
HOUSE BILL 1258

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By Representatives Carrell, Roach, Talcott, Kirby, Newhouse, Conway, McMahan, Kristiansen, Boldt, Flannigan, McDonald, Bush, Lantz, Cairnes, O'Brien, Shabro, Schindler, Ahern, Priest, Benson, Nixon, Chase and Anderson

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1 AN ACT Relating to civilly committing sexually violent predators
2 who are involuntarily committed under chapter 10.77 RCW; and amending
3 RCW 71.09.025, 71.09.030, 71.09.060, and 71.09.090.

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

5 **Sec. 1.** RCW 71.09.025 and 2001 c 286 s 5 are each amended to read
6 as follows:

7 (1)(a)(i) When it appears that a person may meet the criteria of a
8 sexually violent predator as defined in RCW 71.09.020(~~((+1))~~) (16), the
9 agency with jurisdiction shall refer the person in writing to the
10 prosecuting attorney of the county where that person was charged or
11 where that person is about to be released, three months prior to:

12 (~~((+i))~~) (A) The anticipated release from total confinement of a
13 person who has been convicted of a sexually violent offense;

14 (~~((+ii))~~) (B) The anticipated release from total confinement of a
15 person found to have committed a sexually violent offense as a
16 juvenile;

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

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

4 (ii) When it appears that a person who is presently involuntarily
5 committed under chapter 10.77 RCW, and who is not covered under
6 subsection (1)(a)(i)(C) and (D) of this section, may meet the criteria
7 of a sexually violent predator as defined in RCW 71.09.020(16), the
8 agency with jurisdiction shall refer the person in writing to the
9 prosecuting attorney of the county where that person was charged or
10 where that person is presently involuntarily committed.

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

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

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

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

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

22 (v) A current mental health evaluation or mental health records
23 review.

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

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

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

33 **Sec. 2.** RCW 71.09.030 and 1995 c 216 s 3 are each amended to read
34 as follows:

35 When it appears that: (1) A person who at any time previously has
36 been convicted of a sexually violent offense is about to be released
37 from total confinement on, before, or after July 1, 1990; (2) a person

1 found to have committed a sexually violent offense as a juvenile is
2 about to be released from total confinement on, before, or after July
3 1, 1990; (3) a person who has been charged with a sexually violent
4 offense and who has been determined to be incompetent to stand trial is
5 about to be released, or has been released on, before, or after July 1,
6 1990, pursuant to RCW 10.77.090(~~(+3+)~~) (4); (4) a person who has been
7 found not guilty by reason of insanity of a sexually violent offense is
8 about to be released, or has been released on, before, or after July 1,
9 1990, pursuant to RCW (~~(10.77.020(3),)~~) 10.77.110 (1) or (3)(~~(7)~~) or
10 10.77.150; (~~(e)~~) (5) a person who at any time previously has been
11 convicted of a sexually violent offense and has since been released
12 from total confinement and has committed a recent overt act; or (6) a
13 person who is presently involuntarily committed under chapter 10.77 RCW
14 and is not covered under subsection (3) or (4) of this section; and it
15 appears that the person may be a sexually violent predator, the
16 prosecuting attorney of the county where the person was convicted or
17 charged, the prosecuting attorney in the county where the person was
18 released or is about to be released, or the attorney general if
19 requested by the prosecuting attorney may file a petition alleging that
20 the person is a "sexually violent predator" and stating sufficient
21 facts to support such allegation.

22 **Sec. 3.** RCW 71.09.060 and 2001 c 286 s 7 are each amended to read
23 as follows:

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

32 If, on the date that the petition is filed, the person was living
33 in the community after release from custody, the state must also prove
34 beyond a reasonable doubt that the person had committed a recent overt
35 act. If the state alleges that the prior sexually violent offense that
36 forms the basis for the petition for commitment was an act that was

1 sexually motivated as provided in RCW 71.09.020(~~((6))~~) (15)(c), the
2 state must prove beyond a reasonable doubt that the alleged sexually
3 violent act was sexually motivated as defined in RCW 9.94A.030.

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

14 If the court or unanimous jury decides that the state has not met
15 its burden of proving that the person is a sexually violent predator,
16 the court shall direct the person's release. If the petition was filed
17 while the person was involuntarily committed under chapter 10.77 RCW,
18 the court shall return the person to the custody of the department for
19 evaluation and treatment under the chapter under which he or she was
20 involuntarily committed.

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(4), or is otherwise presently involuntarily
33 committed under chapter 10.77 RCW, and his or her commitment is sought
34 pursuant to subsection (1) of this section, the court shall first hear
35 evidence and determine whether the person did commit the act or acts
36 charged if the court did not enter a finding prior to dismissal under
37 RCW 10.77.090(4) that the person committed the act or acts charged.
38 The hearing on this issue must comply with all the procedures specified

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

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

24 (4) A court has jurisdiction to order a less restrictive
25 alternative placement only after a hearing ordered pursuant to RCW
26 71.09.090 following initial commitment under this section and in accord
27 with the provisions of this chapter.

28 **Sec. 4.** RCW 71.09.090 and 2001 c 286 s 9 are each amended to read
29 as follows:

30 (1) If the secretary determines that either: (a) The person's
31 condition has so changed that the person no longer meets the definition
32 of a sexually violent predator; or (b) conditional release to a less
33 restrictive alternative is in the best interest of the person and
34 conditions can be imposed that adequately protect the community, the
35 secretary shall authorize the person to petition the court for
36 conditional release to a less restrictive alternative or unconditional
37 discharge. The petition shall be filed with the court and served upon

1 the prosecuting agency responsible for the initial commitment. The
2 court, upon receipt of the petition for conditional release to a less
3 restrictive alternative or unconditional discharge, shall within forty-
4 five days order a hearing.

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

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

34 (c) If the court at the show cause hearing determines that either:
35 (i) The state has failed to present prima facie evidence that the
36 committed person continues to meet the definition of a sexually violent
37 predator and that no proposed less restrictive alternative is in the
38 best interest of the person and conditions cannot be imposed that would

1 adequately protect the community; or (ii) probable cause exists to
2 believe that the person's condition has so changed that: (A) The
3 person no longer meets the definition of a sexually violent predator;
4 or (B) release to a less restrictive alternative would be in the best
5 interest of the person and conditions can be imposed that would
6 adequately protect the community, then the court shall set a hearing on
7 either or both issues.

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

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

25 (b) If the issue at the hearing is whether the person should be
26 unconditionally discharged, the burden of proof shall be upon the state
27 to prove beyond a reasonable doubt that the committed person's
28 condition remains such that the person continues to meet the definition
29 of a sexually violent predator. Evidence of the prior commitment trial
30 and disposition is admissible.

31 (c) If the issue at the hearing is whether the person should be
32 conditionally released to a less restrictive alternative, the burden of
33 proof at the hearing shall be upon the state to prove beyond a
34 reasonable doubt that conditional release to any proposed less
35 restrictive alternative either: (i) Is not in the best interest of the
36 committed person; or (ii) does not include conditions that would
37 adequately protect the community. Evidence of the prior commitment
38 trial and disposition is admissible.

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

4 (5) If an unconditionally released person's petition under RCW
5 71.09.030 was filed while the person was involuntarily committed under
6 chapter 10.77 RCW, the person shall be returned to the custody of the
7 department for evaluation and treatment under the chapter under which
8 he or she was involuntarily committed.

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