department of corrections  
23 and is willing to comply with supervision requirements imposed by the  
24 department of corrections.

25       **Sec. 10.** RCW 71.09.096 and 2001 c 286 s 12 are each amended to  
26 read as follows:

27       (1) If the court or jury determines that conditional release to a  
28 less restrictive alternative is in the best interest of the person and  
29 includes conditions that would adequately protect the community, and  
30 the court determines that the minimum conditions set forth in RCW  
31 71.09.092 and in this section are met, the court shall enter judgment  
32 and direct a conditional release.

33       (2) The court shall impose any additional conditions necessary to  
34 ensure compliance with treatment and to protect the community. If the  
35 court finds that conditions do not exist that will both ensure the  
36 person's compliance with treatment and protect the community, then the

1 person shall be remanded to the custody of the department of social and  
2 health services for control, care, and treatment in a secure facility  
3 as designated in RCW 71.09.060(1).

4 (3) If the service provider designated by the court to provide  
5 inpatient or outpatient treatment or to monitor or supervise any other  
6 terms and conditions of a person's placement in a less restrictive  
7 alternative is other than the department of social and health services  
8 or the department of corrections, then the service provider so  
9 designated must agree in writing to provide such treatment, monitoring,  
10 or supervision in accord with this section. Any person providing or  
11 agreeing to provide treatment, monitoring, or supervision services  
12 pursuant to this chapter may be compelled to testify and any privilege  
13 with regard to such person's testimony is deemed waived.

14 (4) Prior to authorizing any release to a less restrictive  
15 alternative, the court shall impose such conditions upon the person as  
16 are necessary to ensure the safety of the community. The court shall  
17 order the department of corrections to investigate the less restrictive  
18 alternative and recommend any additional conditions to the court.  
19 These conditions shall include, but are not limited to the following:  
20 Specification of residence, prohibition of contact with potential or  
21 past victims, prohibition of alcohol and other drug use, participation  
22 in a specific course of inpatient or outpatient treatment that may  
23 include monitoring by the use of polygraph and plethysmograph,  
24 monitoring through the use of global positioning satellite technology,  
25 supervision by a department of corrections community corrections  
26 officer, a requirement that the person remain within the state unless  
27 the person receives prior authorization by the court, and any other  
28 conditions that the court determines are in the best interest of the  
29 person or others. A copy of the conditions of release shall be given  
30 to the person and to any designated service providers.

31 (5) Any service provider designated to provide inpatient or  
32 outpatient treatment shall monthly, or as otherwise directed by the  
33 court, submit to the court, to the department of social and health  
34 services facility from which the person was released, to the  
35 ~~((prosecutor of the county in which the person was found to be a~~  
36 ~~sexually violent predator))~~ prosecuting agency, and to the supervising  
37 community corrections officer, a report stating whether the person is

1 complying with the terms and conditions of the conditional release to  
2 a less restrictive alternative.

3 (6) Each person released to a less restrictive alternative shall  
4 have his or her case reviewed by the court that released him or her no  
5 later than one year after such release and annually thereafter until  
6 the person is unconditionally discharged. Review may occur in a  
7 shorter time or more frequently, if the court, in its discretion on its  
8 own motion, or on motion of the person, the secretary, or the  
9 prosecuting ((attorney)) agency so determines. The sole question to be  
10 determined by the court is whether the person shall continue to be  
11 conditionally released to a less restrictive alternative. Absent the  
12 written agreement of the parties, the court may not modify the  
13 conditional release order through the annual review process. The court  
14 in making its determination shall be aided by the periodic reports  
15 filed pursuant to subsection (5) of this section and the opinions of  
16 the secretary and other experts or professional persons.

17 **Sec. 11.** RCW 71.09.098 and 2006 c 282 s 1 are each amended to read  
18 as follows:

19 ~~((1) Any service provider submitting reports pursuant to RCW~~  
20 ~~71.09.096(6), the supervising community corrections officer, the~~  
21 ~~prosecuting attorney, or the attorney general may petition the court,~~  
22 ~~or the court on its own motion may schedule an immediate hearing, for~~  
23 ~~the purpose of revoking or modifying the terms of the person's~~  
24 ~~conditional release to a less restrictive alternative if the petitioner~~  
25 ~~or the court believes the released person is not complying with the~~  
26 ~~terms and conditions of his or her release or is in need of additional~~  
27 ~~care, monitoring, supervision, or treatment.~~

28 ~~(2) If the prosecuting attorney, the supervising community~~  
29 ~~corrections officer, or the court, based upon information received by~~  
30 ~~them, reasonably believes that a conditionally released person is not~~  
31 ~~complying with the terms and conditions of his or her conditional~~  
32 ~~release to a less restrictive alternative, the court or community~~  
33 ~~corrections officer may order that the conditionally released person be~~  
34 ~~apprehended and taken into custody until such time as a hearing can be~~  
35 ~~scheduled to determine the facts and whether or not the person's~~  
36 ~~conditional release should be revoked or modified. A law enforcement~~  
37 ~~officer, who has responded to a request for assistance from a~~

1 department employee, may apprehend and take into custody the  
2 conditionally released person if the law enforcement officer reasonably  
3 believes that the conditionally released person is not complying with  
4 the terms and conditions of his or her conditional release to a less  
5 restrictive alternative. The conditionally released person may be  
6 detained in the county jail or returned to the secure community  
7 transition facility. The court shall be notified before the close of  
8 the next judicial day of the person's apprehension. Both the  
9 prosecuting attorney and the conditionally released person shall have  
10 the right to request an immediate mental examination of the  
11 conditionally released person. If the conditionally released person is  
12 indigent, the court shall, upon request, assist him or her in obtaining  
13 a qualified expert or professional person to conduct the examination.

14 (3) The court, upon receiving notification of the person's  
15 apprehension, shall promptly schedule a hearing. The issue to be  
16 determined is whether the state has proven by a preponderance of the  
17 evidence that the conditionally released person did not comply with the  
18 terms and conditions of his or her release. Hearsay evidence is  
19 admissible if the court finds it otherwise reliable. At the hearing,  
20 the court shall determine whether the person shall continue to be  
21 conditionally released on the same or modified conditions or whether  
22 his or her conditional release shall be revoked and he or she shall be  
23 committed to total confinement, subject to release only in accordance  
24 with provisions of this chapter.)

25 (1) Any service provider submitting reports pursuant to RCW  
26 71.09.096(6), the supervising community corrections officer, the  
27 prosecuting agency, or the secretary's designee may petition the court  
28 for an immediate hearing for the purpose of revoking or modifying the  
29 terms of the person's conditional release to a less restrictive  
30 alternative if the petitioner believes the released person (a) violated  
31 or is in violation of the terms and conditions of the court's  
32 conditional release order or (b) is in need of additional care,  
33 monitoring, supervision, or treatment.

34 (2) The community corrections officer or the secretary's designee  
35 may restrict the person's movement in the community until the petition  
36 is determined by the court. The person may be taken into custody if:

37 (a) The supervising community corrections officer, the secretary's

1 designee, or a law enforcement officer reasonably believes the person  
2 has violated or is in violation of the court's conditional release  
3 order; or

4 (b) The supervising community corrections officer or the  
5 secretary's designee reasonably believes that the person is in need of  
6 additional care, monitoring, supervision, or treatment because the  
7 person presents a danger to himself or herself or others if his or her  
8 conditional release under the conditions imposed by the court's release  
9 order continues.

10 (3) Persons taken into custody pursuant to subsection (2) of this  
11 section shall:

12 (a) Not be released until such time as a hearing is held to  
13 determine whether to revoke or modify the person's conditional release  
14 order and the court has issued its decision;

15 (b) Be held either in the county jail or at the total confinement  
16 facility, at the discretion of the secretary's designee.

17 The court shall be notified before the close of the next judicial  
18 day that the person has been taken into custody and shall promptly  
19 schedule a hearing.

20 (4) Before any hearing to revoke or modify the person's conditional  
21 release order, both the prosecuting agency and the released person  
22 shall have the right to request an immediate mental examination of the  
23 released person. If the conditionally released person is indigent, the  
24 court shall, upon request, assist him or her in obtaining a qualified  
25 expert or professional person to conduct the examination.

26 (5) At any hearing to revoke or modify the conditional release  
27 order:

28 (a) The prosecuting agency shall represent the state, including  
29 determining whether to proceed with revocation or modification of the  
30 conditional release order;

31 (b) Hearsay evidence is admissible if the court finds that it is  
32 otherwise reliable; and

33 (c) The state shall bear the burden of proving by a preponderance  
34 of the evidence that the person has violated or is in violation of the  
35 court's conditional release order or that the person is in need of  
36 additional care, monitoring, supervision, or treatment.

37 (6) If the court determines that the state has met its burden  
38 referenced in subsection (5)(c) of this section, and the issue before

1 the court is revocation of the court's conditional release order, the  
2 court shall consider the evidence presented by the parties and the  
3 following factors relevant to whether continuing the person's  
4 conditional release is in the person's best interests or adequate to  
5 protect the community:

6 (a) The nature of the condition that was violated by the person or  
7 that the person was in violation of in the context of the person's  
8 criminal history and underlying mental conditions;

9 (b) The degree to which the violation was intentional or grossly  
10 negligent;

11 (c) The ability and willingness of the released person to strictly  
12 comply with the conditional release order;

13 (d) The degree of progress made by the person in community-based  
14 treatment; and

15 (e) The risk to the public or particular persons if the conditional  
16 release continues under the conditional release order that was  
17 violated.

18 Any factor alone, or in combination, shall support the court's  
19 determination to revoke the conditional release order.

20 (7) If the court determines the state has met its burden referenced  
21 in subsection (5)(c) of this section, and the issue before the court is  
22 modification of the court's conditional release order, the court shall  
23 modify the conditional release order by adding conditions if the court  
24 determines that the person is in need of additional care, monitoring,  
25 supervision, or treatment. The court has authority to modify its  
26 conditional release order by substituting a new treatment provider,  
27 requiring new housing for the person, or imposing such additional  
28 supervision conditions as the court deems appropriate. The court shall  
29 not reduce or eliminate supervision conditions in its release order  
30 without the agreement of the person and the prosecuting agency.

31 (8) A person whose conditional release has been revoked shall be  
32 remanded to the custody of the secretary for control, care, and  
33 treatment in a total confinement facility as designated in RCW  
34 71.09.060(1). The person is thereafter eligible for conditional  
35 release only in accord with the provisions of RCW 71.09.090 and related  
36 statutes.



1 A treatment provider approved by the department of social and  
2 health services under ~~((e))~~ (b) of this subsection, who is not  
3 certified by the department of health, shall consult with a certified  
4 sex offender treatment provider during the person's period of treatment  
5 to ensure compliance with the rules adopted by the department of  
6 health. The frequency and content of the consultation shall be based  
7 on the recommendation of the certified sex offender treatment provider.

8 (2) A treatment provider, whether or not he or she is employed or  
9 approved by the department of social and health services under  
10 subsection (1) of this section or otherwise certified, may not perform  
11 or provide treatment of sexually violent predators under this section  
12 if the treatment provider has been:

- 13 (a) Convicted of a sex offense, as defined in RCW 9.94A.030;
- 14 (b) Convicted in any other jurisdiction of an offense that under  
15 the laws of this state would be classified as a sex offense as defined  
16 in RCW 9.94A.030; or
- 17 (c) Suspended or otherwise restricted from practicing any health  
18 care profession by competent authority in any state, federal, or  
19 foreign jurisdiction.

20 (3) Nothing in this section prohibits a qualified expert from  
21 examining or evaluating a sexually violent predator who has been  
22 conditionally released for purposes of presenting an opinion in court  
23 proceedings.

--- END ---