
SENATE BILL 6515

State of Washington

65th Legislature

2018 Regular Session

By Senators Conway, Darneille, O'Ban, Becker, Zeiger, and Fortunato

1 AN ACT Relating to the legal and geographical review requirements
2 for the conditional release of sexually violent predators to a less
3 restrictive alternative; and amending RCW 71.09.096.

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

5 **Sec. 1.** RCW 71.09.096 and 2015 c 278 s 3 are each amended to
6 read as follows:

7 (1) If the court or jury determines that conditional release to a
8 less restrictive alternative is in the best interest of the person
9 and includes conditions that would adequately protect the community,
10 and the court determines that the minimum conditions set forth in RCW
11 71.09.092 and in this section are met, the court shall enter judgment
12 and direct a conditional release.

13 (2) The court shall impose any additional conditions necessary to
14 ensure compliance with treatment and to protect the community. If the
15 court finds that conditions do not exist that will both ensure the
16 person's compliance with treatment and protect the community, then
17 the person shall be remanded to the custody of the department of
18 social and health services for control, care, and treatment in a
19 secure facility as designated in RCW 71.09.060(1).

20 (3) If the service provider designated by the court to provide
21 inpatient or outpatient treatment or to monitor or supervise any

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

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

28 (5)(a) Prior to authorizing release to a less restrictive
29 alternative, the court shall consider whether it is appropriate to
30 release the person to the person's county of commitment or a
31 neighboring county. To ensure equitable distribution of releases, and
32 prevent the disproportionate grouping of persons subject to less
33 restrictive orders in any one county, or in any one jurisdiction or
34 community within a county, the legislature finds it is appropriate
35 for releases to a less restrictive alternative to occur in the
36 person's county of commitment ~~((τ))~~ or a neighboring county. Unless
37 the court determines, following an evidentiary hearing, that the
38 person's return to his or her county of commitment or a neighboring
39 county would be ~~((inappropriate))~~ a substantial threat to public
40 safety, considering any court-issued protection orders ~~((τ))~~ and any

1 specific, articulated threat to victim safety ((concerns,)) that
2 cannot be addressed by court-ordered electronic monitoring to include
3 use of global positioning satellite technology, the person shall be
4 returned to the county of commitment or a neighboring county. The
5 ((availability)) unavailability of appropriate treatment or
6 facilities that would adequately protect the community((, negative
7 influences on the person, or the location of family or other persons
8 or organizations offering support to the person)) in the county of
9 commitment shall not be a precluding factor for placement. The burden
10 of proof by clear and convincing evidence is upon the state of
11 Washington at the hearing, and in each case the state must file with
12 the court and serve upon the prospective receiving county at least
13 sixty days before the hearing a statistical summary showing, by
14 county of commitment and by receiving county, the number of all less
15 restrictive alternative releases under this chapter both to county of
16 commitment and to other than county of commitment for the preceding
17 five years. When the ((department or court)) state assists in
18 developing a placement under this section which is outside of the
19 county of commitment, ((and there are two or more options for
20 placement,)) it shall endeavor to develop the placement in
21 neighboring counties first, in a manner that does not have a
22 disproportionate effect on a single county and state in writing its
23 rationale in this regard.

24 (b)(i) If, pursuant to a motion, proposed order, or otherwise,
25 the committed person is not to be conditionally released to his or
26 her county of commitment, the department shall provide the law and
27 justice council of the county in which the person is proposed to be
28 conditionally released with notice and a written explanation at least
29 sixty days before the court hearing concerning release on a less
30 restrictive alternative.

31 (ii) Before approving any release order to other than the county
32 of commitment, the state must provide the prospective receiving
33 county with at least sixty days written notice. If the county elects,
34 it may intervene as a party in the proceeding, conduct discovery, and
35 offer evidence and argument at the hearing.

36 (iii) If the release is approved, the court must enter specific
37 findings of fact concerning the decision. Release to a county other
38 than the county of commitment shall not be based upon maintaining
39 continuity with a current or prior treatment provider where the
40 county of commitment has a population in excess of four hundred fifty

1 thousand according to the latest census data or a more recent
2 official estimate of the state office of financial management, nor
3 where the county of commitment has one or more treatment providers
4 available who meet the requirements of chapter 18.155 RCW.

5 (iv) Before any release outside the county of commitment, the
6 state must certify to the court by means of sworn evidence, and the
7 court must find, that the state has contacted all certified treatment
8 providers under chapter 18.155 RCW in the county of commitment and
9 all neighboring counties, and that each such provider has refused to
10 accept the person for treatment that would meet the requirements of
11 RCW 71.09.092.

12 (v) A person who is unwilling to accept treatment from a
13 qualified and willing treatment provider in the county of commitment,
14 or neighboring counties, shall not be granted release.

15 (vi) The following shall not be a basis to release outside the
16 county of commitment:

17 (A) The availability of recommended counseling or treatment for
18 issues other than sex offender treatment including, but not limited
19 to, chemical dependency, domestic violence, and anger management;

20 (B) The presence outside the county of commitment of a potential
21 support network for the committed person, such as the presence of one
22 or more of the committed person's family members, friends, or other
23 acquaintances; or

24 (C) An effort to limit the travel distance or travel time for
25 treatment or other purposes.

26 (c) For purposes of this section, the person's county of
27 commitment means the county of the court which ordered the person's
28 commitment.

29 (d) This subsection (5) does not apply to releases to a secure
30 community transition facility under RCW 71.09.250.

31 (6) 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 prosecuting agency, to the law and justice council of the county in
36 which the person is released, and to the supervising community
37 corrections officer, a report stating whether the person is complying
38 with the terms and conditions of the conditional release to a less
39 restrictive alternative.

1 (7) Each person released to a less restrictive alternative shall
2 have his or her case reviewed by the court that released him or her
3 no later than one year after such release and annually thereafter
4 until the person is unconditionally discharged. Review may occur in a
5 shorter time or more frequently, if the court, in its discretion on
6 its own motion, or on motion of the person, the secretary, or the
7 prosecuting agency so determines. The sole question to be determined
8 by the court is whether the person shall continue to be conditionally
9 released to a less restrictive alternative. The court in making its
10 determination shall be aided by the periodic reports filed pursuant
11 to subsection (6) of this section and the opinions of the secretary
12 and other experts or professional persons.

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