

CERTIFICATION OF ENROLLMENT

**ENGROSSED SENATE BILL 6870**

Chapter 28, Laws of 2010

61st Legislature  
2010 1st Special Session

SEXUALLY VIOLENT PREDATORS--SERVICES--COSTS

EFFECTIVE DATE: 07/13/10

Passed by the Senate April 12, 2010  
YEAS 45 NAYS 0

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

Passed by the House April 12, 2010  
YEAS 85 NAYS 9

FRANK CHOPP

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**Speaker of the House of Representatives**

Approved April 23, 2010, 2:00 p.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 6870** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

\_\_\_\_\_  
**Secretary**

FILED

April 23, 2010

**Secretary of State  
State of Washington**



1 this chapter shall be entitled to the assistance of counsel, and if the  
2 person is indigent, the court shall appoint counsel to assist him or  
3 her. The person shall be confined in a secure facility for the  
4 duration of the trial.

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

22  
23 (3) The person, the prosecuting agency, or the judge shall have the  
24 right to demand that the trial be before a twelve-person jury. If no  
25 demand is made, the trial shall be before the court.

26  
27 **Sec. 2.** RCW 71.09.090 and 2009 c 409 s 8 are each amended to read  
28 as follows:

29  
30 (1) If the secretary determines that the person's condition has so  
31 changed that either: (a) The person no longer meets the definition of  
32 a sexually violent predator; or (b) conditional release to a less  
33 restrictive alternative is in the best interest of the person and  
34 conditions can be imposed that adequately protect the community, the  
35 secretary shall authorize the person to petition the court for  
36 conditional release to a less restrictive alternative or unconditional  
37 discharge. The petition shall be filed with the court and served upon

1 the prosecuting agency responsible for the initial commitment. The  
2 court, upon receipt of the petition for conditional release to a less  
3 restrictive alternative or unconditional discharge, shall within forty-  
4 five days order a hearing.

5  
6 (2)(a) Nothing contained in this chapter shall prohibit the person  
7 from otherwise petitioning the court for conditional release to a less  
8 restrictive alternative or unconditional discharge without the  
9 secretary's approval. The secretary shall provide the committed person  
10 with an annual written notice of the person's right to petition the  
11 court for conditional release to a less restrictive alternative or  
12 unconditional discharge over the secretary's objection. The notice  
13 shall contain a waiver of rights. The secretary shall file the notice  
14 and waiver form and the annual report with the court. If the person  
15 does not affirmatively waive the right to petition, the court shall set  
16 a show cause hearing to determine whether probable cause exists to  
17 warrant a hearing on whether the person's condition has so changed  
18 that: (i) He or she no longer meets the definition of a sexually  
19 violent predator; or (ii) conditional release to a proposed less  
20 restrictive alternative would be in the best interest of the person and  
21 conditions can be imposed that would adequately protect the community.

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

36  
37 (c) If the court at the show cause hearing determines that either:  
38 (i) The state has failed to present prima facie evidence that the

1 committed person continues to meet the definition of a sexually violent  
2 predator and that no proposed less restrictive alternative is in the  
3 best interest of the person and conditions cannot be imposed that would  
4 adequately protect the community; or (ii) probable cause exists to  
5 believe that the person's condition has so changed that: (A) The  
6 person no longer meets the definition of a sexually violent predator;  
7 or (B) release to a proposed less restrictive alternative would be in  
8 the best interest of the person and conditions can be imposed that  
9 would adequately protect the community, then the court shall set a  
10 hearing on either or both issues.

11  
12 (d) If the court has not previously considered the issue of release  
13 to a less restrictive alternative, either through a trial on the merits  
14 or through the procedures set forth in RCW 71.09.094(1), the court  
15 shall consider whether release to a less restrictive alternative would  
16 be in the best interests of the person and conditions can be imposed  
17 that would adequately protect the community, without considering  
18 whether the person's condition has changed. The court may not find  
19 probable cause for a trial addressing less restrictive alternatives  
20 unless a proposed less restrictive alternative placement meeting the  
21 conditions of RCW 71.09.092 is presented to the court at the show cause  
22 hearing.

23  
24 (3)(a) At the hearing resulting from subsection (1) or (2) of this  
25 section, the committed person shall be entitled to be present and to  
26 the benefit of all constitutional protections that were afforded to the  
27 person at the initial commitment proceeding. The prosecuting agency  
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 department is responsible for the cost of one expert or  
31 professional person to conduct an evaluation on the prosecuting  
32 agency's behalf. The committed person shall also have the right to a  
33 jury trial and the right to have experts evaluate him or her on his or  
34 her behalf and the court shall appoint an expert if the person is  
35 indigent and requests an appointment.

36  
37 (b) Whenever any person is subjected to an evaluation under (a) of  
38 this subsection, the department is responsible for the cost of one

1 expert or professional person conducting an evaluation on the person's  
2 behalf. When the person wishes to be evaluated by a qualified expert  
3 or professional person of his or her own choice, such expert or  
4 professional person must be permitted to have reasonable access to the  
5 person for the purpose of such evaluation, as well as to all relevant  
6 medical and psychological records and reports. In the case of a person  
7 who is indigent, the court shall, upon the person's request, assist the  
8 person in obtaining an expert or professional person to perform an  
9 evaluation or participate in the hearing on the person's behalf.  
10 Nothing in this chapter precludes the person from paying for additional  
11 expert services at his or her own expense.  
12

13 (c) If the issue at the hearing is whether the person should be  
14 unconditionally discharged, the burden of proof shall be upon the state  
15 to prove beyond a reasonable doubt that the committed person's  
16 condition remains such that the person continues to meet the definition  
17 of a sexually violent predator. Evidence of the prior commitment trial  
18 and disposition is admissible. The recommitment proceeding shall  
19 otherwise proceed as set forth in RCW 71.09.050 and 71.09.060.  
20

21 ((+e+)) (d) If the issue at the hearing is whether the person  
22 should be conditionally released to a less restrictive alternative, the  
23 burden of proof at the hearing shall be upon the state to prove beyond  
24 a reasonable doubt that conditional release to any proposed less  
25 restrictive alternative either: (i) Is not in the best interest of the  
26 committed person; or (ii) does not include conditions that would  
27 adequately protect the community. Evidence of the prior commitment  
28 trial and disposition is admissible.  
29

30 (4)(a) Probable cause exists to believe that a person's condition  
31 has "so changed," under subsection (2) of this section, only when  
32 evidence exists, since the person's last commitment trial, or less  
33 restrictive alternative revocation proceeding, of a substantial change  
34 in the person's physical or mental condition such that the person  
35 either no longer meets the definition of a sexually violent predator or  
36 that a conditional release to a less restrictive alternative is in the  
37 person's best interest and conditions can be imposed to adequately  
38 protect the community.

1  
2 (b) A new trial proceeding under subsection (3) of this section may  
3 be ordered, or a trial proceeding may be held, only when there is  
4 current evidence from a licensed professional of one of the following  
5 and the evidence presents a change in condition since the person's last  
6 commitment trial proceeding:  
7

8 (i) An identified physiological change to the person, such as  
9 paralysis, stroke, or dementia, that renders the committed person  
10 unable to commit a sexually violent act and this change is permanent;  
11 or  
12

13 (ii) A change in the person's mental condition brought about  
14 through positive response to continuing participation in treatment  
15 which indicates that the person meets the standard for conditional  
16 release to a less restrictive alternative or that the person would be  
17 safe to be at large if unconditionally released from commitment.  
18

19 (c) For purposes of this section, a change in a single demographic  
20 factor, without more, does not establish probable cause for a new trial  
21 proceeding under subsection (3) of this section. As used in this  
22 section, a single demographic factor includes, but is not limited to,  
23 a change in the chronological age, marital status, or gender of the  
24 committed person.  
25

26 (5) The jurisdiction of the court over a person civilly committed  
27 pursuant to this chapter continues until such time as the person is  
28 unconditionally discharged.  
29

30 **Sec. 3.** RCW 71.09.110 and 1995 c 216 s 14 are each amended to read  
31 as follows:  
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33 The department of social and health services shall be responsible  
34 for all costs relating to the evaluation and treatment of persons  
35 committed to their custody whether in a secure facility or under a less  
36 restrictive alternative under any provision of this chapter. The  
37 secretary shall adopt rules to contain costs relating to reimbursement

1 for evaluation services. Reimbursement may be obtained by the  
2 department for the cost of care and treatment of persons committed to  
3 its custody whether in a secure facility or under a less restrictive  
4 alternative pursuant to RCW 43.20B.330 through 43.20B.370.

Passed by the Senate April 12, 2010.

Passed by the House April 12, 2010.

Approved by the Governor April 23, 2010.

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