
SENATE BILL 5040

State of Washington

66th Legislature

2019 Regular Session

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

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

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 71.05
7 RCW to read as follows:

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

20 (2) If in a case where the court has made an affirmative special
21 finding under RCW 71.05.280(3)(b) the secretary develops an

1 individualized discharge plan which is outside of the county of
2 origin, and there are two or more options for placement, the
3 secretary shall develop the individualized discharge plan in a manner
4 that does not have a disproportionate effect on a single county.

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

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

18 **Sec. 2.** RCW 71.09.096 and 2015 c 278 s 3 are each amended to
19 read as follows:

20 (1) If the court or jury determines that conditional release to a
21 less restrictive alternative is in the best interest of the person
22 and includes conditions that would adequately protect the community,
23 and the court determines that the minimum conditions set forth in RCW
24 71.09.092 and in this section are met, the court shall enter judgment
25 and direct a conditional release.

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

33 (3) If the service provider designated by the court to provide
34 inpatient or outpatient treatment or to monitor or supervise any
35 other terms and conditions of a person's placement in a less
36 restrictive alternative is other than the department of social and
37 health services or the department of corrections, then the service
38 provider so designated must agree in writing to provide such
39 treatment, monitoring, or supervision in accord with this section.

1 Any person providing or agreeing to provide treatment, monitoring, or
2 supervision services pursuant to this chapter may be compelled to
3 testify and any privilege with regard to such person's testimony is
4 deemed waived.

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

23 (5) (a) Prior to authorizing release to a less restrictive
24 alternative, the court shall consider whether it is appropriate to
25 release the person to the person's county of commitment or, if this
26 placement is not available, to a neighboring county. To ensure
27 equitable distribution of releases, and prevent the disproportionate
28 grouping of persons subject to less restrictive orders in any one
29 county, or in any one jurisdiction or community within a county, the
30 legislature finds it is appropriate for releases to a less
31 restrictive alternative to occur in the person's county of
32 commitment, or, if this placement is not available, in a neighboring
33 county, unless the court determines that the person's return to his
34 or her county of commitment or, if this placement is not available,
35 to a neighboring county would be inappropriate considering any court-
36 issued protection orders, victim safety concerns, the availability of
37 appropriate treatment or facilities that would adequately protect the
38 community, negative influences on the person, or the location of
39 family or other persons or organizations offering support to the
40 person. When the (~~department or court~~) state assists in developing

1 a placement under this section which is outside of the county of
2 commitment, (~~and there are two or more options for placement,~~) it
3 shall endeavor to develop the placement in neighboring counties
4 first, in a manner that does not have a disproportionate effect on a
5 single county.

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

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

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

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

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

35 NEW SECTION. **Sec. 3.** The department of social and health
36 services must review and report by December 1, 2019, the adequacy of
37 less restrictive alternative services available for the placement of
38 persons committed under chapter 71.09 RCW within each regional
39 service area, in order to place each person requiring less

1 restrictive services under chapter 71.09 RCW within their county of
2 commitment or, if adequate services are not available in the county
3 of commitment or other factors identified in RCW 71.09.096 weigh
4 against such placement, in another county within the same regional
5 service area. In the event that any regional service area lacks
6 adequate less restrictive alternative services, the department must
7 present a plan to procure adequate services for less restrictive
8 alternative placement within the boundaries of each regional service
9 area. For the purposes of this section, "regional service area" means
10 the purchasing regions identified by the health care authority for
11 health care procurement.

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