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SECOND SUBSTITUTE SENATE BILL 5088

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State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senator Smith)

Read first time 03/06/95.

1 AN ACT Relating to sexually violent predators; amending RCW  
2 71.09.020, 71.09.025, 71.09.030, 71.09.040, 71.09.050, 71.09.060,  
3 71.09.070, 71.09.080, 71.09.090, 71.09.110, and 9A.76.120; adding new  
4 sections to chapter 71.09 RCW; repealing RCW 71.09.100; and prescribing  
5 penalties.

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

7 **Sec. 1.** RCW 71.09.020 and 1992 c 145 s 17 are each amended to read  
8 as follows:

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

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

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

1       (3) "Likely to engage in predatory acts of sexual violence" means  
2 that the person more probably than not will engage in such acts. Such  
3 likelihood must be evidenced by a recent overt act if the person is not  
4 totally confined at the time the petition is filed under RCW 71.09.030.

5       (4) "Predatory" means acts directed towards strangers or  
6 individuals with whom a relationship has been established or promoted  
7 for the primary purpose of victimization.

8       ~~((+4))~~ (5) "Recent overt act" means any act that has either caused  
9 harm of a sexually violent nature or creates a reasonable apprehension  
10 of such harm.

11       (6) "Sexually violent offense" means an act committed on, before,  
12 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as  
13 rape in the first degree, rape in the second degree by forcible  
14 compulsion, rape of a child in the first or second degree, statutory  
15 rape in the first or second degree, indecent liberties by forcible  
16 compulsion, indecent liberties against a child under age fourteen,  
17 incest against a child under age fourteen, or child molestation in the  
18 first or second degree; (b) a felony offense in effect at any time  
19 prior to July 1, 1990, that is comparable to a sexually violent offense  
20 as defined in (a) of this subsection, or any federal or out-of-state  
21 conviction for a felony offense that under the laws of this state would  
22 be a sexually violent offense as defined in this subsection; (c) an act  
23 of murder in the first or second degree, assault in the first or second  
24 degree, assault of a child in the first or second degree, kidnapping in  
25 the first or second degree, burglary in the first degree, residential  
26 burglary, or unlawful imprisonment, which act, either at the time of  
27 sentencing for the offense or subsequently during civil commitment  
28 proceedings pursuant to chapter 71.09 RCW, has been determined beyond  
29 a reasonable doubt to have been sexually motivated, as that term is  
30 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28  
31 RCW, that is an attempt, criminal solicitation, or criminal conspiracy  
32 to commit one of the felonies designated in (a), (b), or (c) of this  
33 subsection.

34       (7) "Less restrictive alternative" means court-ordered treatment in  
35 a setting less restrictive than total confinement.

36       (8) "Secretary" means the secretary of social and health services  
37 or his or her designee.

1       **Sec. 2.** RCW 71.09.025 and 1992 c 45 s 3 are each amended to read  
2 as follows:

3       (1)(a) When it appears that a person may meet the criteria of a  
4 sexually violent predator as defined in RCW 71.09.020(1), the agency  
5 with jurisdiction shall refer the person in writing to the prosecuting  
6 attorney of the county where that person was charged, three months  
7 prior to:

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

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

12       (iii) Release of a person who has been charged with a sexually  
13 violent offense and who has been determined to be incompetent to stand  
14 trial pursuant to RCW 10.77.090(3); or

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

17       (b) The agency shall ~~((inform))~~ provide the prosecutor ~~((of))~~ with  
18 all relevant information including but not limited to the following  
19 information:

20       (i) ~~((The person's name, identifying factors, anticipated future~~  
21 ~~residence, and offense history; and))~~ A complete copy of the  
22 institutional records compiled by the department of corrections  
23 relating to the person, and any such out-of-state department of  
24 corrections' records, if available;

25       (ii) ~~((Documentation of institutional adjustment and any treatment~~  
26 ~~received))~~ A complete copy, if applicable, of any file compiled by the  
27 indeterminate sentence review board relating to the person;

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

30       (iv) A current record of all prior arrests and convictions, and  
31 full police case reports relating to those arrests and convictions; and

32       (v) A current mental health evaluation or mental health records  
33 review.

34       (2) This section applies to acts committed before, on, or after  
35 March 26, 1992.

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

38       (4) As used in this section, "agency with jurisdiction" means that  
39 agency with the authority to direct the release of a person serving a

1 sentence or term of confinement and includes the department of  
2 corrections, the indeterminate sentence review board, and the  
3 department of social and health services.

4 **Sec. 3.** RCW 71.09.030 and 1992 c 45 s 4 are each amended to read  
5 as follows:

6 When it appears that: (1) ~~((The term of total confinement of))~~ A  
7 person who at any time previously has been convicted of a sexually  
8 violent offense is about to ~~((expire, or has expired))~~ be released from  
9 total confinement on, before, or after July 1, 1990; (2) ~~((the term of~~  
10 ~~total confinement of))~~ a person found to have committed a sexually  
11 violent offense as a juvenile is about to ~~((expire, or has expired))~~ be  
12 released from total confinement on, before, or after July 1, 1990; (3)  
13 a person who has been charged with a sexually violent offense and who  
14 has been determined to be incompetent to stand trial is about to be  
15 released, or has been released on, before, or after July 1, 1990,  
16 pursuant to RCW 10.77.090(3); ~~((or))~~ (4) a person who has been found  
17 not guilty by reason of insanity of a sexually violent offense is about  
18 to be released, or has been released on, before, or after July 1, 1990,  
19 pursuant to RCW 10.77.020(3), 10.77.110 (1) or (3), or 10.77.150; or  
20 (5) a person who at any time previously has been convicted of a  
21 sexually violent offense and has since been released from total  
22 confinement and has committed a recent overt act; and it appears that  
23 the person may be a sexually violent predator, the prosecuting attorney  
24 of the county where the person was convicted or charged or the attorney  
25 general if requested by the prosecuting attorney may file a petition  
26 alleging that the person is a "sexually violent predator" and stating  
27 sufficient facts to support such allegation.

28 **Sec. 4.** RCW 71.09.040 and 1990 c 3 s 1004 are each amended to read  
29 as follows:

30 (1) Upon the filing of a petition under RCW 71.09.030, the judge  
31 shall determine whether probable cause exists to believe that the  
32 person named in the petition is a sexually violent predator. If such  
33 determination is made the judge shall direct that the person be taken  
34 into custody ~~((and))~~.

35 (2) Within seventy-two hours after a person is taken into custody  
36 pursuant to subsection (1) of this section, the court shall provide the  
37 person with notice of, and an opportunity to appear in person at, a

1 hearing to contest probable cause as to whether the person is a  
2 sexually violent predator. At this hearing, the court shall (a) verify  
3 the person's identity, and (b) determine whether probable cause exists  
4 to believe that the person is a sexually violent predator. At the  
5 probable cause hearing, the state may rely upon the petition and  
6 certification for determination of probable cause filed pursuant to RCW  
7 71.09.030. The state may supplement this with additional documentary  
8 evidence or live testimony.

9 (3) At the probable cause hearing, the person shall have the  
10 following rights in addition to the rights previously specified: (a)  
11 To be represented by counsel; (b) to present evidence on his or her  
12 behalf; (c) to cross-examine witnesses who testify against him or her;  
13 (d) to view and copy all petitions and reports in the court file.

14 (4) If the probable cause determination is made, the judge shall  
15 direct that the person ((shall)) be transferred to an appropriate  
16 facility for an evaluation as to whether the person is a sexually  
17 violent predator. The evaluation shall be conducted by a person deemed  
18 to be professionally qualified to conduct such an examination pursuant  
19 to rules developed by the department of social and health services. In  
20 adopting such rules, the department of social and health services shall  
21 consult with the department of health and the department of  
22 corrections. In no event shall the person be released from confinement  
23 prior to trial.

24 **Sec. 5.** RCW 71.09.050 and 1990 c 3 s 1005 are each amended to read  
25 as follows:

26 (1) Within forty-five days after the ((filing of a petition  
27 pursuant to RCW 71.09.030)) completion of any hearing held pursuant to  
28 RCW 71.09.040, the court shall conduct a trial to determine whether the  
29 person is a sexually violent predator. The trial may be continued upon  
30 the request of either party and a showing of good cause, or by the  
31 court on its own motion in the due administration of justice, and when  
32 the respondent will not be substantially prejudiced. At all stages of  
33 the proceedings under this chapter, any person subject to this chapter  
34 shall be entitled to the assistance of counsel, and if the person is  
35 indigent, the court shall appoint counsel to assist him or her. The  
36 person shall be confined in a secure facility for the duration of the  
37 trial.

1       (2) Whenever any person is subjected to an examination under this  
2 chapter, he or she may retain experts or professional persons to  
3 perform an examination on their behalf. When the person wishes to be  
4 examined by a qualified expert or professional person of his or her own  
5 choice, such examiner shall be permitted to have reasonable access to  
6 the person for the purpose of such examination, as well as to all  
7 relevant medical and psychological records and reports. In the case of  
8 a person who is indigent, the court shall, upon the person's request,  
9 assist the person in obtaining an expert or professional person to  
10 perform an examination or participate in the trial on the person's  
11 behalf.

12       (3) The person, the prosecuting attorney or attorney general, or  
13 the judge shall have the right to demand that the trial be before a  
14 twelve-person jury. If no demand is made, the trial shall be before  
15 the court.

16       **Sec. 6.** RCW 71.09.060 and 1990 1st ex.s. c 12 s 4 are each amended  
17 to read as follows:

18       (1) The court or jury shall determine whether, beyond a reasonable  
19 doubt, the person is a sexually violent predator. When the  
20 determination is made by a jury, the verdict must be unanimous.

21       If, on the date that the petition is filed, the person was living  
22 in the community after release from custody, the state must also prove  
23 beyond a reasonable doubt that the person had committed a recent overt  
24 act. If the state alleges that the prior sexually violent offense that  
25 forms the basis for the petition for commitment was an act that was  
26 sexually motivated as provided in RCW 71.09.020(~~((+4))~~)(6)(c), the state  
27 must prove beyond a reasonable doubt that the alleged sexually violent  
28 act was sexually motivated as defined in RCW 9.94A.030. If the court  
29 or jury determines that the person is a sexually violent predator, the  
30 person shall be committed to the custody of the department of social  
31 and health services for placement in a secure facility operated by the  
32 department of social and health services for control, care, and  
33 treatment until such time as the person's mental abnormality or  
34 personality disorder has so changed that the person is safe either (a)  
35 to be at large, or (b) to be released to a less restrictive alternative  
36 as set forth in section 10 of this act. (~~((Such control, care, and~~  
37 ~~treatment shall be provided at a facility operated by the department of~~  
38 ~~social and health services.))~~) If the court or jury is not satisfied

1 beyond a reasonable doubt that the person is a sexually violent  
2 predator, the court shall direct the person's release.

3 (2) If the person charged with a sexually violent offense has been  
4 found incompetent to stand trial, and is about to or has been released  
5 pursuant to RCW 10.77.090(3), and his or her commitment is sought  
6 pursuant to subsection (1) of this section, the court shall first hear  
7 evidence and determine whether the person did commit the act or acts  
8 charged if the court did not enter a finding prior to dismissal under  
9 RCW 10.77.090(3) that the person committed the act or acts charged.  
10 The hearing on this issue must comply with all the procedures specified  
11 in this section. In addition, the rules of evidence applicable in  
12 criminal cases shall apply, and all constitutional rights available to  
13 defendants at criminal trials, other than the right not to be tried  
14 while incompetent, shall apply. After hearing evidence on this issue,  
15 the court shall make specific findings on whether the person did commit  
16 the act or acts charged, the extent to which the person's incompetence  
17 or developmental disability affected the outcome of the hearing,  
18 including its effect on the person's ability to consult with and assist  
19 counsel and to testify on his or her own behalf, the extent to which  
20 the evidence could be reconstructed without the assistance of the  
21 person, and the strength of the prosecution's case. If, after the  
22 conclusion of the hearing on this issue, the court finds, beyond a  
23 reasonable doubt, that the person did commit the act or acts charged,  
24 it shall enter a final order, appealable by the person, on that issue,  
25 and may proceed to consider whether the person should be committed  
26 pursuant to this section.

27 (3) The state shall comply with RCW 10.77.220 while confining the  
28 person pursuant to this chapter, except that during all court  
29 proceedings the person shall be detained in a secure facility. The  
30 facility shall not be located on the grounds of any state mental  
31 facility or regional habilitation center because these institutions are  
32 insufficiently secure for this population.

33 **Sec. 7.** RCW 71.09.070 and 1990 c 3 s 1007 are each amended to read  
34 as follows:

35 Each person committed under this chapter shall have a current  
36 examination of his or her mental condition made at least once every  
37 year. The annual report shall include consideration of whether  
38 conditional release to a less restrictive alternative is in the best

1 interest of the person and will adequately protect the community. The  
2 person may retain, or if he or she is indigent and so requests, the  
3 court may appoint a qualified expert or a professional person to  
4 examine him or her, and such expert or professional person shall have  
5 access to all records concerning the person. The periodic report shall  
6 be provided to the court that committed the person under this chapter.

7 **Sec. 8.** RCW 71.09.080 and 1990 c 3 s 1008 are each amended to read  
8 as follows:

9 ~~((The involuntary detention or commitment of persons under this  
10 chapter shall conform to constitutional requirements for care and  
11 treatment.))~~ (1) Any person subjected to restricted liberty as a  
12 sexually violent predator pursuant to this chapter shall not forfeit  
13 any legal right or suffer any legal disability as a consequence of any  
14 actions taken or orders made, other than as specifically provided in  
15 this chapter.

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



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

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

14       **Sec. 9.** RCW 71.09.090 and 1992 c 45 s 7 are each amended to read  
15 as follows:

16       (1) If the secretary (~~of the department of social and health~~  
17 ~~services)) determines that the person's mental abnormality or~~  
18 ~~personality disorder has so changed that the person is not likely to~~  
19 ~~engage in predatory acts of sexual violence if conditionally released~~  
20 ~~to a less restrictive alternative or unconditionally discharged, the~~  
21 ~~secretary shall authorize the person to petition the court for~~  
22 ~~conditional release to a less restrictive alternative or unconditional~~  
23 ~~discharge. The petition shall be served upon the court and the~~  
24 ~~prosecuting attorney. The court, upon receipt of the petition for~~  
25 ~~conditional release to a less restrictive alternative or unconditional~~  
26 ~~discharge, shall within forty-five days order a hearing. The~~  
27 ~~prosecuting attorney or the attorney general, if requested by the~~  
28 ~~county, shall represent the state, and shall have the right to have the~~  
29 ~~petitioner examined by an expert or professional person of his or her~~  
30 ~~choice. The hearing shall be before a jury if demanded by either the~~  
31 ~~petitioner or the prosecuting attorney or attorney general. The burden~~  
32 ~~of proof shall be upon the prosecuting attorney or attorney general to~~  
33 ~~show beyond a reasonable doubt that the petitioner's mental abnormality~~  
34 ~~or personality disorder remains such that the petitioner is not safe to~~  
35 ~~be at large and that if conditionally released to a less restrictive~~  
36 ~~alternative or unconditionally discharged is likely to engage in~~  
37 ~~predatory acts of sexual violence.~~

1 (2) Nothing contained in this chapter shall prohibit the person  
2 from otherwise petitioning the court for conditional release to a less  
3 restrictive alternative or unconditional discharge without the  
4 secretary's approval. The secretary shall provide the committed person  
5 with an annual written notice of the person's right to petition the  
6 court for conditional release to a less restrictive alternative or  
7 unconditional discharge over the secretary's objection. The notice  
8 shall contain a waiver of rights. The secretary shall forward the  
9 notice and waiver form to the court with the annual report. If the  
10 person does not affirmatively waive the right to petition, the court  
11 shall set a show cause hearing to determine whether facts exist that  
12 warrant a hearing on whether the person's condition has so changed that  
13 he or she is safe to be ~~((at large))~~ conditionally released to a less  
14 restrictive alternative or unconditionally discharged. The committed  
15 person shall have a right to have an attorney represent him or her at  
16 the show cause hearing but the person is not entitled to be present at  
17 the show cause hearing. If the court at the show cause hearing  
18 determines that probable cause exists to believe that the person's  
19 mental abnormality or personality disorder has so changed that the  
20 person is ~~((safe to be at large and is))~~ not likely to engage in  
21 predatory acts of sexual violence if conditionally released to a less  
22 restrictive alternative or unconditionally discharged, then the court  
23 shall set a hearing on the issue. At the hearing, the committed person  
24 shall be entitled to be present and to the benefit of all  
25 constitutional protections that were afforded to the person at the  
26 initial commitment proceeding. The prosecuting attorney or the  
27 attorney general if requested by the county shall represent the state  
28 and shall have a right to a jury trial and to have the committed person  
29 evaluated by experts chosen by the state. The committed person shall  
30 also have the right to have experts evaluate him or her on his or her  
31 behalf and the court shall appoint an expert if the person is indigent  
32 and requests an appointment. The burden of proof at the hearing shall  
33 be upon the state to prove beyond a reasonable doubt that the committed  
34 person's mental abnormality or personality disorder remains such that  
35 the person is ~~((not safe to be at large and if released is))~~ likely to  
36 engage in predatory acts of sexual violence if conditionally released  
37 to a less restrictive alternative or unconditionally discharged.

1        NEW SECTION.    **Sec. 10.**    Before the court may enter an order  
2 directing conditional release to a less restrictive alternative, it  
3 must find the following: (1) The person will be treated by a treatment  
4 provider who is qualified to provide such treatment in the state of  
5 Washington under chapter 18.155 RCW; (2) the treatment provider has  
6 presented a specific course of treatment and has agreed to assume  
7 responsibility for such treatment and will report progress to the court  
8 on a regular basis, and will report violations immediately to the  
9 court, the prosecutor, the supervising community corrections officer,  
10 and the superintendent of the special commitment center; (3) housing  
11 exists that is sufficiently secure to protect the community, and the  
12 person or agency providing housing to the conditionally released person  
13 has agreed in writing to accept the person, to provide the level of  
14 security required by the court, and immediately to report to the court,  
15 the prosecutor, the supervising community corrections officer, and the  
16 superintendent of the special commitment center if the person leaves  
17 the housing to which he or she has been assigned without authorization;  
18 (4) the person is willing to comply with the treatment provider and all  
19 requirements imposed by the treatment provider and by the court; and  
20 (5) the person is willing to comply with supervision requirements  
21 imposed by the department of corrections.

22        NEW SECTION.    **Sec. 11.**    (1) Upon the conclusion of the evidence in  
23 a hearing held pursuant to RCW 71.09.090, if the court finds that there  
24 is no legally sufficient evidentiary basis for a reasonable jury to  
25 find that the conditions set forth in section 10 of this act have been  
26 met, the court shall grant a motion by the state for a judgment as a  
27 matter of law on the issue of conditional release to a less restrictive  
28 alternative.

29        (2) Whenever the issue of conditional release to a less restrictive  
30 alternative is submitted to the jury, the court shall instruct the jury  
31 to return a verdict in substantially the following form: Has the state  
32 proved beyond a reasonable doubt that the proposed less restrictive  
33 alternative is not in the best interests of respondent or will not  
34 adequately protect the community?    Answer:    Yes or No.

35        NEW SECTION.    **Sec. 12.**    (1) If the court or jury determines that  
36 conditional release to a less restrictive alternative is in the best  
37 interest of the person and will adequately protect the community, and

1 the court determines that the minimum conditions set forth in section  
2 9 of this act are met, the court shall enter judgment and direct a  
3 conditional release.

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

11 (3) If the service provider designated to provide inpatient or  
12 outpatient treatment or to monitor or supervise any other terms and  
13 conditions of a person's placement in a less restrictive alternative is  
14 other than the department of social and health services or the  
15 department of corrections, then the service provider so designated must  
16 agree in writing to provide such treatment.

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

33 (5) Any service provider designated to provide inpatient or  
34 outpatient treatment shall monthly, or as otherwise directed by the  
35 court, submit to the court, to the department of social and health  
36 services facility from which the person was released, to the prosecutor  
37 of the county in which the person was found to be a sexually violent  
38 predator, and to the supervising community corrections officer, a  
39 report stating whether the person is complying with the terms and

1 conditions of the conditional release to a less restrictive  
2 alternative.

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

15 NEW SECTION. **Sec. 13.** (1) Any service provider submitting reports  
16 pursuant to section 12(5) of this act, the supervising community  
17 corrections officer, the prosecuting attorney, or the attorney general  
18 may petition the court, or the court on its own motion may schedule an  
19 immediate hearing, for the purpose of revoking or modifying the terms  
20 of the person's conditional release to a less restrictive alternative  
21 if the petitioner or the court believes the released person is not  
22 complying with the terms and conditions of his or her release or is in  
23 need of additional care and treatment.

24 (2) If the prosecuting attorney, the supervising community  
25 corrections officer, or the court, based upon information received by  
26 them, reasonably believes that a conditionally released person is not  
27 complying with the terms and conditions of his or her conditional  
28 release to a less restrictive alternative, the court or community  
29 corrections officer may order that the conditionally released person be  
30 apprehended and taken into custody until such time as a hearing can be  
31 scheduled to determine the facts and whether or not the person's  
32 conditional release should be revoked or modified. The court shall be  
33 notified before the close of the next judicial day of the person's  
34 apprehension. Both the prosecuting attorney and the conditionally  
35 released person shall have the right to request an immediate mental  
36 examination of the conditionally released person. If the conditionally  
37 released person is indigent, the court shall, upon request, assist him

1 or her in obtaining a qualified expert or professional person to  
2 conduct the examination.

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

14 **Sec. 14.** RCW 71.09.110 and 1990 c 3 s 1011 are each amended to  
15 read as follows:

16 The department of social and health services shall be responsible  
17 for all costs relating to the evaluation and treatment of persons  
18 committed to their custody whether in a secure facility or under a less  
19 restrictive alternative under any provision of this chapter.  
20 Reimbursement may be obtained by the department for the cost of care  
21 and treatment of persons committed to its custody whether in a secure  
22 facility or under a less restrictive alternative pursuant to RCW  
23 43.20B.330 through 43.20B.370.

24 **Sec. 15.** RCW 9A.76.120 and 1982 1st ex.s. c 47 s 24 are each  
25 amended to read as follows:

- 26 (1) A person is guilty of escape in the second degree if:  
27 (a) He or she escapes from a detention facility; ((or))  
28 (b) Having been charged with a felony or an equivalent juvenile  
29 offense, he or she escapes from custody; or  
30 (c) Having been found to be a sexually violent predator and being  
31 under an order of conditional release, he or she leaves the state of  
32 Washington without prior court authorization.

33 (2) Escape in the second degree is a class C felony.

34 NEW SECTION. **Sec. 16.** In the event of an escape by a person  
35 committed under this chapter from a state institution or the  
36 disappearance of such a person while on conditional release, the

1 superintendent or community corrections officer shall notify the  
2 following as appropriate: Local law enforcement officers, other  
3 governmental agencies, the person's relatives, and any other  
4 appropriate persons about information necessary for the public safety  
5 or to assist in the apprehension of the person.

6 NEW SECTION. **Sec. 17.** (1) At the earliest possible date, and in  
7 no event later than ten days before conditional release or  
8 unconditional discharge, except in the event of escape, the department  
9 of social and health services shall send written notice of conditional  
10 release, unconditional discharge, or escape, to the following:

11 (a) The chief of police of the city, if any, in which the person  
12 will reside or in which placement will be made under a less restrictive  
13 alternative;

14 (b) The sheriff of the county in which the person will reside or in  
15 which placement will be made under a less restrictive alternative; and

16 (c) The sheriff of the county where the person was last convicted  
17 of a sexually violent offense, if the department does not know where  
18 the person will reside.

19 The department shall notify the state patrol of the release of all  
20 sexually violent predators and that information shall be placed in the  
21 Washington crime information center for dissemination to all law  
22 enforcement.

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

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

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

33 (c) Any person specified in writing by the prosecuting attorney.

34 Information regarding victims, next of kin, or witnesses requesting  
35 the notice, information regarding any other person specified in writing  
36 by the prosecuting attorney to receive the notice, and the notice are  
37 confidential and shall not be available to the committed person.

1 (3) If a person committed as a sexually violent predator under this  
2 chapter escapes from a department of social and health services  
3 facility, the department shall immediately notify, by the most  
4 reasonable and expedient means available, the chief of police of the  
5 city and the sheriff of the county in which the committed person  
6 resided immediately before his or her commitment as a sexually violent  
7 predator, or immediately before his or her incarceration for his or her  
8 most recent offense. If previously requested, the department shall  
9 also notify the witnesses and the victims of the sexually violent  
10 offenses for which the person was convicted in the past or the victim's  
11 next of kin if the crime was a homicide. If the person is recaptured,  
12 the department shall send notice to the persons designated in this  
13 subsection as soon as possible but in no event later than two working  
14 days after the department learns of such recapture.

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

19 (5) The department of social and health services shall send the  
20 notices required by this chapter to the last address provided to the  
21 department by the requesting party. The requesting party shall furnish  
22 the department with a current address.

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

26 NEW SECTION. **Sec. 18.** A superior court judge may grant an  
27 escorted leave of absence to a person committed under this chapter to:

28 (1) Go to the bedside of the person's wife, husband, child, mother,  
29 father, sibling, or other member of the person's immediate family who  
30 is seriously ill;

31 (2) Attend the funeral of a member of the person's immediate family  
32 listed in subsection (1) of this section; or

33 (3) Receive necessary medical or dental care not available in the  
34 facility in which the person is housed.

35 NEW SECTION. **Sec. 19.** RCW 71.09.100 and 1990 c 3 s 1010 are each  
36 repealed.



1        NEW SECTION.   **Sec. 20.**   Sections 10 through 13 and 16 through 18 of  
2   this act are each added to chapter 71.09 RCW.

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