
HOUSE BILL 1246

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By Representatives Pearson, Shea, Hurst, Parker, O'Brien, Ross, Hope, Smith, Kirby, Kelley, Kristiansen, Dammeier, and Morrell; by request of Attorney General

Read first time 01/15/09. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to the commitment of sexually violent predators;
2 amending RCW 71.09.020, 71.09.025, 71.09.030, 71.09.040, 71.09.050,
3 71.09.060, 71.09.080, 71.09.090, 71.09.092, 71.09.096, 71.09.098,
4 71.09.112, and 71.09.350; and adding new sections to chapter 71.09 RCW.

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

6 **Sec. 1.** RCW 71.09.020 and 2006 c 303 s 10 are each amended to read
7 as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

10 (1) "Department" means the department of social and health
11 services.

12 (2) "Health care facility" means any hospital, hospice care center,
13 licensed or certified health care facility, health maintenance
14 organization regulated under chapter 48.46 RCW, federally qualified
15 health maintenance organization, federally approved renal dialysis
16 center or facility, or federally approved blood bank.

17 (3) "Health care practitioner" means an individual or firm licensed
18 or certified to engage actively in a regulated health profession.

1 (4) "Health care services" means those services provided by health
2 professionals licensed pursuant to RCW 18.120.020(4).

3 (5) "Health profession" means those licensed or regulated
4 professions set forth in RCW 18.120.020(4).

5 (6) "Less restrictive alternative" means court-ordered treatment in
6 a setting less restrictive than total confinement which satisfies the
7 conditions set forth in RCW 71.09.092. A less restrictive alternative
8 may not include placement in the community protection program as
9 pursuant to RCW 71A.12.230.

10 (7) "Likely to engage in predatory acts of sexual violence if not
11 confined in a secure facility" means that the person more probably than
12 not will engage in such acts if released unconditionally from detention
13 on the sexually violent predator petition before additional treatment
14 in a secure facility, secure community transition facility, or other
15 less restrictive alternative placement. Such likelihood must be
16 evidenced by a recent overt act if the person is not totally confined
17 at the time the petition is filed under RCW 71.09.030.

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

22 (9) "Personality disorder" means an enduring pattern of inner
23 experience and behavior that deviates markedly from the expectations of
24 the individual's culture, is pervasive and inflexible, has onset in
25 adolescence or early adulthood, is stable over time and leads to
26 distress or impairment.

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

31 ((+10+)) (11) "Prosecuting agency" means the prosecuting attorney
32 of the county where the person was convicted or charged or the attorney
33 general if requested by the prosecuting attorney, as provided in RCW
34 71.09.030.

35 (12) "Recent overt act" means any act ((or)), threat, or
36 combination thereof that has either caused harm of a sexually violent
37 nature or creates a reasonable apprehension of such harm in the mind of

1 an objective person who knows of the history and mental condition of
2 the person engaging in the act behaviors.

3 ~~((+11+))~~ (13) "Risk potential activity" or "risk potential
4 facility" means an activity or facility that provides a higher
5 incidence of risk to the public from persons conditionally released
6 from the special commitment center. Risk potential activities and
7 facilities include: Public and private schools, school bus stops,
8 licensed day care and licensed preschool facilities, public parks,
9 publicly dedicated trails, sports fields, playgrounds, recreational and
10 community centers, churches, synagogues, temples, mosques, public
11 libraries, public and private youth camps, and others identified by the
12 department following the hearings on a potential site required in RCW
13 71.09.315. For purposes of this chapter, "school bus stops" does not
14 include bus stops established primarily for public transit.

15 ~~((+12+))~~ (14) "Secretary" means the secretary of social and health
16 services or the secretary's designee.

17 ~~((+13+))~~ (15) "Secure facility" means a residential facility for
18 persons civilly confined under the provisions of this chapter that
19 includes security measures sufficient to protect the community. Such
20 facilities include total confinement facilities, secure community
21 transition facilities, and any residence used as a court-ordered
22 placement under RCW 71.09.096.

23 ~~((+14+))~~ (16) "Secure community transition facility" means a
24 residential facility for persons civilly committed and conditionally
25 released to a less restrictive alternative under this chapter. A
26 secure community transition facility has supervision and security, and
27 either provides or ensures the provision of sex offender treatment
28 services. Secure community transition facilities include but are not
29 limited to the facility established pursuant to RCW 71.09.250(1)(a)(i)
30 and any community-based facilities established under this chapter and
31 operated by the secretary or under contract with the secretary.

32 ~~((+15+))~~ (17) "Sexually violent offense" means an act committed on,
33 before, or after July 1, 1990, that is: (a) An act defined in Title 9A
34 RCW as rape in the first degree, rape in the second degree by forcible
35 compulsion, rape of a child in the first or second degree, statutory
36 rape in the first or second degree, indecent liberties by forcible
37 compulsion, indecent liberties against a child under age fourteen,
38 incest against a child under age fourteen, or child molestation in the

1 first or second degree; (b) a felony offense in effect at any time
2 prior to July 1, 1990, that is comparable to a sexually violent offense
3 as defined in (a) of this subsection, or any federal or out-of-state
4 conviction for a felony offense that under the laws of this state would
5 be a sexually violent offense as defined in this subsection; (c) an act
6 of murder in the first or second degree, assault in the first or second
7 degree, assault of a child in the first or second degree, kidnapping in
8 the first or second degree, burglary in the first degree, residential
9 burglary, or unlawful imprisonment, which act, either at the time of
10 sentencing for the offense or subsequently during civil commitment
11 proceedings pursuant to this chapter, has been determined beyond a
12 reasonable doubt to have been sexually motivated, as that term is
13 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28
14 RCW, that is an attempt, criminal solicitation, or criminal conspiracy
15 to commit one of the felonies designated in (a), (b), or (c) of this
16 subsection.

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

22 ((+17+)) (19) "Total confinement facility" means a secure facility
23 that provides supervision and sex offender treatment services in a
24 total confinement setting. Total confinement facilities include the
25 special commitment center and any similar facility designated as a
26 total confinement facility by the secretary.

27 **Sec. 2.** RCW 71.09.025 and 2008 c 213 s 11 are each amended to read
28 as follows:

29 (1)(a) When it appears that a person may meet the criteria of a
30 sexually violent predator as defined in RCW 71.09.020 (16), the agency
31 with jurisdiction shall refer the person in writing to the prosecuting
32 attorney of the county (~~where that person was charged~~) in which an
33 action under this chapter may be filed pursuant to RCW 71.09.030 and
34 the attorney general, three months prior to:

35 (i) The anticipated release from total confinement of a person who
36 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 10.77.086(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~~) prosecuting agency
9 with all relevant information including but not limited to the
10 following information:

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

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

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

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

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

22 (c) The prosecuting agency has the authority, consistent with RCW
23 72.09.345(3), to obtain all records relating to the person if the
24 prosecuting agency deems such records are necessary to fulfill its
25 duties under this chapter. The prosecuting agency may only disclose
26 such records in the course of performing its duties pursuant to this
27 chapter, unless otherwise authorized by law.

28 (d) The prosecuting agency has the authority to utilize the inquiry
29 judge procedures of chapter 10.27 RCW prior to the filing of any action
30 under this chapter to seek the issuance of compulsory process for the
31 production of any records necessary for a determination of whether to
32 seek the civil commitment of a person under this chapter. Any records
33 obtained pursuant to this process may only be disclosed by the
34 prosecuting agency in the course of performing its duties pursuant to
35 this chapter, or unless otherwise authorized by law.

36 (2) (~~This section applies to acts committed before, on, or after~~
37 ~~March 26, 1992.~~)

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

3 ~~((4))~~) (3) As used in this section, "agency with jurisdiction"
4 means that agency with the authority to direct the release of a person
5 serving a sentence or term of confinement and includes the department
6 of corrections, the indeterminate sentence review board, and the
7 department of social and health services.

8 **Sec. 3.** RCW 71.09.030 and 2008 c 213 s 12 are each amended to read
9 as follows:

10 (1) A petition may be filed alleging that a person is a sexually
11 violent predator and stating sufficient facts to support such
12 allegation when it appears that: ~~((1))~~) (a) A person who at any time
13 previously has been convicted of a sexually violent offense is about to
14 be released from total confinement ~~((on, before, or after July 1,~~
15 ~~1990))~~; ~~((2))~~) (b) a person found to have committed a sexually violent
16 offense as a juvenile is about to be released from total confinement
17 ~~((on, before, or after July 1, 1990))~~; ~~((3))~~) (c) a person who has
18 been charged with a sexually violent offense and who has been
19 determined to be incompetent to stand trial is about to be released, or
20 has been released ~~((on, before, or after July 1, 1990))~~, pursuant to
21 RCW 10.77.086(4); ~~((4))~~) (d) a person who has been found not guilty by
22 reason of insanity of a sexually violent offense is about to be
23 released, or has been released ~~((on, before, or after July 1, 1990))~~,
24 pursuant to RCW 10.77.020(3), 10.77.110 (1) or (3), or 10.77.150; or
25 ~~((5))~~) (e) a person who at any time previously has been convicted of
26 a sexually violent offense and has since been released from total
27 confinement and has committed a recent overt act ~~((; and it appears that~~
28 ~~the person may be a sexually violent predator, the prosecuting attorney~~
29 ~~of the county where the person was convicted or charged or the attorney~~
30 ~~general if requested by the prosecuting attorney may file a petition~~
31 ~~alleging that the person is a "sexually violent predator" and stating~~
32 ~~sufficient facts to support such allegation))~~.

33 (2) The petition may be filed by:

34 (a) The prosecuting attorney of a county in which:

35 (i) The person has been charged or convicted with a sexually
36 violent offense;

1 (ii) A recent overt act occurred involving a person covered under
2 subsection (1)(e) of this section; or

3 (iii) The person was charged or convicted of a criminal offense
4 that would qualify as a recent overt act, if the only sexually violent
5 offense charge or conviction occurred in a jurisdiction other than
6 Washington; or

7 (b) The attorney general, if requested by the county prosecuting
8 attorney identified in (a) of this subsection. If the county
9 prosecuting attorney requests that the attorney general file and
10 prosecute a case under this chapter, then the county shall charge the
11 attorney general only the fees, including filing and jury fees, that
12 would be charged and paid by the county prosecuting attorney, if the
13 county prosecuting attorney retained the case.

14 **Sec. 4.** RCW 71.09.040 and 2001 c 286 s 6 are each amended to read
15 as follows:

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

21 (2) Within seventy-two hours after a person is taken into custody
22 pursuant to subsection (1) of this section, the court shall provide the
23 person with notice of, and an opportunity to appear in person at, a
24 hearing to contest probable cause as to whether the person is a
25 sexually violent predator. In order to assist the person at the
26 hearing, within twenty-four hours of service of the petition, the
27 prosecuting agency shall provide to the person or his or her counsel a
28 copy of all materials provided to the prosecuting agency by the
29 referring agency pursuant to RCW 71.09.025, or obtained by the
30 prosecuting agency pursuant to RCW 71.09.025(1) (c) and (d). At this
31 hearing, the court shall (a) verify the person's identity, and (b)
32 determine whether probable cause exists to believe that the person is
33 a sexually violent predator. At the probable cause hearing, the state
34 may rely upon the petition and certification for determination of
35 probable cause filed pursuant to RCW 71.09.030. The state may
36 supplement this with additional documentary evidence or live testimony.
37 The person must be held in total confinement at the county jail until

1 the trial court renders a decision after the conclusion of the seventy-
2 two hour probable cause hearing. The county shall be entitled to
3 reimbursement for the cost of housing and transporting the person
4 pursuant to rules adopted by the secretary.

5 (3) At the probable cause hearing, the person shall have the
6 following rights in addition to the rights previously specified: (a)
7 To be represented by counsel; (b) to present evidence on his or her
8 behalf; (c) to cross-examine witnesses who testify against him or her;
9 (d) to view and copy all petitions and reports in the court file. The
10 court must permit a witness called by either party to testify by
11 telephone. Because this is a special proceeding, discovery pursuant to
12 the civil rules shall not occur until after the hearing has been held
13 and the court has issued its decision.

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

25 NEW SECTION. Sec. 5. A new section is added to chapter 71.09 RCW
26 to read as follows:

27 (1) Unless otherwise specified within this chapter, this section
28 shall govern pretrial discovery for any hearing held under RCW
29 71.09.098 and any trial proceeding under RCW 71.09.060 and
30 71.09.090(3). Application of the civil discovery rules is permitted
31 when not inconsistent with the provisions of this chapter.

32 (2) The prosecuting agency and the person shall have a continuing
33 obligation to disclose all materials that are not privileged and that
34 are relevant to the questions before the court or reasonably calculated
35 to lead to relevant evidence. Where a privilege is claimed to allow
36 nondisclosure of materials, the party asserting the privilege shall

1 provide a privilege log. The prosecutor, the person, and the person's
2 counsel shall certify compliance with this provision.

3 (3) If an expert witness testifies on behalf of the state or the
4 person at a court proceeding, the party presenting testimony shall
5 provide copies of all prior expert evaluations of the person conducted
6 by experts that have been retained or previously consulted by the
7 party, as well as a report from the testifying expert.

8 (4) A party may take no more than ten depositions. Each party may
9 conduct one deposition that is limited to two days of seven hours per
10 day. All other depositions are limited to one day of seven hours.

11 (5) A party may serve no more than forty interrogatories, with
12 discrete subparts of each counted as a separate interrogatory for the
13 purpose of calculating the forty interrogatory limit.

14 (6) A party may serve no more than fifty requests for admission
15 upon any other party, in addition to requests for admission propounded
16 to authenticate documents.

17 (7) A party served with discovery requests in violation of this
18 section need not respond to those requests or move for a protective
19 order. Any party or person served with a notice of deposition in
20 violation of this section need not attend the deposition or move for a
21 protective order.

22 (8) Any violations of the discovery obligations under this section
23 may be resolved through enforcement mechanisms available under the
24 civil rules or other applicable law.

25 (9) Nothing in this section precludes the parties from engaging in
26 the informal exchange and acquisition of information in lieu of formal
27 discovery.

28 **Sec. 6.** RCW 71.09.050 and 1995 c 216 s 5 are each amended to read
29 as follows:

30 (1) Within forty-five days after the completion of any hearing held
31 pursuant to RCW 71.09.040, the court shall conduct a trial to determine
32 whether the person is a sexually violent predator. The trial may be
33 continued upon the request of either party and a showing of good cause,
34 or by the court on its own motion in the due administration of justice,
35 and when the respondent will not be substantially prejudiced. At all
36 stages of the proceedings under this chapter, any person subject to
37 this chapter shall be entitled to the assistance of counsel, and if the

1 person is indigent, the court shall appoint counsel to assist him or
2 her. The person shall be confined in a secure facility for the
3 duration of the trial.

4 (2) Whenever any person is subjected to an examination under this
5 chapter, he or she may retain experts or professional persons to
6 perform an examination on their behalf. When the person wishes to be
7 examined by a qualified expert or professional person of his or her own
8 choice, such examiner shall be permitted to have reasonable access to
9 the person for the purpose of such examination, as well as to all
10 relevant medical and psychological records and reports. In the case of
11 a person who is indigent, the court shall, upon the person's request,
12 assist the person in obtaining an expert or professional person to
13 perform an examination or participate in the trial on the person's
14 behalf.

15 (3) The person, the prosecuting (~~attorney or attorney general~~)
16 agency, or the judge shall have the right to demand that the trial be
17 before a twelve-person jury. If no demand is made, the trial shall be
18 before the court.

19 (4) The prosecuting agency shall have the right to have the person
20 evaluated by experts chosen by the state.

21 **Sec. 7.** RCW 71.09.060 and 2008 c 213 s 13 are each amended to read
22 as follows:

23 (1) The court or jury shall determine whether, beyond a reasonable
24 doubt, the person is a sexually violent predator. In determining
25 whether or not the person would be likely to engage in predatory acts
26 of sexual violence if not confined in a secure facility, the fact
27 finder may consider all admissible evidence, subject to the limitations
28 in this chapter. A finder of fact may consider only placement
29 conditions and voluntary treatment options that would exist for the
30 person if unconditionally released from detention on the sexually
31 violent predator petition. The community protection program under RCW
32 71A.12.230 may not be considered as a placement condition or treatment
33 option available to the person if unconditionally released from
34 detention on a sexually violent predator petition. When the
35 determination is made by a jury, the verdict must be unanimous. In
36 evaluating a person's mental condition and future danger, the fact
37 finder may consider evidence relating to the person's participation in

1 treatment or treatment refusal, including observations of the person
2 while awaiting trial in the custody of the department. The fact finder
3 may also consider whether the person's mental condition and recidivism
4 risk are best ameliorated over the course of the person's expected
5 lifetime by immediate release on the current petition, or through a
6 continuing opportunity for treatment in a secure facility followed by
7 the possibility of a less restrictive alternative or unconditional
8 release at a later time. The finder of fact may not consider
9 procedural details of the less restrictive alternative or unconditional
10 release process, evidence addressing conditions of confinement, or the
11 possibility of a future petition based on a recent overt act.

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

20 If the court or jury determines that the person is a sexually
21 violent predator, the person shall be committed to the custody of the
22 department of social and health services for placement in a secure
23 facility operated by the department of social and health services for
24 control, care, and treatment until such time as: (a) The person's
25 condition has so changed that the person no longer meets the definition
26 of a sexually violent predator; or (b) conditional release to a less
27 restrictive alternative as set forth in RCW 71.09.092 is in the best
28 interest of the person and conditions can be imposed that would
29 adequately protect the community.

30 If the court or unanimous jury decides that the state has not met
31 its burden of proving that the person is a sexually violent predator,
32 the court shall direct the person's release.

33 If the jury is unable to reach a unanimous verdict, the court shall
34 declare a mistrial and set a retrial within forty-five days of the date
35 of the mistrial unless the prosecuting agency earlier moves to dismiss
36 the petition. The retrial may be continued upon the request of either
37 party accompanied by a showing of good cause, or by the court on its
38 own motion in the due administration of justice provided that the

1 respondent will not be substantially prejudiced. In no event may the
2 person be released from confinement prior to retrial or dismissal of
3 the case.

4 (2) If the person charged with a sexually violent offense has been
5 found incompetent to stand trial, and is about to (~~(be)~~) be or has
6 been released pursuant to RCW 10.77.086(4), and his or her commitment
7 is sought pursuant to subsection (1) of this section, the court shall
8 first hear evidence and determine whether the person did commit the act
9 or acts charged if the court did not enter a finding prior to dismissal
10 under RCW 10.77.086(4) that the person committed the act or acts
11 charged. The hearing on this issue must comply with all the procedures
12 specified in this section. In addition, the rules of evidence
13 applicable in criminal cases shall apply, and all constitutional rights
14 available to defendants at criminal trials, other than the right not to
15 be tried while incompetent, shall apply. After hearing evidence on
16 this issue, the court shall make specific findings on whether the
17 person did commit the act or acts charged, the extent to which the
18 person's incompetence or developmental disability affected the outcome
19 of the hearing, including its effect on the person's ability to consult
20 with and assist counsel and to testify on his or her own behalf, the
21 extent to which the evidence could be reconstructed without the
22 assistance of the person, and the strength of the prosecution's case.
23 If, after the conclusion of the hearing on this issue, the court finds,
24 beyond a reasonable doubt, that the person did commit the act or acts
25 charged, it shall enter a final order, appealable by the person, on
26 that issue, and may proceed to consider whether the person should be
27 committed pursuant to this section.

28 (3) Except as otherwise provided in this chapter, the state shall
29 comply with RCW 10.77.220 while confining the person (~~(pursuant to this~~
30 chapter, except that)). During all court proceedings where the person
31 is present, the person shall be (~~(detained in a secure facility))~~
32 totally confined in the county jail. If the proceedings last more than
33 one consecutive day, the person shall be held in the county jail for
34 the duration of the proceedings, except the person may be returned to
35 the department's custody on weekends and court holidays if the court
36 deems such a transfer feasible. The county shall be entitled to
37 reimbursement for the cost of housing and transporting the person
38 pursuant to rules adopted by the secretary. The department shall not

1 place the person, even temporarily, in a facility on the grounds of any
2 state mental facility or regional habilitation center because these
3 institutions are insufficiently secure for this population.

4 (4) A court has jurisdiction to order a less restrictive
5 alternative placement only after a hearing ordered pursuant to RCW
6 71.09.090 following initial commitment under this section and in accord
7 with the provisions of this chapter.

8 **Sec. 8.** RCW 71.09.080 and 1995 c 216 s 8 are each amended to read
9 as follows:

10 (1) Any person subjected to restricted liberty as a sexually
11 violent predator pursuant to this chapter shall not forfeit any legal
12 right or suffer any legal disability as a consequence of any actions
13 taken or orders made, other than as specifically provided in this
14 chapter, or as otherwise authorized by law.

15 (2) Any person committed pursuant to this chapter has the right to
16 adequate care and individualized treatment. The department of social
17 and health services shall keep records detailing all medical, expert,
18 and professional care and treatment received by a committed person, and
19 shall keep copies of all reports of periodic examinations made pursuant
20 to this chapter. All such records and reports shall be made available
21 upon request only to: The committed person, his or her attorney, the
22 prosecuting attorney, the court, the protection and advocacy agency, or
23 another expert or professional person who, upon proper showing,
24 demonstrates a need for access to such records.

25 (3) At the time a person is taken into custody or transferred into
26 a facility pursuant to a petition under this chapter, the professional
27 person in charge of such facility or his or her designee shall take
28 reasonable precautions to inventory and safeguard the personal property
29 of the persons detained or transferred. A copy of the inventory,
30 signed by the staff member making it, shall be given to the person
31 detained and shall, in addition, be open to inspection to any
32 responsible relative, subject to limitations, if any, specifically
33 imposed by the detained person. For purposes of this subsection,
34 "responsible relative" includes the guardian, conservator, attorney,
35 spouse, parent, adult child, or adult brother or sister of the person.
36 The facility shall not disclose the contents of the inventory to any
37 other person without consent of the patient or order of the court.

1 (4) Nothing in this chapter prohibits a person presently committed
2 from exercising a right presently available to him or her for the
3 purpose of obtaining release from confinement, including the right to
4 petition for a writ of habeas corpus.

5 (5) No indigent person may be conditionally released or
6 unconditionally discharged under this chapter without suitable
7 clothing, and the secretary shall furnish the person with such sum of
8 money as is required by RCW 72.02.100 for persons without ample funds
9 who are released from correctional institutions. As funds are
10 available, the secretary may provide payment to the indigent persons
11 conditionally released pursuant to this chapter consistent with the
12 optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules
13 to do so.

14 (6) If a civil commitment petition is dismissed, or a trier of fact
15 determines that a person does not meet civil commitment criteria, the
16 person shall be released within twenty-four hours of service of the
17 release order on the superintendent of the special commitment center,
18 or later by agreement of the person who is the subject of the petition.
19 The release order may be stayed by lawful court order pending an appeal
20 by the state.

21 **Sec. 9.** RCW 71.09.090 and 2005 c 344 s 2 are each amended to read
22 as follows:

23 (1) If the secretary determines that the person's condition has so
24 changed that either: (a) The person no longer meets the definition of
25 a sexually violent predator; or (b) conditional release to a less
26 restrictive alternative is in the best interest of the person and
27 conditions can be imposed that adequately protect the community, the
28 secretary shall authorize the person to petition the court for
29 conditional release to a less restrictive alternative or unconditional
30 discharge. The petition shall be filed with the court and served upon
31 the prosecuting agency responsible for the initial commitment. The
32 court, upon receipt of the petition for conditional release to a less
33 restrictive alternative or unconditional discharge, shall within forty-
34 five days order a hearing.

35 (2)(a) Nothing contained in this chapter shall prohibit the person
36 from otherwise petitioning the court for conditional release to a less
37 restrictive alternative or unconditional discharge without the

1 secretary's approval. The secretary shall provide the committed person
2 with an annual written notice of the person's right to petition the
3 court for conditional release to a less restrictive alternative or
4 unconditional discharge over the secretary's objection. The notice
5 shall contain a waiver of rights. The secretary shall file the notice
6 and waiver form and the annual report with the court. If the person
7 does not affirmatively waive the right to petition, the court shall set
8 a show cause hearing to determine whether probable cause exists to
9 warrant a hearing on whether the person's condition has so changed
10 that: (i) He or she no longer meets the definition of a sexually
11 violent predator; or (ii) conditional release to a proposed less
12 restrictive alternative would be in the best interest of the person and
13 conditions can be imposed that would adequately protect the community.

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

28 (c) If the court at the show cause hearing determines that either:
29 (i) The state has failed to present prima facie evidence that the
30 committed person continues to meet the definition of a sexually violent
31 predator and that no proposed less restrictive alternative is in the
32 best interest of the person and conditions cannot be imposed that would
33 adequately protect the community; or (ii) probable cause exists to
34 believe that the person's condition has so changed that: (A) The
35 person no longer meets the definition of a sexually violent predator;
36 or (B) release to a proposed less restrictive alternative would be in
37 the best interest of the person and conditions can be imposed that

1 would adequately protect the community, then the court shall set a
2 hearing on either or both issues.

3 (d) If the court has not previously considered the issue of release
4 to a less restrictive alternative, either through a trial on the merits
5 or through the procedures set forth in RCW 71.09.094(1), the court
6 shall consider whether release to a less restrictive alternative would
7 be in the best interests of the person and conditions can be imposed
8 that would adequately protect the community, without considering
9 whether the person's condition has changed. The court may not find
10 probable cause for a trial addressing less restrictive alternatives
11 unless a proposed less restrictive alternative placement meeting the
12 conditions of RCW 71.09.092 is presented to the court at the show cause
13 hearing.

14 (3)(a) At the hearing resulting from subsection (1) or (2) of this
15 section, the committed person shall be entitled to be present and to
16 the benefit of all constitutional protections that were afforded to the
17 person at the initial commitment proceeding. The prosecuting agency
18 (~~(or the attorney general if requested by the county)~~) shall represent
19 the state and shall have a right to a jury trial and to have the
20 committed person evaluated by experts chosen by the state. The
21 committed person shall also have the right to a jury trial and the
22 right to have experts evaluate him or her on his or her behalf and the
23 court shall appoint an expert if the person is indigent and requests an
24 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. The recommitment proceeding shall
31 otherwise proceed as set forth in RCW 71.09.050 and 71.09.060.

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

1 trial and disposition is admissible. In evaluating the proposed less
2 restrictive alternative, the finder of fact may consider whether the
3 person's mental condition and recidivism risk is better ameliorated
4 through completion of the special commitment center treatment program
5 and eventual placement in a secure community transition facility,
6 rather than the proposed less restrictive alternative.

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

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

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

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

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

36 (5) The jurisdiction of the court over a person civilly committed
37 pursuant to this chapter continues until such time as the person is
38 unconditionally discharged.

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

3 Before the court may enter an order directing conditional release
4 to a less restrictive alternative, it must find the following: (1) The
5 person will be treated by a treatment provider who is qualified to
6 provide such treatment in the state of Washington under chapter 18.155
7 RCW; (2) the treatment provider has presented a specific course of
8 treatment and has agreed to assume responsibility for such treatment
9 and will report progress to the court on a regular basis, and will
10 report violations immediately to the court, the prosecutor, the
11 supervising community corrections officer, and the superintendent of
12 the special commitment center; (3) housing exists in Washington that is
13 sufficiently secure to protect the community, and the person or agency
14 providing housing to the conditionally released person has agreed in
15 writing to accept the person, to provide the level of security required
16 by the court, and immediately to report to the court, the prosecutor,
17 the supervising community corrections officer, and the superintendent
18 of the special commitment center if the person leaves the housing to
19 which he or she has been assigned without authorization; (4) the person
20 is willing to comply with the treatment provider and all requirements
21 imposed by the treatment provider and by the court; and (5) the person
22 will be under the personal supervision of the department of corrections
23 and is willing to comply with supervision requirements imposed by the
24 department of corrections.

25 **Sec. 11.** RCW 71.09.096 and 2001 c 286 s 12 are each amended to
26 read as follows:

27 (1) If the court or jury determines that conditional release to a
28 less restrictive alternative is in the best interest of the person and
29 includes conditions that would adequately protect the community, and
30 the court determines that the minimum conditions set forth in RCW
31 71.09.092 and in this section are met, the court shall enter judgment
32 and direct a conditional release.

33 (2) The court shall impose any additional conditions necessary to
34 ensure compliance with treatment and to protect the community. If the
35 court finds that conditions do not exist that will both ensure the
36 person's compliance with treatment and protect the community, then the

1 person shall be remanded to the custody of the department of social and
2 health services for control, care, and treatment in a secure facility
3 as designated in RCW 71.09.060(1).

4 (3) If the service provider designated by the court to provide
5 inpatient or outpatient treatment or to monitor or supervise any other
6 terms and conditions of a person's placement in a less restrictive
7 alternative is other than the department of social and health services
8 or the department of corrections, then the service provider so
9 designated must agree in writing to provide such treatment, monitoring,
10 or supervision in accord with this section. Any person providing or
11 agreeing to provide treatment, monitoring, or supervision services
12 pursuant to this chapter may be compelled to testify and any privilege
13 with regard to such person's testimony is deemed waived.

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

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

1 complying with the terms and conditions of the conditional release to
2 a less restrictive 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)) agency so determines. The sole question to be
10 determined by the court is whether the person shall continue to be
11 conditionally released to a less restrictive alternative. Absent the
12 written agreement of the parties, the court may not modify the
13 conditional release order through the annual review process. The court
14 in making its determination shall be aided by the periodic reports
15 filed pursuant to subsection (5) of this section and the opinions of
16 the secretary and other experts or professional persons.

17 **Sec. 12.** RCW 71.09.098 and 2006 c 282 s 1 are each amended to read
18 as follows:

19 ~~((1) Any service provider submitting reports pursuant to RCW~~
20 ~~71.09.096(6), the supervising community corrections officer, the~~
21 ~~prosecuting attorney, or the attorney general may petition the court,~~
22 ~~or the court on its own motion may schedule an immediate hearing, for~~
23 ~~the purpose of revoking or modifying the terms of the person's~~
24 ~~conditional release to a less restrictive alternative if the petitioner~~
25 ~~or the court believes the released person is not complying with the~~
26 ~~terms and conditions of his or her release or is in need of additional~~
27 ~~care, monitoring, supervision, or treatment.~~

28 ~~(2) If the prosecuting attorney, the supervising community~~
29 ~~corrections officer, or the court, based upon information received by~~
30 ~~them, reasonably believes that a conditionally released person is not~~
31 ~~complying with the terms and conditions of his or her conditional~~
32 ~~release to a less restrictive alternative, the court or community~~
33 ~~corrections officer may order that the conditionally released person be~~
34 ~~apprehended and taken into custody until such time as a hearing can be~~
35 ~~scheduled to determine the facts and whether or not the person's~~
36 ~~conditional release should be revoked or modified. A law enforcement~~
37 ~~officer, who has responded to a request for assistance from a~~

1 department employee, may apprehend and take into custody the
2 conditionally released person if the law enforcement officer reasonably
3 believes that the conditionally released person is not complying with
4 the terms and conditions of his or her conditional release to a less
5 restrictive alternative. The conditionally released person may be
6 detained in the county jail or returned to the secure community
7 transition facility. The court shall be notified before the close of
8 the next judicial day of the person's apprehension. Both the
9 prosecuting attorney and the conditionally released person shall have
10 the right to request an immediate mental examination of the
11 conditionally released person. If the conditionally released person is
12 indigent, the court shall, upon request, assist him or her in obtaining
13 a qualified expert or professional person to conduct the examination.

14 (3) The court, upon receiving notification of the person's
15 apprehension, shall promptly schedule a hearing. The issue to be
16 determined is whether the state has proven by a preponderance of the
17 evidence that the conditionally released person did not comply with the
18 terms and conditions of his or her release. Hearsay evidence is
19 admissible if the court finds it otherwise reliable. At the hearing,
20 the court shall determine whether the person shall continue to be
21 conditionally released on the same or modified conditions or whether
22 his or her conditional release shall be revoked and he or she shall be
23 committed to total confinement, subject to release only in accordance
24 with provisions of this chapter.)

25 (1) Any service provider submitting reports pursuant to RCW
26 71.09.096(6), the supervising community corrections officer, the
27 prosecuting agency, or the secretary's designee may petition the court
28 for an immediate hearing for the purpose of revoking or modifying the
29 terms of the person's conditional release to a less restrictive
30 alternative if the petitioner believes the released person (a) violated
31 or is in violation of the terms and conditions of the court's
32 conditional release order or (b) is in need of additional care,
33 monitoring, supervision, or treatment.

34 (2) The community corrections officer or the secretary's designee
35 may restrict the person's movement in the community until the petition
36 is determined by the court. The person may be taken into custody if:

37 (a) The supervising community corrections officer, the secretary's

1 designee, or a law enforcement officer reasonably believes the person
2 has violated or is in violation of the court's conditional release
3 order; or

4 (b) The supervising community corrections officer or the
5 secretary's designee reasonably believes that the person is in need of
6 additional care, monitoring, supervision, or treatment because the
7 person presents a danger to himself or herself or others if his or her
8 conditional release under the conditions imposed by the court's release
9 order continues.

10 (3) Persons taken into custody pursuant to subsection (2) of this
11 section shall:

12 (a) Not be released until such time as a hearing is held to
13 determine whether to revoke or modify the person's conditional release
14 order and the court has issued its decision;

15 (b) Be held either in the county jail or at the total confinement
16 facility, at the discretion of the secretary's designee.

17 The court shall be notified before the close of the next judicial
18 day that the person has been taken into custody and shall promptly
19 schedule a hearing.

20 (4) Before any hearing to revoke or modify the person's conditional
21 release order, both the prosecuting agency and the released person
22 shall have the right to request an immediate mental examination of the
23 released person. If the conditionally released person is indigent, the
24 court shall, upon request, assist him or her in obtaining a qualified
25 expert or professional person to conduct the examination.

26 (5) At any hearing to revoke or modify the conditional release
27 order:

28 (a) The prosecuting agency shall represent the state, including
29 determining whether to proceed with revocation or modification of the
30 conditional release order;

31 (b) Hearsay evidence is admissible if the court finds that it is
32 otherwise reliable; and

33 (c) The state shall bear the burden of proving by a preponderance
34 of the evidence that the person has violated or is in violation of the
35 court's conditional release order or that the person is in need of
36 additional care, monitoring, supervision, or treatment.

37 (6) If the court determines that the state has met its burden
38 referenced in subsection (5)(c) of this section, and the issue before

1 the court is revocation of the court's conditional release order, the
2 court shall consider the evidence presented by the parties and the
3 following factors relevant to whether continuing the person's
4 conditional release is in the person's best interests or adequate to
5 protect the community:

6 (a) The nature of the condition that was violated by the person or
7 that the person was in violation of in the context of the person's
8 criminal history and underlying mental conditions;

9 (b) The degree to which the violation was intentional or grossly
10 negligent;

11 (c) The ability and willingness of the released person to strictly
12 comply with the conditional release order;

13 (d) The degree of progress made by the person in community-based
14 treatment; and

15 (e) The risk to the public or particular persons if the conditional
16 release continues under the conditional release order that was
17 violated.

18 Any factor alone, or in combination, shall support the court's
19 determination to revoke the conditional release order.

20 (7) If the court determines the state has met its burden referenced
21 in subsection (5)(c) of this section, and the issue before the court is
22 modification of the court's conditional release order, the court shall
23 modify the conditional release order by adding conditions if the court
24 determines that the person is in need of additional care, monitoring,
25 supervision, or treatment. The court has authority to modify its
26 conditional release order by substituting a new treatment provider,
27 requiring new housing for the person, or imposing such additional
28 supervision conditions as the court deems appropriate. The court shall
29 not reduce or eliminate supervision conditions in its release order
30 without the agreement of the person and the prosecuting agency.

31 (8) A person whose conditional release has been revoked shall be
32 remanded to the custody of the secretary for control, care, and
33 treatment in a total confinement facility as designated in RCW
34 71.09.060(1). The person is thereafter eligible for conditional
35 release only in accord with the provisions of RCW 71.09.090 and related
36 statutes.

1 NEW SECTION. **Sec. 13.** A new section is added to chapter 71.09 RCW
2 to read as follows:

3 The department of social and health services shall provide to the
4 prosecuting agency a copy of all reports made by the department to law
5 enforcement in which a person detained or committed under this chapter
6 is named or listed as a suspect, witness, or victim, as well as a copy
7 of all reports received from law enforcement.

8 **Sec. 14.** RCW 71.09.112 and 2002 c 19 s 1 are each amended to read
9 as follows:

10 A person subject to court order under the provisions of this
11 chapter who is thereafter convicted of a criminal offense remains under
12 the jurisdiction of the department and shall be returned to the custody
13 of the department following: (1) Completion of the criminal sentence;
14 or (2) release from confinement in a state, federal, or local
15 correctional facility(~~(, and shall be returned to the custody of the~~
16 ~~department)~~). Any conditional release order shall be immediately
17 revoked upon conviction for a criminal offense.

18 This section does not apply to persons subject to a court order
19 under the provisions of this chapter who are thereafter sentenced to
20 life without the possibility of release.

21 **Sec. 15.** RCW 71.09.350 and 2004 c 38 s 14 are each amended to read
22 as follows:

23 (1) Examinations and treatment of sexually violent predators who
24 are conditionally released to a less restrictive alternative under this
25 chapter shall be conducted only by certified sex offender treatment
26 providers or certified affiliate sex offender treatment providers under
27 chapter 18.155 RCW unless the court or the department of social and
28 health services finds that: (a) The ~~((court-ordered less restrictive~~
29 ~~alternative placement is located in another state; (b) the))~~ treatment
30 provider is employed by the department; or ~~((+e))~~ (b)(i) all certified
31 sex offender treatment providers or certified affiliate sex offender
32 treatment providers become unavailable to provide treatment within a
33 reasonable geographic distance of the person's home, as determined in
34 rules adopted by the department of social and health services; and (ii)
35 the evaluation and treatment plan comply with the rules adopted by the
36 department of social and health services.

1 A treatment provider approved by the department of social and
2 health services under ~~((e))~~ (b) of this subsection, who is not
3 certified by the department of health, shall consult with a certified
4 sex offender treatment provider during the person's period of treatment
5 to ensure compliance with the rules adopted by the department of
6 health. The frequency and content of the consultation shall be based
7 on the recommendation of the certified sex offender treatment provider.

8 (2) A treatment provider, whether or not he or she is employed or
9 approved by the department of social and health services under
10 subsection (1) of this section or otherwise certified, may not perform
11 or provide treatment of sexually violent predators under this section
12 if the treatment provider has been:

- 13 (a) Convicted of a sex offense, as defined in RCW 9.94A.030;
- 14 (b) Convicted in any other jurisdiction of an offense that under
15 the laws of this state would be classified as a sex offense as defined
16 in RCW 9.94A.030; or
- 17 (c) Suspended or otherwise restricted from practicing any health
18 care profession by competent authority in any state, federal, or
19 foreign jurisdiction.

20 (3) Nothing in this section prohibits a qualified expert from
21 examining or evaluating a sexually violent predator who has been
22 conditionally released for purposes of presenting an opinion in court
23 proceedings.

--- END ---