
ENGROSSED SENATE BILL 6870

State of Washington

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2010 Regular Session

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (d) If the court has not previously considered the issue of release
2 to a less restrictive alternative, either through a trial on the merits
3 or through the procedures set forth in RCW 71.09.094(1), the court
4 shall consider whether release to a less restrictive alternative would
5 be in the best interests of the person and conditions can be imposed
6 that would adequately protect the community, without considering
7 whether the person's condition has changed. The court may not find
8 probable cause for a trial addressing less restrictive alternatives
9 unless a proposed less restrictive alternative placement meeting the
10 conditions of RCW 71.09.092 is presented to the court at the show cause
11 hearing.

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

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

37 (c) If the issue at the hearing is whether the person should be
38 unconditionally discharged, the burden of proof shall be upon the state

1 to prove beyond a reasonable doubt that the committed person's
2 condition remains such that the person continues to meet the definition
3 of a sexually violent predator. Evidence of the prior commitment trial
4 and disposition is admissible. The recommitment proceeding shall
5 otherwise proceed as set forth in RCW 71.09.050 and 71.09.060.

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

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

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

28 (i) An identified physiological change to the person, such as
29 paralysis, stroke, or dementia, that renders the committed person
30 unable to commit a sexually violent act and this change is permanent;
31 or

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

37 (c) For purposes of this section, a change in a single demographic
38 factor, without more, does not establish probable cause for a new trial

1 proceeding under subsection (3) of this section. As used in this
2 section, a single demographic factor includes, but is not limited to,
3 a change in the chronological age, marital status, or gender of the
4 committed person.

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

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

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

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

21 Secure community transition facilities shall meet the following
22 minimum staffing requirements:

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

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

35 ~~(2) At any time the census of a facility is six or fewer residents,~~

1 ~~all staff shall be classified as residential rehabilitation counselor~~
2 ~~II or have a classification that indicates an equivalent or higher~~
3 ~~level of skill, experience, and training.~~

4 (3)) Before being assigned to a facility, all staff shall have
5 training in sex offender issues, self-defense, and crisis de-escalation
6 skills in addition to departmental orientation and, as appropriate,
7 management training. All staff with resident treatment or care duties
8 must participate in ongoing in-service training.

9 ((4)) (2) All staff must pass a departmental background check and
10 the check is not subject to the limitations in chapter 9.96A RCW. A
11 person who has been convicted of a felony, or any sex offense, may not
12 be employed at the secure community transition facility or be approved
13 as an escort for a resident of the facility.

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