CERTIFICATION OF ENROLLMENT

**ENGROSSED SECOND SUBSTITUTE SENATE BILL 5163**

Chapter 236, Laws of 2021

67th Legislature

2021 Regular Session

CONDITIONALLY RELEASED SEXUALLY VIOLENT PREDATORS—PLACEMENT AND TREATMENT

EFFECTIVE DATE: July 25, 2021

|  |  |
| --- | --- |
| Passed by the Senate April 19, 2021  Yeas 27 Nays 22  DENNY HECK  **President of the Senate**  Passed by the House April 8, 2021  Yeas 61 Nays 37  LAURIE JINKINS  **Speaker of the House of Representatives** | CERTIFICATE  I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5163** as passed by the Senate and the House of Representatives on the dates hereon set forth.  BRAD HENDRICKSON  Secretary |
| Approved May 10, 2021 3:32 PM | May 10, 2021 |
| JAY INSLEE  **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ENGROSSED SECOND SUBSTITUTE SENATE BILL 5163**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

**State of Washington 67th Legislature 2021 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Rolfes, Dhingra, Saldaña, and Wilson, C.)

AN ACT Relating to the placement and treatment of conditionally released sexually violent predators; amending RCW 71.09.080, 71.09.090, 71.09.092, 71.09.096, 71.09.130, 71.09.140, and 71.09.250; reenacting and amending RCW 71.09.020; adding new sections to chapter 71.09 RCW; adding a new section to chapter 9.94A RCW; creating a new section; and providing expiration dates.

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

NEW SECTION. **Sec.**  The legislature finds that in 2008, the sex offender policy board was established to provide a more coordinated and integrated response to sex offender management in Washington state. The legislature further finds that in March 2020, the board was convened to review policies and practices related to sexually violent predators. The legislature recognizes that the board released a report and a series of recommendations regarding improvement to the current practice in order to ensure a successful transition for individuals convicted of sex offenses from total confinement back into the community. The legislature resolves to increase community safety through successful transition by enacting the recommendations of the board and other related policies.

**Sec.**  RCW 71.09.020 and 2015 c 278 s 2 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of social and health services.

(2) "Fair share principles" and "fair share principles of release" means that each county has adequate options for conditional release housing placements in a number generally equivalent to the number of residents from that county who are subject to total confinement pursuant to this chapter.

(3) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

((~~(3)~~)) (4) "Health care practitioner" means an individual or firm licensed or certified to engage actively in a regulated health profession.

((~~(4)~~)) (5) "Health care services" means those services provided by health professionals licensed pursuant to RCW 18.120.020(4).

((~~(5)~~)) (6) "Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).

((~~(6)~~)) (7) "Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions set forth in RCW 71.09.092. A less restrictive alternative may not include placement in the community protection program as pursuant to RCW 71A.12.230.

((~~(7)~~)) (8) "Likely to engage in predatory acts of sexual violence if not confined in a secure facility" means that the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

((~~(8)~~)) (9) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

((~~(9)~~)) (10) "Personality disorder" means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has onset in adolescence or early adulthood, is stable over time and leads to distress or impairment. Purported evidence of a personality disorder must be supported by testimony of a licensed forensic psychologist or psychiatrist.

((~~(10)~~)) (11) "Predatory" means acts directed towards: (a) Strangers; (b) individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or (c) persons of casual acquaintance with whom no substantial personal relationship exists.

((~~(11)~~)) (12) "Prosecuting agency" means the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney, as provided in RCW 71.09.030.

((~~(12)~~)) (13) "Recent overt act" means any act, threat, or combination thereof that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act or behaviors.

((~~(13)~~)) (14) "Risk potential activity" or "risk potential facility" means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: Public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, public libraries, public and private youth camps, and others identified by the department following the hearings on a potential site required in RCW 71.09.315. For purposes of this chapter, "school bus stops" does not include bus stops established primarily for public transit.

((~~(14)~~)) (15) "Secretary" means the secretary of social and health services or the secretary's designee.

((~~(15)~~)) (16) "Secure community transition facility" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facility established pursuant to RCW 71.09.250(1)(a)(i) and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

((~~(16)~~)) (17) "Secure facility" means a residential facility for persons civilly confined under the provisions of this chapter that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement under RCW 71.09.096.

((~~(17)~~)) (18) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

((~~(18)~~)) (19) "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

((~~(19)~~)) (20) "Total confinement facility" means a secure facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a total confinement facility by the secretary.

((~~(20)~~)) (21) "Treatment" means the sex offender specific treatment program at the special commitment center or a specific course of sex offender treatment pursuant to RCW 71.09.092 (1) and (2).

**Sec.**  RCW 71.09.080 and 2012 c 257 s 6 are each amended to read as follows:

(1) Any person subjected to restricted liberty as a sexually violent predator pursuant to this chapter shall not forfeit any legal right or suffer any legal disability as a consequence of any actions taken or orders made, other than as specifically provided in this chapter, or as otherwise authorized by law.

(2)(a) Any person committed or detained pursuant to this chapter shall be prohibited from possessing or accessing a personal computer if the resident's individualized treatment plan states that access to a computer is harmful to bringing about a positive response to a specific and certain phase or course of treatment.

(b) A person who is prohibited from possessing or accessing a personal computer under (a) of this subsection shall be permitted to access a limited functioning personal computer capable of word processing and limited data storage on the computer only that does not have: (i) Internet access capability; (ii) an optical drive, external drive, universal serial bus port, or similar drive capability; or (iii) the capability to display photographs, images, videos, or motion pictures, or similar display capability from any drive or port capability listed under (b)(ii) of this subsection.

(3) Any person committed pursuant to this chapter has the right to adequate care ((~~and~~)), individualized treatment, and the development of an ongoing, clinically appropriate discharge plan as part of the treatment process. The department of social and health services shall keep records detailing all medical, expert, and professional care and treatment received by a committed person, and shall keep copies of all reports of periodic examinations made pursuant to this chapter. All such records and reports shall be made available upon request only to: The committed person, his or her attorney, the prosecuting agency, the court, the protection and advocacy agency, or another expert or professional person who, upon proper showing, demonstrates a need for access to such records.

(4) The right to the development of a discharge plan under subsection (3) of this section does not guarantee that any particular person will be determined appropriate for discharge at any particular time. Nothing in this section precludes the department from expressing professional judgment regarding the suitability of discharge for the protection of a resident's safety or community safety. Individualized and ongoing discharge planning requires, at a minimum, and as part of a person's treatment plan, the following are addressed based on information known to the department and in accordance with policies developed by the department to implement this subsection:

(a) The resident's known physical health, functioning, and any need for health aid devices;

(b) The resident's known intellectual or cognitive level of functioning and need for specialized programming;

(c) The resident's known history of substance use and abuse;

(d) The resident's known history of risky or impulsive behaviors, criminogenic needs, and treatment interventions to address them;

(e) The resident's known ability to perform life skills and activities of daily living independently and the resident's known need for any disability accommodations;

(f) A summary of the known community services and supports the resident needs for a safe life in the community and the type of providers of such services and support; and

(g) A plan to mitigate the needs identified in this subsection that also addresses ways to develop or increase social supports, recreation opportunities, gainful employment, and if applicable, spiritual opportunities.

(5) At the time a person is taken into custody or transferred into a facility pursuant to a petition under this chapter, the professional person in charge of such facility or his or her designee shall take reasonable precautions to inventory and safeguard the personal property of the persons detained or transferred. A copy of the inventory, signed by the staff member making it, shall be given to the person detained and shall, in addition, be open to inspection to any responsible relative, subject to limitations, if any, specifically imposed by the detained person. For purposes of this subsection, "responsible relative" includes the guardian, conservator, attorney, spouse, parent, adult child, or adult brother or sister of the person. The facility shall not disclose the contents of the inventory to any other person without consent of the patient or order of the court.

((~~(5)~~)) (6) Nothing in this chapter prohibits a person presently committed from exercising a right presently available to him or her for the purpose of obtaining release from confinement, including the right to petition for a writ of habeas corpus.

((~~(6)~~)) (7) No indigent person may be conditionally released or unconditionally discharged under this chapter without suitable clothing, and the secretary shall furnish the person with such sum of money as is required by RCW 72.02.100 for persons without ample funds who are released from correctional institutions. As funds are available, the secretary may provide payment to the indigent persons conditionally released pursuant to this chapter consistent with the optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules to do so.

((~~(7)~~)) (8) If a civil commitment petition is dismissed, or a trier of fact determines that a person does not meet civil commitment criteria, the person shall be released within twenty-four hours of service of the release order on the superintendent of the special commitment center, or later by agreement of the person who is the subject of the petition.

**Sec.**  RCW 71.09.090 and 2018 c 131 s 2 are each amended to read as follows:

(1)(a) If the secretary determines that the person's condition has so changed that ((~~either: (a) The~~)) the person no longer meets the definition of a sexually violent predator((~~; or (b) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community~~)), the secretary shall authorize the person to petition the court for ((~~conditional release to a less restrictive alternative or~~)) unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for ((~~conditional release to a less restrictive alternative or~~)) unconditional discharge, shall within ((~~forty-five~~)) 45 days order a hearing.

(b) If the secretary determines that the person's condition has so changed that conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, then the secretary shall authorize the person to petition the court for conditional release to a less restrictive alternative. Upon receipt of the petition, the court shall order the department to identify a less restrictive alternative placement that satisfies RCW 71.09.092 (1) through (4). Once identified, notice of the placement shall be filed with the court and served upon: The prosecuting agency responsible for the initial commitment; any person or persons identified in RCW 71.09.140(2)(a) who have opted to receive notifications under this chapter; and the person and his or her counsel. If the department cannot identify a placement available to the person that satisfies RCW 71.09.092 (1) through (4) within 90 days, the department shall provide a written certification to the court, the prosecuting agency responsible for the initial commitment, and the person and his or her counsel, detailing the efforts of the department to identify a qualifying placement. Upon the department's certification, the person may propose a placement that satisfies RCW 71.09.092 (1) through (3). After a less restrictive placement has been proposed by either the department or the person, the court shall within 45 days order a hearing.

(2)(a) Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for conditional release to a less restrictive alternative or unconditional discharge without the secretary's approval. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for conditional release to a less restrictive alternative or unconditional discharge over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall file the notice and waiver form and the annual report with the court. If the person does not affirmatively waive the right to petition, the court shall set a show cause hearing to determine whether probable cause exists to warrant a hearing on whether the person's condition has so changed that: (i) He or she no longer meets the definition of a sexually violent predator; or (ii) conditional release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community.

(b)(i) The committed person shall have a right to have an attorney represent him or her at the show cause hearing, which may be conducted solely on the basis of affidavits or declarations, but the person is not entitled to be present at the show cause hearing. At the show cause hearing, the prosecuting agency shall present prima facie evidence establishing: (A) That the committed person continues to meet the definition of a sexually violent predator; and (B) that a less restrictive alternative is not in the best interest of the person and conditions cannot be imposed that adequately protect the community.

(ii)(A) If the state produces prima facie evidence that the committed person continues to be a sexually violent predator, then the state's burden under (b)(i)(A) of this subsection is met and an unconditional release trial may not be ordered unless the committed person produces evidence satisfying: Subsection (4)(a) of this section; and subsection (4)(b) (i) or (ii) of this section.

(B) If the state produces prima facie evidence that a less restrictive alternative is not appropriate for the committed person, then the state's burden under (b)(i)(B) of this subsection is met, and a conditional release trial may not be ordered unless the committed person:

(I) Produces evidence satisfying: Subsection (4)(a) of this section; and subsection (4)(b) (i) or (ii) of this section; and

(II) Presents the court with a specific placement satisfying the requirements of RCW 71.09.092.

(iii) In making the showing required under (b)(i) of this subsection, the state may rely exclusively upon the annual report prepared pursuant to RCW 71.09.070. The committed person may present responsive affidavits or declarations to which the state may reply.

(c)(i) If the court at the show cause hearing determines that either: ((~~(i)~~)) (A) The state has failed to present prima facie evidence that the committed person continues to meet the definition of a sexually violent predator ((~~and that no proposed less restrictive alternative is in the best interest of the person and conditions cannot be imposed that would adequately protect the community~~)); or ((~~(ii)~~)) (B) probable cause exists to believe that the person's condition has so changed that((~~: (A) The~~)) the person no longer meets the definition of a sexually violent predator((~~; or (B) release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community~~)), then the court shall set a hearing on ((~~either or both issues~~)) the issue of unconditional discharge.

(ii) If the court at the show cause hearing determines that the state has failed to present prima facie evidence that no proposed less restrictive alternative is in the best interest of the person and conditions cannot be imposed that would adequately protect the community, the court shall enter an order directing the department to propose a less restrictive alternative that satisfies RCW 71.09.092 (1) through (4). If the department cannot identify a placement available to the person that satisfies RCW 71.09.092 (1) through (4) within 90 days, the department shall provide a written certification to the court, the prosecuting agency responsible for the initial commitment, and the person and his or her counsel, detailing the efforts of the department to identify a qualifying placement. Upon the department's certification, the person may propose a placement that satisfies RCW 71.09.092 (1) through (3). After a less restrictive placement has been proposed by either the department or the person, the court shall set a hearing on the issue of conditional release.

(iii) If the court at the show cause hearing determines, based on the evidence submitted by the person, that probable cause exists to believe that release to a less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community, the court shall set a hearing on the issue of conditional release if the person presents the court with a specific placement that satisfies the requirements of RCW 71.09.092.

(d) If the court has not previously considered the issue of release to a less restrictive alternative, either through a trial on the merits or through the procedures set forth in RCW 71.09.094(1), or if an immediately preceding less restrictive alternative was revoked due to the loss of adequate housing or treatment for reasons other than noncompliance with housing requirements, treatment, or other conditions of the less restrictive alternative, the court shall consider whether release to a less restrictive alternative would be in the best interests of the person and conditions can be imposed that would adequately protect the community, without considering whether the person's condition has changed. ((~~The court may not find probable cause for a trial addressing less restrictive alternatives unless a proposed less restrictive alternative placement meeting the conditions of RCW 71.09.092 is presented to the court at the show cause hearing.~~))

(3)(a) At the hearing resulting from subsection (1) or (2) of this section, the committed person shall be entitled to be present and to the benefit of all constitutional protections that were afforded to the person at the initial commitment proceeding. The prosecuting agency shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The prosecuting agency shall have a right to a current evaluation of the person by experts chosen by the state. The judge may require the person to complete any or all of the following procedures or tests if requested by the evaluator: (i) A clinical interview; (ii) psychological testing; (iii) plethysmograph testing; and (iv) polygraph testing. The judge may order the person to complete any other procedures and tests relevant to the evaluation. The state is responsible for the costs of the evaluation. The committed person shall also have the right to a jury trial and the right to have experts evaluate him or her on his or her behalf and the court shall appoint an expert if the person is indigent and requests an appointment.

(b) Whenever any indigent person is subjected to an evaluation under (a) of this subsection, the office of public defense is responsible for the cost of one expert or professional person conducting an evaluation on the person's behalf. When the person wishes to be evaluated by a qualified expert or professional person of his or her own choice, such expert or professional person must be permitted to have reasonable access to the person for the purpose of such evaluation, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon the person's request, assist the person in obtaining an expert or professional person to perform an evaluation or participate in the hearing on the person's behalf. Nothing in this chapter precludes the person from paying for additional expert services at his or her own expense.

(c) If the issue at the hearing is whether the person should be unconditionally discharged, the burden of proof shall be upon the state to prove beyond a reasonable doubt that the committed person's condition remains such that the person continues to meet the definition of a sexually violent predator. Evidence of the prior commitment trial and disposition is admissible. The recommitment proceeding shall otherwise proceed as set forth in RCW 71.09.050 and 71.09.060.

(d) If the issue at the hearing is whether the person should be conditionally released to a less restrictive alternative, the burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that conditional release to any proposed less restrictive alternative either: (i) Is not in the best interest of the committed person; or (ii) does not include conditions that would adequately protect the community. Evidence of the prior commitment trial and disposition is admissible.

(4)(a) Probable cause exists to believe that a person's condition has "so changed," under subsection (2) of this section, only when evidence exists, since the person's last commitment trial, or less restrictive alternative revocation proceeding, of a substantial change in the person's physical or mental condition such that the person either no longer meets the definition of a sexually violent predator or that a conditional release to a less restrictive alternative is in the person's best interest and conditions can be imposed to adequately protect the community.

(b) A new trial proceeding under subsection (3) of this section may be ordered, or a trial proceeding may be held, only when there is current evidence from a licensed professional of one of the following and the evidence presents a change in condition since the person's last commitment trial proceeding:

(i) An identified physiological change to the person, such as paralysis, stroke, or dementia, that renders the committed person unable to commit a sexually violent act and this change is permanent; or

(ii) A change in the person's mental condition brought about through positive response to continuing participation in treatment which indicates that the person meets the standard for conditional release to a less restrictive alternative or that the person would be safe to be at large if unconditionally released from commitment.

(c) For purposes of this section, a change in a single demographic factor, without more, does not establish probable cause for a new trial proceeding under subsection (3) of this section. As used in this section, a single demographic factor includes, but is not limited to, a change in the chronological age, marital status, or gender of the committed person.

(5) When the court enters an order for unconditional discharge of a person from an immediately preceding less restrictive placement, the court must direct the clerk to transmit a copy of the order to the department of corrections for discharge process and termination of cause.

(6) The jurisdiction of the court over a person civilly committed pursuant to this chapter continues until such time as the person is unconditionally discharged.

((~~(6)~~)) (7) During any period of confinement pursuant to a criminal conviction, or for any period of detention awaiting trial on criminal charges, this section is suspended.

**Sec.**  RCW 71.09.092 and 2009 c 409 s 9 are each amended to read as follows:

Before the court may enter an order directing conditional release to a less restrictive alternative, it must find the following: (1) The person will be treated by a treatment provider who is qualified to provide such treatment in the state of Washington under chapter 18.155 RCW; (2) the treatment provider has presented a specific course of treatment and has agreed to assume responsibility for such treatment and will report progress to the court on a regular basis, and will report violations immediately to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center; (3) housing exists in Washington that complies with distance restrictions, is sufficiently secure to protect the community, and the person or agency providing housing to the conditionally released person has agreed in writing to accept the person, to provide the level of security required by the court, and immediately to report to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center if the person leaves the housing to which he or she has been assigned without authorization; (4) if the department has proposed housing that is outside of the county of commitment, a documented effort was made by the department to ensure that placement is consistent with fair share principles of release; (5) the person is willing to comply with the treatment provider and all requirements imposed by the treatment provider and by the court; and ((~~(5)~~)) (6) the person will be under the supervision of the department of corrections and is willing to comply with supervision requirements imposed by the department of corrections.

**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)(a) 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. In imposing conditions, the court must impose a restriction on the proximity of the person's residence to public or private schools providing instruction to kindergarten or any grades one through 12 in accordance with RCW 72.09.340. Courts shall require a minimum distance restriction of 500 feet on the proximity of the person's residence to child care facilities and public or private schools providing instruction to kindergarten or any grades one through 12. The court shall order the department of corrections to investigate the less restrictive alternative and, within 60 days of the order to investigate, recommend any additional conditions to the court. These conditions shall be individualized to address the person's specific risk factors and criminogenic needs and may include, but are not limited to the following: Specification of residence or restrictions on residence including distance restrictions, specification of contact with a reasonable number of individuals upon the person's request who are verified by the department of corrections to be appropriate social contacts, 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.

(b) To the greatest extent possible, the person, person's counsel, prosecuting agency responsible for the initial commitment, treatment provider, supervising community corrections officer, and appropriate clinical staff of the special commitment center shall meet and collaborate to craft individualized, narrowly tailored, and empirically based conditions to present to the court to help facilitate the person's successful transition to the community.

(5)(a) Prior to authorizing release to a less restrictive alternative proposed by the department, the court shall consider whether ((~~it is appropriate to release the person to the person's county of commitment~~)) the person's less restrictive alternative placement is in accordance with fair share principles. 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~~)) a manner that adheres to fair share principles. The legislature recognizes that there may be reasons why the department may not recommend that a person be released to his or her county of commitment, including availability of individualized resources, the person's support needs, or when the court determines that the person's return to his or her county of commitment would be inappropriate considering any court-issued protection orders, victim safety concerns that cannot be addressed through use of global positioning system technology, the ((~~availability~~)) unavailability of appropriate treatment or facilities that would adequately protect the community, negative influences on the person, ((~~or~~)) and the location of family or other persons or organizations offering support to the person. If the court authorizes conditional release based on the department's proposal to a county other than the county of commitment, the court shall enter specific findings regarding its decision and identify whether the release remains in line with fair share principles.

(b)(i) When the department ((~~or court assists in developing a~~)) develops a less restrictive alternative 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~~)), it shall attempt to identify a placement satisfying the requirements of RCW 71.09.092 that is aligned with fair share principles. The department shall document its rationale for the recommended placement.

(ii) If the department does not support or recommend conditional release to a less restrictive alternative due to a clinical determination, the department shall document its objection and certify that the department is developing the less restrictive alternative pursuant to a court order and not because of a clinical determination.

(iii) When the department develops or proposes a less restrictive alternative placement under this chapter, it shall be considered a predisposition recommendation.

(iv) In developing, modifying, and enforcing less restrictive alternatives, the department shall be deemed to be performing a quasi-judicial function.

((~~(b)~~)) (c) 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, including whether the department remains in compliance with fair share principles regarding releases under this chapter.

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

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

(6)(a) When ordered by the court, the department must provide less restrictive alternative treatment that includes, at a minimum:

(i) The services identified in the person's discharge plan as outlined in RCW 71.09.080(4);

(ii) The assignment of a community care coordinator;

(iii) Regular contacts with providers of court-ordered treatment services;

(iv) Community escorts, if needed;

(v) A transition plan that addresses the person's access to continued services upon unconditional discharge;

(vi) Financial support for necessary housing;

(vii) Life skills training and disability accommodations, if needed; and

(viii) Assistance in pursuing benefits, education, and employment.

(b) At the time the department of corrections is ordered to investigate a proposed less restrictive alternative placement, subject to the availability of amounts appropriated for this specific purpose, the department shall assign a social worker to assist the person with discharge planning, pursuing benefits, and coordination of care prior to release.

(i) The social worker shall assist the person with completing applications for benefits prior to the person's release from total confinement.

(ii) To promote continuity of care and the individual's success in the community, the department social worker shall be responsible for initiating a clinical transition of care between the last treating clinician at the special commitment center and the person's designated community treatment provider. This transition between one clinical setting to another shall occur no later than 15 days before an individual's release from the special commitment center.

(iii) If applicable, the social worker shall assist the person with locating any needed disability accommodations in the community and with obtaining resources to help address the person's identified life skills needs prior to release from total confinement.

(7) 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)~~)) (8) 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~~)) questions to be determined by the court ((~~is~~)) are whether the person shall continue to be conditionally released to a less restrictive alternative, and if so, whether a modification to the person's less restrictive alternative order is appropriate to ensure the conditional release remains in the best interest of the person and adequate to protect the victim and the community. The court in making its determination shall be aided by the periodic reports filed pursuant to subsection ((~~(6)~~)) (7) of this section and the opinions of the secretary and other experts or professional persons.

**Sec.**  RCW 71.09.130 and 1995 c 216 s 16 are each amended to read as follows:

(1) In the event of an escape by a person committed under this chapter from a state institution or the disappearance of such a person while on conditional release, the superintendent or community corrections officer shall notify the following as appropriate: Local law enforcement officers, other governmental agencies, the person's relatives, and any other appropriate persons about information necessary for the public safety or to assist in the apprehension of the person.

(2) If a person committed under this chapter disappears while on conditional release, the department of corrections may enter a warrant for the person's arrest for up to 96 hours pending entry of a bench warrant by the court.

(3) The department of corrections, its officers, agents, and employees are not liable for the acts of individuals on conditional release unless the department of corrections, its officers, agents, and employees acted with gross negligence.

(4) The department, its officers, agents, and employees are not liable for the acts of individuals on conditional release unless the department, its officers, agents, and employees acted with gross negligence.

**Sec.**  RCW 71.09.140 and 2012 c 257 s 12 are each amended to read as follows:

(1)(a) At the earliest possible date, and in no event later than ((~~thirty~~)) 30 days before conditional release, change of address for a person on conditional release, or unconditional discharge, except in the event of escape, the department of social and health services shall send written notice of conditional release, unconditional discharge, or escape, to the following:

((~~(a)~~)) (i) The chief of police of the city, if any, in which the person will reside or in which placement will be made under a less restrictive alternative;

((~~(b)~~)) (ii) The sheriff of the county in which the person will reside or in which placement will be made under a less restrictive alternative; and

((~~(c)~~)) (iii) The sheriff of the county where the person was last convicted of a sexually violent offense, if the department does not know where the person will reside.

The department shall notify the state patrol of the release of all sexually violent predators and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(b) A return to total confinement or to a secure community transition facility pending revocation or modification proceedings is not considered a change of address for purposes of (a) of this subsection, and an additional community notification process is not required, unless conditional release is revoked under RCW 71.09.098 or the return lasts longer than 90 days.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific person found to be a sexually violent predator under this chapter:

(a) The victim or victims of any sexually violent offenses for which the person was convicted in the past or the victim's next of kin if the crime was a homicide. "Next of kin" as used in this section means a person's spouse, parents, siblings, and children;

(b) Any witnesses who testified against the person in his or her commitment trial under RCW 71.09.060; and

(c) Any person specified in writing by the prosecuting agency.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting agency to receive the notice, and the notice are confidential and shall not be available to the committed person.

(3) If a person committed as a sexually violent predator under this chapter escapes from a department of social and health services facility, the department shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the committed person resided immediately before his or her commitment as a sexually violent predator, or immediately before his or her incarceration for his or her most recent offense. If previously requested, the department shall also notify the witnesses and the victims of the sexually violent offenses for which the person was convicted in the past or the victim's next of kin if the crime was a homicide. If the person is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(4) If the victim or victims of any sexually violent offenses for which the person was convicted in the past or the victim's next of kin, or any witness is under the age of ((~~sixteen~~)) 16, the notice required by this section shall be sent to the parents or legal guardian of the child.

(5) The department of social and health services shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(6) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section.

**Sec.**  RCW 71.09.250 and 2003 c 216 s 3 are each amended to read as follows:

(1)(a) The secretary is authorized to site, construct, occupy, and operate (i) a secure community transition facility on McNeil Island for persons authorized to petition for a less restrictive alternative under RCW 71.09.090(1) and who are conditionally released; and (ii) a special commitment center on McNeil Island with up to four hundred four beds as a total confinement facility under this chapter, subject to appropriated funding for those purposes. The secure community transition facility shall be authorized for the number of beds needed to ensure compliance with the orders of the superior courts under this chapter and the federal district court for the western district of Washington. The total number of beds in the secure community transition facility shall be limited to ((~~twenty-four~~)) 24, consisting of up to ((~~fifteen~~)) 15 transitional beds and up to nine pretransitional beds. The residents occupying the transitional beds shall be the only residents eligible for transitional services occurring in Pierce county. In no event shall more than ((~~fifteen~~)) 15 residents of the secure community transition facility be participating in off-island transitional, educational, or employment activity at the same time in Pierce county. The department shall provide the Pierce county sheriff, or his or her designee, with a list of the ((~~fifteen~~)) 15 residents so designated, along with their photographs and physical descriptions, and the list shall be immediately updated whenever a residential change occurs. The Pierce county sheriff, or his or her designee, shall be provided an opportunity to confirm the residential status of each resident leaving McNeil Island.

(b) For purposes of this subsection, "transitional beds" means beds only for residents who are judged by a qualified expert to be suitable to leave the island for treatment, education, and employment.

(2)(a) The secretary is authorized to site, either within the secure community transition facility established pursuant to subsection (1)(a)(i) of this section, or within the special commitment center, up to nine pretransitional beds.

(b) Residents assigned to pretransitional beds shall not be permitted to leave McNeil Island for education, employment, treatment, or community activities in Pierce county.

(c) For purposes of this subsection, "pretransitional beds" means beds for residents whose progress toward a less secure residential environment and transition into more complete community involvement is projected to take substantially longer than a typical resident of the special commitment center.

(3) Notwithstanding RCW 36.70A.103 or any other law, this statute preempts and supersedes local plans, development regulations, permitting requirements, inspection requirements, and all other laws as necessary to enable the secretary to site, construct, occupy, and operate a secure community transition facility on McNeil Island and a total confinement facility on McNeil Island.

(4) To the greatest extent possible, until June 30, 2003, persons who were not civilly committed from the county in which the secure community transition facility established pursuant to subsection (1) of this section is located may not be conditionally released to a setting in that same county less restrictive than that facility.

(5) As of June 26, 2001, the state shall immediately cease any efforts in effect on such date to site secure community transition facilities, other than the facility authorized by subsection (1) of this section, and shall instead site such facilities in accordance with the provisions of this section.

(6) The department must:

(a) Identify the minimum and maximum number of secure community transition facility beds in addition to the facility established under subsection (1) of this section that may be necessary for the period of May 2004 through May 2007 and provide notice of these numbers to all counties by August 31, 2001; and

(b) Develop and publish policy guidelines for the siting and operation of secure community transition facilities.

(7)(a) The total number of secure community transition facility beds that may be required to be sited in a county between June 26, 2001, and June 30, 2008, may be no greater than the total number of persons civilly committed from that county, or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause had been made on April 1, 2001. The total number of secure community transition facility beds required to be sited in each county between July 1, 2008, and June 30, 2015, may be no greater than the total number of persons civilly committed from that county or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause had been made as of July 1, 2008.

(b) Counties and cities that provide secure community transition facility beds above the maximum number that they could be required to site under this subsection are eligible for a bonus grant under the incentive provisions in RCW 71.09.255. The county where the special commitment center is located shall receive this bonus grant for the number of beds in the facility established in subsection (1) of this section in excess of the maximum number established by this subsection.

(c) No secure community transition facilities in addition to the one established in subsection (1) of this section may be required to be sited in the county where the special commitment center is located until after June 30, 2008, provided however, that the county and its cities may elect to site additional secure community transition facilities and shall be eligible under the incentive provisions of RCW 71.09.255 for any additional facilities meeting the requirements of that section.

(8) After the department demonstrates the need for additional bed capacity to the appropriate committees of the legislature, and receives approval and funding from the appropriate committees of the legislature to build additional bed capacity, the state is authorized to site and operate secure community transition facilities and other conditional release and transitional facilities in any county in the state in accordance with RCW 71.09.315. In identifying potential counties and sites within a county for the location of a secure community transition facility or other conditional release and transitional facilities, the department shall work with and assist local governments to provide for the equitable distribution of such facilities. In coordinating and deciding upon the siting of secure community transition facilities or other conditional release and transitional facilities within a county, great weight shall be given by the county and cities within the county to:

(a) The number and location of existing residential facility beds operated by the department of corrections or the mental health division of the department of social and health services in each jurisdiction in the county; and

(b) The number of registered sex offenders classified as level II or level III and the number of sex offenders registered as homeless residing in each jurisdiction in the county.

(9)(a) "Equitable distribution" means siting or locating secure community transition facilities and other conditional release and transitional facilities in a manner that will not cause a disproportionate grouping of similar facilities either in any one county, or in any one jurisdiction or community within a county, as relevant; and

(b) "Jurisdiction" means a city, town, or geographic area of a county in which distinct political or judicial authority may be exercised.

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

To facilitate the primary role of the department in identifying less restrictive alternative placements under RCW 71.09.090 and discharge planning under RCW 71.09.080, subject to the availability of amounts appropriated for this specific purpose, the department shall conduct a study to explore the development of conditional release and transition facilities, which may include community-based state-operated living alternatives similar to the state-operated living alternative program operated by the developmental disabilities administration. Any facilities or placements developed under this section may be identified through a request for proposal process or through direct state acquisition and development. Any contracts with facilities or placements entered into under this section shall include a provision requiring oversight by the department to ensure the programs are operating appropriately.

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

(1) In accordance with RCW 71.09.090 and 71.09.096, the department shall have the primary responsibility for developing a less restrictive alternative placement. To ensure the department has sufficient less restrictive alternative placements to choose from that satisfy the requirements of RCW 71.09.092, subject to the availability of amounts appropriated for this specific purpose, the department shall use a request for proposal process to solicit and contract with housing and treatment providers from across the state and facilitate fair share principles among the counties. In order to increase the number of housing options for individuals qualifying for a less restrictive alternative, the department shall have oversight of the vendors and providers who contract with the state, including the authority to inspect and ensure compliance, negotiate the rates charged for services, ensure adequate living conditions of housing locations, and terminate contracts. The department shall maintain a statewide accounting of the contracted community housing and treatment providers in each county and provide a biannual report to the legislature and governor by December 1st on the availability and adequacy of less restrictive alternative placements and the department's compliance with fair share principles.

(2) To facilitate its duties required under this section, the department shall use the following housing matrix and considerations as a guide to planning and developing less restrictive alternative placements. The following considerations may not be used as a reason to deny a less restrictive alternative placement.

(a) Considerations for evaluating a proposed vendor's application for less restrictive alternative housing services shall include applicable state and local zoning and building codes, general housing requirements, availability of public services, and other considerations identified in accordance with RCW 71.09.315. The department shall require the housing provider to provide proof that the facility is in compliance with all local zoning and building codes.

(i) General housing requirements include running water, electricity, bedroom and living space of adequate size, and no mold or infestations.

(ii) Availability of public services include availability of chaperones and whether the placement is within a reasonable distance to a grocery store, bank, public transportation options, and offices for public services and benefits.

(iii) Other considerations include whether the placement is consistent with fair share principles across the counties, whether the placement is within reasonable distance to other current or planned components of the less restrictive alternative, whether the placement is within reasonable distance to employment opportunities, and the reliability of global positioning system technology.

(b) Factors for evaluating less restrictive alternative options for a specific individual include sex offender treatment considerations, criminogenic needs and risk factors, protective factors, and the specific needs of the client.

(i) Sex offender treatment considerations include whether the housing is within a reasonable distance from the treatment provider, whether the treatment provider is a good therapeutic match with the client, and whether the treatment provider has relevant experience and background to treat the client if the client has special needs.

(ii) Criminogenic needs and risk factors include consideration of the person's specific needs and risk factors in evaluating less restrictive alternative options.

(iii) Protective factors include whether housing is within a reasonable distance of family, friends, potential hobbies, potential employment, and educational opportunities.

(iv) Consideration of the client's specific needs includes assessing the availability of personal care assistance and in-home care assistance, and whether housing is within a reasonable distance of mental health, medical treatment options, and substance use disorder treatment options.

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

(1) The department shall enter into a memorandum of understanding with the department of licensing to allow residents in total confinement at the special commitment center to obtain a state identification card through a written identification verification letter completed by the special commitment center and delivered to the department of licensing.

(2) The process shall occur upon the person's initial detention at the special commitment center. The process shall reoccur when the person's state identification card expires.

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, the sex offender policy board, and department of health shall convene a work group to develop recommendations to increase the availability and quality of sex offender treatment providers to meet the growing number of persons qualifying for conditional release to a less restrictive alternative. The work group shall gather data on best practices in other states and make recommendations whether sex offender treatment providers should be required to contract with the department; whether annual or biannual trainings by the department should be mandatory for prospective and existing sex offender treatment providers; whether the department should provide competitive wages for services or pay that is commensurate with the years of experience or education level of the treatment provider; and whether the department should provide other incentives such as a cost-of-living pay increase or compensating providers for the cost of mandated trainings associated with the sex offender treatment provider license under chapter 18.155 RCW. A report shall be submitted to the legislature by December 1, 2021.

(2) This section expires June 30, 2022.

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

(1) In accordance with RCW 9.94A.8673, the sex offender policy board shall meet quarterly during the 2021-2023 biennium to continue its review of sexually violent predators and less restrictive alternative policies and best practices, collaborate with stakeholders and the department, provide outreach to providers and stakeholders, and monitor implementation of this act. The board shall also explore and make recommendations whether to continue or remove the prohibition on a less restrictive alternative from including a placement in the community protection program pursuant to RCW 71A.12.230. The board shall provide semiannual updates to the appropriate committees of the legislature during the 2021-2023 biennium.

(2) This section expires June 30, 2023.

NEW SECTION. **Sec.**  A new section is added to chapter 9.94A RCW to read as follows:

(1) In accordance with section 14 of this act, the sex offender policy board shall meet quarterly during the 2021-2023 biennium to continue its review of sexually violent predators and less restrictive alternative policies and best practices, collaborate with stakeholders and the department, provide outreach to providers and stakeholders, and monitor implementation of this act. The board shall provide semiannual updates to the appropriate committees of the legislature during the 2021-2023 biennium.

(2) This section expires June 30, 2023.

**--- END ---**

Passed by the Senate April 19, 2021.

Passed by the House April 8, 2021.

Approved by the Governor May 10, 2021.

Filed in Office of Secretary of State May 10, 2021.