

---

SENATE BILL 5122

---

State of Washington

57th Legislature

2001 Regular Session

By Senators Costa, Long and Hargrove

Read first time 01/11/2001. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to civil commitment and related proceedings for  
2 sexually violent predators under chapter 71.09 RCW; amending RCW  
3 5.60.060, 71.09.010, 71.09.020, 71.09.025, 71.09.040, 71.09.060,  
4 71.09.070, 71.09.090, 71.09.094, 71.09.096, and 71.09.098; adding a new  
5 section to chapter 71.09 RCW; creating a new section; and declaring an  
6 emergency.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 71.09 RCW  
9 to read as follows:

10 The legislature finds that presentation of evidence related to  
11 conditions of a less restrictive alternative that are beyond the  
12 authority of the court to order, and that would not exist in the  
13 absence of a court order, reduces the public respect for the rule of  
14 law and for the authority of the courts. Consequently, the legislature  
15 finds that the decision in *In re the Detention of Casper Ross*, No.  
16 23523-4-II, Aug. 18, 2000 (6 P.3d 625), is contrary to the  
17 legislature's intent. The legislature hereby clarifies that it  
18 intends, and has always intended, in any proceeding under this chapter  
19 that the court and jury be presented only with conditions that would

1 exist or that the court would have the authority to order in the  
2 absence of a finding that the person is a sexually violent predator.

3 **Sec. 2.** RCW 5.60.060 and 1998 c 72 s 1 are each amended to read as  
4 follows:

5 (1) A husband shall not be examined for or against his wife,  
6 without the consent of the wife, nor a wife for or against her husband  
7 without the consent of the husband; nor can either during marriage or  
8 afterward, be without the consent of the other, examined as to any  
9 communication made by one to the other during marriage. But this  
10 exception shall not apply to a civil action or proceeding by one  
11 against the other, nor to a criminal action or proceeding for a crime  
12 committed by one against the other, nor to a criminal action or  
13 proceeding against a spouse if the marriage occurred subsequent to the  
14 filing of formal charges against the defendant, nor to a criminal  
15 action or proceeding for a crime committed by said husband or wife  
16 against any child of whom said husband or wife is the parent or  
17 guardian, nor to a proceeding under chapter 70.96A ((~~or~~)), 71.05, or  
18 71.09 RCW: PROVIDED, That the spouse of a person sought to be detained  
19 under chapter 70.96A ((~~or~~)), 71.05, or 71.09 RCW may not be compelled  
20 to testify and shall be so informed by the court prior to being called  
21 as a witness.

22 (2)(a) An attorney or counselor shall not, without the consent of  
23 his or her client, be examined as to any communication made by the  
24 client to him or her, or his or her advice given thereon in the course  
25 of professional employment.

26 (b) A parent or guardian of a minor child arrested on a criminal  
27 charge may not be examined as to a communication between the child and  
28 his or her attorney if the communication was made in the presence of  
29 the parent or guardian. This privilege does not extend to  
30 communications made prior to the arrest.

31 (3) A member of the clergy or a priest shall not, without the  
32 consent of a person making the confession, be examined as to any  
33 confession made to him or her in his or her professional character, in  
34 the course of discipline enjoined by the church to which he or she  
35 belongs.

36 (4) Subject to the limitations under RCW 70.96A.140 or 71.05.250,  
37 a physician or surgeon or osteopathic physician or surgeon or podiatric  
38 physician or surgeon shall not, without the consent of his or her

1 patient, be examined in a civil action as to any information acquired  
2 in attending such patient, which was necessary to enable him or her to  
3 prescribe or act for the patient, except as follows:

4 (a) In any judicial proceedings regarding a child's injury,  
5 neglect, or sexual abuse or the cause thereof; and

6 (b) Ninety days after filing an action for personal injuries or  
7 wrongful death, the claimant shall be deemed to waive the physician-  
8 patient privilege. Waiver of the physician-patient privilege for any  
9 one physician or condition constitutes a waiver of the privilege as to  
10 all physicians or conditions, subject to such limitations as a court  
11 may impose pursuant to court rules.

12 (5) A public officer shall not be examined as a witness as to  
13 communications made to him or her in official confidence, when the  
14 public interest would suffer by the disclosure.

15 (6)(a) A peer support group counselor shall not, without consent of  
16 the law enforcement officer making the communication, be compelled to  
17 testify about any communication made to the counselor by the officer  
18 while receiving counseling. The counselor must be designated as such  
19 by the sheriff, police chief, or chief of the Washington state patrol,  
20 prior to the incident that results in counseling. The privilege only  
21 applies when the communication was made to the counselor while acting  
22 in his or her capacity as a peer support group counselor. The  
23 privilege does not apply if the counselor was an initial responding  
24 officer, a witness, or a party to the incident which prompted the  
25 delivery of peer support group counseling services to the law  
26 enforcement officer.

27 (b) For purposes of this section, "peer support group counselor"  
28 means a:

29 (i) Law enforcement officer, or civilian employee of a law  
30 enforcement agency, who has received training to provide emotional and  
31 moral support and counseling to an officer who needs those services as  
32 a result of an incident in which the officer was involved while acting  
33 in his or her official capacity; or

34 (ii) Nonemployee counselor who has been designated by the sheriff,  
35 police chief, or chief of the Washington state patrol to provide  
36 emotional and moral support and counseling to an officer who needs  
37 those services as a result of an incident in which the officer was  
38 involved while acting in his or her official capacity.

1 (7) A sexual assault advocate may not, without the consent of the  
2 victim, be examined as to any communication made by the victim to the  
3 sexual assault advocate.

4 (a) For purposes of this section, "sexual assault advocate" means  
5 the employee or volunteer from a rape crisis center, victim assistance  
6 unit, program, or association, that provides information, medical or  
7 legal advocacy, counseling, or support to victims of sexual assault,  
8 who is designated by the victim to accompany the victim to the hospital  
9 or other health care facility and to proceedings concerning the alleged  
10 assault, including police and prosecution interviews and court  
11 proceedings.

12 (b) A sexual assault advocate may disclose a confidential  
13 communication without the consent of the victim if failure to disclose  
14 is likely to result in a clear, imminent risk of serious physical  
15 injury or death of the victim or another person. Any sexual assault  
16 advocate participating in good faith in the disclosing of records and  
17 communications under this section shall have immunity from any  
18 liability, civil, criminal, or otherwise, that might result from the  
19 action. In any proceeding, civil or criminal, arising out of a  
20 disclosure under this section, the good faith of the sexual assault  
21 advocate who disclosed the confidential communication shall be  
22 presumed.

23 **Sec. 3.** RCW 71.09.010 and 1990 c 3 s 1001 are each amended to read  
24 as follows:

25 The legislature finds that a small but extremely dangerous group of  
26 sexually violent predators exist who do not have a mental disease or  
27 defect that renders them appropriate for the existing involuntary  
28 treatment act, chapter 71.05 RCW, which is intended to be a short-term  
29 civil commitment system that is primarily designed to provide short-  
30 term treatment to individuals with serious mental disorders and then  
31 return them to the community. In contrast to persons appropriate for  
32 civil commitment under chapter 71.05 RCW, sexually violent predators  
33 generally have ~~((antisocial))~~ personality ~~((features))~~ disorders and/or  
34 mental abnormalities which are unamenable to existing mental illness  
35 treatment modalities and those ~~((features))~~ conditions render them  
36 likely to engage in sexually violent behavior. The legislature further  
37 finds that sex offenders' likelihood of engaging in repeat acts of  
38 predatory sexual violence is high. The existing involuntary commitment

1 act, chapter 71.05 RCW, is inadequate to address the risk to reoffend  
2 because during confinement these offenders do not have access to  
3 potential victims and therefore they will not engage in an overt act  
4 during confinement as required by the involuntary treatment act for  
5 continued confinement. The legislature further finds that as a result  
6 of their extreme dangerousness and unique mental conditions, sexually  
7 violent predators generally are initially unsuitable for less  
8 restrictive placements normally available to persons committed under  
9 chapter 71.05 RCW. Sexually violent predators generally require an  
10 inpatient period of evaluation and treatment following commitment in a  
11 controlled and secure environment before determining the possibility of  
12 a less restrictive alternative. The legislature further finds that the  
13 prognosis for curing sexually violent offenders is poor, the treatment  
14 needs of this population are very long term, and the treatment  
15 modalities for this population are very different than the traditional  
16 treatment modalities for people appropriate for commitment under the  
17 involuntary treatment act.

18 **Sec. 4.** RCW 71.09.020 and 1995 c 216 s 1 are each amended to read  
19 as follows:

20 Unless the context clearly requires otherwise, the definitions in  
21 this section apply throughout this chapter.

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

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

31 (3) "Likely to engage in predatory acts of sexual violence if not  
32 confined in a secure facility" means that the person more probably than  
33 not will engage in such acts if released unconditionally from detention  
34 on the sexually violent predator petition. Such likelihood must be  
35 evidenced by a recent overt act if the person is not totally confined  
36 at the time the petition is filed under RCW 71.09.030.

37 (4) "Predatory" means acts directed towards: (a) Strangers ((or));  
38 (b) individuals with whom a relationship has been established or

1 promoted for the primary purpose of victimization; or (c) persons of  
2 casual acquaintance with whom no substantial personal relationship  
3 exists.

4 (5) "Recent overt act" means any act or threat that has either  
5 caused harm of a sexually violent nature or creates a reasonable  
6 apprehension of such harm in the mind of an objective person who knows  
7 of the history and mental condition of the person engaging in the act.

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

31 (7) "Less restrictive alternative" means court-ordered treatment in  
32 a setting less restrictive than total confinement which satisfies the  
33 conditions set forth in RCW 71.09.092.

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

36 **Sec. 5.** RCW 71.09.025 and 1995 c 216 s 2 are each amended to read  
37 as follows:

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

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

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

10 (iii) Release of a person who has been charged with a sexually  
11 violent offense and who has been determined to be incompetent to stand  
12 trial pursuant to RCW 10.77.090(~~(+3)~~) (4); or

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

15 (b) The agency shall provide the prosecutor with all relevant  
16 information including but not limited to the following information:

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

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

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

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

26 (v) A current mental health evaluation or mental health records  
27 review.

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

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

32 (4) As used in this section, "agency with jurisdiction" means that  
33 agency with the authority to direct the release of a person serving a  
34 sentence or term of confinement and includes the department of  
35 corrections, the indeterminate sentence review board, and the  
36 department of social and health services.

37 **Sec. 6.** RCW 71.09.040 and 1995 c 216 s 4 are each amended to read  
38 as follows:

1 (1) Upon the filing of a petition under RCW 71.09.030, the judge  
2 shall determine whether probable cause exists to believe that the  
3 person named in the petition is a sexually violent predator. If such  
4 determination is made the judge shall direct that the person be taken  
5 into custody.

6 (2) Within seventy-two hours after a person is taken into custody  
7 pursuant to subsection (1) of this section, the court shall provide the  
8 person with notice of, and an opportunity to appear in person at, a  
9 hearing to contest probable cause as to whether the person is a  
10 sexually violent predator. At this hearing, the court shall (a) verify  
11 the person's identity, and (b) determine whether probable cause exists  
12 to believe that the person is a sexually violent predator. At the  
13 probable cause hearing, the state may rely upon the petition and  
14 certification for determination of probable cause filed pursuant to RCW  
15 71.09.030. The state may supplement this with additional documentary  
16 evidence or live testimony.

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

22 (4) If the probable cause determination is made, the judge shall  
23 direct that the person be transferred to an appropriate facility for an  
24 evaluation as to whether the person is a sexually violent predator.  
25 The evaluation shall be conducted by a person deemed to be  
26 professionally qualified to conduct such an examination pursuant to  
27 rules developed by the department of social and health services. In  
28 adopting such rules, the department of social and health services shall  
29 consult with the department of health and the department of  
30 corrections. In no event shall the person be released from confinement  
31 prior to trial. A witness called by either party shall be permitted to  
32 testify by telephone.

33 **Sec. 7.** RCW 71.09.060 and 1998 c 146 s 1 are each amended to read  
34 as follows:

35 (1) The court or jury shall determine whether, beyond a reasonable  
36 doubt, the person is a sexually violent predator. In determining  
37 whether or not the person would be likely to engage in predatory acts  
38 of sexual violence if not confined in a secure facility, the fact



1 finder may consider only placement conditions and voluntary treatment  
2 options that would exist for the person if unconditionally released  
3 from detention on the sexually violent predator petition. When the  
4 determination is made by a jury, the verdict must be unanimous.

5 If, on the date that the petition is filed, the person was living  
6 in the community after release from custody, the state must also prove  
7 beyond a reasonable doubt that the person had committed a recent overt  
8 act. If the state alleges that the prior sexually violent offense that  
9 forms the basis for the petition for commitment was an act that was  
10 sexually motivated as provided in RCW 71.09.020(6)(c), the state must  
11 prove beyond a reasonable doubt that the alleged sexually violent act  
12 was sexually motivated as defined in RCW 9.94A.030.

13 If the court or jury determines that the person is a sexually  
14 violent predator, the person shall be committed to the custody of the  
15 department of social and health services for placement in a secure  
16 facility operated by the department of social and health services for  
17 control, care, and treatment until such time as: (a) The person's  
18 ((~~mental abnormality or personality disorder~~)) condition has so changed  
19 that the person ((~~is safe either (a) to be at large,~~)) no longer meets  
20 the definition of a sexually violent predator; or (b) ((~~to be~~  
21 released)) conditional release to a less restrictive alternative as set  
22 forth in RCW 71.09.092 is in the best interest of the person and  
23 conditions can be imposed that would adequately protect the community.

24 If the court or unanimous jury ((~~is not satisfied beyond a~~  
25 reasonable doubt)) decides that the state has not met its burden of  
26 proving that the person is a sexually violent predator, the court shall  
27 direct the person's release.

28 If the jury is unable to reach a unanimous verdict, the court shall  
29 declare a mistrial and set a retrial within forty-five days of the date  
30 of the mistrial unless the prosecuting agency earlier moves to dismiss  
31 the petition. The retrial may be continued upon the request of either  
32 party accompanied by a showing of good cause, or by the court on its  
33 own motion in the due administration of justice provided that the  
34 respondent will not be substantially prejudiced. In no event may the  
35 person be released from confinement prior to retrial or dismissal of  
36 the case.

37 (2) If the person charged with a sexually violent offense has been  
38 found incompetent to stand trial, and is about to or has been released  
39 pursuant to RCW 10.77.090((+3)) (4), and his or her commitment is

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

22 (3) The state shall comply with RCW 10.77.220 while confining the  
23 person pursuant to this chapter, except that during all court  
24 proceedings the person shall be detained in a secure facility. The  
25 department shall not place the person, even temporarily, in a facility  
26 on the grounds of any state mental facility or regional habilitation  
27 center because these institutions are insufficiently secure for this  
28 population.

29 (4) A court has jurisdiction to order a less restrictive  
30 alternative placement only after a hearing ordered pursuant to RCW  
31 71.09.090 following initial commitment under this section and in accord  
32 with the provisions of this chapter.

33 **Sec. 8.** RCW 71.09.070 and 1995 c 216 s 7 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 by the department of  
37 social and health services at least once every year. The annual report  
38 shall include consideration of whether the committed person currently

1 meets the definition of a sexually violent predator and whether  
2 conditional release to a less restrictive alternative is in the best  
3 interest of the person and ((will)) conditions can be imposed that  
4 would adequately protect the community. The department of social and  
5 health services shall file this periodic report with the court that  
6 committed the person under this chapter. The report shall be in the  
7 form of a declaration or certification in compliance with the  
8 requirements of RCW 9A.72.085 and shall be prepared by a professionally  
9 qualified person as defined by rules adopted by the secretary. A copy  
10 of the report shall be served on the prosecuting agency involved in the  
11 initial commitment and upon the committed person and his or her  
12 counsel. The committed person may retain, or if he or she is indigent  
13 and so requests, the court may appoint a qualified expert or a  
14 professional person to examine him or her, and such expert or  
15 professional person shall have access to all records concerning the  
16 person. ((The periodic report shall be provided to the court that  
17 committed the person under this chapter.))

18 **Sec. 9.** RCW 71.09.090 and 1995 c 216 s 9 are each amended to read  
19 as follows:

20 (1) If the secretary determines that either: (a) The person's  
21 ((mental abnormality or personality disorder)) condition has so changed  
22 that the person ((is not likely to engage in predatory acts of sexual  
23 violence if conditionally released to a less restrictive alternative or  
24 unconditionally discharged)) no longer meets the definition of a  
25 sexually violent predator; or (b) conditional release to a less  
26 restrictive alternative is in the best interest of the person and  
27 conditions can be imposed that adequately protect the community, the  
28 secretary shall authorize the person to petition the court for  
29 conditional release to a less restrictive alternative or unconditional  
30 discharge. The petition shall be ((served upon)) filed with the court  
31 and served upon the prosecuting ((attorney)) agency responsible for the  
32 initial commitment. The court, upon receipt of the petition for  
33 conditional release to a less restrictive alternative or unconditional  
34 discharge, shall within forty-five days order a hearing. ((The  
35 prosecuting attorney or the attorney general, if requested by the  
36 county, shall represent the state, and shall have the right to have the  
37 petitioner examined by an expert or professional person of his or her  
38 choice. The hearing shall be before a jury if demanded by either the

1 petitioner or the prosecuting attorney or attorney general. The burden  
2 of proof shall be upon the prosecuting attorney or attorney general to  
3 show beyond a reasonable doubt that the petitioner's mental abnormality  
4 or personality disorder remains such that the petitioner is not safe to  
5 be at large and that if conditionally released to a less restrictive  
6 alternative or unconditionally discharged is likely to engage in  
7 predatory acts of sexual violence.))

8 (2)(a) Nothing contained in this chapter shall prohibit the person  
9 from otherwise petitioning the court for conditional release to a less  
10 restrictive alternative or unconditional discharge without the  
11 secretary's approval. The secretary shall provide the committed person  
12 with an annual written notice of the person's right to petition the  
13 court for conditional release to a less restrictive alternative or  
14 unconditional discharge over the secretary's objection. The notice  
15 shall contain a waiver of rights. The secretary shall ((forward)) file  
16 the notice and waiver form ((to the court with)) and the annual report  
17 with the court. If the person does not affirmatively waive the right  
18 to petition, the court shall set a show cause hearing to determine  
19 whether ((facts)) probable cause exists ((that)) to warrant a hearing  
20 on whether: (i) The person's condition has so changed that he or she  
21 ((is safe to be conditionally released to a less restrictive  
22 alternative or unconditionally discharged)) no longer meets the  
23 definition of a sexually violent predator; or (ii) conditional release  
24 to a less restrictive alternative would be in the best interest of the  
25 person and conditions can be imposed that would adequately protect the  
26 community.

27 (b) The committed person shall have a right to have an attorney  
28 represent him or her at the show cause hearing, which may be conducted  
29 solely on the basis of affidavits or declarations, but the person is  
30 not entitled to be present at the show cause hearing. At the show  
31 cause hearing, the prosecuting attorney or attorney general shall  
32 present prima facie evidence establishing that the committed person  
33 continues to meet the definition of a sexually violent predator and  
34 that a less restrictive alternative is not in the best interest of the  
35 person and conditions cannot be imposed that adequately protect the  
36 community. In making this showing, the state may rely exclusively upon  
37 the annual report prepared pursuant to RCW 71.09.070. The committed  
38 person may present responsive affidavits or declarations to which the  
39 state may reply.

1       (c) If the court at the show cause hearing determines that either:  
2 (i) The state has failed to present prima facie evidence that the  
3 committed person continues to meet the definition of a sexually violent  
4 predator and that no proposed less restrictive alternative is in the  
5 best interest of the person and conditions cannot be imposed that would  
6 adequately protect the community; or (ii) probable cause exists to  
7 believe that the person's ((mental abnormality or personality  
8 disorder)) condition has so changed that: (A) The person ((is not  
9 likely to engage in predatory acts of sexual violence if conditionally  
10 released to a less restrictive alternative or unconditionally  
11 discharged)) no longer meets the definition of a sexually violent  
12 predator; or (B) release to a less restrictive alternative would be in  
13 the best interest of the person and conditions can be imposed that  
14 would adequately protect the community, then the court shall set a  
15 hearing on ((the)) either or both issues.

16       (d) If the court has not previously considered the issue of release  
17 to a less restrictive alternative, either through a trial on the merits  
18 or through the procedures set forth in RCW 71.09.094(1), the court  
19 shall consider whether release to a less restrictive alternative would  
20 be in the best interests of the person and conditions can be imposed  
21 that would adequately protect the community, without considering  
22 whether the person's condition has changed.

23       (3)(a) At the hearing resulting from subsection (1) or (2) of this  
24 section, the committed person shall be entitled to be present and to  
25 the benefit of all constitutional protections that were afforded to the  
26 person at the initial commitment proceeding. The prosecuting  
27 ((attorney)) agency or the attorney general if requested by the county  
28 shall represent the state and shall have a right to a jury trial and to  
29 have the committed person evaluated by experts chosen by the state.  
30 The committed person shall also have the right to have experts evaluate  
31 him or her on his or her behalf and the court shall appoint an expert  
32 if the person is indigent and requests an appointment.

33       (b) If the issue at the hearing is whether the person should be  
34 unconditionally discharged, the burden of proof ((at the hearing))  
35 shall be upon the state to prove beyond a reasonable doubt that the  
36 committed person's ((mental abnormality or personality disorder))  
37 condition remains such that the person ((is likely to engage in  
38 predatory acts of sexual violence if conditionally released to a less  
39 restrictive alternative or unconditionally discharged)) continues to

1 meet the definition of a sexually violent predator. Evidence of the  
2 prior commitment trial and disposition is admissible.

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

11 ~~((+3+))~~ (4) The jurisdiction of the court over a person civilly  
12 committed pursuant to this chapter continues until such time as the  
13 person is unconditionally discharged.

14 **Sec. 10.** RCW 71.09.094 and 1995 c 216 s 11 are each amended to  
15 read as follows:

16 (1) Upon the conclusion of the evidence in a hearing held pursuant  
17 to RCW 71.09.090 or through summary judgment proceedings prior to such  
18 a hearing, if the court finds that there is no legally sufficient  
19 evidentiary basis for a reasonable jury to find that the conditions set  
20 forth in RCW 71.09.092 have been met, the court shall grant a motion by  
21 the state for a judgment as a matter of law on the issue of conditional  
22 release to a less restrictive alternative.

23 (2) Whenever the issue of conditional release to a less restrictive  
24 alternative is submitted to the jury, the court shall instruct the jury  
25 to return a verdict in substantially the following form: Has the state  
26 proved beyond a reasonable doubt that either: (a) The proposed less  
27 restrictive alternative is not in the best interests of respondent; or  
28 ~~((will not))~~ (b) conditions cannot be imposed that would adequately  
29 protect the community? Answer: Yes or No.

30 **Sec. 11.** RCW 71.09.096 and 1995 c 216 s 12 are each amended to  
31 read as follows:

32 (1) If the court or jury determines that conditional release to a  
33 less restrictive alternative is in the best interest of the person and  
34 ~~((will))~~ conditions can be imposed that would adequately protect the  
35 community, and the court determines that the minimum conditions set  
36 forth in ~~((section 9 of this act))~~ RCW 71.09.092 and in this section

1 are met, the court shall enter judgment and direct a conditional  
2 release.

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

10 (3) If the service provider designated by the court to provide  
11 inpatient or outpatient treatment or to monitor or supervise any other  
12 terms and conditions of a person's placement in a less restrictive  
13 alternative is other than the department of social and health services  
14 or the department of corrections, then the service provider so  
15 designated must agree in writing to provide such treatment, monitoring,  
16 or supervision in accord with this section. Any person providing or  
17 agreeing to provide treatment, monitoring, or supervision services  
18 pursuant to this chapter may be compelled to testify and any privilege  
19 with regard to such person's testimony is deemed waived.

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 **Sec. 12.** RCW 71.09.098 and 1995 c 216 s 13 are each amended to  
19 read as follows:

20 (1) Any service provider submitting reports pursuant to RCW  
21 71.09.096(~~(+5)~~) (6), the supervising community corrections officer,  
22 the prosecuting attorney, or the attorney general may petition the  
23 court, or the court on its own motion may schedule an immediate  
24 hearing, for the purpose of revoking or modifying the terms of the  
25 person's conditional release to a less restrictive alternative if the  
26 petitioner or the court believes the released person is not complying  
27 with the terms and conditions of his or her release or is in need of  
28 additional care (~~(and)~~), monitoring, supervision, or treatment.

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



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

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

18 NEW SECTION. **Sec. 13.** This act applies to all individuals  
19 currently committed or awaiting commitment under chapter 71.09 RCW  
20 either on, before, or after the effective date of this act, whether  
21 confined in a secure facility or on conditional release.

22 NEW SECTION. **Sec. 14.** This act is necessary for the immediate  
23 preservation of the public peace, health, or safety, or support of the  
24 state government and its existing public institutions, and takes effect  
25 immediately.

--- END ---