

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6870

61st Legislature
2010 1st Special Session

Passed by the Senate April 12, 2010
YEAS 45 NAYS 0

President of the Senate

Passed by the House April 12, 2010
YEAS 85 NAYS 9

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 6870** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 6870

AS AMENDED BY THE HOUSE

Passed Legislature - 2010 1st Special Session

State of Washington 61st Legislature 2010 Regular Session

By Senator Hargrove; by request of Department of Social and Health Services

Read first time 02/22/10. Referred to Committee on Human Services & Corrections.

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AN ACT Relating to containing costs for services to sexually violent predators; and amending RCW 71.09.050, 71.09.090, and 71.09.110.

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

Sec. 1. RCW 71.09.050 and 2009 c 409 s 5 are each amended to read as follows:

(1) Within forty-five days after the completion of any hearing held pursuant to RCW 71.09.040, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. The department is responsible for the cost of one expert or professional person to conduct an evaluation on the prosecuting agency's behalf. At all stages of the proceedings under this chapter, any person subject to

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

5
6 (2) Whenever any person is subjected to an (~~examination~~)
7 evaluation under this chapter, (~~he or she may retain~~) the department
8 is responsible for the cost of one expert(~~s~~) or professional
9 person(~~s to perform an examination~~) to conduct an evaluation on
10 (~~their~~) the person's behalf. When the person wishes to be
11 (~~examined~~) evaluated by a qualified expert or professional person of
12 his or her own choice, (~~such examiner shall~~) the expert or
13 professional person must be permitted to have reasonable access to the
14 person for the purpose of such (~~examination~~) evaluation, as well as
15 to all relevant medical and psychological records and reports. In the
16 case of a person who is indigent, the court shall, upon the person's
17 request, assist the person in obtaining an expert or professional
18 person to perform an (~~examination~~) evaluation or participate in the
19 trial on the person's behalf. Nothing in this chapter precludes the
20 person from paying for additional expert services at his or her own
21 expense.

22
23 (3) The person, the prosecuting agency, or the judge shall have the
24 right to demand that the trial be before a twelve-person jury. If no
25 demand is made, the trial shall be before the court.

26
27 **Sec. 2.** RCW 71.09.090 and 2009 c 409 s 8 are each amended to read
28 as follows:

29
30 (1) If the secretary determines that the person's condition has so
31 changed that either: (a) The person no longer meets the definition of
32 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
6 (2)(a) Nothing contained in this chapter shall prohibit the person
7 from otherwise petitioning the court for conditional release to a less
8 restrictive alternative or unconditional discharge without the
9 secretary's approval. The secretary shall provide the committed person
10 with an annual written notice of the person's right to petition the
11 court for conditional release to a less restrictive alternative or
12 unconditional discharge over the secretary's objection. The notice
13 shall contain a waiver of rights. The secretary shall file the notice
14 and waiver form and the annual report with the court. If the person
15 does not affirmatively waive the right to petition, the court shall set
16 a show cause hearing to determine whether probable cause exists to
17 warrant a hearing on whether the person's condition has so changed
18 that: (i) He or she no longer meets the definition of a sexually
19 violent predator; or (ii) conditional release to a proposed less
20 restrictive alternative would be in the best interest of the person and
21 conditions can be imposed that would adequately protect the community.

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

36
37 (c) If the court at the show cause hearing determines that either:
38 (i) The state has failed to present prima facie evidence that the

1 committed person continues to meet the definition of a sexually violent
2 predator and that no proposed less restrictive alternative is in the
3 best interest of the person and conditions cannot be imposed that would
4 adequately protect the community; or (ii) probable cause exists to
5 believe that the person's condition has so changed that: (A) The
6 person no longer meets the definition of a sexually violent predator;
7 or (B) release to a proposed less restrictive alternative would be in
8 the best interest of the person and conditions can be imposed that
9 would adequately protect the community, then the court shall set a
10 hearing on either or both issues.

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

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

36
37 (b) Whenever any person is subjected to an evaluation under (a) of
38 this subsection, the department is responsible for the cost of one

1 expert or professional person conducting an evaluation on the person's
2 behalf. When the person wishes to be evaluated by a qualified expert
3 or professional person of his or her own choice, such expert or
4 professional person must be permitted to have reasonable access to the
5 person for the purpose of such evaluation, as well as to all relevant
6 medical and psychological records and reports. In the case of a person
7 who is indigent, the court shall, upon the person's request, assist the
8 person in obtaining an expert or professional person to perform an
9 evaluation or participate in the hearing on the person's behalf.
10 Nothing in this chapter precludes the person from paying for additional
11 expert services at his or her own expense.
12

13 (c) If the issue at the hearing is whether the person should be
14 unconditionally discharged, the burden of proof shall be upon the state
15 to prove beyond a reasonable doubt that the committed person's
16 condition remains such that the person continues to meet the definition
17 of a sexually violent predator. Evidence of the prior commitment trial
18 and disposition is admissible. The recommitment proceeding shall
19 otherwise proceed as set forth in RCW 71.09.050 and 71.09.060.
20

21 ((e)) (d) If the issue at the hearing is whether the person
22 should be conditionally released to a less restrictive alternative, the
23 burden of proof at the hearing shall be upon the state to prove beyond
24 a reasonable doubt that conditional release to any proposed less
25 restrictive alternative either: (i) Is not in the best interest of the
26 committed person; or (ii) does not include conditions that would
27 adequately protect the community. Evidence of the prior commitment
28 trial and disposition is admissible.
29

30 (4)(a) Probable cause exists to believe that a person's condition
31 has "so changed," under subsection (2) of this section, only when
32 evidence exists, since the person's last commitment trial, or less
33 restrictive alternative revocation proceeding, of a substantial change
34 in the person's physical or mental condition such that the person
35 either no longer meets the definition of a sexually violent predator or
36 that a conditional release to a less restrictive alternative is in the
37 person's best interest and conditions can be imposed to adequately
38 protect the community.

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2 (b) A new trial proceeding under subsection (3) of this section may
3 be ordered, or a trial proceeding may be held, only when there is
4 current evidence from a licensed professional of one of the following
5 and the evidence presents a change in condition since the person's last
6 commitment trial proceeding:
7

8 (i) An identified physiological change to the person, such as
9 paralysis, stroke, or dementia, that renders the committed person
10 unable to commit a sexually violent act and this change is permanent;
11 or
12

13 (ii) A change in the person's mental condition brought about
14 through positive response to continuing participation in treatment
15 which indicates that the person meets the standard for conditional
16 release to a less restrictive alternative or that the person would be
17 safe to be at large if unconditionally released from commitment.
18

19 (c) For purposes of this section, a change in a single demographic
20 factor, without more, does not establish probable cause for a new trial
21 proceeding under subsection (3) of this section. As used in this
22 section, a single demographic factor includes, but is not limited to,
23 a change in the chronological age, marital status, or gender of the
24 committed person.
25

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

29
30 **Sec. 3.** RCW 71.09.110 and 1995 c 216 s 14 are each amended to read
31 as follows:
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33 The department of social and health services shall be responsible
34 for all costs relating to the evaluation and treatment of persons
35 committed to their custody whether in a secure facility or under a less
36 restrictive alternative under any provision of this chapter. The
37 secretary shall adopt rules to contain costs relating to reimbursement

1 for evaluation services. Reimbursement may be obtained by the
2 department for the cost of care and treatment of persons committed to
3 its custody whether in a secure facility or under a less restrictive
4 alternative pursuant to RCW 43.20B.330 through 43.20B.370.

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