
SENATE BILL 6870

State of Washington

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By Senator Hargrove; by request of Department of Social and Health Services

Read first time 02/22/10. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to containing costs for services to sexually
2 violent predators; and amending RCW 71.09.050, 71.09.090, 71.09.110,
3 and 71.09.300.

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

5 **Sec. 1.** RCW 71.09.050 and 2009 c 409 s 5 are each amended to read
6 as follows:

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

18 (2) Whenever any person is subjected to an ((examination))
19 evaluation under this chapter, ((he or she may retain)) the department

1 is responsible for the cost of one expert((s)) or professional
2 person((s to perform an examination)) to conduct an evaluation on
3 ((their)) the person's behalf. When the person wishes to be
4 ((examined)) evaluated by a qualified expert or professional person of
5 his or her own choice, ((such examiner shall)) the expert or
6 professional person must be permitted to have reasonable access to the
7 person for the purpose of such ((examination)) evaluation, as well as
8 to all relevant medical and psychological records and reports. In the
9 case of a person who is indigent, the court shall, upon the person's
10 request, assist the person in obtaining an expert or professional
11 person to perform an ((examination)) evaluation or participate in the
12 trial on the person's behalf. Nothing in this chapter precludes the
13 person from paying for additional expert services at his or her own
14 expense.

15 (3) The person, the prosecuting agency, or the judge shall have the
16 right to demand that the trial be before a twelve-person jury. If no
17 demand is made, the trial shall be before the court.

18 **Sec. 2.** RCW 71.09.090 and 2009 c 409 s 8 are each amended to read
19 as follows:

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

32 (2)(a) Nothing contained in this chapter shall prohibit the person
33 from otherwise petitioning the court for conditional release to a less
34 restrictive alternative or unconditional discharge without the
35 secretary's approval. The secretary shall provide the committed person
36 with an annual written notice of the person's right to petition the
37 court for conditional release to a less restrictive alternative or

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

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

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

36 (d) If the court has not previously considered the issue of release
37 to a less restrictive alternative, either through a trial on the merits
38 or through the procedures set forth in RCW 71.09.094(1), the court

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

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

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

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

1 (~~(e)~~) (d) If the issue at the hearing is whether the person
2 should be conditionally released to a less restrictive alternative, the
3 burden of proof at the hearing shall be upon the state to prove beyond
4 a reasonable doubt that conditional release to any proposed less
5 restrictive alternative either: (i) Is not in the best interest of the
6 committed person; or (ii) does not include conditions that would
7 adequately protect the community. Evidence of the prior commitment
8 trial and disposition is admissible.

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

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

23 (i) An identified physiological change to the person, such as
24 paralysis, stroke, or dementia, that renders the committed person
25 unable to commit a sexually violent act and this change is permanent;
26 or

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

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

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

4 **Sec. 3.** RCW 71.09.110 and 1995 c 216 s 14 are each amended to read
5 as follows:

6 The department of social and health services shall be responsible
7 for all costs relating to the evaluation and treatment of persons
8 committed to their custody whether in a secure facility or under a less
9 restrictive alternative under any provision of this chapter. The
10 secretary shall adopt rules for the payment of evaluation services.
11 Reimbursement may be obtained by the department for the cost of care
12 and treatment of persons committed to its custody whether in a secure
13 facility or under a less restrictive alternative pursuant to RCW
14 43.20B.330 through 43.20B.370.

15 **Sec. 4.** RCW 71.09.300 and 2003 c 216 s 1 are each amended to read
16 as follows:

17 Secure community transition facilities shall meet the following
18 minimum staffing requirements:

19 ~~(1)((a) At any time the census of a facility that accepts its~~
20 ~~first resident before July 1, 2003, is six or fewer residents, the~~
21 ~~facility shall maintain a minimum staffing ratio of one staff per three~~
22 ~~residents during normal waking hours and one awake staff per four~~
23 ~~residents during normal sleeping hours. In no case shall the staffing~~
24 ~~ratio permit less than two staff per housing unit.~~

25 ~~(b) At any time the census of a facility that accepts its first~~
26 ~~resident on or after July 1, 2003, is six or fewer residents, the~~
27 ~~facility shall maintain a minimum staffing ratio of one staff per~~
28 ~~resident during normal waking hours and two awake staff per three~~
29 ~~residents during normal sleeping hours. In no case shall the staffing~~
30 ~~ratio permit less than two staff per housing unit.~~

31 ~~(2) At any time the census of a facility is six or fewer residents,~~
32 ~~all staff shall be classified as residential rehabilitation counselor~~
33 ~~II or have a classification that indicates an equivalent or higher~~
34 ~~level of skill, experience, and training.~~

35 ~~(3))~~ Before being assigned to a facility, all staff shall have
36 training in sex offender issues, self-defense, and crisis de-escalation

1 skills in addition to departmental orientation and, as appropriate,
2 management training. All staff with resident treatment or care duties
3 must participate in ongoing in-service training.

4 ~~((4))~~ (2) All staff must pass a departmental background check and
5 the check is not subject to the limitations in chapter 9.96A RCW. A
6 person who has been convicted of a felony, or any sex offense, may not
7 be employed at the secure community transition facility or be approved
8 as an escort for a resident of the facility.

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