

2 **2SSB 5088** - H COMM AMD **ADOPTED 4/10/95**

3 By Committee on Corrections

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "**Sec. 1.** RCW 71.09.020 and 1992 c 145 s 17 are each amended to
8 read as follows:

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

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

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

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

24 (4) "Predatory" means acts directed towards strangers or
25 individuals with whom a relationship has been established or promoted
26 for the primary purpose of victimization.

27 ~~((+4))~~ (5) "Recent overt act" means any act that has either caused
28 harm of a sexually violent nature or creates a reasonable apprehension
29 of such harm.

30 (6) "Sexually violent offense" means an act committed on, before,
31 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as
32 rape in the first degree, rape in the second degree by forcible
33 compulsion, rape of a child in the first or second degree, statutory
34 rape in the first or second degree, indecent liberties by forcible
35 compulsion, indecent liberties against a child under age fourteen,
36 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 chapter 71.09 RCW, has been determined beyond
12 a 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 (7) "Less restrictive alternative" means court-ordered treatment in
18 a setting less restrictive than total confinement.

19 (8) "Secretary" means the secretary of social and health services
20 or his or her designee.

21 **Sec. 2.** RCW 71.09.025 and 1992 c 45 s 3 are each amended to read
22 as follows:

23 (1)(a) When it appears that a person may meet the criteria of a
24 sexually violent predator as defined in RCW 71.09.020(1), the agency
25 with jurisdiction shall refer the person in writing to the prosecuting
26 attorney of the county where that person was charged, three months
27 prior to:

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

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

32 (iii) Release of a person who has been charged with a sexually
33 violent offense and who has been determined to be incompetent to stand
34 trial pursuant to RCW 10.77.090(3); or

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

37 (b) The agency shall ~~((inform))~~ provide the prosecutor ~~((of))~~ with
38 all relevant information including but not limited to the following

1 information:

2 (i) ~~((The person's name, identifying factors, anticipated future~~
3 ~~residence, and offense history; and))~~ A complete copy of the
4 institutional records compiled by the department of corrections
5 relating to the person, and any such out-of-state department of
6 corrections' records, if available;

7 (ii) ~~((Documentation of institutional adjustment and any treatment~~
8 ~~received))~~ A complete copy, if applicable, of any file compiled by the
9 indeterminate sentence review board relating to the person;

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

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

14 (v) A current mental health evaluation or mental health records
15 review.

16 (2) This section applies to acts committed before, on, or after
17 March 26, 1992.

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

20 (4) As used in this section, "agency with jurisdiction" means that
21 agency with the authority to direct the release of a person serving a
22 sentence or term of confinement and includes the department of
23 corrections, the indeterminate sentence review board, and the
24 department of social and health services.

25 **Sec. 3.** RCW 71.09.030 and 1992 c 45 s 4 are each amended to read
26 as follows:

27 When it appears that: (1) ~~((The term of total confinement of))~~ A
28 person who at any time previously has been convicted of a sexually
29 violent offense is about to ~~((expire, or has expired))~~ be released from
30 total confinement on, before, or after July 1, 1990; (2) ~~((the term of~~
31 total confinement of)) a person found to have committed a sexually
32 violent offense as a juvenile is about to ~~((expire, or has expired))~~ be
33 released from total confinement on, before, or after July 1, 1990; (3)
34 a person who has been charged with a sexually violent offense and who
35 has been determined to be incompetent to stand trial is about to be
36 released, or has been released on, before, or after July 1, 1990,
37 pursuant to RCW 10.77.090(3); ~~((or))~~ (4) a person who has been found
38 not guilty by reason of insanity of a sexually violent offense is about

1 to be released, or has been released on, before, or after July 1, 1990,
2 pursuant to RCW 10.77.020(3), 10.77.110 (1) or (3), or 10.77.150; or
3 (5) a person who at any time previously has been convicted of a
4 sexually violent offense and has since been released from total
5 confinement and has committed a recent overt act; and it appears that
6 the person may be a sexually violent predator, the prosecuting attorney
7 of the county where the person was convicted or charged or the attorney
8 general if requested by the prosecuting attorney may file a petition
9 alleging that the person is a "sexually violent predator" and stating
10 sufficient facts to support such allegation.

11 **Sec. 4.** RCW 71.09.040 and 1990 c 3 s 1004 are each amended to read
12 as follows:

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

18 (2) Within seventy-two hours after a person is taken into custody
19 pursuant to subsection (1) of this section, the court shall provide the
20 person with notice of, and an opportunity to appear in person at, a
21 hearing to contest probable cause as to whether the person is a
22 sexually violent predator. At this hearing, the court shall (a) verify
23 the person's identity, and (b) determine whether probable cause exists
24 to believe that the person is a sexually violent predator. At the
25 probable cause hearing, the state may rely upon the petition and
26 certification for determination of probable cause filed pursuant to RCW
27 71.09.030. The state may supplement this with additional documentary
28 evidence or live testimony.

29 (3) At the probable cause hearing, the person shall have the
30 following rights in addition to the rights previously specified: (a)
31 To be represented by counsel; (b) to present evidence on his or her
32 behalf; (c) to cross-examine witnesses who testify against him or her;
33 (d) to view and copy all petitions and reports in the court file.

34 (4) If the probable cause determination is made, the judge shall
35 direct that the person ~~((shall))~~ be transferred to an appropriate
36 facility for an evaluation as to whether the person is a sexually
37 violent predator. The evaluation shall be conducted by a person deemed
38 to be professionally qualified to conduct such an examination pursuant

1 to rules developed by the department of social and health services. In
2 adopting such rules, the department of social and health services shall
3 consult with the department of health and the department of
4 corrections. In no event shall the person be released from confinement
5 prior to trial.

6 **Sec. 5.** RCW 71.09.050 and 1990 c 3 s 1005 are each amended to read
7 as follows:

8 (1) Within forty-five days after the (~~filing of a petition~~
9 ~~pursuant to RCW 71.09.030~~) completion of any hearing held pursuant to
10 RCW 71.09.040, the court shall conduct a trial to determine whether the
11 person is a sexually violent predator. The trial may be continued upon
12 the request of either party and a showing of good cause, or by the
13 court on its own motion in the due administration of justice, and when
14 the respondent will not be substantially prejudiced. At all stages of
15 the proceedings under this chapter, any person subject to this chapter
16 shall be entitled to the assistance of counsel, and if the person is
17 indigent, the court shall appoint counsel to assist him or her. The
18 person shall be confined in a secure facility for the duration of the
19 trial.

20 (2) Whenever any person is subjected to an examination under this
21 chapter, he or she may retain experts or professional persons to
22 perform an examination on their behalf. When the person wishes to be
23 examined by a qualified expert or professional person of his or her own
24 choice, such examiner shall be permitted to have reasonable access to
25 the person for the purpose of such examination, as well as to all
26 relevant medical and psychological records and reports. In the case of
27 a person who is indigent, the court shall, upon the person's request,
28 assist the person in obtaining an expert or professional person to
29 perform an examination or participate in the trial on the person's
30 behalf.

31 (3) The person, the prosecuting attorney or attorney general, or
32 the judge shall have the right to demand that the trial be before a
33 twelve-person jury. If no demand is made, the trial shall be before
34 the court.

35 **Sec. 6.** RCW 71.09.060 and 1990 1st ex.s. c 12 s 4 are each amended
36 to read as follows:

37 (1) The court or jury shall determine whether, beyond a reasonable

1 doubt, the person is a sexually violent predator. When the
2 determination is made by a jury, the verdict must be unanimous.

3 If, on the date that the petition is filed, the person was living
4 in the community after release from custody, the state must also prove
5 beyond a reasonable doubt that the person had committed a recent overt
6 act. If the state alleges that the prior sexually violent offense that
7 forms the basis for the petition for commitment was an act that was
8 sexually motivated as provided in RCW 71.09.020(~~(+4)~~)(6)(c), the state
9 must prove beyond a reasonable doubt that the alleged sexually violent
10 act was sexually motivated as defined in RCW 9.94A.030. If the court
11 or jury determines that the person is a sexually violent predator, the
12 person shall be committed to the custody of the department of social
13 and health services for placement in a secure facility operated by the
14 department of social and health services for control, care, and
15 treatment until such time as the person's mental abnormality or
16 personality disorder has so changed that the person is safe either (a)
17 to be at large, or (b) to be released to a less restrictive alternative
18 as set forth in section 10 of this act. (~~Such control, care, and~~
19 ~~treatment shall be provided at a facility operated by the department of~~
20 ~~social and health services.~~) If the court or jury is not satisfied
21 beyond a reasonable doubt that the person is a sexually violent
22 predator, the court shall direct the person's release.

23 (2) If the person charged with a sexually violent offense has been
24 found incompetent to stand trial, and is about to or has been released
25 pursuant to RCW 10.77.090(3), and his or her commitment is sought
26 pursuant to subsection (1) of this section, the court shall first hear
27 evidence and determine whether the person did commit the act or acts
28 charged if the court did not enter a finding prior to dismissal under
29 RCW 10.77.090(3) that the person committed the act or acts charged.
30 The hearing on this issue must comply with all the procedures specified
31 in this section. In addition, the rules of evidence applicable in
32 criminal cases shall apply, and all constitutional rights available to
33 defendants at criminal trials, other than the right not to be tried
34 while incompetent, shall apply. After hearing evidence on this issue,
35 the court shall make specific findings on whether the person did commit
36 the act or acts charged, the extent to which the person's incompetence
37 or developmental disability affected the outcome of the hearing,
38 including its effect on the person's ability to consult with and assist
39 counsel and to testify on his or her own behalf, the extent to which

1 the evidence could be reconstructed without the assistance of the
2 person, and the strength of the prosecution's case. If, after the
3 conclusion of the hearing on this issue, the court finds, beyond a
4 reasonable doubt, that the person did commit the act or acts charged,
5 it shall enter a final order, appealable by the person, on that issue,
6 and may proceed to consider whether the person should be committed
7 pursuant to this section.

8 (3) The state shall comply with RCW 10.77.220 while confining the
9 person pursuant to this chapter, except that during all court
10 proceedings the person shall be detained in a secure facility. The
11 facility shall not be located on the grounds of any state mental
12 facility or regional habilitation center because these institutions are
13 insufficiently secure for this population.

14 **Sec. 7.** RCW 71.09.070 and 1990 c 3 s 1007 are each amended to read
15 as follows:

16 Each person committed under this chapter shall have a current
17 examination of his or her mental condition made at least once every
18 year. The annual report shall include consideration of whether
19 conditional release to a less restrictive alternative is in the best
20 interest of the person and will adequately protect the community. The
21 person may retain, or if he or she is indigent and so requests, the
22 court may appoint a qualified expert or a professional person to
23 examine him or her, and such expert or professional person shall have
24 access to all records concerning the person. The periodic report shall
25 be provided to the court that committed the person under this chapter.

26 **Sec. 8.** RCW 71.09.080 and 1990 c 3 s 1008 are each amended to read
27 as follows:

28 ~~((The involuntary detention or commitment of persons under this~~
29 ~~chapter shall conform to constitutional requirements for care and~~
30 ~~treatment.))~~ (1) Any person subjected to restricted liberty as a
31 sexually violent predator pursuant to this chapter shall not forfeit
32 any legal right or suffer any legal disability as a consequence of any
33 actions taken or orders made, other than as specifically provided in
34 this chapter.

35 (2) Any person committed pursuant to this chapter has the right to
36 adequate care and individualized treatment. The department of social
37 and health services shall keep records detailing all medical, expert,

1 and professional care and treatment received by a committed person, and
2 shall keep copies of all reports of periodic examinations made pursuant
3 to this chapter. All such records and reports shall be made available
4 upon request only to: The committed person, his or her attorney, the
5 prosecuting attorney, the court, the protection and advocacy agency, or
6 another expert or professional person who, upon proper showing,
7 demonstrates a need for access to such records.

8 (3) At the time a person is taken into custody or transferred into
9 a facility pursuant to a petition under this chapter, the professional
10 person in charge of such facility or his or her designee shall take
11 reasonable precautions to inventory and safeguard the personal property
12 of the persons detained or transferred. A copy of the inventory,
13 signed by the staff member making it, shall be given to the person
14 detained and shall, in addition, be open to inspection to any
15 responsible relative, subject to limitations, if any, specifically
16 imposed by the detained person. For purposes of this subsection,
17 "responsible relative" includes the guardian, conservator, attorney,
18 spouse, parent, adult child, or adult brother or sister of the person.
19 The facility shall not disclose the contents of the inventory to any
20 other person without consent of the patient or order of the court.

21 (4) Nothing in this chapter prohibits a person presently committed
22 from exercising a right presently available to him or her for the
23 purpose of obtaining release from confinement, including the right to
24 petition for a writ of habeas corpus.

25 (5) No indigent person may be conditionally released or
26 unconditionally discharged under this chapter without suitable
27 clothing, and the secretary shall furnish the person with such sum of
28 money as is required by RCW 72.02.100 for persons without ample funds
29 who are released from correctional institutions. As funds are
30 available, the secretary may provide payment to the indigent persons
31 conditionally released pursuant to this chapter consistent with the
32 optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules
33 to do so.

34 **Sec. 9.** RCW 71.09.090 and 1992 c 45 s 7 are each amended to read
35 as follows:

36 (1) If the secretary ((of the department of social and health
37 services)) determines that the person's mental abnormality or
38 personality disorder has so changed that the person is not likely to

1 engage in predatory acts of sexual violence if conditionally released
2 to a less restrictive alternative or unconditionally discharged, the
3 secretary shall authorize the person to petition the court for
4 conditional release to a less restrictive alternative or unconditional
5 discharge. The petition shall be served upon the court and the
6 prosecuting attorney. The court, upon receipt of the petition for
7 conditional release to a less restrictive alternative or unconditional
8 discharge, shall within forty-five days order a hearing. The
9 prosecuting attorney or the attorney general, if requested by the
10 county, shall represent the state, and shall have the right to have the
11 petitioner examined by an expert or professional person of his or her
12 choice. The hearing shall be before a jury if demanded by either the
13 petitioner or the prosecuting attorney or attorney general. The burden
14 of proof shall be upon the prosecuting attorney or attorney general to
15 show beyond a reasonable doubt that the petitioner's mental abnormality
16 or personality disorder remains such that the petitioner is not safe to
17 be at large and that if conditionally released to a less restrictive
18 alternative or unconditionally discharged is likely to engage in
19 predatory acts of sexual violence.

20 (2) Nothing contained in this chapter shall prohibit the person
21 from otherwise petitioning the court for conditional release to a less
22 restrictive alternative or unconditional discharge without the
23 secretary's approval. The secretary shall provide the committed person
24 with an annual written notice of the person's right to petition the
25 court for conditional release to a less restrictive alternative or
26 unconditional discharge over the secretary's objection. The notice
27 shall contain a waiver of rights. The secretary shall forward the
28 notice and waiver form to the court with the annual report. If the
29 person does not affirmatively waive the right to petition, the court
30 shall set a show cause hearing to determine whether facts exist that
31 warrant a hearing on whether the person's condition has so changed that
32 he or she is safe to be ~~((at large))~~ conditionally released to a less
33 restrictive alternative or unconditionally discharged. The committed
34 person shall have a right to have an attorney represent him or her at
35 the show cause hearing but the person is not entitled to be present at
36 the show cause hearing. If the court at the show cause hearing
37 determines that probable cause exists to believe that the person's
38 mental abnormality or personality disorder has so changed that the
39 person is ~~((safe to be at large and is))~~ not likely to engage in

1 predatory acts of sexual violence if conditionally released to a less
2 restrictive alternative or unconditionally discharged, then the court
3 shall set a hearing on the issue. At the hearing, the committed person
4 shall be entitled to be present and to the benefit of all
5 constitutional protections that were afforded to the person at the
6 initial commitment proceeding. The prosecuting attorney or the
7 attorney general if requested by the county shall represent the state
8 and shall have a right to a jury trial and to have the committed person
9 evaluated by experts chosen by the state. The committed person shall
10 also have the right to have experts evaluate him or her on his or her
11 behalf and the court shall appoint an expert if the person is indigent
12 and requests an appointment. The burden of proof at the hearing shall
13 be upon the state to prove beyond a reasonable doubt that the committed
14 person's mental abnormality or personality disorder remains such that
15 the person is (~~not safe to be at large and if released is~~) likely to
16 engage in predatory acts of sexual violence if conditionally released
17 to a less restrictive alternative or unconditionally discharged.

18 (3) The jurisdiction of the court over a person civilly committed
19 pursuant to this chapter continues until such time as the person is
20 unconditionally discharged.

21 NEW SECTION. **Sec. 10.** Before the court may enter an order
22 directing conditional release to a less restrictive alternative, it
23 must find the following: (1) The person will be treated by a treatment
24 provider who is qualified to provide such treatment in the state of
25 Washington under chapter 18.155 RCW; (2) the treatment provider has
26 presented a specific course of treatment and has agreed to assume
27 responsibility for such treatment and will report progress to the court
28 on a regular basis, and will report violations immediately to the
29 court, the prosecutor, the supervising community corrections officer,
30 and the superintendent of the special commitment center; (3) housing
31 exists that is sufficiently secure to protect the community, and the
32 person or agency providing housing to the conditionally released person
33 has agreed in writing to accept the person, to provide the level of
34 security required by the court, and immediately to report to the court,
35 the prosecutor, the supervising community corrections officer, and the
36 superintendent of the special commitment center if the person leaves
37 the housing to which he or she has been assigned without authorization;
38 (4) the person is willing to comply with the treatment provider and all

1 requirements imposed by the treatment provider and by the court; and
2 (5) the person is willing to comply with supervision requirements
3 imposed by the department of corrections.

4 NEW SECTION. **Sec. 11.** (1) Upon the conclusion of the evidence in
5 a hearing held pursuant to RCW 71.09.090, if the court finds that there
6 is no legally sufficient evidentiary basis for a reasonable jury to
7 find that the conditions set forth in section 10 of this act have been
8 met, the court shall grant a motion by the state for a judgment as a
9 matter of law on the issue of conditional release to a less restrictive
10 alternative.

11 (2) Whenever the issue of conditional release to a less restrictive
12 alternative is submitted to the jury, the court shall instruct the jury
13 to return a verdict in substantially the following form: Has the state
14 proved beyond a reasonable doubt that the proposed less restrictive
15 alternative is not in the best interests of respondent or will not
16 adequately protect the community? Answer: Yes or No.

17 NEW SECTION. **Sec. 12.** (1) If the court or jury determines that
18 conditional release to a less restrictive alternative is in the best
19 interest of the person and will adequately protect the community, and
20 the court determines that the minimum conditions set forth in section
21 9 of this act are met, the court shall enter judgment and direct a
22 conditional release.

23 (2) The court shall impose any additional conditions necessary to
24 ensure compliance with treatment and to protect the community. If the
25 court finds that conditions do not exist that will both ensure the
26 person's compliance with treatment and protect the community, then the
27 person shall be remanded to the custody of the department of social and
28 health services for control, care, and treatment in a secure facility
29 as designated in RCW 71.09.060(1).

30 (3) If the service provider designated to provide inpatient or
31 outpatient treatment or to monitor or supervise any other terms and
32 conditions of a person's placement in a less restrictive alternative is
33 other than the department of social and health services or the
34 department of corrections, then the service provider so designated must
35 agree in writing to provide such treatment.

36 (4) Prior to authorizing any release to a less restrictive
37 alternative, the court shall impose such conditions upon the person as

1 are necessary to ensure the safety of the community. The court shall
2 order the department of corrections to investigate the less restrictive
3 alternative and recommend any additional conditions to the court.
4 These conditions shall include, but are not limited to the following:
5 Specification of residence, prohibition of contact with potential or
6 past victims, prohibition of alcohol and other drug use, participation
7 in a specific course of inpatient or outpatient treatment that may
8 include monitoring by the use of polygraph and plethysmograph,
9 supervision by a department of corrections community corrections
10 officer, a requirement that the person remain within the state unless
11 the person receives prior authorization by the court, and any other
12 conditions that the court determines are in the best interest of the
13 person or others. A copy of the conditions of release shall be given
14 to the person and to any designated service providers.

15 (5) Any service provider designated to provide inpatient or
16 outpatient treatment shall monthly, or as otherwise directed by the
17 court, submit to the court, to the department of social and health
18 services facility from which the person was released, to the prosecutor
19 of the county in which the person was found to be a sexually violent
20 predator, and to the supervising community corrections officer, a
21 report stating whether the person is complying with the terms and
22 conditions of the conditional release to a less restrictive
23 alternative.

24 (6) Each person released to a less restrictive alternative shall
25 have his or her case reviewed by the court that released him or her no
26 later than one year after such release and annually thereafter until
27 the person is unconditionally discharged. Review may occur in a
28 shorter time or more frequently, if the court, in its discretion on its
29 own motion, or on motion of the person, the secretary, or the
30 prosecuting attorney so determines. The sole question to be determined
31 by the court is whether the person shall continue to be conditionally
32 released to a less restrictive alternative. The court in making its
33 determination shall be aided by the periodic reports filed pursuant to
34 subsection (5) of this section and the opinions of the secretary and
35 other experts or professional persons.

36 NEW SECTION. **Sec. 13.** (1) Any service provider submitting reports
37 pursuant to section 12(5) of this act, the supervising community
38 corrections officer, the prosecuting attorney, or the attorney general

1 may petition the court, or the court on its own motion may schedule an
2 immediate hearing, for the purpose of revoking or modifying the terms
3 of the person's conditional release to a less restrictive alternative
4 if the petitioner or the court believes the released person is not
5 complying with the terms and conditions of his or her release or is in
6 need of additional care and treatment.

7 (2) If the prosecuting attorney, the supervising community
8 corrections officer, or the court, based upon information received by
9 them, reasonably believes that a conditionally released person is not
10 complying with the terms and conditions of his or her conditional
11 release to a less restrictive alternative, the court or community
12 corrections officer may order that the conditionally released person be
13 apprehended and taken into custody until such time as a hearing can be
14 scheduled to determine the facts and whether or not the person's
15 conditional release should be revoked or modified. The court shall be
16 notified before the close of the next judicial day of the person's
17 apprehension. Both the prosecuting attorney and the conditionally
18 released person shall have the right to request an immediate mental
19 examination of the conditionally released person. If the conditionally
20 released person is indigent, the court shall, upon request, assist him
21 or her in obtaining a qualified expert or professional person to
22 conduct the examination.

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

34 **Sec. 14.** RCW 71.09.110 and 1990 c 3 s 1011 are each amended to
35 read as follows:

36 The department of social and health services shall be responsible
37 for all costs relating to the evaluation and treatment of persons
38 committed to their custody whether in a secure facility or under a less

1 restrictive alternative under any provision of this chapter.
2 Reimbursement may be obtained by the department for the cost of care
3 and treatment of persons committed to its custody whether in a secure
4 facility or under a less restrictive alternative pursuant to RCW
5 43.20B.330 through 43.20B.370.

6 **Sec. 15.** RCW 9A.76.120 and 1982 1st ex.s. c 47 s 24 are each
7 amended to read as follows:

8 (1) A person is guilty of escape in the second degree if:

9 (a) He or she escapes from a detention facility; ~~((or))~~

10 (b) Having been charged with a felony or an equivalent juvenile
11 offense, he or she escapes from custody; or

12 (c) Having been found to be a sexually violent predator and being
13 under an order of conditional release, he or she leaves the state of
14 Washington without prior court authorization.

15 (2) Escape in the second degree is a class C felony.

16 NEW SECTION. **Sec. 16.** In the event of an escape by a person
17 committed under this chapter from a state institution or the
18 disappearance of such a person while on conditional release, the
19 superintendent or community corrections officer shall notify the
20 following as appropriate: Local law enforcement officers, other
21 governmental agencies, the person's relatives, and any other
22 appropriate persons about information necessary for the public safety
23 or to assist in the apprehension of the person.

24 NEW SECTION. **Sec. 17.** (1) At the earliest possible date, and in
25 no event later than thirty days before conditional release or
26 unconditional discharge, except in the event of escape, the department
27 of social and health services shall send written notice of conditional
28 release, unconditional discharge, or escape, to the following:

29 (a) The chief of police of the city, if any, in which the person
30 will reside or in which placement will be made under a less restrictive
31 alternative;

32 (b) The sheriff of the county in which the person will reside or in
33 which placement will be made under a less restrictive alternative; and

34 (c) The sheriff of the county where the person was last convicted
35 of a sexually violent offense, if the department does not know where
36 the person will reside.

1 The department shall notify the state patrol of the release of all
2 sexually violent predators and that information shall be placed in the
3 Washington crime information center for dissemination to all law
4 enforcement.

5 (2) The same notice as required by subsection (1) of this section
6 shall be sent to the following if such notice has been requested in
7 writing about a specific person found to be a sexually violent predator
8 under this chapter:

9 (a) The victim or victims of any sexually violent offenses for
10 which the person was convicted in the past or the victim's next of kin
11 if the crime was a homicide. "Next of kin" as used in this section
12 means a person's spouse, parents, siblings, and children;

13 (b) Any witnesses who testified against the person in his or her
14 commitment trial under RCW 71.09.060; and

15 (c) Any person specified in writing by the prosecuting attorney.

16 Information regarding victims, next of kin, or witnesses requesting
17 the notice, information regarding any other person specified in writing
18 by the prosecuting attorney to receive the notice, and the notice are
19 confidential and shall not be available to the committed person.

20 (3) If a person committed as a sexually violent predator under this
21 chapter escapes from a department of social and health services
22 facility, the department shall immediately notify, by the most
23 reasonable and expedient means available, the chief of police of the
24 city and the sheriff of the county in which the committed person
25 resided immediately before his or her commitment as a sexually violent
26 predator, or immediately before his or her incarceration for his or her
27 most recent offense. If previously requested, the department shall
28 also notify the witnesses and the victims of the sexually violent
29 offenses for which the person was convicted in the past or the victim's
30 next of kin if the crime was a homicide. If the person is recaptured,
31 the department shall send notice to the persons designated in this
32 subsection as soon as possible but in no event later than two working
33 days after the department learns of such recapture.

34 (4) If the victim or victims of any sexually violent offenses for
35 which the person was convicted in the past or the victim's next of kin,
36 or any witness is under the age of sixteen, the notice required by this
37 section shall be sent to the parents or legal guardian of the child.

38 (5) The department of social and health services shall send the
39 notices required by this chapter to the last address provided to the

1 department by the requesting party. The requesting party shall furnish
2 the department with a current address.

3 (6) Nothing in this section shall impose any liability upon a chief
4 of police of a city or sheriff of a county for failing to request in
5 writing a notice as provided in subsection (1) of this section.

6 NEW SECTION. **Sec. 18.** For purposes of sections 19 through 21 of
7 this act:

8 (1) "Escorted leave" means a leave of absence from a facility
9 housing persons detained or committed pursuant to this chapter under
10 the continuous supervision of an escort.

11 (2) "Escort" means a correctional officer or other person approved
12 by the superintendent or the superintendent's designee to accompany a
13 resident on a leave of absence and be in visual or auditory contact
14 with the resident at all times.

15 (3) "Resident" means a person detained or committed pursuant to
16 this chapter.

17 NEW SECTION. **Sec. 19.** The superintendent of any facility housing
18 persons detained or committed pursuant to this chapter may, subject to
19 the approval of the secretary, grant escorted leaves of absence to
20 residents confined in such institutions to:

21 (1) Go to the bedside of the resident's wife, husband, child,
22 mother or father, or other member of the resident's immediate family
23 who is seriously ill;

24 (2) Attend the funeral of a member of the resident's immediate
25 family listed in subsection (1) of this section; and

26 (3) Receive necessary medical or dental care which is not available
27 in the institution.

28 NEW SECTION. **Sec. 20.** A resident shall not be allowed to start a
29 leave of absence under section 19 of this act until the secretary, or
30 the secretary's designee, has notified any county and city law
31 enforcement agency having jurisdiction in the area of the resident's
32 destination.

33 NEW SECTION. **Sec. 21.** (1) The secretary is authorized to adopt
34 rules providing for the conditions under which residents will be
35 granted leaves of absence and providing for safeguards to prevent

1 escapes while on leaves of absence. Leaves of absence granted to
2 residents under section 19 of this act, however, shall not allow or
3 permit any resident to go beyond the boundaries of this state.

4 (2) The secretary shall adopt rules requiring reimbursement of the
5 state from the resident granted leave of absence, or the resident's
6 family, for the actual costs incurred arising from any leave of absence
7 granted under the authority of section 19 (1) and (2) of this act. No
8 state funds shall be expended in connection with leaves of absence
9 granted under section 19 (1) and (2) of this act unless the resident
10 and the resident's immediate family are indigent and without resources
11 sufficient to reimburse the state for the expenses of such leaves of
12 absence.

13 NEW SECTION. **Sec. 22.** RCW 71.09.100 and 1990 c 3 s 1010 are each
14 repealed.

15 NEW SECTION. **Sec. 23.** Sections 10 through 13 and 16 through 21 of
16 this act are each added to chapter 71.09 RCW."

17 **2SSB 5088** - H COMM AMD
18 By Committee on Corrections

19

20 On page 1, line 1 of the title, after "predators;" strike the
21 remainder of the title and insert "amending RCW 71.09.020, 71.09.025,
22 71.09.030, 71.09.040, 71.09.050, 71.09.060, 71.09.070, 71.09.080,
23 71.09.090, 71.09.110, and 9A.76.120; adding new sections to chapter
24 71.09 RCW; repealing RCW 71.09.100; and prescribing penalties."

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