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**SENATE BILL 5040**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators O'Ban, Becker, Conway, Honeyford, and Wagoner

AN ACT Relating to the equitable geographic distribution of community placements for institutionalized persons with a history of criminal justice involvement; amending RCW 71.09.096; adding a new section to chapter 71.05 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  A new section is added to chapter 71.05 RCW to read as follows:

(1) In a case where the court has made an affirmative special finding under RCW 71.05.280(3)(b), at the time when it becomes appropriate to develop an individualized discharge plan for the person, the secretary must work with the entity or entities responsible for the community treatment of the person to develop an individualized discharge plan which is within the person's county of origin, unless it is determined by the secretary that the person's return to his or her county of origin would be inappropriate considering any court-issued protection orders, victim safety concerns, the availability of appropriate treatment, negative influences on the person, or the location of family or other persons or organizations offering support to the person.

(2) If in a case where the court has made an affirmative special finding under RCW 71.05.280(3)(b) the secretary develops an individualized discharge plan which is outside of the county of origin, and there are two or more options for placement, the secretary shall develop the individualized discharge plan in a manner that does not have a disproportionate effect on a single county.

(3) If the secretary participates in the development of an individualized discharge plan in a case where the court has made an affirmative special finding under RCW 71.05.280(3)(b) calling for placement outside the county of origin, the secretary shall provide the law and justice council of the county in which the person is to be discharged with a written explanation.

(4) For purposes of this section, "county of origin" means the county in which the person was most recently enrolled in services prior to the current commitment, another county within the same regional service area, or, if the person was not enrolled in services prior to the current commitment, a county within the same regional service area as the county where the person was criminally charged prior to commitment.

**Sec.**  RCW 71.09.096 and 2015 c 278 s 3 are each amended to read as follows:

(1) If the court or jury determines that conditional release to a less restrictive alternative is in the best interest of the person and includes conditions that would adequately protect the community, and the court determines that the minimum conditions set forth in RCW 71.09.092 and in this section are met, the court shall enter judgment and direct a conditional release.

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

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

(4) Prior to authorizing any release to a less restrictive alternative, the court shall impose such conditions upon the person as are necessary to ensure the safety of the community. The court shall order the department of corrections to investigate the less restrictive alternative and recommend any additional conditions to the court. These conditions shall include, but are not limited to the following: Specification of residence, prohibition of contact with potential or past victims, prohibition of alcohol and other drug use, participation in a specific course of inpatient or outpatient treatment that may include monitoring by the use of polygraph and plethysmograph, monitoring through the use of global positioning ((~~satellite [global positioning system]~~)) system technology, supervision by a department of corrections community corrections officer, a requirement that the person remain within the state unless the person receives prior authorization by the court, and any other conditions that the court determines are in the best interest of the person or others. A copy of the conditions of release shall be given to the person and to any designated service providers.

(5)(a) Prior to authorizing release to a less restrictive alternative, the court shall consider whether it is appropriate to release the person to the person's county of commitment or, if this placement is not available, to a neighboring county. To ensure equitable distribution of releases, and prevent the disproportionate grouping of persons subject to less restrictive orders in any one county, or in any one jurisdiction or community within a county, the legislature finds it is appropriate for releases to a less restrictive alternative to occur in the person's county of commitment, or, if this placement is not available, in a neighboring county, unless the court determines that the person's return to his or her county of commitment or, if this placement is not available, to a neighboring county would be inappropriate considering any court-issued protection orders, victim safety concerns, the availability of appropriate treatment or facilities that would adequately protect the community, negative influences on the person, or the location of family or other persons or organizations offering support to the person. When the ((~~department or court~~)) state assists in developing a placement under this section which is outside of the county of commitment, ((~~and there are two or more options for placement,~~)) it shall endeavor to develop the placement in neighboring counties first, in a manner that does not have a disproportionate effect on a single county.

(b) If the committed person is not conditionally released to his or her county of commitment, the department shall provide the law and justice council of the county in which the person is conditionally released with notice and a written explanation.

(c) For purposes of this section, the person's county of commitment means the county of the court which ordered the person's commitment.

(d) This subsection (5) does not apply to releases to a secure community transition facility under RCW 71.09.250.

(6) Any service provider designated to provide inpatient or outpatient treatment shall monthly, or as otherwise directed by the court, submit to the court, to the department of social and health services facility from which the person was released, to the prosecuting agency, and to the supervising community corrections officer, a report stating whether the person is complying with the terms and conditions of the conditional release to a less restrictive alternative.

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

NEW SECTION. **Sec.**  The department of social and health services must review and report by December 1, 2019, the adequacy of less restrictive alternative services available for the placement of persons committed under chapter 71.09 RCW within each regional service area, in order to place each person requiring less restrictive services under chapter 71.09 RCW within their county of commitment or, if adequate services are not available in the county of commitment or other factors identified in RCW 71.09.096 weigh against such placement, in another county within the same regional service area. In the event that any regional service area lacks adequate less restrictive alternative services, the department must present a plan to procure adequate services for less restrictive alternative placement within the boundaries of each regional service area. For the purposes of this section, "regional service area" means the purchasing regions identified by the health care authority for health care procurement.

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