
HOUSE BILL 2096

State of Washington

68th Legislature

2024 Regular Session

By Representatives Leavitt, Couture, Bronoske, Robertson, Klicker, Sandlin, Stokesbary, Chambers, Eslick, Graham, Barnard, Jacobsen, and Caldier

Prefiled 01/03/24. Read first time 01/08/24. Referred to Committee on Community Safety, Justice, & Reentry.

1 AN ACT Relating to ensuring adequate notice to and consideration
2 of local communities when establishing housing options for
3 individuals qualifying for a less restrictive alternative placement;
4 and amending RCW 71.09.097 and 71.09.096.

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

6 **Sec. 1.** RCW 71.09.097 and 2021 c 236 s 11 are each amended to
7 read as follows:

8 (1) (a) In accordance with RCW 71.09.090 and 71.09.096, the
9 department shall have the primary responsibility for developing a
10 less restrictive alternative placement. To ensure the department has
11 sufficient less restrictive alternative placements to choose from
12 that satisfy the requirements of RCW 71.09.092, subject to the
13 availability of amounts appropriated for this specific purpose, the
14 department shall use a request for proposal process to solicit and
15 contract with housing and treatment providers from across the state
16 and facilitate fair share principles among the counties. In order to
17 increase the number of housing options for individuals qualifying for
18 a less restrictive alternative, the department shall have oversight
19 of the vendors and providers who contract with the state, including
20 the authority to inspect and ensure compliance, negotiate the rates
21 charged for services, ensure adequate living conditions of housing

1 locations, and terminate contracts. The department shall maintain a
2 statewide accounting of the contracted community housing and
3 treatment providers in each county and provide a biannual report to
4 the legislature and governor by December 1st on the availability and
5 adequacy of less restrictive alternative placements and the
6 department's compliance with fair share principles.

7 (b) The department may not enter into a contract with a housing
8 provider until the following conditions have been met:

9 (i) Upon identifying a county for possible housing, the
10 department and housing provider must contact the county legislative
11 authority and inform them of the intent to create a facility in their
12 jurisdiction;

13 (ii) The department must contact the local government planning
14 agencies and consult with any federally recognized tribes and
15 academic or educational programs in the local communities affected,
16 and coordinate with local government agencies to ensure opportunities
17 are provided for effective citizen input and to reduce duplication of
18 notice and meetings;

19 (iii) The department must create strategies to effectively engage
20 the public, including a way to allow community members to easily
21 submit written and oral comments;

22 (iv) The department must specifically solicit feedback from any
23 federally recognized tribes and privately licensed educational
24 organizations in the local communities located within 500 feet of the
25 proposed location of the less restrictive alternative housing; and

26 (v) The department, in partnership with the potential housing
27 provider, the department of corrections, county leadership, and the
28 county sheriff's office, must plan and host a minimum of one public
29 meeting in the local communities affected.

30 (c) The department shall also consider whether the proposed
31 housing would be adjacent to, or immediately across the street or
32 parking lot from, a risk potential activity or facility in existence
33 at the time the site is listed for consideration.

34 (2) To facilitate its duties required under this section, the
35 department shall use the following housing matrix and considerations
36 as a guide to planning and developing less restrictive alternative
37 placements. The following considerations may not be used as a reason
38 to deny a less restrictive alternative placement.

39 (a) Considerations for evaluating a proposed vendor's application
40 for less restrictive alternative housing services shall include

1 applicable state and local zoning, health, and building codes,
2 general housing requirements, availability of public services, and
3 other considerations identified in accordance with RCW 71.09.315. The
4 department shall require the housing provider to provide proof that
5 the facility is in compliance with all local zoning, health, and
6 building codes.

7 (i) General housing requirements include running water,
8 electricity, bedroom and living space of adequate size, and no mold
9 or infestations.

10 (ii) Availability of public services include availability of
11 chaperones and whether the placement is within a reasonable distance
12 to a grocery store, bank, public transportation options, and offices
13 for public services and benefits.

14 (iii) Other considerations include whether the placement is
15 consistent with fair share principles across the counties, whether
16 the placement is within reasonable distance to other current or
17 planned components of the less restrictive alternative, whether the
18 placement is within reasonable distance to employment opportunities,
19 and the reliability of global positioning system technology.

20 (b) Factors for evaluating less restrictive alternative options
21 for a specific individual include sex offender treatment
22 considerations, criminogenic needs and risk factors, protective
23 factors, and the specific needs of the client.

24 (i) Sex offender treatment considerations include whether the
25 housing is within a reasonable distance from the treatment provider,
26 whether the treatment provider is a good therapeutic match with the
27 client, and whether the treatment provider has relevant experience
28 and background to treat the client if the client has special needs.

29 (ii) Criminogenic needs and risk factors include consideration of
30 the person's specific needs and risk factors in evaluating less
31 restrictive alternative options.

32 (iii) Protective factors include whether housing is within a
33 reasonable distance of family, friends, potential hobbies, potential
34 employment, and educational opportunities.

35 (iv) Consideration of the client's specific needs includes
36 assessing the availability of personal care assistance and in-home
37 care assistance, and whether housing is within a reasonable distance
38 of mental health, medical treatment options, and substance use
39 disorder treatment options.

1 **Sec. 2.** RCW 71.09.096 and 2021 c 236 s 6 are each amended to
2 read as follows:

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

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

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

27 (4)(a) Prior to authorizing any release to a less restrictive
28 alternative, the court shall impose such conditions upon the person
29 as are necessary to ensure the safety of the community. In imposing
30 conditions, the court must impose a restriction on the proximity of
31 the person's residence to public or private schools providing
32 instruction to kindergarten or any grades one through 12 in
33 accordance with RCW 72.09.340. Courts shall require a minimum
34 distance restriction of 500 feet on the proximity of the person's
35 residence to child care facilities, academic or educational programs,
36 and public or private schools providing instruction to kindergarten
37 or any grades one through 12. The court shall order the department of
38 corrections to investigate the less restrictive alternative and,
39 within 60 days of the order to investigate, recommend any additional
40 conditions to the court. These conditions shall be individualized to

1 address the person's specific risk factors and criminogenic needs and
2 may include, but are not limited to ~~((+,+))~~, the following:
3 Specification of residence or restrictions on residence including
4 distance restrictions, specification of contact with a reasonable
5 number of individuals upon the person's request who are verified by
6 the department of corrections to be appropriate social contacts,
7 prohibition of contact with potential or past victims, prohibition of
8 alcohol and other drug use, participation in a specific course of
9 inpatient or outpatient treatment that may include monitoring by the
10 use of polygraph and plethysmograph, monitoring through the use of
11 global positioning system technology, supervision by a department of
12 corrections community corrections officer, a requirement that the
13 person remain within the state unless the person receives prior
14 authorization by the court, and any other conditions that the court
15 determines are in the best interest of the person or others. A copy
16 of the conditions of release shall be given to the person and to any
17 designated service providers.

18 (b) To the greatest extent possible, the person, person's
19 counsel, prosecuting agency responsible for the initial commitment,
20 treatment provider, supervising community corrections officer, and
21 appropriate clinical staff of the special commitment center shall
22 meet and collaborate to craft individualized, narrowly tailored, and
23 empirically based conditions to present to the court to help
24 facilitate the person's successful transition to the community.

25 (5) (a) Prior to authorizing release to a less restrictive
26 alternative proposed by the department, the court shall consider
27 whether the person's less restrictive alternative placement is in
28 accordance with fair share principles. To ensure equitable
29 distribution of releases, and prevent the disproportionate grouping
30 of persons subject to less restrictive orders in any one county, or
31 in any one jurisdiction or community within a county, the legislature
32 finds it is appropriate for releases to a less restrictive
33 alternative to occur in a manner that adheres to fair share
34 principles. The legislature recognizes that there may be reasons why
35 the department may not recommend that a person be released to his or
36 her county of commitment, including availability of individualized
37 resources, the person's support needs, or when the court determines
38 that the person's return to his or her county of commitment would be
39 inappropriate considering any court-issued protection orders, victim
40 safety concerns that cannot be addressed through use of global

1 positioning system technology, the unavailability of appropriate
2 treatment or facilities that would adequately protect the community,
3 negative influences on the person, and the location of family or
4 other persons or organizations offering support to the person. If the
5 court authorizes conditional release based on the department's
6 proposal to a county other than the county of commitment, the court
7 shall enter specific findings regarding its decision and identify
8 whether the release remains in line with fair share principles.

9 (b) (i) When the department develops a less restrictive
10 alternative placement under this section, it shall attempt to
11 identify a placement satisfying the requirements of RCW 71.09.092
12 that is aligned with fair share principles. The department shall
13 document its rationale for the recommended placement.

14 (ii) If the department does not support or recommend conditional
15 release to a less restrictive alternative due to a clinical
16 determination, the department shall document its objection and
17 certify that the department is developing the less restrictive
18 alternative pursuant to a court order and not because of a clinical
19 determination.

20 (iii) When the department develops or proposes a less restrictive
21 alternative placement under this chapter, it shall be considered a
22 predisposition recommendation.

23 (iv) In developing, modifying, and enforcing less restrictive
24 alternatives, the department shall be deemed to be performing a
25 quasi-judicial function.

26 (c) If the committed person is not conditionally released to his
27 or her county of commitment, the department shall provide the law and
28 justice council of the county in which the person is conditionally
29 released with notice and a written explanation, including whether the
30 department remains in compliance with fair share principles regarding
31 releases under this chapter.

32 (d) For purposes of this section, the person's county of
33 commitment means the county of the court which ordered the person's
34 commitment.

35 (e) This subsection (5) does not apply to releases to a secure
36 community transition facility under RCW 71.09.250.

37 (6) (a) When ordered by the court, the department must provide
38 less restrictive alternative treatment that includes, at a minimum:

39 (i) The services identified in the person's discharge plan as
40 outlined in RCW 71.09.080(4);

- 1 (ii) The assignment of a community care coordinator;
2 (iii) Regular contacts with providers of court-ordered treatment
3 services;
4 (iv) Community escorts, if needed;
5 (v) A transition plan that addresses the person's access to
6 continued services upon unconditional discharge;
7 (vi) Financial support for necessary housing;
8 (vii) Life skills training and disability accommodations, if
9 needed; and
10 (viii) Assistance in pursuing benefits, education, and
11 employment.

12 (b) At the time the department of corrections is ordered to
13 investigate a proposed less restrictive alternative placement,
14 subject to the availability of amounts appropriated for this specific
15 purpose, the department shall assign a social worker to assist the
16 person with discharge planning, pursuing benefits, and coordination
17 of care prior to release.

18 (i) The social worker shall assist the person with completing
19 applications for benefits prior to the person's release from total
20 confinement.

21 (ii) To promote continuity of care and the individual's success
22 in the community, the department social worker shall be responsible
23 for initiating a clinical transition of care between the last
24 treating clinician at the special commitment center and the person's
25 designated community treatment provider. This transition between one
26 clinical setting to another shall occur no later than 15 days before
27 an individual's release from the special commitment center.

28 (iii) If applicable, the social worker shall assist the person
29 with locating any needed disability accommodations in the community
30 and with obtaining resources to help address the person's identified
31 life skills needs prior to release from total confinement.

32 (7) Any service provider designated to provide inpatient or
33 outpatient treatment shall monthly, or as otherwise directed by the
34 court, submit to the court, to the department of social and health
35 services facility from which the person was released, to the
36 prosecuting agency, and to the supervising community corrections
37 officer, a report stating whether the person is complying with the
38 terms and conditions of the conditional release to a less restrictive
39 alternative.

1 (8) 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 questions to be determined by
8 the court are whether the person shall continue to be conditionally
9 released to a less restrictive alternative, and if so, whether a
10 modification to the person's less restrictive alternative order is
11 appropriate to ensure the conditional release remains in the best
12 interest of the person and adequate to protect the victim and the
13 community. The court in making its determination shall be aided by
14 the periodic reports filed pursuant to subsection (7) of this section
15 and the opinions of the secretary and other experts or professional
16 persons.

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