
HOUSE BILL 1059

AS AMENDED BY THE SENATE

Passed Legislature - 2015 Regular Session

State of Washington **64th Legislature** **2015 Regular Session**

By Representatives Fagan, Goodman, Hayes, Moscoso, Takko, Tarleton, Orwall, Nealey, Klippert, Pettigrew, Gregerson, Haler, Fitzgibbon, Stanford, and Farrell; by request of Attorney General

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1 AN ACT Relating to sexually violent predators; amending RCW
2 71.09.070, 71.09.020, and 71.09.096; providing an effective date; and
3 declaring an emergency.

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

5 **Sec. 1.** RCW 71.09.070 and 2011 2nd sp.s. c 7 s 1 are each
6 amended to read as follows:

7 (1) Each person committed under this chapter shall have a current
8 examination of his or her mental condition made by the department
9 (~~of social and health services~~) at least once every year. (~~The~~
10 ~~annual report shall include~~)

11 (2) The evaluator must prepare a report that includes
12 consideration of whether:

13 (a) The committed person currently meets the definition of a
14 sexually violent predator (~~and whether~~);

15 (b) Conditional release to a less restrictive alternative is in
16 the best interest of the person; and

17 (c) Conditions can be imposed that would adequately protect the
18 community.

19 (3) The department, on request of the committed person, shall
20 allow a record of the annual review interview to be preserved by
21 audio recording and made available to the committed person.

1 (4) The evaluator must indicate in the report whether the
2 committed person participated in the interview and examination.

3 ~~(5) The department ((of social and health services)) shall file~~
4 ~~((this periodic))~~ the report with the court that committed the person
5 under this chapter. The report shall be in the form of a declaration
6 or certification in compliance with the requirements of RCW 9A.72.085
7 and shall be prepared by a professionally qualified person as defined
8 by rules adopted by the secretary. A copy of the report shall be
9 served on the prosecuting agency involved in the initial commitment
10 and upon the committed person and his or her counsel.

11 (6)(a) The committed person may retain, or if he or she is
12 indigent and so requests, the court may appoint a qualified expert or
13 a professional person to examine him or her, and such expert or
14 professional person shall have access to all records concerning the
15 person.

16 ~~((+2))~~ (b) Any report prepared by the expert or professional
17 person and any expert testimony on the committed person's behalf is
18 not admissible in a proceeding pursuant to RCW 71.09.090, unless the
19 committed person participated in the most recent interview and
20 evaluation completed by the department.

21 (7) If an unconditional release trial is ordered pursuant to RCW
22 71.09.090, this section is suspended until the completion of that
23 trial. If the individual is found either by jury or the court to
24 continue to meet the definition of a sexually violent predator, the
25 department must conduct an examination pursuant to this section no
26 later than one year after the date of the order finding that the
27 individual continues to be a sexually violent predator. The
28 examination must comply with the requirements of this section.

29 (8) During any period of confinement pursuant to a criminal
30 conviction, or for any period of detention awaiting trial on criminal
31 charges, this section is suspended. Upon the return of the person
32 committed under this chapter to the custody of the department, the
33 department shall initiate an examination of the person's mental
34 condition. The examination must comply with the requirements of
35 subsection (1) of this section.

36 **Sec. 2.** RCW 71.09.020 and 2009 c 409 s 1 are each amended to
37 read as follows:

38 Unless the context clearly requires otherwise, the definitions in
39 this section apply throughout this chapter.

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

3 (2) "Health care facility" means any hospital, hospice care
4 center, licensed or certified health care facility, health
5 maintenance organization regulated under chapter 48.46 RCW, federally
6 qualified health maintenance organization, federally approved renal
7 dialysis center or facility, or federally approved blood bank.

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

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

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

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

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

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

30 (9) "Personality disorder" means an enduring pattern of inner
31 experience and behavior that deviates markedly from the expectations
32 of the individual's culture, is pervasive and inflexible, has onset
33 in adolescence or early adulthood, is stable over time and leads to
34 distress or impairment. Purported evidence of a personality disorder
35 must be supported by testimony of a licensed forensic psychologist or
36 psychiatrist.

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

1 (11) "Prosecuting agency" means the prosecuting attorney of the
2 county where the person was convicted or charged or the attorney
3 general if requested by the prosecuting attorney, as provided in RCW
4 71.09.030.

5 (12) "Recent overt act" means any act, threat, or combination
6 thereof that has either caused harm of a sexually violent nature or
7 creates a reasonable apprehension of such harm in the mind of an
8 objective person who knows of the history and mental condition of the
9 person engaging in the act or behaviors.

10 (13) "Risk potential activity" or "risk potential facility" means
11 an activity or facility that provides a higher incidence of risk to
12 the public from persons conditionally released from the special
13 commitment center. Risk potential activities and facilities include:
14 Public and private schools, school bus stops, licensed day care and
15 licensed preschool facilities, public parks, publicly dedicated
16 trails, sports fields, playgrounds, recreational and community
17 centers, churches, synagogues, temples, mosques, public libraries,
18 public and private youth camps, and others identified by the
19 department following the hearings on a potential site required in RCW
20 71.09.315. For purposes of this chapter, "school bus stops" does not
21 include bus stops established primarily for public transit.

22 (14) "Secretary" means the secretary of social and health
23 services or the secretary's designee.

24 (15) "Secure facility" means a residential facility for persons
25 civilly confined under the provisions of this chapter that includes
26 security measures sufficient to protect the community. Such
27 facilities include total confinement facilities, secure community
28 transition facilities, and any residence used as a court-ordered
29 placement under RCW 71.09.096.

30 (16) "Secure community transition facility" means a residential
31 facility for persons civilly committed and conditionally released to
32 a less restrictive alternative under this chapter. A secure community
33 transition facility has supervision and security, and either provides
34 or ensures the provision of sex offender treatment services. Secure
35 community transition facilities include but are not limited to the
36 facility established pursuant to RCW 71.09.250(1)(a)(i) and any
37 community-based facilities established under this chapter and
38 operated by the secretary or under contract with the secretary.

39 (17) "Sexually violent offense" means an act committed on,
40 before, or after July 1, 1990, that is: (a) An act defined in Title

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

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

28 (19) "Total confinement facility" means a secure facility that
29 provides supervision and sex offender treatment services in a total
30 confinement setting. Total confinement facilities include the special
31 commitment center and any similar facility designated as a total
32 confinement facility by the secretary.

33 (20) "Treatment" means the sex offender specific treatment
34 program at the special commitment center or a specific course of sex
35 offender treatment pursuant to RCW 71.09.092 (1) and (2).

36 **Sec. 3.** RCW 71.09.096 and 2009 c 409 s 10 are each amended to
37 read as follows:

38 (1) If the court or jury determines that conditional release to a
39 less restrictive alternative is in the best interest of the person

1 and includes conditions that would adequately protect the community,
2 and the court determines that the minimum conditions set forth in RCW
3 71.09.092 and in this section are met, the court shall enter judgment
4 and direct a conditional release.

5 (2) The court shall impose any additional conditions necessary to
6 ensure compliance with treatment and to protect the community. If the
7 court finds that conditions do not exist that will both ensure the
8 person's compliance with treatment and protect the community, then
9 the person shall be remanded to the custody of the department of
10 social and health services for control, care, and treatment in a
11 secure facility as designated in RCW 71.09.060(1).

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

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

1 (5)(a) Prior to authorizing release to a less restrictive
2 alternative, the court shall consider whether it is appropriate to
3 release the person to the person's county of commitment. To ensure
4 equitable distribution of releases, and prevent the disproportionate
5 grouping of persons subject to less restrictive orders in any one
6 county, or in any one jurisdiction or community within a county, the
7 legislature finds it is appropriate for releases to a less
8 restrictive alternative to occur in the person's county of
9 commitment, unless the court determines that the person's return to
10 his or her county of commitment would be inappropriate considering
11 any court-issued protection orders, victim safety concerns, the
12 availability of appropriate treatment or facilities that would
13 adequately protect the community, negative influences on the person,
14 or the location of family or other persons or organizations offering
15 support to the person. When the department or court assists in
16 developing a placement under this section which is outside of the
17 county of commitment, and there are two or more options for
18 placement, it shall endeavor to develop the placement in a manner
19 that does not have a disproportionate effect on a single county.

20 (b) If the committed person is not conditionally released to his
21 or her county of commitment, the department shall provide the law and
22 justice council of the county in which the person is conditionally
23 released with notice and a written explanation.

24 (c) For purposes of this section, the person's county of
25 commitment means the county of the court which ordered the person's
26 commitment.

27 (d) This subsection (5) does not apply to releases to a secure
28 community transition facility under RCW 71.09.250.

29 (6) Any service provider designated to provide inpatient or
30 outpatient treatment shall monthly, or as otherwise directed by the
31 court, submit to the court, to the department of social and health
32 services facility from which the person was released, to the
33 prosecuting agency, and to the supervising community corrections
34 officer, a report stating whether the person is complying with the
35 terms and conditions of the conditional release to a less restrictive
36 alternative.

37 ~~((+6))~~ (7) Each person released to a less restrictive
38 alternative shall have his or her case reviewed by the court that
39 released him or her no later than one year after such release and
40 annually thereafter until the person is unconditionally discharged.

1 Review may occur in a shorter time or more frequently, if the court,
2 in its discretion on its own motion, or on motion of the person, the
3 secretary, or the prosecuting agency so determines. The sole question
4 to be determined by the court is whether the person shall continue to
5 be conditionally released to a less restrictive alternative. The
6 court in making its determination shall be aided by the periodic
7 reports filed pursuant to subsection (~~(+5+)~~) (6) of this section and
8 the opinions of the secretary and other experts or professional
9 persons.

10 NEW SECTION. **Sec. 4.** Sections 1 and 2 of this act are necessary
11 for the immediate preservation of the public peace, health, or
12 safety, or support of the state government and its existing public
13 institutions, and take effect July 1, 2015.

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