
SENATE BILL 5582

State of Washington

59th Legislature

2005 Regular Session

By Senators Regala, Hargrove, Stevens, Carrell, Franklin, McAuliffe and Kohl-Welles

Read first time 01/28/2005. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to the use of demographic factors in proceedings
2 under chapter 71.09 RCW; amending RCW 71.09.090; creating a new
3 section; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the decisions in
6 *In re Young*, 120 Wn. App. 753, review denied, ___ Wn.2d ___ (2004) and
7 *In re Ward*, ___ Wn. App. ___ (2005) illustrate an unintended
8 consequence of language in chapter 71.09 RCW.

9 The *Young* and *Ward* decisions are contrary to the legislature's
10 intent set forth in RCW 71.09.010 that civil commitment pursuant to
11 chapter 71.09 RCW address the "very long-term" needs of the sexually
12 violent predator population for treatment and the equally long-term
13 needs of the community for protection from these offenders. The
14 legislature finds that the mental abnormalities and personality
15 disorders that make a person subject to commitment under chapter 71.09
16 RCW are severe and chronic and do not remit due solely to advancing age
17 or changes in other demographic factors.

18 The legislature finds, although severe medical conditions like
19 stroke, paralysis, and some types of dementia can leave a person unable

1 to commit further sexually violent acts, that a mere advance in age or
2 a change in gender or some other demographic factor after the time of
3 commitment does not merit a new trial proceeding under RCW 71.09.090.
4 To the contrary, the legislature finds that a new trial ordered under
5 the circumstances set forth in *Young and Ward* subverts the statutory
6 focus on treatment and reduces community safety by removing all
7 incentive for successful treatment participation in favor of passive
8 aging and distracting committed persons from fully engaging in sex
9 offender treatment.

10 The *Young and Ward* decisions are contrary to the legislature's
11 intent that the risk posed by persons committed under chapter 71.09 RCW
12 will generally require prolonged treatment in a secure facility
13 followed by intensive community supervision in the cases where positive
14 treatment gains are sufficient for community safety. The legislature
15 has, under the guidance of the federal court, provided avenues through
16 which committed persons who successfully progress in treatment will be
17 supported by the state in a conditional release to a less restrictive
18 alternative that is in the best interest of the committed person and
19 provides adequate safeguards to the community and is the appropriate
20 next step in the person's treatment.

21 The legislature also finds that, in some cases, a committed person
22 may appropriately challenge whether he or she continues to meet the
23 criteria for commitment. Because of this, the legislature enacted RCW
24 71.09.070 and 71.09.090, requiring a regular review of a committed
25 person's status and permitting the person the opportunity to present
26 evidence of a relevant change in condition from the time of the last
27 commitment trial proceeding. These provisions are intended only to
28 provide a method of revisiting the indefinite commitment due to a
29 relevant change in the person's condition, not an alternate method of
30 collaterally attacking a person's indefinite commitment for reasons
31 unrelated to a change in condition. Where necessary, other existing
32 statutes and court rules provide ample opportunity to resolve any
33 concerns about prior commitment trials. Therefore, the legislature
34 intends to clarify the "so changed" standard.

35 **Sec. 2.** RCW 71.09.090 and 2001 c 286 s 9 are each amended to read
36 as follows:

37 (1) If the secretary determines that (~~either:—(a))~~) the person's

1 condition has so changed that either: (a) The person no longer meets
2 the definition of a sexually violent predator; or (b) conditional
3 release to a less restrictive alternative is in the best interest of
4 the person and conditions can be imposed that adequately protect the
5 community, the secretary shall authorize the person to petition the
6 court for conditional release to a less restrictive alternative or
7 unconditional discharge. The petition shall be filed with the court
8 and served upon the prosecuting agency responsible for the initial
9 commitment. The court, upon receipt of the petition for conditional
10 release to a less restrictive alternative or unconditional discharge,
11 shall within forty-five days order a hearing.

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 less restrictive alternative or
18 unconditional discharge over the secretary's objection. The notice
19 shall contain a waiver of rights. The secretary shall file the notice
20 and waiver form and the annual report with the court. If the person
21 does not affirmatively waive the right to petition, the court shall set
22 a show cause hearing to determine whether probable cause exists to
23 warrant a hearing on whether(~~(i)~~) the person's condition has so
24 changed that: (i) He or she no longer meets the definition of a
25 sexually violent predator; or (ii) conditional release to a proposed
26 less restrictive alternative would be in the best interest of the
27 person and conditions can be imposed that would adequately protect the
28 community.

29 (b) The committed person shall have a right to have an attorney
30 represent him or her at the show cause hearing, which may be conducted
31 solely on the basis of affidavits or declarations, but the person is
32 not entitled to be present at the show cause hearing. At the show
33 cause hearing, the prosecuting attorney or attorney general shall
34 present prima facie evidence establishing that the committed person
35 continues to meet the definition of a sexually violent predator and
36 that a less restrictive alternative is not in the best interest of the
37 person and conditions cannot be imposed that adequately protect the
38 community. In making this showing, the state may rely exclusively upon

1 the annual report prepared pursuant to RCW 71.09.070. The committed
2 person may present responsive affidavits or declarations to which the
3 state may reply.

4 (c) If the court at the show cause hearing determines that either:
5 (i) The state has failed to present prima facie evidence that the
6 committed person continues to meet the definition of a sexually violent
7 predator and that no proposed less restrictive alternative is in the
8 best interest of the person and conditions cannot be imposed that would
9 adequately protect the community; or (ii) probable cause exists to
10 believe that the person's condition has so changed that: (A) The
11 person no longer meets the definition of a sexually violent predator;
12 or (B) release to a proposed less restrictive alternative would be in
13 the best interest of the person and conditions can be imposed that
14 would adequately protect the community, then the court shall set a
15 hearing on either or both issues.

16 (d) If the court has not previously considered the issue of release
17 to a less restrictive alternative, either through a trial on the merits
18 or through the procedures set forth in RCW 71.09.094(1), the court
19 shall consider whether release to a less restrictive alternative would
20 be in the best interests of the person and conditions can be imposed
21 that would adequately protect the community, without considering
22 whether the person's condition has changed.

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

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

1 (c) If the issue at the hearing is whether the person should be
2 conditionally released to a less restrictive alternative, the burden of
3 proof at the hearing shall be upon the state to prove beyond a
4 reasonable doubt that conditional release to any proposed less
5 restrictive alternative either: (i) Is not in the best interest of the
6 committed person; or (ii) does not include conditions that would
7 adequately protect the community. Evidence of the prior commitment
8 trial and disposition is admissible.

9 (4)(a) Probable cause exists to believe that a person's condition
10 has "so changed," under subsection (2) of this section, only when
11 evidence exists, since the person's last commitment trial proceeding,
12 of a substantial change in the person's physical or mental condition
13 such that the person either no longer meets the definition of a
14 sexually violent predator or that a conditional release to a less
15 restrictive alternative is in the person's best interest and conditions
16 can be imposed to adequately protect the community.

17 (b) A new trial proceeding under subsection (3) of this section may
18 be ordered, or held, only when there is current evidence from a
19 licensed professional of one of the following and the evidence presents
20 a change in condition since the person's last commitment trial
21 proceeding:

22 (i) An identified physiological change to the person, such as
23 paralysis, stroke, or dementia, that renders the committed person
24 unable to commit a sexually violent act and this change is permanent;
25 or

26 (ii) A change in the person's mental condition brought about
27 through positive response to continuing participation in treatment
28 which indicates that the person meets the standard for conditional
29 release to a less restrictive alternative or that the person would be
30 safe to be at large if unconditionally released from commitment.

31 (c) For purposes of this section, a change in a single demographic
32 factor, without more, does not establish probable cause for a new trial
33 proceeding under subsection (3) of this section. As used in this
34 section, a single demographic factor includes, but is not limited to,
35 a change in the chronological age, marital status, or gender of the
36 committed person.

37 (5) The jurisdiction of the court over a person civilly committed

1 pursuant to this chapter continues until such time as the person is
2 unconditionally discharged.

3 NEW SECTION. **Sec. 3.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

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

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