

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2905

55th Legislature
1998 Regular Session

Passed by the House February 13, 1998
Yeas 90 Nays 6

**Speaker of the
House of Representatives**

Passed by the Senate March 6, 1998
Yeas 39 Nays 4

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2905** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 2905

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1998 Regular Session

By Representatives Carrell, Talcott, Cooke, Bush, Smith, Cairnes,
Koster, Backlund, Sherstad, Lambert and Kastama

Read first time 01/22/98. Referred to Committee on Children & Family
Services.

1 AN ACT Relating to placement of sexually violent predators by the
2 department of social and health services at state mental facilities;
3 amending RCW 71.09.060; and declaring an emergency.

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

5 **Sec. 1.** RCW 71.09.060 and 1995 c 216 s 6 are each amended to read
6 as follows:

7 (1) The court or jury shall determine whether, beyond a reasonable
8 doubt, the person is a sexually violent predator. When the
9 determination is made by a jury, the verdict must be unanimous.

10 If, on the date that the petition is filed, the person was living
11 in the community after release from custody, the state must also prove
12 beyond a reasonable doubt that the person had committed a recent overt
13 act. If the state alleges that the prior sexually violent offense that
14 forms the basis for the petition for commitment was an act that was
15 sexually motivated as provided in RCW 71.09.020(6)(c), the state must
16 prove beyond a reasonable doubt that the alleged sexually violent act
17 was sexually motivated as defined in RCW 9.94A.030. If the court or
18 jury determines that the person is a sexually violent predator, the
19 person shall be committed to the custody of the department of social

1 and health services for placement in a secure facility operated by the
2 department of social and health services for control, care, and
3 treatment until such time as the person's mental abnormality or
4 personality disorder has so changed that the person is safe either (a)
5 to be at large, or (b) to be released to a less restrictive alternative
6 as set forth in RCW 71.09.092. If the court or jury is not satisfied
7 beyond a reasonable doubt that the person is a sexually violent
8 predator, the court shall direct the person's release.

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

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

1 NEW SECTION. **Sec. 2.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately.

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