H-3557.2

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**HOUSE BILL 2579**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Kilduff, McDonald, Muri, Fey, Stambaugh, and Sawyer

AN ACT Relating to the placement and treatment of conditionally released sexually violent predators; amending RCW 71.09.096; adding new sections to chapter 71.09 RCW; and providing an expiration date.

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

**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 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. 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, unless the court determines at an evidentiary hearing that the person's return to his or her county of commitment would be ((~~inappropriate considering~~)) a threat to public safety, based on consideration of: (i) Any court-issued protection orders((~~,~~)) and any specific articulated threat to victim safety ((~~concerns,~~)) which cannot be addressed by ordering the use of electronic monitoring with global positioning satellite technology; and (ii) the ((~~availability~~)) unavailability 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 determining the county of placement for a conditional release, the court shall consider the statistical summary and other documentation provided pursuant to (b) of this subsection and endeavor to equitably distribute releases across the state. If the court authorizes conditional release to a county other than the county of commitment, the court shall enter specific findings concerning the decision.

(b) If a proposed placement plan includes a residence in a county other than the county of commitment, the state shall file with the court and serve upon the proposed county of placement at least sixty days prior to the hearing in (a) of this subsection a statistical summary showing the number of all conditional releases to a less restrictive alternative for the preceding five years, including data referencing and comparing county of commitment and county of placement. The notice to the proposed county of placement must include the case number and other appropriate information for the present case so as to provide the county with information necessary to determine whether to file a motion to intervene as a party under this subsection. Notice must be sent to the county prosecuting attorney and the law and justice council of the proposed county of placement. The proposed county of placement may intervene as a party in the proceeding, conduct discovery, and offer evidence and argument at the hearing under (a) of this subsection.

(c) When the department ((~~or court~~)) assists in developing a placement ((~~under this section which is~~)) plan, the department shall consider a residential placement in the county of commitment. If the department proposes a residential placement outside of the county of commitment, ((~~and there are two or more options for placement,~~)) it shall ((~~endeavor to~~)) develop the placement in a manner that does not have a disproportionate effect on a single county and shall provide written documentation to the court as to its rationale in this regard. Regardless of whether the department assists with developing a placement plan, if a proposed placement plan submitted to the court pursuant to the requirements of RCW 71.09.090 and 71.09.092 includes a residence outside the county of commitment, the proposal must include an explanation as to why the county of commitment is not an appropriate placement for the committed person. The proposal must specifically describe efforts to seek treatment providers and residential placement in the county of commitment, including whether or not every treatment provider in the county of commitment posted on the list under section 2 of this act was contacted.

((~~(b)~~)) (d) If, after a hearing under (a) of this subsection, the court authorizes the conditional release of the committed person ((~~is not conditionally released to~~)) to a placement in a county other than 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 at least sixty days prior to release.

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

((~~(d)~~)) (f) 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, to the law and justice council of the county in which the person is released, 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.**  A new section is added to chapter 71.09 RCW to read as follows:

(1) Beginning January 1, 2019, the department shall maintain a list of certified sex offender treatment providers offering treatment to conditionally released sexually violent predators under RCW 71.09.350, which must include information on the city and county where providers are located and the type of treatment offered. The list must be updated at least every six months and made available to committed persons eligible or otherwise seeking conditional release under RCW 71.09.090.

(2) The department shall encourage eligible professionals located in underserved areas to seek certification under RCW 18.155.030 so as to reduce the impact of conditionally releasing several sexually violent predators to the same location. The department is authorized to engage in outreach and other educational efforts to comply with this section.

NEW SECTION. **Sec.**  A new section is added to chapter 71.09 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the department shall administer a grant program for the purpose of expanding the availability of certified treatment providers under chapter 18.155 RCW in underserved counties. Underserved counties are counties where the department finds there are an insufficient number of treatment providers, thereby preventing residential placement of persons conditionally released under this chapter in those counties.

(2) Grants shall be provided on an individual basis to eligible grant applicants for the purpose of paying for the costs of the training requirements and the costs of application, examination, and certification under chapter 18.155 RCW. Grants may be awarded from July 1, 2018, through June 30, 2021.

(3) Eligible grant applicants must:

(a) Be credentialed health professionals;

(b) Have completed the education requirements for certification, as promulgated by department of health rules;

(c) Agree to practice for at least three years in an underserved county; and

(d) Meet other requirements established by the department. In developing eligibility criteria, the department shall consult with the department of health.

(4) Grant recipients shall comply with policies and procedures established by the department. Upon receiving certification under chapter 18.155 RCW, a grant recipient must offer treatment services to persons conditionally released under this chapter in at least one underserved county, as designated by the department, for a minimum of two years. If an applicant does not comply with this section, he or she shall reimburse the department for the total amount of the grant award.

(5) The department shall:

(a) Design and implement the grant program according to the requirements of this section;

(b) Adopt necessary policies and procedures to administer the program;

(c) Monitor the use of grant funds and compliance with the requirements of the program; and

(d) Collect reimbursements for grants when a grant recipient fails to meet the requirements of subsection (4) of this section.

(6) The department shall report to the appropriate committees of the legislature and the governor by December 1st of each year on the status of the grant program, including the number of grants awarded, the number of certifications resulting from grant awards, the counties where grant recipients are offering services, and any other information deemed relevant by the department.

(7) This section expires June 30, 2024.

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