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ENGROSSED SUBSTITUTE SENATE BILL 5122

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State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Costa, Long and Hargrove)

READ FIRST TIME 02/16/01.

1 AN ACT Relating to civil commitment and related proceedings for  
2 sexually violent predators under chapter 71.09 RCW; amending RCW  
3 5.60.060, 71.09.010, 71.09.020, 71.09.025, 71.09.040, 71.09.060,  
4 71.09.070, 71.09.090, 71.09.092, 71.09.094, 71.09.096, and 71.09.098;  
5 adding a new section to chapter 71.09 RCW; creating a new section; and  
6 declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 71.09 RCW  
9 to read as follows:

10 The legislature finds that presentation of evidence related to  
11 conditions of a less restrictive alternative that are beyond the  
12 authority of the court to order, and that would not exist in the  
13 absence of a court order, reduces the public respect for the rule of  
14 law and for the authority of the courts. Consequently, the legislature  
15 finds that the decision in *In re the Detention of Casper Ross*, 102 Wn.  
16 App 108 (2000), is contrary to the legislature's intent. The  
17 legislature hereby clarifies that it intends, and has always intended,  
18 in any proceeding under this chapter that the court and jury be  
19 presented only with conditions that would exist or that the court would

1 have the authority to order in the absence of a finding that the person  
2 is a sexually violent predator.

3 **Sec. 2.** RCW 5.60.060 and 1998 c 72 s 1 are each amended to read as  
4 follows:

5 (1) A husband shall not be examined for or against his wife,  
6 without the consent of the wife, nor a wife for or against her husband  
7 without the consent of the husband; nor can either during marriage or  
8 afterward, be without the consent of the other, examined as to any  
9 communication made by one to the other during marriage. But this  
10 exception shall not apply to a civil action or proceeding by one  
11 against the other, nor to a criminal action or proceeding for a crime  
12 committed by one against the other, nor to a criminal action or  
13 proceeding against a spouse if the marriage occurred subsequent to the  
14 filing of formal charges against the defendant, nor to a criminal  
15 action or proceeding for a crime committed by said husband or wife  
16 against any child of whom said husband or wife is the parent or  
17 guardian, nor to a proceeding under chapter 70.96A ((~~or~~)), 71.05, or  
18 71.09 RCW: PROVIDED, That the spouse of a person sought to be detained  
19 under chapter 70.96A ((~~or~~)), 71.05, or 71.09 RCW may not be compelled  
20 to testify and shall be so informed by the court prior to being called  
21 as a witness.

22 (2)(a) An attorney or counselor shall not, without the consent of  
23 his or her client, be examined as to any communication made by the  
24 client to him or her, or his or her advice given thereon in the course  
25 of professional employment.

26 (b) A parent or guardian of a minor child arrested on a criminal  
27 charge may not be examined as to a communication between the child and  
28 his or her attorney if the communication was made in the presence of  
29 the parent or guardian. This privilege does not extend to  
30 communications made prior to the arrest.

31 (3) A member of the clergy or a priest shall not, without the  
32 consent of a person making the confession, be examined as to any  
33 confession made to him or her in his or her professional character, in  
34 the course of discipline enjoined by the church to which he or she  
35 belongs.

36 (4) Subject to the limitations under RCW 70.96A.140 or 71.05.250,  
37 a physician or surgeon or osteopathic physician or surgeon or podiatric  
38 physician or surgeon shall not, without the consent of his or her

1 patient, be examined in a civil action as to any information acquired  
2 in attending such patient, which was necessary to enable him or her to  
3 prescribe or act for the patient, except as follows:

4 (a) In any judicial proceedings regarding a child's injury,  
5 neglect, or sexual abuse or the cause thereof; and

6 (b) Ninety days after filing an action for personal injuries or  
7 wrongful death, the claimant shall be deemed to waive the physician-  
8 patient privilege. Waiver of the physician-patient privilege for any  
9 one physician or condition constitutes a waiver of the privilege as to  
10 all physicians or conditions, subject to such limitations as a court  
11 may impose pursuant to court rules.

12 (5) A public officer shall not be examined as a witness as to  
13 communications made to him or her in official confidence, when the  
14 public interest would suffer by the disclosure.

15 (6)(a) A peer support group counselor shall not, without consent of  
16 the law enforcement officer making the communication, be compelled to  
17 testify about any communication made to the counselor by the officer  
18 while receiving counseling. The counselor must be designated as such  
19 by the sheriff, police chief, or chief of the Washington state patrol,  
20 prior to the incident that results in counseling. The privilege only  
21 applies when the communication was made to the counselor while acting  
22 in his or her capacity as a peer support group counselor. The  
23 privilege does not apply if the counselor was an initial responding  
24 officer, a witness, or a party to the incident which prompted the  
25 delivery of peer support group counseling services to the law  
26 enforcement officer.

27 (b) For purposes of this section, "peer support group counselor"  
28 means a:

29 (i) Law enforcement officer, or civilian employee of a law  
30 enforcement agency, who has received training to provide emotional and  
31 moral support and counseling to an officer who needs those services as  
32 a result of an incident in which the officer was involved while acting  
33 in his or her official capacity; or

34 (ii) Nonemployee counselor who has been designated by the sheriff,  
35 police chief, or chief of the Washington state patrol to provide  
36 emotional and moral support and counseling to an officer who needs  
37 those services as a result of an incident in which the officer was  
38 involved while acting in his or her official capacity.

1 (7) A sexual assault advocate may not, without the consent of the  
2 victim, be examined as to any communication made by the victim to the  
3 sexual assault advocate.

4 (a) For purposes of this section, "sexual assault advocate" means  
5 the employee or volunteer from a rape crisis center, victim assistance  
6 unit, program, or association, that provides information, medical or  
7 legal advocacy, counseling, or support to victims of sexual assault,  
8 who is designated by the victim to accompany the victim to the hospital  
9 or other health care facility and to proceedings concerning the alleged  
10 assault, including police and prosecution interviews and court  
11 proceedings.

12 (b) A sexual assault advocate may disclose a confidential  
13 communication without the consent of the victim if failure to disclose  
14 is likely to result in a clear, imminent risk of serious physical  
15 injury or death of the victim or another person. Any sexual assault  
16 advocate participating in good faith in the disclosing of records and  
17 communications under this section shall have immunity from any  
18 liability, civil, criminal, or otherwise, that might result from the  
19 action. In any proceeding, civil or criminal, arising out of a  
20 disclosure under this section, the good faith of the sexual assault  
21 advocate who disclosed the confidential communication shall be  
22 presumed.

23 **Sec. 3.** RCW 71.09.010 and 1990 c 3 s 1001 are each amended to read  
24 as follows:

25 The legislature finds that a small but extremely dangerous group of  
26 sexually violent predators exist who do not have a mental disease or  
27 defect that renders them appropriate for the existing involuntary  
28 treatment act, chapter 71.05 RCW, which is intended to be a short-term  
29 civil commitment system that is primarily designed to provide short-  
30 term treatment to individuals with serious mental disorders and then  
31 return them to the community. In contrast to persons appropriate for  
32 civil commitment under chapter 71.05 RCW, sexually violent predators  
33 generally have ~~((antisocial))~~ personality ~~((features))~~ disorders and/or  
34 mental abnormalities which are unamenable to existing mental illness  
35 treatment modalities and those ~~((features))~~ conditions render them  
36 likely to engage in sexually violent behavior. The legislature further  
37 finds that sex offenders' likelihood of engaging in repeat acts of  
38 predatory sexual violence is high. The existing involuntary commitment

1 act, chapter 71.05 RCW, is inadequate to address the risk to reoffend  
2 because during confinement these offenders do not have access to  
3 potential victims and therefore they will not engage in an overt act  
4 during confinement as required by the involuntary treatment act for  
5 continued confinement. The legislature further finds that the  
6 prognosis for curing sexually violent offenders is poor, the treatment  
7 needs of this population are very long term, and the treatment  
8 modalities for this population are very different than the traditional  
9 treatment modalities for people appropriate for commitment under the  
10 involuntary treatment act.

11 **Sec. 4.** RCW 71.09.020 and 1995 c 216 s 1 are each amended to read  
12 as follows:

13 Unless the context clearly requires otherwise, the definitions in  
14 this section apply throughout this chapter.

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

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

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

30 (4) "Predatory" means acts directed towards: (a) Strangers ((or));  
31 (b) individuals with whom a relationship has been established or  
32 promoted for the primary purpose of victimization; or (c) persons of  
33 casual acquaintance with whom no substantial personal relationship  
34 exists.

35 (5) "Recent overt act" means any act or threat that has either  
36 caused harm of a sexually violent nature or creates a reasonable  
37 apprehension of such harm in the mind of an objective person who knows  
38 of the history and mental condition of the person engaging in the act.

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

24 (7) "Less restrictive alternative" means court-ordered treatment in  
25 a setting less restrictive than total confinement which satisfies the  
26 conditions set forth in RCW 71.09.092.

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

29 **Sec. 5.** RCW 71.09.025 and 1995 c 216 s 2 are each amended to read  
30 as follows:

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

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

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

3 (iii) Release of a person who has been charged with a sexually  
4 violent offense and who has been determined to be incompetent to stand  
5 trial pursuant to RCW 10.77.090(~~(+3)~~) (4); or

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

8 (b) The agency shall provide the prosecutor with all relevant  
9 information including but not limited to the following information:

10 (i) A complete copy of the institutional records compiled by the  
11 department of corrections relating to the person, and any such out-of-  
12 state department of corrections' records, if available;

13 (ii) A complete copy, if applicable, of any file compiled by the  
14 indeterminate sentence review board relating to the person;

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

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

19 (v) A current mental health evaluation or mental health records  
20 review.

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

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

25 (4) As used in this section, "agency with jurisdiction" means that  
26 agency with the authority to direct the release of a person serving a  
27 sentence or term of confinement and includes the department of  
28 corrections, the indeterminate sentence review board, and the  
29 department of social and health services.

30 **Sec. 6.** RCW 71.09.040 and 1995 c 216 s 4 are each amended to read  
31 as follows:

32 (1) Upon the filing of a petition under RCW 71.09.030, the judge  
33 shall determine whether probable cause exists to believe that the  
34 person named in the petition is a sexually violent predator. If such  
35 determination is made the judge shall direct that the person be taken  
36 into custody.

37 (2) Within seventy-two hours after a person is taken into custody  
38 pursuant to subsection (1) of this section, the court shall provide the

1 person with notice of, and an opportunity to appear in person at, a  
2 hearing to contest probable cause as to whether the person is a  
3 sexually violent predator. At this hearing, the court shall (a) verify  
4 the person's identity, and (b) determine whether probable cause exists  
5 to believe that the person is a sexually violent predator. At the  
6 probable cause hearing, the state may rely upon the petition and  
7 certification for determination of probable cause filed pursuant to RCW  
8 71.09.030. The state may supplement this with additional documentary  
9 evidence or live testimony.

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

15 (4) If the probable cause determination is made, the judge shall  
16 direct that the person be transferred to an appropriate facility for an  
17 evaluation as to whether the person is a sexually violent predator.  
18 The evaluation shall be conducted by a person deemed to be  
19 professionally qualified to conduct such an examination pursuant to  
20 rules developed by the department of social and health services. In  
21 adopting such rules, the department of social and health services shall  
22 consult with the department of health and the department of  
23 corrections. In no event shall the person be released from confinement  
24 prior to trial. A witness called by either party shall be permitted to  
25 testify by telephone.

26 **Sec. 7.** RCW 71.09.060 and 1998 c 146 s 1 are each amended to read  
27 as follows:

28 (1) The court or jury shall determine whether, beyond a reasonable  
29 doubt, the person is a sexually violent predator. In determining  
30 whether or not the person would be likely to engage in predatory acts  
31 of sexual violence if not confined in a secure facility, the fact  
32 finder may consider only placement conditions and voluntary treatment  
33 options that would exist for the person if unconditionally released  
34 from detention on the sexually violent predator petition. When the  
35 determination is made by a jury, the verdict must be unanimous.

36 If, on the date that the petition is filed, the person was living  
37 in the community after release from custody, the state must also prove  
38 beyond a reasonable doubt that the person had committed a recent overt



1 act. If the state alleges that the prior sexually violent offense that  
2 forms the basis for the petition for commitment was an act that was  
3 sexually motivated as provided in RCW 71.09.020(6)(c), the state must  
4 prove beyond a reasonable doubt that the alleged sexually violent act  
5 was sexually motivated as defined in RCW 9.94A.030.

6 If the court or jury determines that the person is a sexually  
7 violent predator, the person shall be committed to the custody of the  
8 department of social and health services for placement in a secure  
9 facility operated by the department of social and health services for  
10 control, care, and treatment until such time as: (a) The person's  
11 ((mental abnormality or personality disorder)) condition has so changed  
12 that the person ((is safe either (a) to be at large,)) no longer meets  
13 the definition of a sexually violent predator; or (b) ((to be  
14 released)) conditional release to a less restrictive alternative as set  
15 forth in RCW 71.09.092 is in the best interest of the person and  
16 conditions can be imposed that would adequately protect the community.

17 If the court or unanimous jury ((is not satisfied beyond a  
18 reasonable doubt)) decides that the state has not met its burden of  
19 proving that the person is a sexually violent predator, the court shall  
20 direct the person's release.

21 If the jury is unable to reach a unanimous verdict, the court shall  
22 declare a mistrial and set a retrial within forty-five days of the date  
23 of the mistrial unless the prosecuting agency earlier moves to dismiss  
24 the petition. The retrial may be continued upon the request of either  
25 party accompanied by a showing of good cause, or by the court on its  
26 own motion in the due administration of justice provided that the  
27 respondent will not be substantially prejudiced. In no event may the  
28 person be released from confinement prior to retrial or dismissal of  
29 the case.

30 (2) If the person charged with a sexually violent offense has been  
31 found incompetent to stand trial, and is about to or has been released  
32 pursuant to RCW 10.77.090(~~(+3)~~) (4), and his or her commitment is  
33 sought pursuant to subsection (1) of this section, the court shall  
34 first hear evidence and determine whether the person did commit the act  
35 or acts charged if the court did not enter a finding prior to dismissal  
36 under RCW 10.77.090(~~(+3)~~) (4) that the person committed the act or  
37 acts charged. The hearing on this issue must comply with all the  
38 procedures specified in this section. In addition, the rules of  
39 evidence applicable in criminal cases shall apply, and all

1 constitutional rights available to defendants at criminal trials, other  
2 than the right not to be tried while incompetent, shall apply. After  
3 hearing evidence on this issue, the court shall make specific findings  
4 on whether the person did commit the act or acts charged, the extent to  
5 which the person's incompetence or developmental disability affected  
6 the outcome of the hearing, including its effect on the person's  
7 ability to consult with and assist counsel and to testify on his or her  
8 own behalf, the extent to which the evidence could be reconstructed  
9 without the assistance of the person, and the strength of the  
10 prosecution's case. If, after the conclusion of the hearing on this  
11 issue, the court finds, beyond a reasonable doubt, that the person did  
12 commit the act or acts charged, it shall enter a final order,  
13 appealable by the person, on that issue, and may proceed to consider  
14 whether the person should be committed pursuant to this section.

15 (3) The state shall comply with RCW 10.77.220 while confining the  
16 person pursuant to this chapter, except that during all court  
17 proceedings the person shall be detained in a secure facility. The  
18 department shall not place the person, even temporarily, in a facility  
19 on the grounds of any state mental facility or regional habilitation  
20 center because these institutions are insufficiently secure for this  
21 population.

22 (4) A court has jurisdiction to order a less restrictive  
23 alternative placement only after a hearing ordered pursuant to RCW  
24 71.09.090 following initial commitment under this section and in accord  
25 with the provisions of this chapter.

26 **Sec. 8.** RCW 71.09.070 and 1995 c 216 s 7 are each amended to read  
27 as follows:

28 Each person committed under this chapter shall have a current  
29 examination of his or her mental condition made by the department of  
30 social and health services at least once every year. The annual report  
31 shall include consideration of whether the committed person currently  
32 meets the definition of a sexually violent predator and whether  
33 conditional release to a less restrictive alternative is in the best  
34 interest of the person and ((will)) conditions can be imposed that  
35 would adequately protect the community. The department of social and  
36 health services shall file this periodic report with the court that  
37 committed the person under this chapter. The report shall be in the  
38 form of a declaration or certification in compliance with the

1 requirements of RCW 9A.72.085 and shall be prepared by a professionally  
2 qualified person as defined by rules adopted by the secretary. A copy  
3 of the report shall be served on the prosecuting agency involved in the  
4 initial commitment and upon the committed person and his or her  
5 counsel. The committed person may retain, or if he or she is indigent  
6 and so requests, the court may appoint a qualified expert or a  
7 professional person to examine him or her, and such expert or  
8 professional person shall have access to all records concerning the  
9 person. ~~((The periodic report shall be provided to the court that~~  
10 ~~committed the person under this chapter.))~~

11 **Sec. 9.** RCW 71.09.090 and 1995 c 216 s 9 are each amended to read  
12 as follows:

13 (1) If the secretary determines that either: (a) The person's  
14 ~~((mental abnormality or personality disorder))~~ condition has so changed  
15 that the person ~~((is not likely to engage in predatory acts of sexual~~  
16 ~~violence if conditionally released to a less restrictive alternative or~~  
17 ~~unconditionally discharged))~~ no longer meets the definition of a  
18 sexually violent predator; or (b) conditional release to a less  
19 restrictive alternative is in the best interest of the person and  
20 conditions can be imposed that adequately protect the community, the  
21 secretary shall authorize the person to petition the court for  
22 conditional release to a less restrictive alternative or unconditional  
23 discharge. The petition shall be ~~((served upon))~~ filed with the court  
24 and served upon the prosecuting ~~((attorney))~~ agency responsible for the  
25 initial commitment. The court, upon receipt of the petition for  
26 conditional release to a less restrictive alternative or unconditional  
27 discharge, shall within forty-five days order a hearing. ~~((The~~  
28 ~~prosecuting attorney or the attorney general, if requested by the~~  
29 ~~county, shall represent the state, and shall have the right to have the~~  
30 ~~petitioner examined by an expert or professional person of his or her~~  
31 ~~choice. The hearing shall be before a jury if demanded by either the~~  
32 ~~petitioner or the prosecuting attorney or attorney general. The burden~~  
33 ~~of proof shall be upon the prosecuting attorney or attorney general to~~  
34 ~~show beyond a reasonable doubt that the petitioner's mental abnormality~~  
35 ~~or personality disorder remains such that the petitioner is not safe to~~  
36 ~~be at large and that if conditionally released to a less restrictive~~  
37 ~~alternative or unconditionally discharged is likely to engage in~~  
38 ~~predatory acts of sexual violence.))~~

1 (2)(a) Nothing contained in this chapter shall prohibit the person  
2 from otherwise petitioning the court for conditional release to a less  
3 restrictive alternative or unconditional discharge without the  
4 secretary's approval. The secretary shall provide the committed person  
5 with an annual written notice of the person's right to petition the  
6 court for conditional release to a less restrictive alternative or  
7 unconditional discharge over the secretary's objection. The notice  
8 shall contain a waiver of rights. The secretary shall ~~((forward))~~ file  
9 the notice and waiver form ~~((to the court with))~~ and the annual report  
10 with the court. If the person does not affirmatively waive the right  
11 to petition, the court shall set a show cause hearing to determine  
12 whether ~~((facts))~~ probable cause exists ~~((that))~~ to warrant a hearing  
13 on whether: (i) The person's condition has so changed that he or she  
14 ~~((is safe to be conditionally released to a less restrictive~~  
15 ~~alternative or unconditionally discharged))~~ no longer meets the  
16 definition of a sexually violent predator; or (ii) conditional release  
17 to a less restrictive alternative would be in the best interest of the  
18 person and conditions can be imposed that would adequately protect the  
19 community.

20 (b) The committed person shall have a right to have an attorney  
21 represent him or her at the show cause hearing, which may be conducted  
22 solely on the basis of affidavits or declarations, but the person is  
23 not entitled to be present at the show cause hearing. At the show  
24 cause hearing, the prosecuting attorney or attorney general shall  
25 present prima facie evidence establishing that the committed person  
26 continues to meet the definition of a sexually violent predator and  
27 that a less restrictive alternative is not in the best interest of the  
28 person and conditions cannot be imposed that adequately protect the  
29 community. In making this showing, the state may rely exclusively upon  
30 the annual report prepared pursuant to RCW 71.09.070. The committed  
31 person may present responsive affidavits or declarations to which the  
32 state may reply.

33 (c) If the court at the show cause hearing determines that either:  
34 (i) The state has failed to present prima facie evidence that the  
35 committed person continues to meet the definition of a sexually violent  
36 predator and that no proposed less restrictive alternative is in the  
37 best interest of the person and conditions cannot be imposed that would  
38 adequately protect the community; or (ii) probable cause exists to  
39 believe that the person's ~~((mental abnormality or personality~~

1 disorder)) condition has so changed that: (A) The person ((is not  
2 likely to engage in predatory acts of sexual violence if conditionally  
3 released to a less restrictive alternative or unconditionally  
4 discharged)) no longer meets the definition of a sexually violent  
5 predator; or (B) release to a less restrictive alternative would be in  
6 the best interest of the person and conditions can be imposed that  
7 would adequately protect the community, then the court shall set a  
8 hearing on ((the)) either or both issues.

9 (d) If the court has not previously considered the issue of release  
10 to a less restrictive alternative, either through a trial on the merits  
11 or through the procedures set forth in RCW 71.09.094(1), the court  
12 shall consider whether release to a less restrictive alternative would  
13 be in the best interests of the person and conditions can be imposed  
14 that would adequately protect the community, without considering  
15 whether the person's condition has changed.

16 (3)(a) At the hearing resulting from subsection (1) or (2) of this  
17 section, the committed person shall be entitled to be present and to  
18 the benefit of all constitutional protections that were afforded to the  
19 person at the initial commitment proceeding. The prosecuting  
20 ((attorney)) agency or the attorney general if requested by the county  
21 shall represent the state and shall have a right to a jury trial and to  
22 have the committed person evaluated by experts chosen by the state.  
23 The committed person shall also have the right to have experts evaluate  
24 him or her on his or her behalf and the court shall appoint an expert  
25 if the person is indigent and requests an appointment.

26 (b) If the issue at the hearing is whether the person should be  
27 unconditionally discharged, the burden of proof ((at the hearing))  
28 shall be upon the state to prove beyond a reasonable doubt that the  
29 committed person's ((mental abnormality or personality disorder))  
30 condition remains such that the person ((is likely to engage in  
31 predatory acts of sexual violence if conditionally released to a less  
32 restrictive alternative or unconditionally discharged)) continues to  
33 meet the definition of a sexually violent predator. Evidence of the  
34 prior commitment trial and disposition is admissible.

35 (c) If the issue at the hearing is whether the person should be  
36 conditionally released to a less restrictive alternative, the burden of  
37 proof at the hearing shall be upon the state to prove beyond a  
38 reasonable doubt that conditional release to any proposed less  
39 restrictive alternative either: (i) Is not in the best interest of the

1 committed person; or (ii) does not include conditions that would  
2 adequately protect the community. Evidence of the prior commitment  
3 trial and disposition is admissible.

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

7 **Sec. 10.** RCW 71.09.092 and 1995 c 216 s 10 are each amended to  
8 read as follows:

9 Before the court may enter an order directing conditional release  
10 to a less restrictive alternative, it must find the following: (1) The  
11 person will be treated by a treatment provider who is qualified to  
12 provide such treatment in the state of Washington under chapter 18.155  
13 RCW; (2) the treatment provider has presented a specific course of  
14 treatment and has agreed to assume responsibility for such treatment  
15 and will report progress to the court on a regular basis, and will  
16 report violations immediately to the court, the prosecutor, the  
17 supervising community corrections officer, and the superintendent of  
18 the special commitment center; (3) housing exists that is sufficiently  
19 secure to protect the community, and the person or agency providing  
20 housing to the conditionally released person has agreed in writing to  
21 accept the person, to provide the level of security required by the  
22 court, and immediately to report to the court, the prosecutor, the  
23 supervising community corrections officer, and the superintendent of  
24 the special commitment center if the person leaves the housing to which  
25 he or she has been assigned without authorization; (4) the person is  
26 willing to comply with the treatment provider and all requirements  
27 imposed by the treatment provider and by the court; ~~((and))~~ (5) the  
28 person is willing to comply with supervision requirements imposed by  
29 the department of corrections; and (6) that the department of social  
30 and health services has verified with the victim witness programs  
31 operated by the department of social and health services, the  
32 department of corrections, the secretary of state, and any other  
33 appropriate programs, that the last known address of any of the  
34 person's registered victims is not within twenty-five miles of the  
35 committed person's proposed housing.

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

1 (1) Upon the conclusion of the evidence in a hearing held pursuant  
2 to RCW 71.09.090 or through summary judgment proceedings prior to such  
3 a hearing, if the court finds that there is no legally sufficient  
4 evidentiary basis for a reasonable jury to find that the conditions set  
5 forth in RCW 71.09.092 have been met, the court shall grant a motion by  
6 the state for a judgment as a matter of law on the issue of conditional  
7 release to a less restrictive alternative.

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

15 **Sec. 12.** RCW 71.09.096 and 1995 c 216 s 12 are each amended to  
16 read as follows:

17 (1) If the court or jury determines that conditional release to a  
18 less restrictive alternative is in the best interest of the person and  
19 ((will)) includes conditions that would adequately protect the  
20 community, and the court determines that the minimum conditions set  
21 forth in ((section 9 of this act)) RCW 71.09.092 and in this section  
22 are met, the court shall enter judgment and direct a conditional  
23 release.

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

31 (3) If the service provider designated by the court to provide  
32 inpatient or outpatient treatment or to monitor or supervise any other  
33 terms and conditions of a person's placement in a less restrictive  
34 alternative is other than the department of social and health services  
35 or the department of corrections, then the service provider so  
36 designated must agree in writing to provide such treatment, monitoring,  
37 or supervision in accord with this section. Any person providing or  
38 agreeing to provide treatment, monitoring, or supervision services

1 pursuant to this chapter may be compelled to testify and any privilege  
2 with regard to such person's testimony is deemed waived.

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

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

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



1       **Sec. 13.** RCW 71.09.098 and 1995 c 216 s 13 are each amended to  
2 read as follows:

3       (1) Any service provider submitting reports pursuant to RCW  
4 71.09.096(~~(+5)~~) (6), the supervising community corrections officer,  
5 the prosecuting attorney, or the attorney general may petition the  
6 court, or the court on its own motion may schedule an immediate  
7 hearing, for the purpose of revoking or modifying the terms of the  
8 person's conditional release to a less restrictive alternative if the  
9 petitioner or the court believes the released person is not complying  
10 with the terms and conditions of his or her release or is in need of  
11 additional care (~~(and)~~), monitoring, supervision, or treatment.

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

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

1        NEW SECTION.    **Sec. 14.**    This act applies to all individuals  
2 currently committed or awaiting commitment under chapter 71.09 RCW  
3 either on, before, or after the effective date of this act, whether  
4 confined in a secure facility or on conditional release.

5        NEW SECTION.    **Sec. 15.**    This act is necessary for the immediate  
6 preservation of the public peace, health, or safety, or support of the  
7 state government and its existing public institutions, and takes effect  
8 immediately.

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