

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2148

62nd Legislature
2011 2nd Special Session

Passed by the House December 13, 2011
Yeas 94 Nays 0

Speaker of the House of Representatives

Passed by the Senate December 14, 2011
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2148** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2148

Passed Legislature - 2011 2nd Special Session

State of Washington 62nd Legislature 2011 2nd Special Session

By House Ways & Means (originally sponsored by Representatives Darneille and Hunter; by request of Department of Social and Health Services)

READ FIRST TIME 12/13/11.

1 AN ACT Relating to suspending annual examinations and show cause
2 hearings for sexually violent predators convicted of a criminal offense
3 or awaiting trial on criminal charges; amending RCW 71.09.070 and
4 71.09.090; and declaring an emergency.

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

6 **Sec. 1.** RCW 71.09.070 and 2001 c 286 s 8 are each amended to read
7 as follows:

8 (1) Each person committed under this chapter shall have a current
9 examination of his or her mental condition made by the department of
10 social and health services at least once every year. The annual report
11 shall include consideration of whether the committed person currently
12 meets the definition of a sexually violent predator and whether
13 conditional release to a less restrictive alternative is in the best
14 interest of the person and conditions can be imposed that would
15 adequately protect the community. The department of social and health
16 services shall file this periodic report with the court that committed
17 the person under this chapter. The report shall be in the form of a
18 declaration or certification in compliance with the requirements of RCW
19 9A.72.085 and shall be prepared by a professionally qualified person as

1 defined by rules adopted by the secretary. A copy of the report shall
2 be served on the prosecuting agency involved in the initial commitment
3 and upon the committed person and his or her counsel. The committed
4 person may retain, or if he or she is indigent and so requests, the
5 court may appoint a qualified expert or a professional person to
6 examine him or her, and such expert or professional person shall have
7 access to all records concerning the person.

8 (2) During any period of confinement pursuant to a criminal
9 conviction, or for any period of detention awaiting trial on criminal
10 charges, this section is suspended. Upon the return of the person
11 committed under this chapter to the custody of the department, the
12 department shall initiate an examination of the person's mental
13 condition. The examination must comply with the requirements of
14 subsection (1) of this section.

15 **Sec. 2.** RCW 71.09.090 and 2010 1st sp.s. c 28 s 2 are each amended
16 to read as follows:

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

29 (2)(a) Nothing contained in this chapter shall prohibit the person
30 from otherwise petitioning the court for conditional release to a less
31 restrictive alternative or unconditional discharge without the
32 secretary's approval. The secretary shall provide the committed person
33 with an annual written notice of the person's right to petition the
34 court for conditional release to a less restrictive alternative or
35 unconditional discharge over the secretary's objection. The notice
36 shall contain a waiver of rights. The secretary shall file the notice
37 and waiver form and the annual report with the court. If the person

1 does not affirmatively waive the right to petition, the court shall set
2 a show cause hearing to determine whether probable cause exists to
3 warrant a hearing on whether the person's condition has so changed
4 that: (i) He or she no longer meets the definition of a sexually
5 violent predator; or (ii) conditional release to a proposed less
6 restrictive alternative would be in the best interest of the person and
7 conditions can be imposed that would adequately protect the community.

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

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

33 (d) If the court has not previously considered the issue of release
34 to a less restrictive alternative, either through a trial on the merits
35 or through the procedures set forth in RCW 71.09.094(1), the court
36 shall consider whether release to a less restrictive alternative would
37 be in the best interests of the person and conditions can be imposed
38 that would adequately protect the community, without considering

1 whether the person's condition has changed. The court may not find
2 probable cause for a trial addressing less restrictive alternatives
3 unless a proposed less restrictive alternative placement meeting the
4 conditions of RCW 71.09.092 is presented to the court at the show cause
5 hearing.

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

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

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

1 (d) If the issue at the hearing is whether the person should be
2 conditionally released to a less restrictive alternative, the burden of
3 proof at the hearing shall be upon the state to prove beyond a
4 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 (6) During any period of confinement pursuant to a criminal
5 conviction, or for any period of detention awaiting trial on criminal
6 charges, this section is suspended.

7 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 immediately.

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