

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE SENATE BILL 5088

Chapter 216, Laws of 1995

54th Legislature
1995 Regular Session

SEXUALLY VIOLENT PREDATORS--REVISION OF RELATED PROVISIONS

EFFECTIVE DATE: 7/23/95

Passed by the Senate April 17, 1995
YEAS 43 NAYS 0

JOEL PRITCHARD
President of the Senate

Passed by the House April 10, 1995
YEAS 94 NAYS 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

Approved May 3, 1995

MIKE LOWRY
Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 5088** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN
Secretary

FILED

May 3, 1995 - 11:42 a.m.

**Secretary of State
State of Washington**

SECOND SUBSTITUTE SENATE BILL 5088

AS AMENDED BY THE HOUSE

Passed Legislature - 1995 Regular Session

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

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

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

1 NEW SECTION. **Sec. 12.** (1) If the court or jury determines that
2 conditional release to a less restrictive alternative is in the best
3 interest of the person and will adequately protect the community, and
4 the court determines that the minimum conditions set forth in section
5 9 of this act are met, the court shall enter judgment and direct a
6 conditional release.

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

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

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

36 (5) Any service provider designated to provide inpatient or
37 outpatient treatment shall monthly, or as otherwise directed by the
38 court, submit to the court, to the department of social and health
39 services facility from which the person was released, to the prosecutor

1 of the county in which the person was found to be a sexually violent
2 predator, and to the supervising community corrections officer, a
3 report stating whether the person is complying with the terms and
4 conditions of the conditional release to a less restrictive
5 alternative.

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

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

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

1 examination of the conditionally released person. If the conditionally
2 released person is indigent, the court shall, upon request, assist him
3 or her in obtaining a qualified expert or professional person to
4 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 **Sec. 14.** RCW 71.09.110 and 1990 c 3 s 1011 are each amended to
17 read as follows:

18 The department of social and health services shall be responsible
19 for all costs relating to the evaluation and treatment of persons
20 committed to their custody whether in a secure facility or under a less
21 restrictive alternative under any provision of this chapter.
22 Reimbursement may be obtained by the department for the cost of care
23 and treatment of persons committed to its custody whether in a secure
24 facility or under a less restrictive alternative pursuant to RCW
25 43.20B.330 through 43.20B.370.

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

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

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

1 NEW SECTION. **Sec. 16.** In the event of an escape by a person
2 committed under this chapter from a state institution or the
3 disappearance of such a person while on conditional release, the
4 superintendent or community corrections officer shall notify the
5 following as appropriate: Local law enforcement officers, other
6 governmental agencies, the person's relatives, and any other
7 appropriate persons about information necessary for the public safety
8 or to assist in the apprehension of the person.

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

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

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

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

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

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

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

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

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

37 Information regarding victims, next of kin, or witnesses requesting
38 the notice, information regarding any other person specified in writing

1 by the prosecuting attorney to receive the notice, and the notice are
2 confidential and shall not be available to the committed person.

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

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

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

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

28 NEW SECTION. **Sec. 18.** For purposes of sections 19 through 21 of
29 this act:

30 (1) "Escorted leave" means a leave of absence from a facility
31 housing persons detained or committed pursuant to this chapter under
32 the continuous supervision of an escort.

33 (2) "Escort" means a correctional officer or other person approved
34 by the superintendent or the superintendent's designee to accompany a
35 resident on a leave of absence and be in visual or auditory contact
36 with the resident at all times.

37 (3) "Resident" means a person detained or committed pursuant to
38 this chapter.

1 NEW SECTION. **Sec. 19.** The superintendent of any facility housing
2 persons detained or committed pursuant to this chapter may, subject to
3 the approval of the secretary, grant escorted leaves of absence to
4 residents confined in such institutions to:

5 (1) Go to the bedside of the resident's wife, husband, child,
6 mother or father, or other member of the resident's immediate family
7 who is seriously ill;

8 (2) Attend the funeral of a member of the resident's immediate
9 family listed in subsection (1) of this section; and

10 (3) Receive necessary medical or dental care which is not available
11 in the institution.

12 NEW SECTION. **Sec. 20.** A resident shall not be allowed to start a
13 leave of absence under section 19 of this act until the secretary, or
14 the secretary's designee, has notified any county and city law
15 enforcement agency having jurisdiction in the area of the resident's
16 destination.

17 NEW SECTION. **Sec. 21.** (1) The secretary is authorized to adopt
18 rules providing for the conditions under which residents will be
19 granted leaves of absence and providing for safeguards to prevent
20 escapes while on leaves of absence. Leaves of absence granted to
21 residents under section 19 of this act, however, shall not allow or
22 permit any resident to go beyond the boundaries of this state.

23 (2) The secretary shall adopt rules requiring reimbursement of the
24 state from the resident granted leave of absence, or the resident's
25 family, for the actual costs incurred arising from any leave of absence
26 granted under the authority of section 19 (1) and (2) of this act. No
27 state funds shall be expended in connection with leaves of absence
28 granted under section 19 (1) and (2) of this act unless the resident
29 and the resident's immediate family are indigent and without resources
30 sufficient to reimburse the state for the expenses of such leaves of
31 absence.

32 NEW SECTION. **Sec. 22.** RCW 71.09.100 and 1990 c 3 s 1010 are each
33 repealed.

34 NEW SECTION. **Sec. 23.** Sections 10 through 13 and 16 through 21 of
35 this act are each added to chapter 71.09 RCW.

Passed the Senate April 17, 1995.
Passed the House April 10, 1995.
Approved by the Governor May 3, 1995.
Filed in Office of Secretary of State May 3, 1995.