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**SENATE BILL 6359**

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

**By** Senator O'Ban

AN ACT Relating to concerning limiting and clarifying the legal requirements for the conditional release of sexually violent predators to a less restrictive environment; and amending RCW 71.09.096.

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 following an evidentiary hearing that the person's return to his or her county of commitment would be ((~~inappropriate~~)) a substantial threat to public safety considering any court-issued protection orders((~~,~~)) and any specific, articulated threat to victim safety ((~~concerns, the availability~~)) that cannot be addressed by court-ordered electronic monitoring to include use of global positioning satellite technology, or the 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~~)). The burden of proof by clear and convincing evidence is upon the state of Washington at the hearing, and in each case the state must file with the court and serve upon the prospective receiving county at least sixty days before the hearing a statistical summary showing, by county of commitment and by receiving county, the number of all less restrictive alternative releases under this chapter both to county of commitment and to other than county of commitment for the preceding five years. 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 a manner that does not have a disproportionate effect on a single county and state in writing its rationale in this regard.

(b) If, pursuant to a motion, proposed order, or otherwise, the committed person is not to be 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 proposed to be conditionally released with notice and a written explanation at least sixty days before the court hearing concerning release on a less restrictive alternative. Before approving any release order to other than the county of commitment, the state must provide the prospective receiving county with at least sixty days written notice. If the county elects, it may intervene as a party in the proceeding, conduct discovery, and offer evidence and argument at the hearing. If the release is approved, the court must enter specific findings of fact concerning the decision. Release to a county other than the county of commitment shall not be based upon maintaining continuity with a current or prior treatment provider where the county of commitment has a population in excess of four hundred fifty thousand according to the latest census data or a more recent official estimate of the state office of financial management, nor where the county of commitment has available one or more treatment providers who meet the requirements of chapter 18.155 RCW. Before any release outside the county of commitment, the state must certify to the court by means of sworn evidence, and the court must find, that the state has contacted every treatment provider certified under chapter 18.155 RCW in the county of commitment and that each such provider has refused to accept the person for treatment that would meet the requirements of RCW 71.09.092. A person who is unwilling to accept treatment from a qualified and willing treatment provider in the county of commitment shall not be granted release. The availability of recommended counseling or treatment for issues other than sex offender treatment, including but not limited to chemical dependency, domestic violence, and anger management, shall not be a basis to release outside the county of commitment. The presence outside the county of commitment of a "support network" such as one or more family members, friends, or other acquaintances shall not be a basis to release to other than the county of commitment. Release to other than the county of commitment shall not be based on an effort to limit the travel distance or travel time for treatment or other purposes.

(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, 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.

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