
HOUSE BILL 2934

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By Representatives Ballasiotes, Costa, Radcliff, O'Brien, Koster, Cody, Mitchell, McDonald, Scott, Kenney, Conway, Gombosky and Mason

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1 AN ACT Relating to sexually violent predators; amending RCW
2 71.09.010, 71.09.020, 71.09.060, 71.09.070, 71.09.090, 71.09.094, and
3 71.09.096; creating a new section; and declaring an emergency.

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

5 **Sec. 1.** RCW 71.09.010 and 1990 c 3 s 1001 are each amended to read
6 as follows:

7 The legislature finds that a small but extremely dangerous group of
8 sexually violent predators exist who do not have a mental disease or
9 defect that renders them appropriate for the existing involuntary
10 treatment act, chapter 71.05 RCW, which is intended to be a short-term
11 civil commitment system that is primarily designed to provide short-
12 term treatment to individuals with serious mental disorders and then
13 return them to the community. In contrast to persons appropriate for
14 civil commitment under chapter 71.05 RCW, sexually violent predators
15 ~~((generally))~~ have ~~((antisocial))~~ personality ~~((features—which))~~
16 disorders and/or mental abnormalities that are unamenable to existing
17 mental illness treatment modalities and those ~~((features))~~ conditions
18 render them likely to engage in sexually violent behavior. The
19 legislature further finds that sex offenders' likelihood of engaging in

1 repeat acts of predatory sexual violence is high. The existing
2 involuntary commitment act, chapter 71.05 RCW, is inadequate to address
3 the risk to reoffend because during confinement these offenders do not
4 have access to potential victims and therefore they will not engage in
5 an overt act during confinement as required by the involuntary
6 treatment act for continued confinement. The legislature further finds
7 that consideration of placement in a setting less restrictive than
8 total confinement cannot occur at the initial commitment trial for
9 sexually violent predators. As a result of their extreme dangerousness
10 and unique mental conditions, sexually violent predators are initially
11 unsuitable for less restrictive placements normally available to
12 persons committed under chapter 71.05 RCW. Sexually violent predators
13 require an intensive period of evaluation and treatment following
14 commitment in a controlled and secure environment before determining
15 the possibility of a less restrictive alternative. The legislature
16 further finds that the prognosis for curing sexually violent offenders
17 is poor, the treatment needs of this population are very long term, and
18 the treatment modalities for this population are very different than
19 the traditional treatment modalities for people appropriate for
20 commitment under the involuntary treatment act.

21 **Sec. 2.** RCW 71.09.020 and 1995 c 216 s 1 are each amended to read
22 as follows:

23 Unless the context clearly requires otherwise, the definitions in
24 this section apply throughout this chapter.

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

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

34 (3) "Likely to engage in predatory acts of sexual violence if not
35 confined in a secure facility" means that the person more probably than
36 not will engage in such acts if released unconditionally from
37 detention. Such likelihood must be evidenced by a recent overt act if

1 the person is not totally confined at the time the petition is filed
2 under RCW 71.09.030.

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

6 (5) "Recent overt act" means any act that has either caused harm of
7 a sexually violent nature or creates a reasonable apprehension of such
8 harm in the mind of an objective person who knows of the history and
9 mental condition of the person engaging in the act. A statement may
10 constitute an act under this definition.

11 (6) "Sexually violent offense" means an act committed on, before,
12 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as
13 rape in the first degree, rape in the second degree by forcible
14 compulsion, rape of a child in the first or second degree, statutory
15 rape in the first or second degree, indecent liberties by forcible
16 compulsion, indecent liberties against a child under age fourteen,
17 incest against a child under age fourteen, or child molestation in the
18 first or second degree; (b) a felony offense in effect at any time
19 prior to July 1, 1990, that is comparable to a sexually violent offense
20 as defined in (a) of this subsection, or any federal or out-of-state
21 conviction for a felony offense that under the laws of this state would
22 be a sexually violent offense as defined in this subsection; (c) an act
23 of murder in the first or second degree, assault in the first or second
24 degree, assault of a child in the first or second degree, kidnapping in
25 the first or second degree, burglary in the first degree, residential
26 burglary, or unlawful imprisonment, which act, either at the time of
27 sentencing for the offense or subsequently during civil commitment
28 proceedings pursuant to chapter 71.09 RCW, has been determined beyond
29 a reasonable doubt to have been sexually motivated, as that term is
30 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28
31 RCW, that is an attempt, criminal solicitation, or criminal conspiracy
32 to commit one of the felonies designated in (a), (b), or (c) of this
33 subsection.

34 (7) "Less restrictive alternative" means court-ordered treatment in
35 a setting less restrictive than total confinement.

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

38 (9) "Probable cause to believe that a person is a sexually violent
39 predator" means that a preponderance of the evidence supports a finding

1 that a person meets the definition of a sexually violent predator
2 contained in this section.

3 **Sec. 3.** RCW 71.09.060 and 1995 c 216 s 6 are each amended to read
4 as follows:

5 (1) The court or jury shall determine whether, beyond a reasonable
6 doubt, the person is a sexually violent predator. In considering
7 whether or not the person would be likely to engage in predatory acts
8 of sexual violence if not confined in a secure facility, the fact-
9 finder may only consider any actual conditions and voluntary treatment
10 options that would exist for the person if unconditionally released
11 from detention. The court may impose less restrictive alternatives
12 only at hearings ordered pursuant to RCW 71.09.090 following initial
13 commitment under this section. When the determination is made by a
14 jury, the verdict must be unanimous.

15 If, on the date that the petition is filed, the person was living
16 in the community after release from custody, the state must also prove
17 beyond a reasonable doubt that the person had committed a recent overt
18 act. If the state alleges that the prior sexually violent offense that
19 forms the basis for the petition for commitment was an act that was
20 sexually motivated as provided in RCW 71.09.020(6)(c), the state must
21 prove beyond a reasonable doubt that the alleged sexually violent act
22 was sexually motivated as defined in RCW 9.94A.030.

23 If the court or jury determines that the person is a sexually
24 violent predator, the person shall be committed to the custody of the
25 department of social and health services for placement in a secure
26 facility operated by the department of social and health services for
27 control, care, and treatment until such time as (a) the person's
28 ((~~mental abnormality or personality disorder~~)) condition has so changed
29 that the person ((~~is safe either (a) to be at large~~)) no longer meets
30 the definition of a sexually violent predator, or (b) ((~~to be~~
31 released)) conditional release to a less restrictive alternative as set
32 forth in RCW 71.09.092 is in the best interest of the person and will
33 adequately protect the community. If the court or unanimous jury ((~~is~~
34 not satisfied beyond a reasonable doubt)) decides that the state has
35 not met its burden of proving that the person is a sexually violent
36 predator, the court shall direct the person's release.

37 If the jury is unable to reach a unanimous verdict, the court shall
38 declare a mistrial and, at the request of the prosecuting agency, set

1 a retrial within forty-five days of the date of the mistrial. The
2 retrial may be continued upon the request of either party accompanied
3 by a showing of good cause, or by the court on its own motion in the
4 due administration of justice provided that the respondent will not be
5 substantially prejudiced. In no event may the person be released from
6 confinement prior to retrial.

7 (2) If the person charged with a sexually violent offense has been
8 found incompetent to stand trial, and is about to or has been released
9 pursuant to RCW 10.77.090(3), and his or her commitment is sought
10 pursuant to subsection (1) of this section, the court shall first hear
11 evidence and determine whether the person did commit the act or acts
12 charged if the court did not enter a finding prior to dismissal under
13 RCW 10.77.090(3) that the person committed the act or acts charged.
14 The hearing on this issue must comply with all the procedures specified
15 in this section. In addition, the rules of evidence applicable in
16 criminal cases shall apply, and all constitutional rights available to
17 defendants at criminal trials, other than the right not to be tried
18 while incompetent, shall apply. After hearing evidence on this issue,
19 the court shall make specific findings on whether the person did commit
20 the act or acts charged, the extent to which the person's incompetence
21 or developmental disability affected the outcome of the hearing,
22 including its effect on the person's ability to consult with and assist
23 counsel and to testify on his or her own behalf, the extent to which
24 the evidence could be reconstructed without the assistance of the
25 person, and the strength of the prosecution's case. If, after the
26 conclusion of the hearing on this issue, the court finds, beyond a
27 reasonable doubt, that the person did commit the act or acts charged,
28 it shall enter a final order, appealable by the person, on that issue,
29 and may proceed to consider whether the person should be committed
30 pursuant to this section.

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

37 **Sec. 4.** RCW 71.09.070 and 1995 c 216 s 7 are each amended to read
38 as follows:

1 Each person committed under this chapter shall have a current
2 examination of his or her mental condition made ~~((at least))~~ by the
3 department of social and health services once every year. The annual
4 report shall include consideration of whether the committed person
5 currently meets the definition of a sexually violent predator and
6 whether conditional release to a reasonably available less restrictive
7 alternative is in the best interest of the person and will adequately
8 protect the community. The department of social and health services
9 shall file this periodic report with the court that committed the
10 person under this chapter. The report shall be in the form of a
11 declaration or certification in compliance with the requirements of RCW
12 9A.72.085 and shall be prepared by a professionally qualified person as
13 defined by rules developed by the department of social and health
14 services. A copy of the report shall be served on the prosecuting
15 agency involved in the initial commitment and upon the committed person
16 and his or her counsel. The committed person may retain, or if he or
17 she is indigent and so requests, the court may appoint a qualified
18 expert or a professional person to examine him or her, and such expert
19 or professional person shall have access to all records concerning the
20 person. ((The periodic report shall be provided to the court that
21 committed the person under this chapter.))

22 **Sec. 5.** RCW 71.09.090 and 1995 c 216 s 9 are each amended to read
23 as follows:

24 (1) If the secretary determines either (a) that the person's
25 ((mental abnormality or personality disorder)) condition has so changed
26 that the person ((is not likely to engage in predatory acts of sexual
27 violence if conditionally released to a less restrictive alternative or
28 unconditionally discharged)) no longer meets the definition of a
29 sexually violent predator, or (b) that conditional release to a
30 reasonably available less restrictive alternative is in the best
31 interest of the person and will adequately protect the community, the
32 secretary shall authorize the person to petition the court for
33 conditional release to a less restrictive alternative or unconditional
34 discharge. The petition shall be ((served upon)) filed with the court
35 and served upon the prosecuting ((attorney)) agency responsible for the
36 initial commitment. The court, upon receipt of the petition for
37 conditional release to a less restrictive alternative or unconditional
38 discharge, shall within forty-five days order a hearing. ((The

1 prosecuting attorney or the attorney general, if requested by the
2 county, shall represent the state, and shall have the right to have the
3 petitioner examined by an expert or professional person of his or her
4 choice. The hearing shall be before a jury if demanded by either the
5 petitioner or the prosecuting attorney or attorney general. The burden
6 of proof shall be upon the prosecuting attorney or attorney general to
7 show beyond a reasonable doubt that the petitioner's mental abnormality
8 or personality disorder remains such that the petitioner is not safe to
9 be at large and that if conditionally released to a less restrictive
10 alternative or unconditionally discharged is likely to engage in
11 predatory acts of sexual violence.))

12 (2)(a) Nothing contained in this chapter shall prohibit the person
13 from otherwise petitioning the court for conditional release to a less
14 restrictive alternative or unconditional discharge without the
15 secretary's approval. The secretary shall provide the committed person
16 with an annual written notice of the person's right to petition the
17 court for conditional release to a reasonably available less
18 restrictive alternative or unconditional discharge over the secretary's
19 objection. The notice shall contain a waiver of rights. The secretary
20 shall ((forward)) file the notice and waiver form ((to the court with))
21 and the annual report with the court. If the person does not
22 affirmatively waive the right to petition, the court shall set a show
23 cause hearing to determine whether sufficient facts exist that warrant
24 a hearing on whether: (i) The person's condition has so changed that
25 he or she ((is safe to be conditionally released to a less restrictive
26 alternative or unconditionally discharged)) no longer meets the
27 definition of a sexually violent predator; or (ii) conditional release
28 to a reasonably available less restrictive alternative would be in the
29 best interest of the person and would adequately protect the community.
30 The committed person shall have a right to have an attorney represent
31 him or her at the show cause hearing ((but the person is not entitled
32 to be present at the show cause hearing)).

33 (b) At the show cause hearing, the prosecuting attorney or attorney
34 general shall present prima facie evidence establishing that the
35 committed person continues to meet the definition of a sexually violent
36 predator and that any reasonably available less restrictive alternative
37 is not in the best interest of the person or will not adequately
38 protect the community. In making this showing, the state may rely
39 exclusively upon the annual report prepared pursuant to RCW 71.09.070.

1 The state may supplement this with additional evidence. The committed
2 person may present evidence on his or her behalf. If the court at the
3 show cause hearing determines that ((probable cause exists to believe
4 that the person's mental abnormality or personality disorder has so
5 changed that the person is not likely to engage in predatory acts of
6 sexual violence if conditionally released to a less restrictive
7 alternative or unconditionally discharged)) either (i) the state has
8 failed to present prima facie evidence that the committed person
9 continues to meet the definition of a sexually violent predator and
10 that no reasonably available less restrictive alternative is in the
11 best interest of the person and will adequately protect the community;
12 or (ii) facts exist that would warrant a reasonable person's belief
13 that (A) the committed person's condition has so changed that the
14 person no longer meets the definition of a sexually violent predator or
15 (B) release to a reasonably available less restrictive alternative
16 would be in the best interest of the person and would adequately
17 protect the community, then the court shall set a hearing on ((the))
18 either or both issues.

19 (3) At the hearing resulting from subsection (1) or (2) of this
20 section, the committed person shall be entitled to be present and to
21 the benefit of all constitutional protections that were afforded to the
22 person at the initial commitment proceeding. The prosecuting attorney
23 or the attorney general if requested by the county shall represent the
24 state and shall have a right to a jury trial and to have the committed
25 person evaluated by experts chosen by the state. The committed person
26 shall also have the right to have experts evaluate him or her on his or
27 her behalf and the court shall appoint an expert if the person is
28 indigent and requests an appointment. If the issue at the hearing is
29 whether the person should be unconditionally discharged, the burden of
30 proof ((at the hearing)) shall be upon the state to prove beyond a
31 reasonable doubt that the committed person's ((mental abnormality or
32 personality disorder)) condition remains such that the person ((is
33 likely to engage in predatory acts of sexual violence if conditionally
34 released to a less restrictive alternative or unconditionally
35 discharged)) continues to meet the definition of a sexually violent
36 predator. If the issue at the hearing is whether the person should be
37 conditionally released, the burden of proof at the hearing shall be
38 upon the state to prove by clear and convincing evidence that
39 conditional release to any proposed less restrictive alternative (a) is

1 not in the best interest of the committed person or would not
2 adequately protect the community; or (b) is not reasonably available.
3 In hearings where release to a less restrictive alternative is at
4 issue, the state's proof on this issue may be rebutted only with
5 evidence of a potential less restrictive alternative that meets the
6 requirements of RCW 71.09.092.

7 ~~((3))~~ (4) The jurisdiction of the court over a person civilly
8 committed pursuant to this chapter continues until such time as the
9 person is unconditionally discharged.

10 **Sec. 6.** RCW 71.09.094 and 1995 c 216 s 11 are each amended to read
11 as follows:

12 (1) Upon the conclusion of the evidence in a hearing held pursuant
13 to RCW 71.09.090, if the court finds that there is no legally
14 sufficient evidentiary basis for a reasonable jury to find that the
15 conditions set forth in RCW 71.09.092 have been met, the court shall
16 grant a motion by the state for a judgment as a matter of law on the
17 issue of conditional release to a less restrictive alternative.

18 (2) Whenever the issue of conditional release to a less restrictive
19 alternative is submitted to the jury, the court shall instruct the jury
20 to return a verdict in substantially the following form:

21 (a) Has the state proved ~~((beyond a reasonable doubt))~~ by clear and
22 convincing evidence that ~~((the))~~ any proposed less restrictive
23 alternative is not in the best interests of respondent or will not
24 adequately protect the community? Answer: Yes or No.

25 (b) Has the state proved by clear and convincing evidence that any
26 proposed less restrictive alternative is not reasonably available?
27 Answer: Yes or No.

28 Ten jurors must agree as to each question in order to reach a
29 verdict.

30 **Sec. 7.** RCW 71.09.096 and 1995 c 216 s 12 are each amended to read
31 as follows:

32 (1) If the court or jury determines that conditional release to a
33 less restrictive alternative is reasonably available, and is in the
34 best interest of the person and will adequately protect the community,
35 and the court determines that the minimum conditions set forth in
36 ~~((section 9 of this act))~~ RCW 71.09.092 are met, the court shall enter

1 judgment and direct a conditional release except as provided in
2 subsection (2) of this section.

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

10 (3) If the service provider designated to provide inpatient or
11 outpatient treatment or to monitor or supervise any other terms and
12 conditions of a person's placement in a less restrictive alternative is
13 other than the department of social and health services or the
14 department of corrections, then the service provider so designated must
15 agree in writing to provide such treatment.

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

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

1 conditions of the conditional release to a less restrictive
2 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 so determines. The sole question to be determined
10 by the court is whether the person shall continue to be conditionally
11 released to a less restrictive alternative. The court in making its
12 determination shall be aided by the periodic reports filed pursuant to
13 subsection (5) of this section and the opinions of the secretary and
14 other experts or professional persons.

15 NEW SECTION. **Sec. 8.** The provisions of this act apply to all
16 individuals currently committed or awaiting commitment under chapter
17 71.09 RCW either on, before, or after the effective date of this act.

18 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
19 preservation of the public peace, health, or safety, or support of the
20 state government and its existing public institutions, and takes effect
21 immediately.

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