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HOUSE BILL 2730

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State of Washington

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2012 Regular Session

By Representative Appleton

Read first time 01/27/12. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to annual reviews of commitment under chapter 71.09  
2 RCW; and amending RCW 71.09.070 and 71.09.090.

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

4 **Sec. 1.** RCW 71.09.070 and 2011 2nd sp.s. c 7 s 1 are each amended  
5 to read as follows:

6 (1) Each person committed to a department's treatment facility  
7 under this chapter, including RCW 71.09.040(4), shall have a current  
8 examination of his or her mental condition made by the department (~~of~~  
9 ~~social and health services~~) at least once every year. The annual  
10 report shall include consideration of whether the committed person  
11 currently meets the definition of a sexually violent predator and  
12 whether conditional release to a less restrictive alternative is in the  
13 best interest of the person and conditions can be imposed that would  
14 adequately protect the community. The department (~~of social and~~  
15 ~~health services~~) shall file this periodic report with the court that  
16 committed the person under this chapter, including RCW 71.09.040(4).  
17 The report shall be in the form of a declaration or certification in  
18 compliance with the requirements of RCW 9A.72.085 and shall be prepared  
19 by a professionally qualified person as defined by rules adopted by the

1 secretary. A copy of the report shall be served on the prosecuting  
2 agency involved in the initial commitment and upon the committed person  
3 and his or her counsel. The committed person may retain, or if he or  
4 she is indigent and so requests, the court may appoint a qualified  
5 expert or a professional person to examine him or her, and such expert  
6 or professional person shall have access to all records concerning the  
7 person. The department, on request of the committed person, shall  
8 allow a record of the annual review interview to be preserved either by  
9 audio recording or the presence of the person's attorney.

10 (2) During any period of confinement pursuant to a criminal  
11 conviction, or for any period of detention awaiting trial on criminal  
12 charges, this section is suspended. Upon the return of the person  
13 committed under this chapter to the custody of the department, the  
14 department shall initiate an examination of the person's mental  
15 condition. The examination must comply with the requirements of  
16 subsection (1) of this section.

17 **Sec. 2.** RCW 71.09.090 and 2011 2nd sp.s. c 7 s 2 are each amended  
18 to read as follows:

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

31 (2)(a) Nothing contained in this chapter shall prohibit the person  
32 from otherwise petitioning the court for conditional release to a less  
33 restrictive alternative or unconditional discharge without the  
34 secretary's approval. The secretary shall provide the committed person  
35 with an annual written notice of the person's right to petition the  
36 court for conditional release to a less restrictive alternative or  
37 unconditional discharge over the secretary's objection. The notice

1 shall contain a waiver of rights. The secretary shall file the notice  
2 and waiver form and the annual report with the court. If the person  
3 does not affirmatively waive the right to petition, the court shall set  
4 a show cause hearing to determine whether probable cause exists to  
5 warrant a hearing on whether the person's condition has so changed  
6 that: (i) He or she no longer meets the definition of a sexually  
7 violent predator; or (ii) conditional release to a proposed less  
8 restrictive alternative would be in the best interest of the person and  
9 conditions can be imposed that would adequately protect the community.  
10 In addition to the procedures contained in this chapter, any person  
11 detained due to a finding of probable cause pursuant to RCW  
12 71.09.040(4) may petition the court for release on a less restrictive  
13 alternative when at least one year has elapsed since that detention and  
14 there is probable cause of a change in the person's mental condition  
15 brought about through positive response to continuing participation in  
16 treatment that indicates that the person meets the standard for  
17 conditional release to a less restrictive alternative.

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

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

1 or (B) release to a proposed less restrictive alternative would be in  
2 the best interest of the person and conditions can be imposed that  
3 would adequately protect the community, then the court shall set a  
4 hearing on either or both issues.

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

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

28 (b) Whenever any person is subjected to an evaluation under (a) of  
29 this subsection, the department is responsible for the cost of one  
30 expert or professional person conducting an evaluation on the person's  
31 behalf. When the person wishes to be evaluated by a qualified expert  
32 or professional person of his or her own choice, such expert or  
33 professional person must be permitted to have reasonable access to the  
34 person for the purpose of such evaluation, as well as to all relevant  
35 medical and psychological records and reports. In the case of a person  
36 who is indigent, the court shall, upon the person's request, assist the  
37 person in obtaining an expert or professional person to perform an

1 evaluation or participate in the hearing on the person's behalf.  
2 Nothing in this chapter precludes the person from paying for additional  
3 expert services at his or her own expense.

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

11 (d) If the issue at the hearing is whether the person should be  
12 conditionally released to a less restrictive alternative, the burden of  
13 proof at the hearing shall be upon the state to prove beyond a  
14 reasonable doubt that conditional release to any proposed less  
15 restrictive alternative either: (i) Is not in the best interest of the  
16 committed person; or (ii) does not include conditions that would  
17 adequately protect the community. Evidence of the prior commitment  
18 trial and disposition is admissible.

19 (4)(a) Probable cause exists to believe that a person's condition  
20 has "so changed," under subsection (2) of this section, only when  
21 evidence exists, since the person's last commitment trial, or less  
22 restrictive alternative revocation proceeding, of a substantial change  
23 in the person's physical or mental condition such that the person  
24 either no longer meets the definition of a sexually violent predator or  
25 that a conditional release to a less restrictive alternative is in the  
26 person's best interest and conditions can be imposed to adequately  
27 protect the community.

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

33 (i) An identified physiological change to the person, such as  
34 paralysis, stroke, or dementia, that renders the committed person  
35 unable to commit a sexually violent act and this change is permanent;  
36 or

37 (ii) A change in the person's mental condition brought about  
38 through positive response to continuing participation in treatment

1 which indicates that the person meets the standard for conditional  
2 release to a less restrictive alternative or that the person would be  
3 safe to be at large if unconditionally released from commitment.

4 (c) For purposes of this section, a change in a single demographic  
5 factor, without more, does not establish probable cause for a new trial  
6 proceeding under subsection (3) of this section. As used in this  
7 section, a single demographic factor includes, but is not limited to,  
8 a change in the chronological age, marital status, or gender of the  
9 committed person.

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

13 (6) During any period of confinement pursuant to a criminal  
14 conviction, or for any period of detention awaiting trial on criminal  
15 charges, this section is suspended.

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