

**HOUSE BILL ANALYSIS**  
**HB 2934**

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**Title:** An act relating to sexually violent predators.

**Brief Description:** Revising provisions relating to sexually violent predators.

**Sponsors:** Representatives Ballasiotes, Costa, Radcliff, O'Brien, Koster, Cody, Mitchell, McDonald, Scott, Kenney, Conway, Gombosky, and Mason.

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**HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS**

**Hearing Date:** February 3, 1998.

**Prepared By:** Mark G. Hamilton, Counsel (786-7310).

**Background:** Currently, under involuntary commitment laws, persons may be conditionally released to settings less restrictive than total confinement. However, there must be a determination that the person committed is no longer a danger to himself or others. A "sexually violent predator" is defined as a person who has been charged with or convicted of sexual violence or who suffers from a condition which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility. The release of sexually violent predators is limited under the law. The current law which deals with sexually violent predator confinement permits release to a less restrictive alternative than total confinement in certain instances, but does not require that the less restrictive alternative be one which is also reasonably available, as a practical and expense-limiting measure.

**Summary:** **Section 1.** Amends RCW 71.09.010 as follows:

*Findings.* The legislature finds that consideration of placement of sexually violent predators in a setting less restrictive than total confinement cannot occur at the initial commitment proceeding for such offenders, because they require an intensive period of evaluation and treatment in a controlled and secure environment before determining the possibility of a less restrictive alternative.

**Section 2.** Amends RCW 71.09.020 as follows:

*Definitions.* "Likely to engage in predatory acts of sexual violence if not confined in a secure facility." This means that the person will more likely than not engage in such acts if released from detention unconditionally; a recent overt act (if the person is not totally confined at the time the petition for commitment is filed) is required to evidence this likelihood.

"Recent overt act." Clarifies the standard for determining existence of a recent overt act to include an act that has caused harm of a sexually violent nature or has created an apprehension of such harm as determined by an

objective person who knows the history of the person's mental condition. Also clarifies that a statement may constitute such an act.

*"Probable cause to believe that a person is a sexually violent predator."*  
Sets preponderance of the evidence as standard to support such a finding.

**Section 3.** Amends RCW 71.09.060 as follows:

*Trial — Determination — Commitment procedures.* Requires certain considerations by the finder of fact in determining whether a person is a sexually violent predator, beyond a reasonable doubt. Specifically, requires that fact-finder may only consider any actual conditions and voluntary treatment options that would exist for the person if unconditionally released from detention, and whether the person would be likely to engage in predatory acts of sexual violence if not securely confined. Also imposes restriction on court that it may only impose a less restrictive alternative than total confinement *following* the initial commitment. If a unanimous determination is not made (in the case of jury as fact-finder), the court must declare a mistrial and may set a retrial within 45 days of the date of the mistrial; retrial may be continued for good cause. However, in no event may the person be released from confinement pending the retrial.

**Section 4.** Amends RCW 71.09.070 as follows:

*Annual examinations of persons committed.* Requires an annual report by the Department of Social and Health Services to be filed with the court regarding the committed sexually violent predator. The report must be prepared by a professionally qualified person. It must also include consideration of whether the person meets the definition of sexually violent predator, and whether the person qualifies for reasonably available less restrictive alternatives to total confinement.

**Section 5.** Amends RCW 71.09.090 as follows:

*Petition for conditional release to less restrictive alternative or unconditional discharge — Procedures.* Provides for procedures by which the Department of Social and Health Services may authorize the person committed to petition the court for a reasonably available less restrictive alternative. This is available if the secretary of the department determines that the person no longer meets the definition of sexually violent predator and that conditional release to a less restrictive alternative than total confinement would be in the best interest of the person and would adequately protect the community. The prosecuting attorney may show *prima facie* evidence that such alternatives are not in the person's best interests or will not adequately protect the community. The state may rely exclusively on the annual report. The burden of proof at the hearing is on the state to prove beyond a reasonable doubt that the person continues to meet the definition of sexually violent predator, if the issue is whether the person should be discharged unconditionally. If the issue is whether the person should be conditionally released, the burden on the state is to prove by clear and convincing evidence that a less restrictive alternative is not in the person's best interests or would not adequately protect the community, or is not reasonably available.

**Section 6.** Amends RCW 71.09.094 as follows:

*Conditional release to less restrictive alternative — Verdict.* Adds special verdict question whether the state has proved by clear and convincing evidence that a proposed less restrictive alternative is not reasonably available. Also requires that ten jurors must agree as to each question in order to reach a verdict.

**Section 7.** Amends RCW 71.09.096 as follows:

*Conditional release to less restrictive environment.* Permits the court or jury to determine that a less restrictive alternative is reasonably available for purposes of conditional release.

**Section 8.** *Application.* Applies to all individuals committed or awaiting commitment under chapter 71.09 RCW on, before, or after the date of passage.

**Rules Authority:**

No.

**Fiscal Note:**

Requested.

**Effective Date:**

Section 9 of this bill contains an emergency clause, which provides that it takes effect upon passage.