
HOUSE BILL 2148

State of Washington 62nd Legislature 2011 2nd Special Session

By Representatives Darneille and Hunter; by request of Department of Social and Health Services

Read first time 12/06/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to suspending annual examinations and show cause
2 hearings for sexually violent predators convicted of a criminal offense
3 or awaiting trial on criminal charges; amending RCW 71.09.070 and
4 71.09.090; and declaring an emergency.

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

6 **Sec. 1.** RCW 71.09.070 and 2001 c 286 s 8 are each amended to read
7 as follows:

8 (1) Each person committed under this chapter shall have a current
9 examination of his or her mental condition made by the department of
10 social and health services at least once every year. The annual report
11 shall include consideration of whether the committed person currently
12 meets the definition of a sexually violent predator and whether
13 conditional release to a less restrictive alternative is in the best
14 interest of the person and conditions can be imposed that would
15 adequately protect the community. The department of social and health
16 services shall file this periodic report with the court that committed
17 the person under this chapter. The report shall be in the form of a
18 declaration or certification in compliance with the requirements of RCW
19 9A.72.085 and shall be prepared by a professionally qualified person as

1 defined by rules adopted by the secretary. A copy of the report shall
2 be served on the prosecuting agency involved in the initial commitment
3 and upon the committed person and his or her counsel. The committed
4 person may retain, or if he or she is indigent and so requests, the
5 court may appoint a qualified expert or a professional person to
6 examine him or her, and such expert or professional person shall have
7 access to all records concerning the person.

8 (2) During any period of confinement pursuant to a criminal
9 conviction, or for any period of detention awaiting trial on criminal
10 charges, this section is suspended.

11 **Sec. 2.** RCW 71.09.090 and 2010 1st sp.s. c 28 s 2 are each amended
12 to read as follows:

13 (1) If the secretary determines that the person's condition has so
14 changed that either: (a) The person no longer meets the definition of
15 a sexually violent predator; or (b) conditional release to a less
16 restrictive alternative is in the best interest of the person and
17 conditions can be imposed that adequately protect the community, the
18 secretary shall authorize the person to petition the court for
19 conditional release to a less restrictive alternative or unconditional
20 discharge. The petition shall be filed with the court and served upon
21 the prosecuting agency responsible for the initial commitment. The
22 court, upon receipt of the petition for conditional release to a less
23 restrictive alternative or unconditional discharge, shall within forty-
24 five days order a hearing.

25 (2)(a) Nothing contained in this chapter shall prohibit the person
26 from otherwise petitioning the court for conditional release to a less
27 restrictive alternative or unconditional discharge without the
28 secretary's approval. The secretary shall provide the committed person
29 with an annual written notice of the person's right to petition the
30 court for conditional release to a less restrictive alternative or
31 unconditional discharge over the secretary's objection. The notice
32 shall contain a waiver of rights. The secretary shall file the notice
33 and waiver form and the annual report with the court. If the person
34 does not affirmatively waive the right to petition, the court shall set
35 a show cause hearing to determine whether probable cause exists to
36 warrant a hearing on whether the person's condition has so changed
37 that: (i) He or she no longer meets the definition of a sexually

1 violent predator; or (ii) conditional release to a proposed less
2 restrictive alternative would be in the best interest of the person and
3 conditions can be imposed that would adequately protect the community.

4 (b) The committed person shall have a right to have an attorney
5 represent him or her at the show cause hearing, which may be conducted
6 solely on the basis of affidavits or declarations, but the person is
7 not entitled to be present at the show cause hearing. At the show
8 cause hearing, the prosecuting attorney or attorney general shall
9 present prima facie evidence establishing that the committed person
10 continues to meet the definition of a sexually violent predator and
11 that a less restrictive alternative is not in the best interest of the
12 person and conditions cannot be imposed that adequately protect the
13 community. In making this showing, the state may rely exclusively upon
14 the annual report prepared pursuant to RCW 71.09.070. The committed
15 person may present responsive affidavits or declarations to which the
16 state may reply.

17 (c) If the court at the show cause hearing determines that either:
18 (i) The state has failed to present prima facie evidence that the
19 committed person continues to meet the definition of a sexually violent
20 predator and that no proposed less restrictive alternative is in the
21 best interest of the person and conditions cannot be imposed that would
22 adequately protect the community; or (ii) probable cause exists to
23 believe that the person's condition has so changed that: (A) The
24 person no longer meets the definition of a sexually violent predator;
25 or (B) release to a proposed less restrictive alternative would be in
26 the best interest of the person and conditions can be imposed that
27 would adequately protect the community, then the court shall set a
28 hearing on either or both issues.

29 (d) If the court has not previously considered the issue of release
30 to a less restrictive alternative, either through a trial on the merits
31 or through the procedures set forth in RCW 71.09.094(1), the court
32 shall consider whether release to a less restrictive alternative would
33 be in the best interests of the person and conditions can be imposed
34 that would adequately protect the community, without considering
35 whether the person's condition has changed. The court may not find
36 probable cause for a trial addressing less restrictive alternatives
37 unless a proposed less restrictive alternative placement meeting the

1 conditions of RCW 71.09.092 is presented to the court at the show cause
2 hearing.

3 (3)(a) At the hearing resulting from subsection (1) or (2) of this
4 section, the committed person shall be entitled to be present and to
5 the benefit of all constitutional protections that were afforded to the
6 person at the initial commitment proceeding. The prosecuting agency
7 shall represent the state and shall have a right to a jury trial and to
8 have the committed person evaluated by experts chosen by the state.
9 The department is responsible for the cost of one expert or
10 professional person to conduct an evaluation on the prosecuting
11 agency's behalf. The committed person shall also have the right to a
12 jury trial and the right to have experts evaluate him or her on his or
13 her behalf and the court shall appoint an expert if the person is
14 indigent and requests an appointment.

15 (b) Whenever any person is subjected to an evaluation under (a) of
16 this subsection, the department is responsible for the cost of one
17 expert or professional person conducting an evaluation on the person's
18 behalf. When the person wishes to be evaluated by a qualified expert
19 or professional person of his or her own choice, such expert or
20 professional person must be permitted to have reasonable access to the
21 person for the purpose of such evaluation, as well as to all relevant
22 medical and psychological records and reports. In the case of a person
23 who is indigent, the court shall, upon the person's request, assist the
24 person in obtaining an expert or professional person to perform an
25 evaluation or participate in the hearing on the person's behalf.
26 Nothing in this chapter precludes the person from paying for additional
27 expert services at his or her own expense.

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

35 (d) If the issue at the hearing is whether the person should be
36 conditionally released to a less restrictive alternative, the burden of
37 proof at the hearing shall be upon the state to prove beyond a
38 reasonable doubt that conditional release to any proposed less

1 restrictive alternative either: (i) Is not in the best interest of the
2 committed person; or (ii) does not include conditions that would
3 adequately protect the community. Evidence of the prior commitment
4 trial and disposition is admissible.

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

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

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

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

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

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

37 (6) During any period of confinement pursuant to a criminal

1 conviction, or for any period of detention awaiting trial on criminal
2 charges, this section is suspended.

3 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and takes effect
6 immediately.

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