

SSB 5718 - H COMM AMD

By Committee on Public Safety & Emergency Preparedness

ADOPTED 04/01/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 71.09.020 and 2006 c 303 s 10 are each amended to
4 read as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

7 (1) "Department" means the department of social and health
8 services.

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

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

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

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

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

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

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

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

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

16 ((+10)) (11) "Prosecuting agency" means the prosecuting attorney
17 of the county where the person was convicted or charged or the attorney
18 general if requested by the prosecuting attorney, as provided in RCW
19 71.09.030.

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

25 ((+11)) (13) "Risk potential activity" or "risk potential
26 facility" means an activity or facility that provides a higher
27 incidence of risk to the public from persons conditionally released
28 from the special commitment center. Risk potential activities and
29 facilities include: Public and private schools, school bus stops,
30 licensed day care and licensed preschool facilities, public parks,
31 publicly dedicated trails, sports fields, playgrounds, recreational and
32 community centers, churches, synagogues, temples, mosques, public
33 libraries, public and private youth camps, and others identified by the
34 department following the hearings on a potential site required in RCW
35 71.09.315. For purposes of this chapter, "school bus stops" does not
36 include bus stops established primarily for public transit.

37 ((+12)) (14) "Secretary" means the secretary of social and health
38 services or the secretary's designee.

1 (~~(13)~~) (15) "Secure facility" means a residential facility for
2 persons civilly confined under the provisions of this chapter that
3 includes security measures sufficient to protect the community. Such
4 facilities include total confinement facilities, secure community
5 transition facilities, and any residence used as a court-ordered
6 placement under RCW 71.09.096.

7 (~~(14)~~) (16) "Secure community transition facility" means a
8 residential facility for persons civilly committed and conditionally
9 released to a less restrictive alternative under this chapter. A
10 secure community transition facility has supervision and security, and
11 either provides or ensures the provision of sex offender treatment
12 services. Secure community transition facilities include but are not
13 limited to the facility established pursuant to RCW 71.09.250(1)(a)(i)
14 and any community-based facilities established under this chapter and
15 operated by the secretary or under contract with the secretary.

16 (~~(15)~~) (17) "Sexually violent offense" means an act committed on,
17 before, or after July 1, 1990, that is: (a) An act defined in Title 9A
18 RCW as rape in the first degree, rape in the second degree by forcible
19 compulsion, rape of a child in the first or second degree, statutory
20 rape in the first or second degree, indecent liberties by forcible
21 compulsion, indecent liberties against a child under age fourteen,
22 incest against a child under age fourteen, or child molestation in the
23 first or second degree; (b) a felony offense in effect at any time
24 prior to July 1, 1990, that is comparable to a sexually violent offense
25 as defined in (a) of this subsection, or any federal or out-of-state
26 conviction for a felony offense that under the laws of this state would
27 be a sexually violent offense as defined in this subsection; (c) an act
28 of murder in the first or second degree, assault in the first or second
29 degree, assault of a child in the first or second degree, kidnapping in
30 the first or second degree, burglary in the first degree, residential
31 burglary, or unlawful imprisonment, which act, either at the time of
32 sentencing for the offense or subsequently during civil commitment
33 proceedings pursuant to this chapter, has been determined beyond a
34 reasonable doubt to have been sexually motivated, as that term is
35 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28
36 RCW, that is an attempt, criminal solicitation, or criminal conspiracy
37 to commit one of the felonies designated in (a), (b), or (c) of this
38 subsection.

1 (~~(16)~~) (18) "Sexually violent predator" means any person who has
2 been convicted of or charged with a crime of sexual violence and who
3 suffers from a mental abnormality or personality disorder which makes
4 the person likely to engage in predatory acts of sexual violence if not
5 confined in a secure facility.

6 (~~(17)~~) (19) "Total confinement facility" means a secure facility
7 that provides supervision and sex offender treatment services in a
8 total confinement setting. Total confinement facilities include the
9 special commitment center and any similar facility designated as a
10 total confinement facility by the secretary.

11 **Sec. 2.** RCW 71.09.025 and 2008 c 213 s 11 are each amended to read
12 as follows:

13 (1)(a) When it appears that a person may meet the criteria of a
14 sexually violent predator as defined in RCW 71.09.020 (16), the agency
15 with jurisdiction shall refer the person in writing to the prosecuting
16 attorney of the county (~~where that person was charged~~) in which an
17 action under this chapter may be filed pursuant to RCW 71.09.030 and
18 the attorney general, three months prior to:

19 (i) The anticipated release from total confinement of a person who
20 has been convicted of a sexually violent offense;

21 (ii) The anticipated release from total confinement of a person
22 found to have committed a sexually violent offense as a juvenile;

23 (iii) Release of a person who has been charged with a sexually
24 violent offense and who has been determined to be incompetent to stand
25 trial pursuant to RCW 10.77.086(4); or

26 (iv) Release of a person who has been found not guilty by reason of
27 insanity of a sexually violent offense pursuant to RCW 10.77.020(3).

28 (b) The agency shall provide the (~~prosecutor~~) prosecuting agency
29 with all relevant information including but not limited to the
30 following information:

31 (i) A complete copy of the institutional records compiled by the
32 department of corrections relating to the person, and any such out-of-
33 state department of corrections' records, if available;

34 (ii) A complete copy, if applicable, of any file compiled by the
35 indeterminate sentence review board relating to the person;

36 (iii) All records relating to the psychological or psychiatric
37 evaluation and/or treatment of the person;

1 (iv) A current record of all prior arrests and convictions, and
2 full police case reports relating to those arrests and convictions; and
3 (v) A current mental health evaluation or mental health records
4 review.

5 (c) The prosecuting agency has the authority, consistent with RCW
6 72.09.345(3), to obtain all records relating to the person if the
7 prosecuting agency deems such records are necessary to fulfill its
8 duties under this chapter. The prosecuting agency may only disclose
9 such records in the course of performing its duties pursuant to this
10 chapter, unless otherwise authorized by law.

11 (d) The prosecuting agency has the authority to utilize the inquiry
12 judge procedures of chapter 10.27 RCW prior to the filing of any action
13 under this chapter to seek the issuance of compulsory process for the
14 production of any records necessary for a determination of whether to
15 seek the civil commitment of a person under this chapter. Any records
16 obtained pursuant to this process may only be disclosed by the
17 prosecuting agency in the course of performing its duties pursuant to
18 this chapter, or unless otherwise authorized by law.

19 ~~(2) ((This section applies to acts committed before, on, or after~~
20 ~~March 26, 1992.~~

21 ~~(3))~~ The agency, its employees, and officials shall be immune from
22 liability for any good-faith conduct under this section.

23 ~~((4))~~ (3) As used in this section, "agency with jurisdiction"
24 means that agency with the authority to direct the release of a person
25 serving a sentence or term of confinement and includes the department
26 of corrections, the indeterminate sentence review board, and the
27 department of social and health services.

28 **Sec. 3.** RCW 71.09.030 and 2008 c 213 s 12 are each amended to read
29 as follows:

30 (1) A petition may be filed alleging that a person is a sexually
31 violent predator and stating sufficient facts to support such
32 allegation when it appears that: ((1)) (a) A person who at any time
33 previously has been convicted of a sexually violent offense is about to
34 be released from total confinement ((on, before, or after July 1,
35 1990)); ((2)) (b) a person found to have committed a sexually violent
36 offense as a juvenile is about to be released from total confinement
37 ((on, before, or after July 1, 1990)); ((3)) (c) a person who has

1 been charged with a sexually violent offense and who has been
2 determined to be incompetent to stand trial is about to be released, or
3 has been released (~~(on, before, or after July 1, 1990)~~), pursuant to
4 RCW 10.77.086(4); ~~((+4))~~ (d) a person who has been found not guilty by
5 reason of insanity of a sexually violent offense is about to be
6 released, or has been released (~~(on, before, or after July 1, 1990)~~),
7 pursuant to RCW 10.77.020(3), 10.77.110 (1) or (3), or 10.77.150; or
8 ~~((+5))~~ (e) a person who at any time previously has been convicted of
9 a sexually violent offense and has since been released from total
10 confinement and has committed a recent overt act(~~(; and it appears that~~
11 ~~the person may be a sexually violent predator, the prosecuting attorney~~
12 ~~of the county where the person was convicted or charged or the attorney~~
13 ~~general if requested by the prosecuting attorney may file a petition~~
14 ~~alleging that the person is a "sexually violent predator" and stating~~
15 ~~sufficient facts to support such allegation))~~).

16 (2) The petition may be filed by:

17 (a) The prosecuting attorney of a county in which:

18 (i) The person has been charged or convicted with a sexually
19 violent offense;

20 (ii) A recent overt act occurred involving a person covered under
21 subsection (1)(e) of this section; or

22 (iii) The person committed a recent overt act, or was charged or
23 convicted of a criminal offense that would qualify as a recent overt
24 act, if the only sexually violent offense charge or conviction occurred
25 in a jurisdiction other than Washington; or

26 (b) The attorney general, if requested by the county prosecuting
27 attorney identified in (a) of this subsection. If the county
28 prosecuting attorney requests that the attorney general file and
29 prosecute a case under this chapter, then the county shall charge the
30 attorney general only the fees, including filing and jury fees, that
31 would be charged and paid by the county prosecuting attorney, if the
32 county prosecuting attorney retained the case.

33 **Sec. 4.** RCW 71.09.040 and 2001 c 286 s 6 are each amended to read
34 as follows:

35 (1) Upon the filing of a petition under RCW 71.09.030, the judge
36 shall determine whether probable cause exists to believe that the

1 person named in the petition is a sexually violent predator. If such
2 determination is made the judge shall direct that the person be taken
3 into custody.

4 (2) Within seventy-two hours after a person is taken into custody
5 pursuant to subsection (1) of this section, the court shall provide the
6 person with notice of, and an opportunity to appear in person at, a
7 hearing to contest probable cause as to whether the person is a
8 sexually violent predator. In order to assist the person at the
9 hearing, within twenty-four hours of service of the petition, the
10 prosecuting agency shall provide to the person or his or her counsel a
11 copy of all materials provided to the prosecuting agency by the
12 referring agency pursuant to RCW 71.09.025, or obtained by the
13 prosecuting agency pursuant to RCW 71.09.025(1) (c) and (d). At this
14 hearing, the court shall (a) verify the person's identity, and (b)
15 determine whether probable cause exists to believe that the person is
16 a sexually violent predator. At the probable cause hearing, the state
17 may rely upon the petition and certification for determination of
18 probable cause filed pursuant to RCW 71.09.030. The state may
19 supplement this with additional documentary evidence or live testimony.
20 The person may be held in total confinement at the county jail until
21 the trial court renders a decision after the conclusion of the seventy-
22 two hour probable cause hearing. The county shall be entitled to
23 reimbursement for the cost of housing and transporting the person
24 pursuant to rules adopted by the secretary.

25 (3) At the probable cause hearing, the person shall have the
26 following rights in addition to the rights previously specified: (a)
27 To be represented by counsel; (b) to present evidence on his or her
28 behalf; (c) to cross-examine witnesses who testify against him or her;
29 (d) to view and copy all petitions and reports in the court file. The
30 court must permit a witness called by either party to testify by
31 telephone. Because this is a special proceeding, discovery pursuant to
32 the civil rules shall not occur until after the hearing has been held
33 and the court has issued its decision.

34 (4) If the probable cause determination is made, the judge shall
35 direct that the person be transferred to an appropriate facility for an
36 evaluation as to whether the person is a sexually violent predator.
37 The evaluation shall be conducted by a person deemed to be
38 professionally qualified to conduct such an examination pursuant to

1 rules developed by the department of social and health services. In
2 adopting such rules, the department of social and health services shall
3 consult with the department of health and the department of
4 corrections. In no event shall the person be released from confinement
5 prior to trial. A witness called by either party shall be permitted to
6 testify by telephone.

7 **Sec. 5.** RCW 71.09.050 and 1995 c 216 s 5 are each amended to read
8 as follows:

9 (1) Within forty-five days after the completion of any hearing held
10 pursuant to RCW 71.09.040, the court shall conduct a trial to determine
11 whether the person is a sexually violent predator. The trial may be
12 continued upon the request of either party and a showing of good cause,
13 or by the court on its own motion in the due administration of justice,
14 and when the respondent will not be substantially prejudiced. At all
15 stages of the proceedings under this chapter, any person subject to
16 this chapter shall be entitled to the assistance of counsel, and if the
17 person is indigent, the court shall appoint counsel to assist him or
18 her. The person shall be confined in a secure facility for the
19 duration of the trial.

20 (2) Whenever any person is subjected to an examination under this
21 chapter, he or she may retain experts or professional persons to
22 perform an examination on their behalf. When the person wishes to be
23 examined by a qualified expert or professional person of his or her own
24 choice, such examiner shall be permitted to have reasonable access to
25 the person for the purpose of such examination, as well as to all
26 relevant medical and psychological records and reports. In the case of
27 a person who is indigent, the court shall, upon the person's request,
28 assist the person in obtaining an expert or professional person to
29 perform an examination or participate in the trial on the person's
30 behalf.

31 (3) The person, the prosecuting (~~attorney or attorney general~~)
32 agency, or the judge shall have the right to demand that the trial be
33 before a twelve-person jury. If no demand is made, the trial shall be
34 before the court.

35 **Sec. 6.** RCW 71.09.060 and 2008 c 213 s 13 are each amended to read
36 as follows:

1 (1) The court or jury shall determine whether, beyond a reasonable
2 doubt, the person is a sexually violent predator. In determining
3 whether or not the person would be likely to engage in predatory acts
4 of sexual violence if not confined in a secure facility, the fact
5 finder may consider only placement conditions and voluntary treatment
6 options that would exist for the person if unconditionally released
7 from detention on the sexually violent predator petition. The
8 community protection program under RCW 71A.12.230 may not be considered
9 as a placement condition or treatment option available to the person if
10 unconditionally released from detention on a sexually violent predator
11 petition. When the determination is made by a jury, the verdict must
12 be unanimous.

13 If, on the date that the petition is filed, the person was living
14 in the community after release from custody, the state must also prove
15 beyond a reasonable doubt that the person had committed a recent overt
16 act. If the state alleges that the prior sexually violent offense that
17 forms the basis for the petition for commitment was an act that was
18 sexually motivated as provided in RCW 71.09.020(15)(c), the state must
19 prove beyond a reasonable doubt that the alleged sexually violent act
20 was sexually motivated as defined in RCW 9.94A.030.

21 If the court or jury determines that the person is a sexually
22 violent predator, the person shall be committed to the custody of the
23 department of social and health services for placement in a secure
24 facility operated by the department of social and health services for
25 control, care, and treatment until such time as: (a) The person's
26 condition has so changed that the person no longer meets the definition
27 of a sexually violent predator; or (b) conditional release to a less
28 restrictive alternative as set forth in RCW 71.09.092 is in the best
29 interest of the person and conditions can be imposed that would
30 adequately protect the community.

31 If the court or unanimous jury decides that the state has not met
32 its burden of proving that the person is a sexually violent predator,
33 the court shall direct the person's release.

34 If the jury is unable to reach a unanimous verdict, the court shall
35 declare a mistrial and set a retrial within forty-five days of the date
36 of the mistrial unless the prosecuting agency earlier moves to dismiss
37 the petition. The retrial may be continued upon the request of either
38 party accompanied by a showing of good cause, or by the court on its

1 own motion in the due administration of justice provided that the
2 respondent will not be substantially prejudiced. In no event may the
3 person be released from confinement prior to retrial or dismissal of
4 the case.

5 (2) If the person charged with a sexually violent offense has been
6 found incompetent to stand trial, and is about to (~~be~~) be or has
7 been released pursuant to RCW 10.77.086(4), and his or her commitment
8 is sought pursuant to subsection (1) of this section, the court shall
9 first hear evidence and determine whether the person did commit the act
10 or acts charged if the court did not enter a finding prior to dismissal
11 under RCW 10.77.086(4) that the person committed the act or acts
12 charged. The hearing on this issue must comply with all the procedures
13 specified in this section. In addition, the rules of evidence
14 applicable in criminal cases shall apply, and all constitutional rights
15 available to defendants at criminal trials, other than the right not to
16 be tried while incompetent, shall apply. After hearing evidence on
17 this issue, the court shall make specific findings on whether the
18 person did commit the act or acts charged, the extent to which the
19 person's incompetence or developmental disability affected the outcome
20 of the hearing, including its effect on the person's ability to consult
21 with and assist counsel and to testify on his or her own behalf, the
22 extent to which the evidence could be reconstructed without the
23 assistance of the person, and the strength of the prosecution's case.
24 If, after the conclusion of the hearing on this issue, the court finds,
25 beyond a reasonable doubt, that the person did commit the act or acts
26 charged, it shall enter a final order, appealable by the person, on
27 that issue, and may proceed to consider whether the person should be
28 committed pursuant to this section.

29 (3) Except as otherwise provided in this chapter, the state shall
30 comply with RCW 10.77.220 while confining the person (~~pursuant to this~~
31 chapter, ~~except that~~)). During all court proceedings where the person
32 is present, the person shall be detained in a secure facility. If the
33 proceedings last more than one day, the person may be held in the
34 county jail for the duration of the proceedings, except the person may
35 be returned to the department's custody on weekends and court holidays
36 if the court deems such a transfer feasible. The county shall be
37 entitled to reimbursement for the cost of housing and transporting the
38 person pursuant to rules adopted by the secretary. The department

1 shall not place the person, even temporarily, in a facility on the
2 grounds of any state mental facility or regional habilitation center
3 because these institutions are insufficiently secure for this
4 population.

5 (4) A court has jurisdiction to order a less restrictive
6 alternative placement only after a hearing ordered pursuant to RCW
7 71.09.090 following initial commitment under this section and in accord
8 with the provisions of this chapter.

9 **Sec. 7.** RCW 71.09.080 and 1995 c 216 s 8 are each amended to read
10 as follows:

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

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

26 (3) At the time a person is taken into custody or transferred into
27 a facility pursuant to a petition under this chapter, the professional
28 person in charge of such facility or his or her designee shall take
29 reasonable precautions to inventory and safeguard the personal property
30 of the persons detained or transferred. A copy of the inventory,
31 signed by the staff member making it, shall be given to the person
32 detained and shall, in addition, be open to inspection to any
33 responsible relative, subject to limitations, if any, specifically
34 imposed by the detained person. For purposes of this subsection,
35 "responsible relative" includes the guardian, conservator, attorney,
36 spouse, parent, adult child, or adult brother or sister of the person.

1 The facility shall not disclose the contents of the inventory to any
2 other person without consent of the patient or order of the court.

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

7 (5) No indigent person may be conditionally released or
8 unconditionally discharged under this chapter without suitable
9 clothing, and the secretary shall furnish the person with such sum of
10 money as is required by RCW 72.02.100 for persons without ample funds
11 who are released from correctional institutions. As funds are
12 available, the secretary may provide payment to the indigent persons
13 conditionally released pursuant to this chapter consistent with the
14 optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules
15 to do so.

16 (6) If a civil commitment petition is dismissed, or a trier of fact
17 determines that a person does not meet civil commitment criteria, the
18 person shall be released within twenty-four hours of service of the
19 release order on the superintendent of the special commitment center,
20 or later by agreement of the person who is the subject of the petition.

21 **Sec. 8.** RCW 71.09.090 and 2005 c 344 s 2 are each amended to read
22 as follows:

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

35 (2)(a) Nothing contained in this chapter shall prohibit the person
36 from otherwise petitioning the court for conditional release to a less
37 restrictive alternative or unconditional discharge without the

1 secretary's approval. The secretary shall provide the committed person
2 with an annual written notice of the person's right to petition the
3 court for conditional release to a less restrictive alternative or
4 unconditional discharge over the secretary's objection. The notice
5 shall contain a waiver of rights. The secretary shall file the notice
6 and waiver form and the annual report with the court. If the person
7 does not affirmatively waive the right to petition, the court shall set
8 a show cause hearing to determine whether probable cause exists to
9 warrant a hearing on whether the person's condition has so changed
10 that: (i) He or she no longer meets the definition of a sexually
11 violent predator; or (ii) conditional release to a proposed less
12 restrictive alternative would be in the best interest of the person and
13 conditions can be imposed that would adequately protect the community.

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

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

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

12 (3)(a) At the hearing resulting from subsection (1) or (2) of this
13 section, the committed person shall be entitled to be present and to
14 the benefit of all constitutional protections that were afforded to the
15 person at the initial commitment proceeding. The prosecuting agency
16 (~~(or the attorney general if requested by the county)~~) shall represent
17 the state and shall have a right to a jury trial and to have the
18 committed person evaluated by experts chosen by the state. The
19 committed person shall also have the right to a jury trial and the
20 right to have experts evaluate him or her on his or her behalf and the
21 court shall appoint an expert if the person is indigent and requests an
22 appointment.

23 (b) If the issue at the hearing is whether the person should be
24 unconditionally discharged, the burden of proof shall be upon the state
25 to prove beyond a reasonable doubt that the committed person's
26 condition remains such that the person continues to meet the definition
27 of a sexually violent predator. Evidence of the prior commitment trial
28 and disposition is admissible. The recommitment proceeding shall
29 otherwise proceed as set forth in RCW 71.09.050 and 71.09.060.

30 (c) If the issue at the hearing is whether the person should be
31 conditionally released to a less restrictive alternative, the burden of
32 proof at the hearing shall be upon the state to prove beyond a
33 reasonable doubt that conditional release to any proposed less
34 restrictive alternative either: (i) Is not in the best interest of the
35 committed person; or (ii) does not include conditions that would
36 adequately protect the community. Evidence of the prior commitment
37 trial and disposition is admissible.

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

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

15 (i) An identified physiological change to the person, such as
16 paralysis, stroke, or dementia, that renders the committed person
17 unable to commit a sexually violent act and this change is permanent;
18 or

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

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

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

33 **Sec. 9.** RCW 71.09.092 and 1995 c 216 s 10 are each amended to read
34 as follows:

35 Before the court may enter an order directing conditional release
36 to a less restrictive alternative, it must find the following: (1) The
37 person will be treated by a treatment provider who is qualified to

1 provide such treatment in the state of Washington under chapter 18.155
2 RCW; (2) the treatment provider has presented a specific course of
3 treatment and has agreed to assume responsibility for such treatment
4 and will report progress to the court on a regular basis, and will
5 report violations immediately to the court, the prosecutor, the
6 supervising community corrections officer, and the superintendent of
7 the special commitment center; (3) housing exists in Washington that is
8 sufficiently secure to protect the community, and the person or agency
9 providing housing to the conditionally released person has agreed in
10 writing to accept the person, to provide the level of security required
11 by the court, and immediately to report to the court, the prosecutor,
12 the supervising community corrections officer, and the superintendent
13 of the special commitment center if the person leaves the housing to
14 which he or she has been assigned without authorization; (4) the person
15 is willing to comply with the treatment provider and all requirements
16 imposed by the treatment provider and by the court; and (5) the person
17 will be under the supervision of the department of corrections and is
18 willing to comply with supervision requirements imposed by the
19 department of corrections.

20 **Sec. 10.** RCW 71.09.096 and 2001 c 286 s 12 are each amended to
21 read as follows:

22 (1) If the court or jury determines that conditional release to a
23 less restrictive alternative is in the best interest of the person and
24 includes conditions that would adequately protect the community, and
25 the court determines that the minimum conditions set forth in RCW
26 71.09.092 and in this section are met, the court shall enter judgment
27 and direct a conditional release.

28 (2) The court shall impose any additional conditions necessary to
29 ensure compliance with treatment and to protect the community. If the
30 court finds that conditions do not exist that will both ensure the
31 person's compliance with treatment and protect the community, then the
32 person shall be remanded to the custody of the department of social and
33 health services for control, care, and treatment in a secure facility
34 as designated in RCW 71.09.060(1).

35 (3) If the service provider designated by the court to provide
36 inpatient or outpatient treatment or to monitor or supervise any other
37 terms and conditions of a person's placement in a less restrictive

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

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

25 (5) Any service provider designated to provide inpatient or
26 outpatient treatment shall monthly, or as otherwise directed by the
27 court, submit to the court, to the department of social and health
28 services facility from which the person was released, to the
29 ~~((prosecutor of the county in which the person was found to be a~~
30 ~~sexually violent predator))~~ prosecuting agency, and to the supervising
31 community corrections officer, a report stating whether the person is
32 complying with the terms and conditions of the conditional release to
33 a less restrictive alternative.

34 (6) Each person released to a less restrictive alternative shall
35 have his or her case reviewed by the court that released him or her no
36 later than one year after such release and annually thereafter until
37 the person is unconditionally discharged. Review may occur in a
38 shorter time or more frequently, if the court, in its discretion on its

1 own motion, or on motion of the person, the secretary, or the
2 prosecuting ((attorney)) agency so determines. The sole question to be
3 determined by the court is whether the person shall continue to be
4 conditionally released to a less restrictive alternative. The court in
5 making its determination shall be aided by the periodic reports filed
6 pursuant to subsection (5) of this section and the opinions of the
7 secretary and other experts or professional persons.

8 **Sec. 11.** RCW 71.09.098 and 2006 c 282 s 1 are each amended to read
9 as follows:

10 ~~((1) Any service provider submitting reports pursuant to RCW
11 71.09.096(6), the supervising community corrections officer, the
12 prosecuting attorney, or the attorney general may petition the court,
13 or the court on its own motion may schedule an immediate hearing, for
14 the purpose of revoking or modifying the terms of the person's
15 conditional release to a less restrictive alternative if the petitioner
16 or the court believes the released person is not complying with the
17 terms and conditions of his or her release or is in need of additional
18 care, monitoring, supervision, or treatment.~~

19 ~~(2) If the prosecuting attorney, the supervising community
20 corrections officer, or the court, based upon information received by
21 them, reasonably believes that a conditionally released person is not
22 complying with the terms and conditions of his or her conditional
23 release to a less restrictive alternative, the court or community
24 corrections officer may order that the conditionally released person be
25 apprehended and taken into custody until such time as a hearing can be
26 scheduled to determine the facts and whether or not the person's
27 conditional release should be revoked or modified. A law enforcement
28 officer, who has responded to a request for assistance from a
29 department employee, may apprehend and take into custody the
30 conditionally released person if the law enforcement officer reasonably
31 believes that the conditionally released person is not complying with
32 the terms and conditions of his or her conditional release to a less
33 restrictive alternative. The conditionally released person may be
34 detained in the county jail or returned to the secure community
35 transition facility. The court shall be notified before the close of
36 the next judicial day of the person's apprehension. Both the
37 prosecuting attorney and the conditionally released person shall have~~

1 the right to request an immediate mental examination of the
2 conditionally released person. If the conditionally released person is
3 indigent, the court shall, upon request, assist him or her in obtaining
4 a qualified expert or professional person to conduct the examination.

5 (3) The court, upon receiving notification of the person's
6 apprehension, shall promptly schedule a hearing. The issue to be
7 determined is whether the state has proven by a preponderance of the
8 evidence that the conditionally released person did not comply with the
9 terms and conditions of his or her release. Hearsay evidence is
10 admissible if the court finds it otherwise reliable. At the hearing,
11 the court shall determine whether the person shall continue to be
12 conditionally released on the same or modified conditions or whether
13 his or her conditional release shall be revoked and he or she shall be
14 committed to total confinement, subject to release only in accordance
15 with provisions of this chapter.))

16 (1) Any service provider submitting reports pursuant to RCW
17 71.09.096(6), the supervising community corrections officer, the
18 prosecuting agency, or the secretary's designee may petition the court
19 for an immediate hearing for the purpose of revoking or modifying the
20 terms of the person's conditional release to a less restrictive
21 alternative if the petitioner believes the released person: (a)
22 Violated or is in violation of the terms and conditions of the court's
23 conditional release order; or (b) is in need of additional care,
24 monitoring, supervision, or treatment.

25 (2) The community corrections officer or the secretary's designee
26 may restrict the person's movement in the community until the petition
27 is determined by the court. The person may be taken into custody if:

28 (a) The supervising community corrections officer, the secretary's
29 designee, or a law enforcement officer reasonably believes the person
30 has violated or is in violation of the court's conditional release
31 order; or

32 (b) The supervising community corrections officer or the
33 secretary's designee reasonably believes that the person is in need of
34 additional care, monitoring, supervision, or treatment because the
35 person presents a danger to himself or herself or others if his or her
36 conditional release under the conditions imposed by the court's release
37 order continues.

1 (3)(a) Persons taken into custody pursuant to subsection (2) of
2 this section shall:

3 (i) Not be released until such time as a hearing is held to
4 determine whether to revoke or modify the person's conditional release
5 order and the court has issued its decision; and

6 (ii) Be held in the county jail, at a secure community transition
7 facility, or at the total confinement facility, at the discretion of
8 the secretary's designee.

9 (b) The court shall be notified before the close of the next
10 judicial day that the person has been taken into custody and shall
11 promptly schedule a hearing.

12 (4) Before any hearing to revoke or modify the person's conditional
13 release order, both the prosecuting agency and the released person
14 shall have the right to request an immediate mental examination of the
15 released person. If the conditionally released person is indigent, the
16 court shall, upon request, assist him or her in obtaining a qualified
17 expert or professional person to conduct the examination.

18 (5) At any hearing to revoke or modify the conditional release
19 order:

20 (a) The prosecuting agency shall represent the state, including
21 determining whether to proceed with revocation or modification of the
22 conditional release order;

23 (b) Hearsay evidence is admissible if the court finds that it is
24 otherwise reliable; and

25 (c) The state shall bear the burden of proving by a preponderance
26 of the evidence that the person has violated or is in violation of the
27 court's conditional release order or that the person is in need of
28 additional care, monitoring, supervision, or treatment.

29 (6)(a) If the court determines that the state has met its burden
30 referenced in subsection (5)(c) of this section, and the issue before
31 the court is revocation of the court's conditional release order, the
32 court shall consider the evidence presented by the parties and the
33 following factors relevant to whether continuing the person's
34 conditional release is in the person's best interests or adequate to
35 protect the community:

36 (i) The nature of the condition that was violated by the person or
37 that the person was in violation of in the context of the person's
38 criminal history and underlying mental conditions;

1 (ii) The degree to which the violation was intentional or grossly
2 negligent;

3 (iii) The ability and willingness of the released person to
4 strictly comply with the conditional release order;

5 (iv) The degree of progress made by the person in community-based
6 treatment; and

7 (v) The risk to the public or particular persons if the conditional
8 release continues under the conditional release order that was
9 violated.

10 (b) Any factor alone, or in combination, shall support the court's
11 determination to revoke the conditional release order.

12 (7) If the court determines the state has met its burden referenced
13 in subsection (5)(c) of this section, and the issue before the court is
14 modification of the court's conditional release order, the court shall
15 modify the conditional release order by adding conditions if the court
16 determines that the person is in need of additional care, monitoring,
17 supervision, or treatment. The court has authority to modify its
18 conditional release order by substituting a new treatment provider,
19 requiring new housing for the person, or imposing such additional
20 supervision conditions as the court deems appropriate.

21 (8) A person whose conditional release has been revoked shall be
22 remanded to the custody of the secretary for control, care, and
23 treatment in a total confinement facility as designated in RCW
24 71.09.060(1). The person is thereafter eligible for conditional
25 release only in accord with the provisions of RCW 71.09.090 and related
26 statutes.

27 NEW SECTION. Sec. 12. A new section is added to chapter 71.09 RCW
28 to read as follows:

29 The department of social and health services shall provide to the
30 prosecuting agency a copy of all reports made by the department to law
31 enforcement in which a person detained or committed under this chapter
32 is named or listed as a suspect, witness, or victim, as well as a copy
33 of all reports received from law enforcement.

34 **Sec. 13.** RCW 71.09.112 and 2002 c 19 s 1 are each amended to read
35 as follows:

36 A person subject to court order under the provisions of this

1 chapter who is thereafter convicted of a criminal offense remains under
2 the jurisdiction of the department and shall be returned to the custody
3 of the department following: (1) Completion of the criminal sentence;
4 or (2) release from confinement in a state, federal, or local
5 correctional facility(~~(, and shall be returned to the custody of the~~
6 ~~department)~~). Any conditional release order shall be immediately
7 revoked upon conviction for a criminal offense.

8 This section does not apply to persons subject to a court order
9 under the provisions of this chapter who are thereafter sentenced to
10 life without the possibility of release.

11 **Sec. 14.** RCW 71.09.350 and 2004 c 38 s 14 are each amended to read
12 as follows:

13 (1) Examinations and treatment of sexually violent predators who
14 are conditionally released to a less restrictive alternative under this
15 chapter shall be conducted only by certified sex offender treatment
16 providers or certified affiliate sex offender treatment providers under
17 chapter 18.155 RCW unless the court or the department of social and
18 health services finds that: (a) The ~~((court-ordered less restrictive~~
19 ~~alternative placement is located in another state; (b) the))~~ treatment
20 provider is employed by the department; or ~~((+e+))~~ (b)(i) all certified
21 sex offender treatment providers or certified affiliate sex offender
22 treatment providers become unavailable to provide treatment within a
23 reasonable geographic distance of the person's home, as determined in
24 rules adopted by the department of social and health services; and (ii)
25 the evaluation and treatment plan comply with the rules adopted by the
26 department of social and health services.

27 A treatment provider approved by the department of social and
28 health services under ~~((+e+))~~ (b) of this subsection, who is not
29 certified by the department of health, shall consult with a certified
30 sex offender treatment provider during the person's period of treatment
31 to ensure compliance with the rules adopted by the department of
32 health. The frequency and content of the consultation shall be based
33 on the recommendation of the certified sex offender treatment provider.

34 (2) A treatment provider, whether or not he or she is employed or
35 approved by the department of social and health services under
36 subsection (1) of this section or otherwise certified, may not perform

1 or provide treatment of sexually violent predators under this section
2 if the treatment provider has been:

3 (a) Convicted of a sex offense, as defined in RCW 9.94A.030;

4 (b) Convicted in any other jurisdiction of an offense that under
5 the laws of this state would be classified as a sex offense as defined
6 in RCW 9.94A.030; or

7 (c) Suspended or otherwise restricted from practicing any health
8 care profession by competent authority in any state, federal, or
9 foreign jurisdiction.

10 (3) Nothing in this section prohibits a qualified expert from
11 examining or evaluating a sexually violent predator who has been
12 conditionally released for purposes of presenting an opinion in court
13 proceedings.

14 NEW SECTION. **Sec. 15.** This act applies to all persons currently
15 committed or awaiting commitment under chapter 71.09 RCW either on,
16 before, or after the effective date of this act, whether confined in a
17 secure facility or on conditional release.

18 NEW SECTION. **Sec. 16.** This act is necessary for the immediate
19 preservation of the public peace, health, or safety, or support of the
20 state government and its existing public institutions, and takes effect
21 immediately.

22 NEW SECTION. **Sec. 17.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected."

26 Correct the title.

EFFECT: Clarifies that the court may evaluate whether a person's
physical or mental condition has "so changed" that release is justified
by comparing the person's present condition to his or her condition at
the last LRA revocation proceeding.

Removes the restriction prohibiting the court from modifying the

conditional release order through the annual review process unless all parties agree to the modification in writing.

Removes the restriction prohibiting the court from reducing or eliminating supervision conditions in the release order unless the person and the prosecuting attorney agree.

Makes technical corrections.

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