
HOUSE BILL 2851

State of Washington

66th Legislature

2020 Regular Session

By Representatives Kilduff and Leavitt

Read first time 01/27/20. Referred to Committee on Public Safety.

1 AN ACT Relating to the placement and treatment of conditionally
2 released sexually violent predators; amending RCW 71.09.080,
3 71.09.090, 71.09.092, 71.09.096, 71.09.130, 71.09.140, and 71.09.250;
4 reenacting and amending RCW 71.09.020; adding a new section to
5 chapter 71.09 RCW; and creating a new section.

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

7 **Sec. 1.** RCW 71.09.020 and 2015 c 278 s 2 are each reenacted and
8 amended to read as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) "Department" means the department of social and health
12 services.

13 (2) "Health care facility" means any hospital, hospice care
14 center, licensed or certified health care facility, health
15 maintenance organization regulated under chapter 48.46 RCW, federally
16 qualified health maintenance organization, federally approved renal
17 dialysis center or facility, or federally approved blood bank.

18 (3) "Health care practitioner" means an individual or firm
19 licensed or certified to engage actively in a regulated health
20 profession.

1 (4) "Health care services" means those services provided by
2 health professionals licensed pursuant to RCW 18.120.020(4).

3 (5) "Health profession" means those licensed or regulated
4 professions set forth in RCW 18.120.020(4).

5 (6) "Less restrictive alternative" means court-ordered treatment
6 in a setting less restrictive than total confinement which satisfies
7 the conditions set forth in RCW 71.09.092. (~~(A less restrictive
8 alternative may not include placement in the community protection
9 program as pursuant to RCW 71A.12.230.)~~)

10 (7) "Likely to engage in predatory acts of sexual violence if not
11 confined in a secure facility" means that the person more probably
12 than not will engage in such acts if released unconditionally from
13 detention on the sexually violent predator petition. Such likelihood
14 must be evidenced by a recent overt act if the person is not totally
15 confined at the time the petition is filed under RCW 71.09.030.

16 (8) "Mental abnormality" means a congenital or acquired condition
17 affecting the emotional or volitional capacity which predisposes the
18 person to the commission of criminal sexual acts in a degree
19 constituting such person a menace to the health and safety of others.

20 (9) "Personality disorder" means an enduring pattern of inner
21 experience and behavior that deviates markedly from the expectations
22 of the individual's culture, is pervasive and inflexible, has onset
23 in adolescence or early adulthood, is stable over time and leads to
24 distress or impairment. Purported evidence of a personality disorder
25 must be supported by testimony of a licensed forensic psychologist or
26 psychiatrist.

27 (10) "Predatory" means acts directed towards: (a) Strangers; (b)
28 individuals with whom a relationship has been established or promoted
29 for the primary purpose of victimization; or (c) persons of casual
30 acquaintance with whom no substantial personal relationship exists.

31 (11) "Prosecuting agency" means the prosecuting attorney of the
32 county where the person was convicted or charged or the attorney
33 general if requested by the prosecuting attorney, as provided in RCW
34 71.09.030.

35 (12) "Recent overt act" means any act, threat, or combination
36 thereof that has either caused harm of a sexually violent nature or
37 creates a reasonable apprehension of such harm in the mind of an
38 objective person who knows of the history and mental condition of the
39 person engaging in the act or behaviors.

1 (13) "Risk potential activity" or "risk potential facility" means
2 an activity or facility that provides a higher incidence of risk to
3 the public from persons conditionally released from the special
4 commitment center. Risk potential activities and facilities include:
5 Public and private schools, school bus stops, licensed day care and
6 licensed preschool facilities, public parks, publicly dedicated
7 trails, sports fields, playgrounds, recreational and community
8 centers, churches, synagogues, temples, mosques, public libraries,
9 public and private youth camps, and others identified by the
10 department following the hearings on a potential site required in RCW
11 71.09.315. For purposes of this chapter, "school bus stops" does not
12 include bus stops established primarily for public transit.

13 (14) "Secretary" means the secretary of social and health
14 services or the secretary's designee.

15 (15) "Secure community transition facility" means a residential
16 facility for persons civilly committed and conditionally released to
17 a less restrictive alternative under this chapter. A secure community
18 transition facility has supervision and security, and either provides
19 or ensures the provision of sex offender treatment services. Secure
20 community transition facilities include but are not limited to the
21 facility established pursuant to RCW 71.09.250(1)(a)(i) and any
22 community-based facilities established under this chapter and
23 operated by the secretary or under contract with the secretary.

24 (16) "Secure facility" means a residential facility for persons
25 civilly confined under the provisions of this chapter that includes
26 security measures sufficient to protect the community. Such
27 facilities include total confinement facilities, secure community
28 transition facilities, and any residence used as a court-ordered
29 placement under RCW 71.09.096.

30 (17) "Sexually violent offense" means an act committed on,
31 before, or after July 1, 1990, that is: (a) An act defined in Title
32 9A RCW as rape in the first degree, rape in the second degree by
33 forcible compulsion, rape of a child in the first or second degree,
34 statutory rape in the first or second degree, indecent liberties by
35 forcible compulsion, indecent liberties against a child under age
36 fourteen, incest against a child under age fourteen, or child
37 molestation in the first or second degree; (b) a felony offense in
38 effect at any time prior to July 1, 1990, that is comparable to a
39 sexually violent offense as defined in (a) of this subsection, or any
40 federal or out-of-state conviction for a felony offense that under

1 the laws of this state would be a sexually violent offense as defined
2 in this subsection; (c) an act of murder in the first or second
3 degree, assault in the first or second degree, assault of a child in
4 the first or second degree, kidnapping in the first or second degree,
5 burglary in the first degree, residential burglary, or unlawful
6 imprisonment, which act, either at the time of sentencing for the
7 offense or subsequently during civil commitment proceedings pursuant
8 to this chapter, has been determined beyond a reasonable doubt to
9 have been sexually motivated, as that term is defined in RCW
10 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is
11 an attempt, criminal solicitation, or criminal conspiracy to commit
12 one of the felonies designated in (a), (b), or (c) of this
13 subsection.

14 (18) "Sexually violent predator" means any person who has been
15 convicted of or charged with a crime of sexual violence and who
16 suffers from a mental abnormality or personality disorder which makes
17 the person likely to engage in predatory acts of sexual violence if
18 not confined in a secure facility.

19 (19) "Total confinement facility" means a secure facility that
20 provides supervision and sex offender treatment services in a total
21 confinement setting. Total confinement facilities include the special
22 commitment center and any similar facility designated as a total
23 confinement facility by the secretary.

24 (20) "Treatment" means the sex offender specific treatment
25 program at the special commitment center or a specific course of sex
26 offender treatment pursuant to RCW 71.09.092 (1) and (2).

27 (21) "Fair share principles" and "fair share principles of
28 release" mean that each county has options for conditional release
29 housing placements in a number generally equivalent to the number of
30 residents from that county who are subject to total confinement
31 pursuant to this chapter.

32 **Sec. 2.** RCW 71.09.080 and 2012 c 257 s 6 are each amended to
33 read as follows:

34 (1) Any person subjected to restricted liberty as a sexually
35 violent predator pursuant to this chapter shall not forfeit any legal
36 right or suffer any legal disability as a consequence of any actions
37 taken or orders made, other than as specifically provided in this
38 chapter, or as otherwise authorized by law.

1 (2) (a) Any person committed or detained pursuant to this chapter
2 shall be prohibited from possessing or accessing a personal computer
3 if the resident's individualized treatment plan states that access to
4 a computer is harmful to bringing about a positive response to a
5 specific and certain phase or course of treatment.

6 (b) A person who is prohibited from possessing or accessing a
7 personal computer under (a) of this subsection shall be permitted to
8 access a limited functioning personal computer capable of word
9 processing and limited data storage on the computer only that does
10 not have: (i) Internet access capability; (ii) an optical drive,
11 external drive, universal serial bus port, or similar drive
12 capability; or (iii) the capability to display photographs, images,
13 videos, or motion pictures, or similar display capability from any
14 drive or port capability listed under (b) (ii) of this subsection.

15 (3) Any person committed pursuant to this chapter has the right
16 to adequate care ~~((and))~~, individualized treatment, and a treatment
17 plan that includes an individualized discharge plan. The department
18 of social and health services shall keep records detailing all
19 medical, expert, and professional care and treatment received by a
20 committed person, and shall keep copies of all reports of periodic
21 examinations made pursuant to this chapter. All such records and
22 reports shall be made available upon request only to: The committed
23 person, his or her attorney, the prosecuting agency, the court, the
24 protection and advocacy agency, or another expert or professional
25 person who, upon proper showing, demonstrates a need for access to
26 such records.

27 (4) In developing an individualized discharge plan as part of a
28 person's treatment plan, the department must verify that, at a
29 minimum, the following are addressed, based on information known to
30 the department:

31 (a) A functional assessment of physical health, functioning, and
32 any need for health aid devices;

33 (b) Any history of substance use and abuse;

34 (c) Any history of risk and impulsive behaviors; and

35 (d) A summary of the individual's treatment needs, including the
36 community services and supports needed for safe living in the
37 community, and providers of such services and supports.

38 (5) At the time a person is taken into custody or transferred
39 into a facility pursuant to a petition under this chapter, the
40 professional person in charge of such facility or his or her designee

1 shall take reasonable precautions to inventory and safeguard the
2 personal property of the persons detained or transferred. A copy of
3 the inventory, signed by the staff member making it, shall be given
4 to the person detained and shall, in addition, be open to inspection
5 to any responsible relative, subject to limitations, if any,
6 specifically imposed by the detained person. For purposes of this
7 subsection, "responsible relative" includes the guardian,
8 conservator, attorney, spouse, parent, adult child, or adult brother
9 or sister of the person. The facility shall not disclose the contents
10 of the inventory to any other person without consent of the patient
11 or order of the court.

12 ~~((+5))~~ (6) Nothing in this chapter prohibits a person presently
13 committed from exercising a right presently available to him or her
14 for the purpose of obtaining release from confinement, including the
15 right to petition for a writ of habeas corpus.

16 ~~((+6))~~ (7) No indigent person may be conditionally released or
17 unconditionally discharged under this chapter without suitable
18 clothing, and the secretary shall furnish the person with such sum of
19 money as is required by RCW 72.02.100 for persons without ample funds
20 who are released from correctional institutions. As funds are
21 available, the secretary may provide payment to the indigent persons
22 conditionally released pursuant to this chapter consistent with the
23 optional provisions of RCW 72.02.100 and 72.02.110, and may adopt
24 rules to do so.

25 ~~((+7))~~ (8) If a civil commitment petition is dismissed, or a
26 trier of fact determines that a person does not meet civil commitment
27 criteria, the person shall be released within twenty-four hours of
28 service of the release order on the superintendent of the special
29 commitment center, or later by agreement of the person who is the
30 subject of the petition.

31 **Sec. 3.** RCW 71.09.090 and 2018 c 131 s 2 are each amended to
32 read as follows:

33 (1) (a) If the secretary determines that the person's condition
34 has so changed that ~~((either: (a) The))~~ the person no longer meets
35 the definition of a sexually violent predator ~~((; or (b) conditional
36 release to a less restrictive alternative is in the best interest of
37 the person and conditions can be imposed that adequately protect the
38 community,))~~ the secretary shall authorize the person to petition the
39 court for ~~((conditional release to a less restrictive alternative~~

1 ~~or~~) unconditional discharge. The petition shall be filed with the
2 court and served upon the prosecuting agency responsible for the
3 initial commitment. The court, upon receipt of the petition for
4 (~~conditional release to a less restrictive alternative or~~)
5 unconditional discharge, shall within forty-five days order a
6 hearing.

7 (b) If the secretary determines that the person's condition has
8 so changed such that conditional release to a less restrictive
9 alternative is in the best interest of the person and conditions can
10 be imposed that adequately protect the community, then the secretary
11 shall authorize the person to petition the court for conditional
12 release to a less restrictive alternative. Upon receipt of the
13 petition, the court shall order the department to, within sixty days,
14 identify a less restrictive alternative placement that satisfies RCW
15 71.09.092 (1) through (4). Once identified, notice of the placement
16 shall be filed with the court and served upon the prosecuting agency
17 responsible for the initial commitment as well as the person and his
18 or her counsel. If the department cannot identify a placement
19 available to the person that satisfies RCW 71.09.092 (1) through (3)
20 within sixty days, it shall provide a written certification to the
21 court, as well as the prosecuting agency responsible for the initial
22 commitment and the person and his or her counsel, detailing the
23 efforts of the department to identify a qualifying placement. Upon
24 the department's certification, the person may propose a placement
25 that satisfies RCW 71.09.092 (1) through (3). After a less
26 restrictive placement has been proposed by either the department or
27 the person, the court shall within forty-five days order a hearing.

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

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

5 (b) (i) The committed person shall have a right to have an
6 attorney represent him or her at the show cause hearing, which may be
7 conducted solely on the basis of affidavits or declarations, but the
8 person is not entitled to be present at the show cause hearing. At
9 the show cause hearing, the prosecuting agency shall present prima
10 facie evidence establishing: (A) That the committed person continues
11 to meet the definition of a sexually violent predator; and (B) that a
12 less restrictive alternative is not in the best interest of the
13 person and conditions cannot be imposed that adequately protect the
14 community.

15 (ii) (A) If the state produces prima facie evidence that the
16 committed person continues to be a sexually violent predator, then
17 the state's burden under (b) (i) (A) of this subsection is met and an
18 unconditional release trial may not be ordered unless the committed
19 person produces evidence satisfying: Subsection (4) (a) of this
20 section; and subsection (4) (b) (i) or (ii) of this section.

21 (B) If the state produces prima facie evidence that a less
22 restrictive alternative is not appropriate for the committed person,
23 then the state's burden under (b) (i) (B) of this subsection is met,
24 and a conditional release trial may not be ordered unless the
25 committed person:

26 (I) Produces evidence satisfying: Subsection (4) (a) of this
27 section; and subsection (4) (b) (i) or (ii) of this section; and

28 (II) Presents the court with a specific placement satisfying the
29 requirements of RCW 71.09.092.

30 (iii) In making the showing required under (b) (i) of this
31 subsection, the state may rely exclusively upon the annual report
32 prepared pursuant to RCW 71.09.070. The committed person may present
33 responsive affidavits or declarations to which the state may reply.

34 (c) (i) If the court at the show cause hearing determines that
35 either: ~~((+))~~ (A) The state has failed to present prima facie
36 evidence that the committed person continues to meet the definition
37 of a sexually violent predator ~~((and that no proposed less
38 restrictive alternative is in the best interest of the person and
39 conditions cannot be imposed that would adequately protect the
40 community))~~; or ~~((+))~~ (B) probable cause exists to believe that

1 the person's condition has so changed that(~~(A) The~~) the person no
2 longer meets the definition of a sexually violent predator(~~(B)~~
3 release to a proposed less restrictive alternative would be in the
4 best interest of the person and conditions can be imposed that would
5 adequately protect the community)), then the court shall set a
6 hearing on (~~either or both issues~~) the issue of unconditional
7 discharge.

8 (ii) If, at the show cause hearing, the court determines that the
9 state has failed to present prima facie evidence that no less
10 restrictive alternative is in the best interest of the person and
11 conditions cannot be imposed that would adequately protect the
12 community, the court shall enter an order directing the department to
13 propose a less restrictive alternative placement that satisfies RCW
14 71.09.092 (1) through (4) within sixty days. If the department cannot
15 identify a placement available to the person that satisfies RCW
16 71.09.092 (1) through (3) within sixty days, it shall provide a
17 written certification to the court, as well as the prosecuting agency
18 responsible for the initial commitment, the person, and the person's
19 counsel, detailing the efforts of the department to identify a
20 qualifying placement. Upon the department's certification, the person
21 may propose a placement that satisfies RCW 71.09.092 (1) through (3).
22 After a less restrictive alternative placement has been proposed by
23 either the department or the person the court shall set a hearing on
24 the issue of conditional release.

25 (iii) If, at the show cause hearing, the court determines, based
26 on the evidence submitted by the person, that probable cause exists
27 to believe that release to a less restrictive alternative would be in
28 the best interest of the person and conditions can be imposed that
29 would adequately protect the community, the court shall set a hearing
30 on the issue of conditional release if the person presents the court
31 with a specific placement satisfying the requirements of RCW
32 71.09.092.

33 (d) If the court has not previously considered the issue of
34 release to a less restrictive alternative, either through a trial on
35 the merits or through the procedures set forth in RCW 71.09.094(1),
36 or if an immediately preceding less restrictive alternative was
37 revoked due to the loss of adequate housing or treatment for reasons
38 other than noncompliance with housing requirements, treatment, or
39 other conditions of the less restrictive alternative, the court shall
40 consider whether release to a less restrictive alternative would be

1 in the best interests of the person and conditions can be imposed
2 that would adequately protect the community, without considering
3 whether the person's condition has changed. (~~The court may not find
4 probable cause for a trial addressing less restrictive alternatives
5 unless a proposed less restrictive alternative placement meeting the
6 conditions of RCW 71.09.092 is presented to the court at the show
7 cause hearing.~~)

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

26 (b) Whenever any indigent person is subjected to an evaluation
27 under (a) of this subsection, the office of public defense is
28 responsible for the cost of one expert or professional person
29 conducting an evaluation on the person's behalf. When the person
30 wishes to be evaluated by a qualified expert or professional person
31 of his or her own choice, such expert or professional person must be
32 permitted to have reasonable access to the person for the purpose of
33 such evaluation, as well as to all relevant medical and psychological
34 records and reports. In the case of a person who is indigent, the
35 court shall, upon the person's request, assist the person in
36 obtaining an expert or professional person to perform an evaluation
37 or participate in the hearing on the person's behalf. Nothing in this
38 chapter precludes the person from paying for additional expert
39 services at his or her own expense.

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

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

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

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

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

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

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

7 (5) A court entering an order for unconditional discharge of a
8 person from an immediately preceding less restrictive placement must
9 transmit the order to the department of corrections for discharge
10 process and termination of cause.

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

14 (~~(6)~~) (7) During any period of confinement pursuant to a
15 criminal conviction, or for any period of detention awaiting trial on
16 criminal charges, this section is suspended.

17 **Sec. 4.** RCW 71.09.092 and 2009 c 409 s 9 are each amended to
18 read as follows:

19 Before the court may enter an order directing conditional release
20 to a less restrictive alternative, it must find the following: (1)
21 The person will be treated by a treatment provider who is qualified
22 to provide such treatment in the state of Washington under chapter
23 18.155 RCW; (2) the treatment provider has presented a specific
24 course of treatment and has agreed to assume responsibility for such
25 treatment and will report progress to the court on a regular basis,
26 and will report violations immediately to the court, the prosecutor,
27 the supervising community corrections officer, and the superintendent
28 of the special commitment center; (3) housing exists in Washington
29 that is sufficiently secure to protect the community, and the person
30 or agency providing housing to the conditionally released person has
31 agreed in writing to accept the person, to provide the level of
32 security required by the court, and immediately to report to the
33 court, the prosecutor, the supervising community corrections officer,
34 and the superintendent of the special commitment center if the person
35 leaves the housing to which he or she has been assigned without
36 authorization; (4) if the department has proposed housing that is
37 outside of the county of commitment, a documented effort was made by
38 the department to ensure that placement is consistent with fair share
39 principles of release; (5) the person is willing to comply with the

1 treatment provider and all requirements imposed by the treatment
2 provider and by the court; and ~~((+5))~~ (6) the person will be under
3 the supervision of the department of corrections and is willing to
4 comply with supervision requirements imposed by the department of
5 corrections.

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

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

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

21 (3) If the service provider designated by the court to provide
22 inpatient or outpatient treatment or to monitor or supervise any
23 other terms and conditions of a person's placement in a less
24 restrictive alternative is other than the department of social and
25 health services or the department of corrections, then the service
26 provider so designated must agree in writing to provide such
27 treatment, monitoring, or supervision in accord with this section.
28 Any person providing or agreeing to provide treatment, monitoring, or
29 supervision services pursuant to this chapter may be compelled to
30 testify and any privilege with regard to such person's testimony is
31 deemed waived.

32 (4) Prior to authorizing any release to a less restrictive
33 alternative, the court shall impose such conditions upon the person
34 as are necessary to ensure the safety of the community. In imposing
35 conditions upon a person whose sex offense history includes one or
36 more victims under the age of eighteen, the court must consider
37 whether it is necessary to impose a restriction on the proximity of
38 the person's residence to public or private schools providing
39 instruction to kindergarten or any of grades one through twelve. The

1 court shall additionally order the department of corrections to
2 investigate the less restrictive alternative and, within sixty days
3 of the order to investigate, recommend any additional conditions to
4 the court. These conditions shall be individualized to address the
5 person's specific risk factors and may include, but are not limited
6 to the following: Specification of residence or restrictions on
7 residence, prohibition of contact with potential or past victims,
8 prohibition of alcohol and other drug use, participation in a
9 specific course of inpatient or outpatient treatment that may include
10 monitoring by the use of polygraph and plethysmograph, monitoring
11 through the use of global positioning (~~satellite [global positioning~~
12 ~~system]~~) system technology, supervision by a department of
13 corrections community corrections officer, a requirement that the
14 person remain within the state unless the person receives prior
15 authorization by the court, and any other conditions that the court
16 determines are in the best interest of the person or others. A copy
17 of the conditions of release shall be given to the person and to any
18 designated service providers.

19 (5) (a) Prior to authorizing release to a less restrictive
20 alternative proposed by the department, the court shall consider
21 whether (~~it is appropriate to release the person to the person's~~
22 ~~county of commitment~~) the person's less restrictive alternative
23 placement is in accordance with fair share principles. To ensure
24 equitable distribution of releases, and prevent the disproportionate
25 grouping of persons subject to less restrictive orders in any one
26 county, or in any one jurisdiction or community within a county, the
27 legislature finds it is appropriate for releases to a less
28 restrictive alternative to occur in (~~the person's county of~~
29 ~~commitment, unless~~) a manner that adheres to fair share principles.
30 The legislature recognizes that there may be reasons why the
31 department may not recommend that a person is released to his or her
32 county of commitment, including the availability of individualized
33 resource or support needs of the person or when the court determines
34 that the person's return to his or her county of commitment would be
35 inappropriate (~~considering any~~) based on consideration of: Any
36 court-issued protection orders, victim safety concerns that cannot be
37 addressed by ordering the use of global positioning system
38 technology, the (~~availability~~) unavailability of appropriate
39 treatment or facilities that would adequately protect the community,
40 negative influences on the person, (~~or~~) and the location of family

1 or other persons or organizations offering support to the person. If
2 the court authorizes conditional release based on the department's
3 proposal to a county other than the county of commitment, the court
4 shall enter specific findings regarding its decision and identify
5 whether the release remains in line with fair share principles.

6 (b) When the department ((or court assists in developing a))
7 develops a less restrictive alternative placement under this section
8 ((which is outside of the county of commitment, and there are two or
9 more options for placement, it shall endeavor to develop the
10 placement in a manner that does not have a disproportionate effect on
11 a single county.

12 (b-)) it shall attempt to identify a placement satisfying the
13 requirements of RCW 71.09.092 that is in alignment with fair share
14 principles. The department shall document its rationale for the
15 recommended placement.

16 (c) If the committed person is not conditionally released to his
17 or her county of commitment, the department shall provide the law and
18 justice council of the county in which the person is conditionally
19 released with notice and a written explanation((-

20 (-e))), including whether the department remains in compliance
21 with fair share principles regarding releases under this chapter.

22 (d) For purposes of this section, the person's county of
23 commitment means the county of the court which ordered the person's
24 commitment.

25 (((-d))) (e) This subsection (5) does not apply to releases to a
26 secure community transition facility under RCW 71.09.250.

27 (6) When ordered by the court, the department must provide less
28 restrictive alternative treatment that includes, at a minimum, the
29 service needs identified in the person's discharge plan as outlined
30 in RCW 71.09.080(4), as well as: The assignment of a community care
31 coordinator; regular contacts with providers of court-ordered
32 treatment services; community escorts, if needed; a transition plan
33 addressing access to continued services upon unconditional discharge;
34 financial support for necessary housing; and assistance in pursuing
35 benefits, education, and employment.

36 (7) Any service provider designated to provide inpatient or
37 outpatient treatment shall monthly, or as otherwise directed by the
38 court, submit to the court, to the department of social and health
39 services facility from which the person was released, to the
40 prosecuting agency, and to the supervising community corrections

1 officer, a report stating whether the person is complying with the
2 terms and conditions of the conditional release to a less restrictive
3 alternative.

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

17 **Sec. 6.** RCW 71.09.130 and 1995 c 216 s 16 are each amended to
18 read as follows:

19 (1) In the event of an escape by a person committed under this
20 chapter from a state institution or the disappearance of such a
21 person while on conditional release, the superintendent or community
22 corrections officer shall notify the following as appropriate: Local
23 law enforcement officers, other governmental agencies, the person's
24 relatives, and any other appropriate persons about information
25 necessary for the public safety or to assist in the apprehension of
26 the person.

27 (2) If a person committed under this chapter disappears while on
28 conditional release, the department of corrections may enter an
29 arrest warrant for up to seventy-two hours pending entry of a bench
30 warrant by the court.

31 **Sec. 7.** RCW 71.09.140 and 2012 c 257 s 12 are each amended to
32 read as follows:

33 (1)(a) At the earliest possible date, and in no event later than
34 thirty days before conditional release, change of address for a
35 person on conditional release, or unconditional discharge, except in
36 the event of escape, the department of social and health services
37 shall send written notice of conditional release, unconditional
38 discharge, or escape, to the following:

1 (~~(a)~~) (i) The chief of police of the city, if any, in which the
2 person will reside or in which placement will be made under a less
3 restrictive alternative;

4 (~~(b)~~) (ii) The sheriff of the county in which the person will
5 reside or in which placement will be made under a less restrictive
6 alternative; and

7 (~~(c)~~) (iii) The sheriff of the county where the person was last
8 convicted of a sexually violent offense, if the department does not
9 know where the person will reside.

10 The department shall notify the state patrol of the release of
11 all sexually violent predators and that information shall be placed
12 in the Washington crime information center for dissemination to all
13 law enforcement.

14 (b) A return to total confinement or to a secure community
15 transition facility pending revocation or modification proceedings is
16 not considered a change of address for purposes of (a) of this
17 subsection, unless conditional release is revoked under RCW 71.09.098
18 or the return lasts longer than one year.

19 (2) The same notice as required by subsection (1) of this section
20 shall be sent to the following if such notice has been requested in
21 writing about a specific person found to be a sexually violent
22 predator under this chapter:

23 (a) The victim or victims of any sexually violent offenses for
24 which the person was convicted in the past or the victim's next of
25 kin if the crime was a homicide. "Next of kin" as used in this
26 section means a person's spouse, parents, siblings, and children;

27 (b) Any witnesses who testified against the person in his or her
28 commitment trial under RCW 71.09.060; and

29 (c) Any person specified in writing by the prosecuting agency.

30 Information regarding victims, next of kin, or witnesses
31 requesting the notice, information regarding any other person
32 specified in writing by the prosecuting agency to receive the notice,
33 and the notice are confidential and shall not be available to the
34 committed person.

35 (3) If a person committed as a sexually violent predator under
36 this chapter escapes from a department of social and health services
37 facility, the department shall immediately notify, by the most
38 reasonable and expedient means available, the chief of police of the
39 city and the sheriff of the county in which the committed person
40 resided immediately before his or her commitment as a sexually

1 violent predator, or immediately before his or her incarceration for
2 his or her most recent offense. If previously requested, the
3 department shall also notify the witnesses and the victims of the
4 sexually violent offenses for which the person was convicted in the
5 past or the victim's next of kin if the crime was a homicide. If the
6 person is recaptured, the department shall send notice to the persons
7 designated in this subsection as soon as possible but in no event
8 later than two working days after the department learns of such
9 recapture.

10 (4) If the victim or victims of any sexually violent offenses for
11 which the person was convicted in the past or the victim's next of
12 kin, or any witness is under the age of sixteen, the notice required
13 by this section shall be sent to the parents or legal guardian of the
14 child.

15 (5) The department of social and health services shall send the
16 notices required by this chapter to the last address provided to the
17 department by the requesting party. The requesting party shall
18 furnish the department with a current address.

19 (6) Nothing in this section shall impose any liability upon a
20 chief of police of a city or sheriff of a county for failing to
21 request in writing a notice as provided in subsection (1) of this
22 section.

23 **Sec. 8.** RCW 71.09.250 and 2003 c 216 s 3 are each amended to
24 read as follows:

25 (1)(a) The secretary is authorized to site, construct, occupy,
26 and operate (i) a secure community transition facility on McNeil
27 Island for persons authorized to petition for a less restrictive
28 alternative under RCW 71.09.090(1) and who are conditionally
29 released; and (ii) a special commitment center on McNeil Island with
30 up to four hundred four beds as a total confinement facility under
31 this chapter, subject to appropriated funding for those purposes. The
32 secure community transition facility shall be authorized for the
33 number of beds needed to ensure compliance with the orders of the
34 superior courts under this chapter and the federal district court for
35 the western district of Washington. The total number of beds in the
36 secure community transition facility shall be limited to twenty-four,
37 consisting of up to fifteen transitional beds and up to nine
38 pretransitional beds. The residents occupying the transitional beds
39 shall be the only residents eligible for transitional services

1 occurring in Pierce county. In no event shall more than fifteen
2 residents of the secure community transition facility be
3 participating in off-island transitional, educational, or employment
4 activity at the same time in Pierce county. The department shall
5 provide the Pierce county sheriff, or his or her designee, with a
6 list of the fifteen residents so designated, along with their
7 photographs and physical descriptions, and the list shall be
8 immediately updated whenever a residential change occurs. The Pierce
9 county sheriff, or his or her designee, shall be provided an
10 opportunity to confirm the residential status of each resident
11 leaving McNeil Island.

12 (b) For purposes of this subsection, "transitional beds" means
13 beds only for residents who are judged by a qualified expert to be
14 suitable to leave the island for treatment, education, and
15 employment.

16 (2) (a) The secretary is authorized to site, either within the
17 secure community transition facility established pursuant to
18 subsection (1) (a) (i) of this section, or within the special
19 commitment center, up to nine pretransitional beds.

20 (b) Residents assigned to pretransitional beds shall not be
21 permitted to leave McNeil Island for education, employment,
22 treatment, or community activities in Pierce county.

23 (c) For purposes of this subsection, "pretransitional beds" means
24 beds for residents whose progress toward a less secure residential
25 environment and transition into more complete community involvement
26 is projected to take substantially longer than a typical resident of
27 the special commitment center.

28 (3) Notwithstanding RCW 36.70A.103 or any other law, this statute
29 preempts and supersedes local plans, development regulations,
30 permitting requirements, inspection requirements, and all other laws
31 as necessary to enable the secretary to site, construct, occupy, and
32 operate a secure community transition facility on McNeil Island and a
33 total confinement facility on McNeil Island.

34 (4) To the greatest extent possible, until June 30, 2003, persons
35 who were not civilly committed from the county in which the secure
36 community transition facility established pursuant to subsection (1)
37 of this section is located may not be conditionally released to a
38 setting in that same county less restrictive than that facility.

39 (5) As of June 26, 2001, the state shall immediately cease any
40 efforts in effect on such date to site secure community transition

1 facilities, other than the facility authorized by subsection (1) of
2 this section, and shall instead site such facilities in accordance
3 with the provisions of this section.

4 (6) The department must:

5 (a) Identify the minimum and maximum number of secure community
6 transition facility beds in addition to the facility established
7 under subsection (1) of this section that may be necessary for the
8 period of May 2004 through May 2007 and provide notice of these
9 numbers to all counties by August 31, 2001; and

10 (b) Develop and publish policy guidelines for the siting and
11 operation of secure community transition facilities.

12 (7)(a) The total number of secure community transition facility
13 beds that may be required to be sited in a county between June 26,
14 2001, and June 30, 2008, may be no greater than the total number of
15 persons civilly committed from that county, or detained at the
16 special commitment center under a pending civil commitment petition
17 from that county where a finding of probable cause had been made on
18 April 1, 2001. The total number of secure community transition
19 facility beds required to be sited in each county between July 1,
20 2008, and June 30, 2015, may be no greater than the total number of
21 persons civilly committed from that county or detained at the special
22 commitment center under a pending civil commitment petition from that
23 county where a finding of probable cause had been made as of July 1,
24 2008.

25 (b) Counties and cities that provide secure community transition
26 facility beds above the maximum number that they could be required to
27 site under this subsection are eligible for a bonus grant under the
28 incentive provisions in RCW 71.09.255. The county where the special
29 commitment center is located shall receive this bonus grant for the
30 number of beds in the facility established in subsection (1) of this
31 section in excess of the maximum number established by this
32 subsection.

33 (c) No secure community transition facilities in addition to the
34 one established in subsection (1) of this section may be required to
35 be sited in the county where the special commitment center is located
36 until after June 30, 2008, provided however, that the county and its
37 cities may elect to site additional secure community transition
38 facilities and shall be eligible under the incentive provisions of
39 RCW 71.09.255 for any additional facilities meeting the requirements
40 of that section.

1 (8) The state is authorized to site and operate secure community
2 transition facilities and other conditional release facilities in any
3 county in the state. In identifying potential counties within which
4 to site a secure community transition facility or other conditional
5 release facility, and in identifying sites within a county for the
6 location of ((a—secure—community—transition—facility)) such
7 facilities, the department shall work with and assist local
8 governments to provide for the equitable distribution of such
9 facilities. In coordinating and deciding upon the siting of a secure
10 community transition ((facilities)) facility or other conditional
11 release facility within a county, great weight shall be given by the
12 county and cities within the county to:

13 (a) The number and location of existing residential facility beds
14 operated by the department of corrections or the mental health
15 division of the department of social and health services in each
16 jurisdiction in the county; and

17 (b) The number of registered sex offenders classified as level II
18 or level III and the number of sex offenders registered as homeless
19 residing in each jurisdiction in the county.

20 (9) (a) "Equitable distribution" means siting or locating secure
21 community transition facilities and other conditional release
22 facilities in a manner that will not cause a disproportionate
23 grouping of similar facilities either in any one county, or in any
24 one jurisdiction or community within a county, as relevant; and

25 (b) "Jurisdiction" means a city, town, or geographic area of a
26 county in which distinct political or judicial authority may be
27 exercised.

28 NEW SECTION. Sec. 9. A new section is added to chapter 71.09
29 RCW to read as follows:

30 To facilitate the equitable geographic distribution of
31 conditional releases under this chapter, the department shall notify
32 the secretary of health, or the secretary's designee, whenever a sex
33 offender treatment provider in an underserved county has been
34 contracted to provide treatment services to persons on conditional
35 release under this chapter, in which case the secretary of health
36 shall waive any fees for the initial issue, renewal, and reissuance
37 of a credential for the provider under chapter 18.155 RCW. An
38 underserved county is any county identified by the department as
39 having an inadequate supply of qualified sex offender treatment

1 providers to achieve equitable geographic distribution of conditional
2 releases under this chapter.

3 NEW SECTION. **Sec. 10.** The Washington state institute for public
4 policy shall review and report by December 1, 2020, on the
5 availability of adequate less restrictive alternative services
6 available for the placement of persons committed under chapter 71.09
7 RCW within each county in the state of Washington. In the event that
8 any county lacks adequate less restrictive alternative services, the
9 department of social and health services must present a plan by
10 December 1, 2021, to procure adequate services for less restrictive
11 alternative placement within each county consistent with fair share
12 principles of release. For purposes of this section, "adequate" means
13 meeting the treatment needs of those eligible for conditional
14 release, including the community services and supports needed to
15 support safe living in the community, and the providers of such
16 services and supports.

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