
HOUSE BILL 1081

State of Washington 63rd Legislature 2013 Regular Session

By Representative Appleton

Read first time 01/16/13. Referred to Committee on Public Safety.

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 2012 c 257 s 7 are each amended to read
18 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 agency shall present prima facie
23 evidence establishing that the committed person continues to meet the
24 definition of a sexually violent predator and that a less restrictive
25 alternative is not in the best interest of the person and conditions
26 cannot be imposed that adequately protect the community. In making
27 this showing, the state may rely exclusively upon the annual report
28 prepared pursuant to RCW 71.09.070. The committed person may present
29 responsive affidavits or declarations to which the state may reply.

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

1 the best interest of the person and conditions can be imposed that
2 would adequately protect the community, then the court shall set a
3 hearing on either or both issues.

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

15 (3)(a) At the hearing resulting from subsection (1) or (2) of this
16 section, the committed person shall be entitled to be present and to
17 the benefit of all constitutional protections that were afforded to the
18 person at the initial commitment proceeding. The prosecuting agency
19 shall represent the state and shall have a right to a jury trial and to
20 have the committed person evaluated by experts chosen by the state.
21 The prosecuting agency shall have a right to a current evaluation of
22 the person by experts chosen by the state. The judge may require the
23 person to complete any or all of the following procedures or tests if
24 requested by the evaluator: (i) A clinical interview; (ii)
25 psychological testing; (iii) plethysmograph testing; and (iv) polygraph
26 testing. The judge may order the person to complete any other
27 procedures and tests relevant to the evaluation. The state is
28 responsible for the costs of the evaluation. The committed person
29 shall also have the right to a jury trial and the right to have experts
30 evaluate him or her on his or her behalf and the court shall appoint an
31 expert if the person is indigent and requests an appointment.

32 (b) Whenever any indigent person is subjected to an evaluation
33 under (a) of this subsection, the office of public defense is
34 responsible for the cost of one expert or professional person
35 conducting an evaluation on the person's behalf. When the person
36 wishes to be evaluated by a qualified expert or professional person of
37 his or her own choice, such expert or professional person must be
38 permitted to have reasonable access to the person for the purpose of

1 such evaluation, as well as to all relevant medical and psychological
2 records and reports. In the case of a person who is indigent, the
3 court shall, upon the person's request, assist the person in obtaining
4 an expert or professional person to perform an evaluation or
5 participate in the hearing on the person's behalf. Nothing in this
6 chapter precludes the person from paying for additional expert services
7 at his or her own expense.

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

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

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

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

37 (i) An identified physiological change to the person, such as

1 paralysis, stroke, or dementia, that renders the committed person
2 unable to commit a sexually violent act and this change is permanent;
3 or

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

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

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

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

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