
SENATE BILL 6008

State of Washington 53rd Legislature 1994 Regular Session

By Senators A. Smith, Quigley, Oke and Nelson

Read first time 01/10/94. Referred to Committee on Law & Justice.

1 AN ACT Relating to sexually violent predators; and amending RCW
2 71.09.030, 71.09.040, 71.09.050, and 71.09.060.

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

4 **Sec. 1.** RCW 71.09.030 and 1992 c 45 s 4 are each amended to read
5 as follows:

6 When it appears that: (1) The term of total confinement of a
7 person who has been convicted of a sexually violent offense is about to
8 expire, or has expired on, before, or after July 1, 1990; (2) the term
9 of total confinement of a person found to have committed a sexually
10 violent offense as a juvenile is about to expire, or has expired on,
11 before, or after July 1, 1990; (3) a person who has been charged with
12 a sexually violent offense and who has been determined to be
13 incompetent to stand trial is about to be released, or has been
14 released on, before, or after July 1, 1990, pursuant to RCW
15 10.77.090(3); or (4) a person who has been found not guilty by reason
16 of insanity of a sexually violent offense is about to be released, or
17 has been released on, before, or after July 1, 1990, pursuant to RCW
18 10.77.020(3); and it appears that the person may be a sexually violent
19 predator, the prosecuting attorney of the county where the person was

1 convicted or charged or the attorney general if requested by the
2 prosecuting attorney may file a petition alleging that the person is a
3 "sexually violent predator" and stating sufficient facts to support
4 such allegation. For nonincarcerated individuals, the petition must
5 also include an allegation of a recent overt act sufficient to
6 establish probable cause when considered in conjunction with the other
7 factors listed in RCW 71.09.040.

8 **Sec. 2.** RCW 71.09.040 and 1990 c 3 s 1004 are each amended to read
9 as follows:

10 Upon the filing of a petition under RCW 71.09.030, the judge shall
11 determine whether probable cause exists to believe that the person
12 named in the petition is a sexually violent predator. Within seventy-
13 two hours of the filing of the petition, the person shall be provided
14 with notice and an opportunity to appear at a hearing in order to
15 contest probable cause. If such determination is made the judge shall
16 direct that the person be taken into custody and the person shall be
17 transferred to an appropriate facility for an evaluation as to whether
18 the person is a sexually violent predator. The evaluation shall be
19 conducted by a person deemed to be professionally qualified to conduct
20 such an examination pursuant to rules developed by the department of
21 social and health services. In adopting such rules, the department of
22 social and health services shall consult with the department of health
23 and the department of corrections.

24 **Sec. 3.** RCW 71.09.050 and 1990 c 3 s 1005 are each amended to read
25 as follows:

26 Within forty-five days after the filing of a petition pursuant to
27 RCW 71.09.030, the court shall conduct a trial to determine whether the
28 person is a sexually violent predator. At all stages of the
29 proceedings under this chapter, any person subject to this chapter
30 shall be entitled to the assistance of counsel, and if the person is
31 indigent, the court shall appoint counsel to assist him or her.
32 Whenever any person is subjected to an examination under this chapter,
33 he or she may retain experts or professional persons to perform an
34 examination on their behalf. When the person wishes to be examined by
35 a qualified expert or professional person of his or her own choice,
36 such examiner shall be permitted to have reasonable access to the
37 person for the purpose of such examination, as well as to all relevant

1 medical and psychological records and reports. In the case of a person
2 who is indigent, the court shall, upon the person's request, assist the
3 person in obtaining an expert or professional person to perform an
4 examination or participate in the trial on the person's behalf. The
5 person, the prosecuting attorney or attorney general, or the judge
6 shall have the right to demand that the trial be before a twelve-person
7 jury. If no demand is made, the trial shall be before the court.

8 **Sec. 4.** RCW 71.09.060 and 1990 1st ex.s. c 12 s 4 are each amended
9 to read as follows:

10 (1) The court or jury shall determine whether, beyond a reasonable
11 doubt, all allegations in the petition have been satisfied and the
12 person is a sexually violent predator. When the determination is made
13 by a jury, the verdict must be unanimous. If the state alleges that
14 the prior sexually violent offense that forms the basis for the
15 petition for commitment was an act that was sexually motivated as
16 provided in RCW 71.09.020(4)(c), the state must prove beyond a
17 reasonable doubt that the alleged sexually violent act was sexually
18 motivated as defined in RCW 9.94A.030. If the court or jury determines
19 that the person is a sexually violent predator, and, after considering
20 less restrictive alternatives to commitment, finds that no such
21 alternatives are in the best interests of the person or others, the
22 person shall be committed to the custody of the department of social
23 and health services in a secure facility for control, care, and
24 treatment until such time as the person's mental abnormality or
25 personality disorder has so changed that the person is safe to be at
26 large.

27 If the court or jury finds that the person is a sexually violent
28 predator, but that treatment in a setting less restrictive than
29 commitment is in the best interest of the person or others, the court
30 shall direct the department of social and health services to determine
31 and administer an appropriate less restrictive course of treatment for
32 the person.

33 Such control, care, and treatment shall be provided at a facility
34 operated by the department of social and health services. If the court
35 or jury is not satisfied beyond a reasonable doubt that the person is
36 a sexually violent predator, the court shall direct the person's
37 release.

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

25 (3) The state shall comply with RCW 10.77.220 while confining the
26 person pursuant to this chapter. The facility shall not be located on
27 the grounds of any state mental facility or regional habilitation
28 center because these institutions are insufficiently secure for this
29 population.

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