

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5718**

Chapter 409, Laws of 2009

61st Legislature  
2009 Regular Session

SEXUALLY VIOLENT PREDATORS--CIVIL COMMITMENT PROCEDURES

EFFECTIVE DATE: 05/07/09

Passed by the Senate April 22, 2009  
YEAS 49 NAYS 0

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

Passed by the House April 1, 2009  
YEAS 97 NAYS 0

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

Approved May 7, 2009, 3:02 p.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5718** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

\_\_\_\_\_  
**Secretary**

FILED

May 8, 2009

**Secretary of State  
State of Washington**

---

**SUBSTITUTE SENATE BILL 5718**

---

AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

**State of Washington                      61st Legislature                      2009 Regular Session**

**By** Senate Human Services & Corrections (originally sponsored by Senators Regala, Stevens, Holmquist, Hobbs, Carrell, and Hatfield; by request of Attorney General)

READ FIRST TIME 02/25/09.

1            AN ACT Relating to the commitment of sexually violent predators;  
2 amending RCW 71.09.020, 71.09.025, 71.09.030, 71.09.040, 71.09.050,  
3 71.09.060, 71.09.080, 71.09.090, 71.09.092, 71.09.096, 71.09.098,  
4 71.09.112, and 71.09.350; adding a new section to chapter 71.09 RCW;  
5 creating a new section; and declaring an emergency.

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

7            **Sec. 1.** RCW 71.09.020 and 2006 c 303 s 10 are each amended to read  
8 as follows:

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

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

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

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

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

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

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

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

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

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

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

31 ((+10)) (11) "Prosecuting agency" means the prosecuting attorney  
32 of the county where the person was convicted or charged or the attorney  
33 general if requested by the prosecuting attorney, as provided in RCW  
34 71.09.030.

35 (12) "Recent overt act" means any act ((or)) threat, or  
36 combination thereof that has either caused harm of a sexually violent  
37 nature or creates a reasonable apprehension of such harm in the mind of

1 an objective person who knows of the history and mental condition of  
2 the person engaging in the act or behaviors.

3 ~~((+11+))~~ (13) "Risk potential activity" or "risk potential  
4 facility" means an activity or facility that provides a higher  
5 incidence of risk to the public from persons conditionally released  
6 from the special commitment center. Risk potential activities and  
7 facilities include: Public and private schools, school bus stops,  
8 licensed day care and licensed preschool facilities, public parks,  
9 publicly dedicated trails, sports fields, playgrounds, recreational and  
10 community centers, churches, synagogues, temples, mosques, public  
11 libraries, public and private youth camps, and others identified by the  
12 department following the hearings on a potential site required in RCW  
13 71.09.315. For purposes of this chapter, "school bus stops" does not  
14 include bus stops established primarily for public transit.

15 ~~((+12+))~~ (14) "Secretary" means the secretary of social and health  
16 services or the secretary's designee.

17 ~~((+13+))~~ (15) "Secure facility" means a residential facility for  
18 persons civilly confined under the provisions of this chapter that  
19 includes security measures sufficient to protect the community. Such  
20 facilities include total confinement facilities, secure community  
21 transition facilities, and any residence used as a court-ordered  
22 placement under RCW 71.09.096.

23 ~~((+14+))~~ (16) "Secure community transition facility" means a  
24 residential facility for persons civilly committed and conditionally  
25 released to a less restrictive alternative under this chapter. A  
26 secure community transition facility has supervision and security, and  
27 either provides or ensures the provision of sex offender treatment  
28 services. Secure community transition facilities include but are not  
29 limited to the facility established pursuant to RCW 71.09.250(1)(a)(i)  
30 and any community-based facilities established under this chapter and  
31 operated by the secretary or under contract with the secretary.

32 ~~((+15+))~~ (17) "Sexually violent offense" means an act committed on,  
33 before, or after July 1, 1990, that is: (a) An act defined in Title 9A  
34 RCW as rape in the first degree, rape in the second degree by forcible  
35 compulsion, rape of a child in the first or second degree, statutory  
36 rape in the first or second degree, indecent liberties by forcible  
37 compulsion, indecent liberties against a child under age fourteen,  
38 incest against a child under age fourteen, or child molestation in the

1 first or second degree; (b) a felony offense in effect at any time  
2 prior to July 1, 1990, that is comparable to a sexually violent offense  
3 as defined in (a) of this subsection, or any federal or out-of-state  
4 conviction for a felony offense that under the laws of this state would  
5 be a sexually violent offense as defined in this subsection; (c) an act  
6 of murder in the first or second degree, assault in the first or second  
7 degree, assault of a child in the first or second degree, kidnapping in  
8 the first or second degree, burglary in the first degree, residential  
9 burglary, or unlawful imprisonment, which act, either at the time of  
10 sentencing for the offense or subsequently during civil commitment  
11 proceedings pursuant to this chapter, has been determined beyond a  
12 reasonable doubt to have been sexually motivated, as that term is  
13 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28  
14 RCW, that is an attempt, criminal solicitation, or criminal conspiracy  
15 to commit one of the felonies designated in (a), (b), or (c) of this  
16 subsection.

17 ((+16+)) (18) "Sexually violent predator" means any person who has  
18 been convicted of or charged with a crime of sexual violence and who  
19 suffers from a mental abnormality or personality disorder which makes  
20 the person likely to engage in predatory acts of sexual violence if not  
21 confined in a secure facility.

22 ((+17+)) (19) "Total confinement facility" means a secure facility  
23 that provides supervision and sex offender treatment services in a  
24 total confinement setting. Total confinement facilities include the  
25 special commitment center and any similar facility designated as a  
26 total confinement facility by the secretary.

27 **Sec. 2.** RCW 71.09.025 and 2008 c 213 s 11 are each amended to read  
28 as follows:

29 (1)(a) When it appears that a person may meet the criteria of a  
30 sexually violent predator as defined in RCW 71.09.020 (16), the agency  
31 with jurisdiction shall refer the person in writing to the prosecuting  
32 attorney of the county (~~where that person was charged~~) in which an  
33 action under this chapter may be filed pursuant to RCW 71.09.030 and  
34 the attorney general, three months prior to:

35 (i) The anticipated release from total confinement of a person who  
36 has been convicted of a sexually violent offense;

1 (ii) The anticipated release from total confinement of a person  
2 found to have committed a sexually violent offense as a juvenile;

3 (iii) Release of a person who has been charged with a sexually  
4 violent offense and who has been determined to be incompetent to stand  
5 trial pursuant to RCW 10.77.086(4); or

6 (iv) Release of a person who has been found not guilty by reason of  
7 insanity of a sexually violent offense pursuant to RCW 10.77.020(3).

8 (b) The agency shall provide the (~~prosecutor~~) prosecuting agency  
9 with all relevant information including but not limited to the  
10 following information:

11 (i) A complete copy of the institutional records compiled by the  
12 department of corrections relating to the person, and any such out-of-  
13 state department of corrections' records, if available;

14 (ii) A complete copy, if applicable, of any file compiled by the  
15 indeterminate sentence review board relating to the person;

16 (iii) All records relating to the psychological or psychiatric  
17 evaluation and/or treatment of the person;

18 (iv) A current record of all prior arrests and convictions, and  
19 full police case reports relating to those arrests and convictions; and

20 (v) A current mental health evaluation or mental health records  
21 review.

22 (c) The prosecuting agency has the authority, consistent with RCW  
23 72.09.345(3), to obtain all records relating to the person if the  
24 prosecuting agency deems such records are necessary to fulfill its  
25 duties under this chapter. The prosecuting agency may only disclose  
26 such records in the course of performing its duties pursuant to this  
27 chapter, unless otherwise authorized by law.

28 (d) The prosecuting agency has the authority to utilize the inquiry  
29 judge procedures of chapter 10.27 RCW prior to the filing of any action  
30 under this chapter to seek the issuance of compulsory process for the  
31 production of any records necessary for a determination of whether to  
32 seek the civil commitment of a person under this chapter. Any records  
33 obtained pursuant to this process may only be disclosed by the  
34 prosecuting agency in the course of performing its duties pursuant to  
35 this chapter, or unless otherwise authorized by law.

36 (2) (~~This section applies to acts committed before, on, or after~~  
37 ~~March 26, 1992.~~

1       ~~(3)~~) The agency, its employees, and officials shall be immune from  
2 liability for any good-faith conduct under this section.

3       ~~((4))~~ (3) As used in this section, "agency with jurisdiction"  
4 means that agency with the authority to direct the release of a person  
5 serving a sentence or term of confinement and includes the department  
6 of corrections, the indeterminate sentence review board, and the  
7 department of social and health services.

8       **Sec. 3.** RCW 71.09.030 and 2008 c 213 s 12 are each amended to read  
9 as follows:

10       (1) A petition may be filed alleging that a person is a sexually  
11 violent predator and stating sufficient facts to support such  
12 allegation when it appears that: ~~((1))~~ (a) A person who at any time  
13 previously has been convicted of a sexually violent offense is about to  
14 be released from total confinement ~~((on, before, or after July 1,~~  
15 ~~1990))~~; ~~((2))~~ (b) a person found to have committed a sexually violent  
16 offense as a juvenile is about to be released from total confinement  
17 ~~((on, before, or after July 1, 1990))~~; ~~((3))~~ (c) a person who has  
18 been charged with a sexually violent offense and who has been  
19 determined to be incompetent to stand trial is about to be released, or  
20 has been released ~~((on, before, or after July 1, 1990))~~, pursuant to  
21 RCW 10.77.086(4); ~~((4))~~ (d) a person who has been found not guilty by  
22 reason of insanity of a sexually violent offense is about to be  
23 released, or has been released ~~((on, before, or after July 1, 1990))~~,  
24 pursuant to RCW 10.77.020(3), 10.77.110 (1) or (3), or 10.77.150; or  
25 ~~((5))~~ (e) a person who at any time previously has been convicted of  
26 a sexually violent offense and has since been released from total  
27 confinement and has committed a recent overt act ~~((; and it appears that~~  
28 ~~the person may be a sexually violent predator, the prosecuting attorney~~  
29 ~~of the county where the person was convicted or charged or the attorney~~  
30 ~~general if requested by the prosecuting attorney may file a petition~~  
31 ~~alleging that the person is a "sexually violent predator" and stating~~  
32 ~~sufficient facts to support such allegation))~~.

33       (2) The petition may be filed by:

34       (a) The prosecuting attorney of a county in which:

35       (i) The person has been charged or convicted with a sexually  
36 violent offense;

1 (ii) A recent overt act occurred involving a person covered under  
2 subsection (1)(e) of this section; or

3 (iii) The person committed a recent overt act, or was charged or  
4 convicted of a criminal offense that would qualify as a recent overt  
5 act, if the only sexually violent offense charge or conviction occurred  
6 in a jurisdiction other than Washington; or

7 (b) The attorney general, if requested by the county prosecuting  
8 attorney identified in (a) of this subsection. If the county  
9 prosecuting attorney requests that the attorney general file and  
10 prosecute a case under this chapter, then the county shall charge the  
11 attorney general only the fees, including filing and jury fees, that  
12 would be charged and paid by the county prosecuting attorney, if the  
13 county prosecuting attorney retained the case.

14 **Sec. 4.** RCW 71.09.040 and 2001 c 286 s 6 are each amended to read  
15 as follows:

16 (1) Upon the filing of a petition under RCW 71.09.030, the judge  
17 shall determine whether probable cause exists to believe that the  
18 person named in the petition is a sexually violent predator. If such  
19 determination is made the judge shall direct that the person be taken  
20 into custody.

21 (2) Within seventy-two hours after a person is taken into custody  
22 pursuant to subsection (1) of this section, the court shall provide the  
23 person with notice of, and an opportunity to appear in person at, a  
24 hearing to contest probable cause as to whether the person is a  
25 sexually violent predator. In order to assist the person at the  
26 hearing, within twenty-four hours of service of the petition, the  
27 prosecuting agency shall provide to the person or his or her counsel a  
28 copy of all materials provided to the prosecuting agency by the  
29 referring agency pursuant to RCW 71.09.025, or obtained by the  
30 prosecuting agency pursuant to RCW 71.09.025(1) (c) and (d). At this  
31 hearing, the court shall (a) verify the person's identity, and (b)  
32 determine whether probable cause exists to believe that the person is  
33 a sexually violent predator. At the probable cause hearing, the state  
34 may rely upon the petition and certification for determination of  
35 probable cause filed pursuant to RCW 71.09.030. The state may  
36 supplement this with additional documentary evidence or live testimony.  
37 The person may be held in total confinement at the county jail until



1 the trial court renders a decision after the conclusion of the seventy-  
2 two hour probable cause hearing. The county shall be entitled to  
3 reimbursement for the cost of housing and transporting the person  
4 pursuant to rules adopted by the secretary.

5 (3) At the probable cause hearing, the person shall have the  
6 following rights in addition to the rights previously specified: (a)  
7 To be represented by counsel; (b) to present evidence on his or her  
8 behalf; (c) to cross-examine witnesses who testify against him or her;  
9 (d) to view and copy all petitions and reports in the court file. The  
10 court must permit a witness called by either party to testify by  
11 telephone. Because this is a special proceeding, discovery pursuant to  
12 the civil rules shall not occur until after the hearing has been held  
13 and the court has issued its decision.

14 (4) If the probable cause determination is made, the judge shall  
15 direct that the person be transferred to an appropriate facility for an  
16 evaluation as to whether the person is a sexually violent predator.  
17 The evaluation shall be conducted by a person deemed to be  
18 professionally qualified to conduct such an examination pursuant to  
19 rules developed by the department of social and health services. In  
20 adopting such rules, the department of social and health services shall  
21 consult with the department of health and the department of  
22 corrections. In no event shall the person be released from confinement  
23 prior to trial. A witness called by either party shall be permitted to  
24 testify by telephone.

25 **Sec. 5.** RCW 71.09.050 and 1995 c 216 s 5 are each amended to read  
26 as follows:

27 (1) Within forty-five days after the completion of any hearing held  
28 pursuant to RCW 71.09.040, the court shall conduct a trial to determine  
29 whether the person is a sexually violent predator. The trial may be  
30 continued upon the request of either party and a showing of good cause,  
31 or by the court on its own motion in the due administration of justice,  
32 and when the respondent will not be substantially prejudiced. At all  
33 stages of the proceedings under this chapter, any person subject to  
34 this chapter shall be entitled to the assistance of counsel, and if the  
35 person is indigent, the court shall appoint counsel to assist him or  
36 her. The person shall be confined in a secure facility for the  
37 duration of the trial.

1 (2) Whenever any person is subjected to an examination under this  
2 chapter, he or she may retain experts or professional persons to  
3 perform an examination on their behalf. When the person wishes to be  
4 examined by a qualified expert or professional person of his or her own  
5 choice, such examiner shall be permitted to have reasonable access to  
6 the person for the purpose of such examination, as well as to all  
7 relevant medical and psychological records and reports. In the case of  
8 a person who is indigent, the court shall, upon the person's request,  
9 assist the person in obtaining an expert or professional person to  
10 perform an examination or participate in the trial on the person's  
11 behalf.

12 (3) The person, the prosecuting (~~attorney or attorney general~~)  
13 agency, or the judge shall have the right to demand that the trial be  
14 before a twelve-person jury. If no demand is made, the trial shall be  
15 before the court.

16 **Sec. 6.** RCW 71.09.060 and 2008 c 213 s 13 are each amended to read  
17 as follows:

18 (1) The court or jury shall determine whether, beyond a reasonable  
19 doubt, the person is a sexually violent predator. In determining  
20 whether or not the person would be likely to engage in predatory acts  
21 of sexual violence if not confined in a secure facility, the fact  
22 finder may consider only placement conditions and voluntary treatment  
23 options that would exist for the person if unconditionally released  
24 from detention on the sexually violent predator petition. The  
25 community protection program under RCW 71A.12.230 may not be considered  
26 as a placement condition or treatment option available to the person if  
27 unconditionally released from detention on a sexually violent predator  
28 petition. When the determination is made by a jury, the verdict must  
29 be unanimous.

30 If, on the date that the petition is filed, the person was living  
31 in the community after release from custody, the state must also prove  
32 beyond a reasonable doubt that the person had committed a recent overt  
33 act. If the state alleges that the prior sexually violent offense that  
34 forms the basis for the petition for commitment was an act that was  
35 sexually motivated as provided in RCW 71.09.020(15)(c), the state must  
36 prove beyond a reasonable doubt that the alleged sexually violent act  
37 was sexually motivated as defined in RCW 9.94A.030.

1        If the court or jury determines that the person is a sexually  
2 violent predator, the person shall be committed to the custody of the  
3 department of social and health services for placement in a secure  
4 facility operated by the department of social and health services for  
5 control, care, and treatment until such time as: (a) The person's  
6 condition has so changed that the person no longer meets the definition  
7 of a sexually violent predator; or (b) conditional release to a less  
8 restrictive alternative as set forth in RCW 71.09.092 is in the best  
9 interest of the person and conditions can be imposed that would  
10 adequately protect the community.

11        If the court or unanimous jury decides that the state has not met  
12 its burden of proving that the person is a sexually violent predator,  
13 the court shall direct the person's release.

14        If the jury is unable to reach a unanimous verdict, the court shall  
15 declare a mistrial and set a retrial within forty-five days of the date  
16 of the mistrial unless the prosecuting agency earlier moves to dismiss  
17 the petition. The retrial may be continued upon the request of either  
18 party accompanied by a showing of good cause, or by the court on its  
19 own motion in the due administration of justice provided that the  
20 respondent will not be substantially prejudiced. In no event may the  
21 person be released from confinement prior to retrial or dismissal of  
22 the case.

23        (2) If the person charged with a sexually violent offense has been  
24 found incompetent to stand trial, and is about to (~~be~~) be or has  
25 been released pursuant to RCW 10.77.086(4), and his or her commitment  
26 is sought pursuant to subsection (1) of this section, the court shall  
27 first hear evidence and determine whether the person did commit the act  
28 or acts charged if the court did not enter a finding prior to dismissal  
29 under RCW 10.77.086(4) that the person committed the act or acts  
30 charged. The hearing on this issue must comply with all the procedures  
31 specified in this section. In addition, the rules of evidence  
32 applicable in criminal cases shall apply, and all constitutional rights  
33 available to defendants at criminal trials, other than the right not to  
34 be tried while incompetent, shall apply. After hearing evidence on  
35 this issue, the court shall make specific findings on whether the  
36 person did commit the act or acts charged, the extent to which the  
37 person's incompetence or developmental disability affected the outcome  
38 of the hearing, including its effect on the person's ability to consult

1 with and assist counsel and to testify on his or her own behalf, the  
2 extent to which the evidence could be reconstructed without the  
3 assistance of the person, and the strength of the prosecution's case.  
4 If, after the conclusion of the hearing on this issue, the court finds,  
5 beyond a reasonable doubt, that the person did commit the act or acts  
6 charged, it shall enter a final order, appealable by the person, on  
7 that issue, and may proceed to consider whether the person should be  
8 committed pursuant to this section.

9 (3) Except as otherwise provided in this chapter, the state shall  
10 comply with RCW 10.77.220 while confining the person ((pursuant to this  
11 chapter, except that)). During all court proceedings where the person  
12 is present, the person shall be detained in a secure facility. If the  
13 proceedings last more than one day, the person may be held in the  
14 county jail for the duration of the proceedings, except the person may  
15 be returned to the department's custody on weekends and court holidays  
16 if the court deems such a transfer feasible. The county shall be  
17 entitled to reimbursement for the cost of housing and transporting the  
18 person pursuant to rules adopted by the secretary. The department  
19 shall not place the person, even temporarily, in a facility on the  
20 grounds of any state mental facility or regional habilitation center  
21 because these institutions are insufficiently secure for this  
22 population.

23 (4) A court has jurisdiction to order a less restrictive  
24 alternative placement only after a hearing ordered pursuant to RCW  
25 71.09.090 following initial commitment under this section and in accord  
26 with the provisions of this chapter.

27 **Sec. 7.** RCW 71.09.080 and 1995 c 216 s 8 are each amended to read  
28 as follows:

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

34 (2) Any person committed pursuant to this chapter has the right to  
35 adequate care and individualized treatment. The department of social  
36 and health services shall keep records detailing all medical, expert,  
37 and professional care and treatment received by a committed person, and

1 shall keep copies of all reports of periodic examinations made pursuant  
2 to this chapter. All such records and reports shall be made available  
3 upon request only to: The committed person, his or her attorney, the  
4 prosecuting attorney, the court, the protection and advocacy agency, or  
5 another expert or professional person who, upon proper showing,  
6 demonstrates a need for access to such records.

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

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

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

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

1       **Sec. 8.** RCW 71.09.090 and 2005 c 344 s 2 are each amended to read  
2 as follows:

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

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

31       (b) The committed person shall have a right to have an attorney  
32 represent him or her at the show cause hearing, which may be conducted  
33 solely on the basis of affidavits or declarations, but the person is  
34 not entitled to be present at the show cause hearing. At the show  
35 cause hearing, the prosecuting attorney or attorney general shall  
36 present prima facie evidence establishing that the committed person  
37 continues to meet the definition of a sexually violent predator and  
38 that a less restrictive alternative is not in the best interest of the

1 person and conditions cannot be imposed that adequately protect the  
2 community. In making this showing, the state may rely exclusively upon  
3 the annual report prepared pursuant to RCW 71.09.070. The committed  
4 person may present responsive affidavits or declarations to which the  
5 state may reply.

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

18 (d) If the court has not previously considered the issue of release  
19 to a less restrictive alternative, either through a trial on the merits  
20 or through the procedures set forth in RCW 71.09.094(1), the court  
21 shall consider whether release to a less restrictive alternative would  
22 be in the best interests of the person and conditions can be imposed  
23 that would adequately protect the community, without considering  
24 whether the person's condition has changed. The court may not find  
25 probable cause for a trial addressing less restrictive alternatives  
26 unless a proposed less restrictive alternative placement meeting the  
27 conditions of RCW 71.09.092 is presented to the court at the show cause  
28 hearing.

29 (3)(a) At the hearing resulting from subsection (1) or (2) of this  
30 section, the committed person shall be entitled to be present and to  
31 the benefit of all constitutional protections that were afforded to the  
32 person at the initial commitment proceeding. The prosecuting agency  
33 (~~or the attorney general if requested by the county~~) shall represent  
34 the state and shall have a right to a jury trial and to have the  
35 committed person evaluated by experts chosen by the state. The  
36 committed person shall also have the right to a jury trial and the  
37 right to have experts evaluate him or her on his or her behalf and the

1 court shall appoint an expert if the person is indigent and requests an  
2 appointment.

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

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

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

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

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

36 (ii) A change in the person's mental condition brought about  
37 through positive response to continuing participation in treatment



1 which indicates that the person meets the standard for conditional  
2 release to a less restrictive alternative or that the person would be  
3 safe to be at large if unconditionally released from commitment.

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

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

13 **Sec. 9.** RCW 71.09.092 and 1995 c 216 s 10 are each amended to read  
14 as follows:

15 Before the court may enter an order directing conditional release  
16 to a less restrictive alternative, it must find the following: (1) The  
17 person will be treated by a treatment provider who is qualified to  
18 provide such treatment in the state of Washington under chapter 18.155  
19 RCW; (2) the treatment provider has presented a specific course of  
20 treatment and has agreed to assume responsibility for such treatment  
21 and will report progress to the court on a regular basis, and will  
22 report violations immediately to the court, the prosecutor, the  
23 supervising community corrections officer, and the superintendent of  
24 the special commitment center; (3) housing exists in Washington that is  
25 sufficiently secure to protect the community, and the person or agency  
26 providing housing to the conditionally released person has agreed in  
27 writing to accept the person, to provide the level of security required  
28 by the court, and immediately to report to the court, the prosecutor,  
29 the supervising community corrections officer, and the superintendent  
30 of the special commitment center if the person leaves the housing to  
31 which he or she has been assigned without authorization; (4) the person  
32 is willing to comply with the treatment provider and all requirements  
33 imposed by the treatment provider and by the court; and (5) the person  
34 will be under the supervision of the department of corrections and is  
35 willing to comply with supervision requirements imposed by the  
36 department of corrections.

1           **Sec. 10.** RCW 71.09.096 and 2001 c 286 s 12 are each amended to  
2 read as follows:

3           (1) If the court or jury determines that conditional release to a  
4 less restrictive alternative is in the best interest of the person and  
5 includes conditions that would adequately protect the community, and  
6 the court determines that the minimum conditions set forth in RCW  
7 71.09.092 and in this section are met, the court shall enter judgment  
8 and direct a conditional release.

9           (2) The court shall impose any additional conditions necessary to  
10 ensure compliance with treatment and to protect the community. If the  
11 court finds that conditions do not exist that will both ensure the  
12 person's compliance with treatment and protect the community, then the  
13 person shall be remanded to the custody of the department of social and  
14 health services for control, care, and treatment in a secure facility  
15 as designated in RCW 71.09.060(1).

16           (3) If the service provider designated by the court to provide  
17 inpatient or outpatient treatment or to monitor or supervise any other  
18 terms and conditions of a person's placement in a less restrictive  
19 alternative is other than the department of social and health services  
20 or the department of corrections, then the service provider so  
21 designated must agree in writing to provide such treatment, monitoring,  
22 or supervision in accord with this section. Any person providing or  
23 agreeing to provide treatment, monitoring, or supervision services  
24 pursuant to this chapter may be compelled to testify and any privilege  
25 with regard to such person's testimony is deemed waived.

26           (4) Prior to authorizing any release to a less restrictive  
27 alternative, the court shall impose such conditions upon the person as  
28 are necessary to ensure the safety of the community. The court shall  
29 order the department of corrections to investigate the less restrictive  
30 alternative and recommend any additional conditions to the court.  
31 These conditions shall include, but are not limited to the following:  
32 Specification of residence, prohibition of contact with potential or  
33 past victims, prohibition of alcohol and other drug use, participation  
34 in a specific course of inpatient or outpatient treatment that may  
35 include monitoring by the use of polygraph and plethysmograph,  
36 monitoring through the use of global positioning satellite technology,  
37 supervision by a department of corrections community corrections  
38 officer, a requirement that the person remain within the state unless

1 the person receives prior authorization by the court, and any other  
2 conditions that the court determines are in the best interest of the  
3 person or others. A copy of the conditions of release shall be given  
4 to the person and to any designated service providers.

5 (5) Any service provider designated to provide inpatient or  
6 outpatient treatment shall monthly, or as otherwise directed by the  
7 court, submit to the court, to the department of social and health  
8 services facility from which the person was released, to the  
9 (~~prosecutor of the county in which the person was found to be a~~  
10 ~~sexually violent predator~~) prosecuting agency, and to the supervising  
11 community corrections officer, a report stating whether the person is  
12 complying with the terms and conditions of the conditional release to  
13 a less restrictive alternative.

14 (6) Each person released to a less restrictive alternative shall  
15 have his or her case reviewed by the court that released him or her no  
16 later than one year after such release and annually thereafter until  
17 the person is unconditionally discharged. Review may occur in a  
18 shorter time or more frequently, if the court, in its discretion on its  
19 own motion, or on motion of the person, the secretary, or the  
20 prosecuting (~~attorney~~) agency so determines. The sole question to be  
21 determined by the court is whether the person shall continue to be  
22 conditionally released to a less restrictive alternative. The court in  
23 making its determination shall be aided by the periodic reports filed  
24 pursuant to subsection (5) of this section and the opinions of the  
25 secretary and other experts or professional persons.

26 **Sec. 11.** RCW 71.09.098 and 2006 c 282 s 1 are each amended to read  
27 as follows:

28 (~~(1) Any service provider submitting reports pursuant to RCW~~  
29 ~~71.09.096(6), the supervising community corrections officer, the~~  
30 ~~prosecuting attorney, or the attorney general may petition the court,~~  
31 ~~or the court on its own motion may schedule an immediate hearing, for~~  
32 ~~the purpose of revoking or modifying the terms of the person's~~  
33 ~~conditional release to a less restrictive alternative if the petitioner~~  
34 ~~or the court believes the released person is not complying with the~~  
35 ~~terms and conditions of his or her release or is in need of additional~~  
36 ~~care, monitoring, supervision, or treatment.~~

1       ~~(2) — If — the — prosecuting — attorney, — the — supervising — community~~  
2 ~~corrections officer, or the court, based upon information received by~~  
3 ~~them, reasonably believes that a conditionally released person is not~~  
4 ~~complying with the terms and conditions of his or her conditional~~  
5 ~~release to a less restrictive alternative, — the court or community~~  
6 ~~corrections officer may order that the conditionally released person be~~  
7 ~~apprehended and taken into custody until such time as a hearing can be~~  
8 ~~scheduled to determine the facts and whether or not the person's~~  
9 ~~conditional release should be revoked or modified. — A law enforcement~~  
10 ~~officer, — who — has — responded — to — a — request — for — assistance — from — a~~  
11 ~~department — employee, — may — apprehend — and — take — into — custody — the~~  
12 ~~conditionally released person if the law enforcement officer reasonably~~  
13 ~~believes that the conditionally released person is not complying with~~  
14 ~~the terms and conditions of his or her conditional release to a less~~  
15 ~~restrictive alternative. — The conditionally released person may be~~  
16 ~~detained in the county jail or returned to the secure community~~  
17 ~~transition facility. — The court shall be notified before the close of~~  
18 ~~the — next — judicial — day — of — the — person's — apprehension. — Both — the~~  
19 ~~prosecuting attorney and the conditionally released person shall have~~  
20 ~~the — right — to — request — an — immediate — mental — examination — of — the~~  
21 ~~conditionally released person. — If the conditionally released person is~~  
22 ~~indigent, the court shall, upon request, assist him or her in obtaining~~  
23 ~~a qualified expert or professional person to conduct the examination.~~

24       ~~(3) — The — court, — upon — receiving — notification — of — the — person's~~  
25 ~~apprehension, — shall — promptly — schedule — a — hearing. — The — issue — to — be~~  
26 ~~determined is whether the state has proven by a preponderance of the~~  
27 ~~evidence that the conditionally released person did not comply with the~~  
28 ~~terms and conditions of his or her release. — Hearsay evidence is~~  
29 ~~admissible if the court finds it otherwise reliable. — At the hearing,~~  
30 ~~the court shall determine whether the person shall continue to be~~  
31 ~~conditionally released on the same or modified conditions or whether~~  
32 ~~his or her conditional release shall be revoked and he or she shall be~~  
33 ~~committed to total confinement, — subject to release only in accordance~~  
34 ~~with provisions of this chapter.))~~

35       (1) Any service provider submitting reports pursuant to RCW  
36 71.09.096(6), the supervising community corrections officer, the  
37 prosecuting agency, or the secretary's designee may petition the court  
38 for an immediate hearing for the purpose of revoking or modifying the

1 terms of the person's conditional release to a less restrictive  
2 alternative if the petitioner believes the released person: (a)  
3 Violated or is in violation of the terms and conditions of the court's  
4 conditional release order; or (b) is in need of additional care,  
5 monitoring, supervision, or treatment.

6 (2) The community corrections officer or the secretary's designee  
7 may restrict the person's movement in the community until the petition  
8 is determined by the court. The person may be taken into custody if:

9 (a) The supervising community corrections officer, the secretary's  
10 designee, or a law enforcement officer reasonably believes the person  
11 has violated or is in violation of the court's conditional release  
12 order; or

13 (b) The supervising community corrections officer or the  
14 secretary's designee reasonably believes that the person is in need of  
15 additional care, monitoring, supervision, or treatment because the  
16 person presents a danger to himself or herself or others if his or her  
17 conditional release under the conditions imposed by the court's release  
18 order continues.

19 (3)(a) Persons taken into custody pursuant to subsection (2) of  
20 this section shall:

21 (i) Not be released until such time as a hearing is held to  
22 determine whether to revoke or modify the person's conditional release  
23 order and the court has issued its decision; and

24 (ii) Be held in the county jail, at a secure community transition  
25 facility, or at the total confinement facility, at the discretion of  
26 the secretary's designee.

27 (b) The court shall be notified before the close of the next  
28 judicial day that the person has been taken into custody and shall  
29 promptly schedule a hearing.

30 (4) Before any hearing to revoke or modify the person's conditional  
31 release order, both the prosecuting agency and the released person  
32 shall have the right to request an immediate mental examination of the  
33 released person. If the conditionally released person is indigent, the  
34 court shall, upon request, assist him or her in obtaining a qualified  
35 expert or professional person to conduct the examination.

36 (5) At any hearing to revoke or modify the conditional release  
37 order:

1 (a) The prosecuting agency shall represent the state, including  
2 determining whether to proceed with revocation or modification of the  
3 conditional release order;

4 (b) Hearsay evidence is admissible if the court finds that it is  
5 otherwise reliable; and

6 (c) The state shall bear the burden of proving by a preponderance  
7 of the evidence that the person has violated or is in violation of the  
8 court's conditional release order or that the person is in need of  
9 additional care, monitoring, supervision, or treatment.

10 (6)(a) If the court determines that the state has met its burden  
11 referenced in subsection (5)(c) of this section, and the issue before  
12 the court is revocation of the court's conditional release order, the  
13 court shall consider the evidence presented by the parties and the  
14 following factors relevant to whether continuing the person's  
15 conditional release is in the person's best interests or adequate to  
16 protect the community:

17 (i) The nature of the condition that was violated by the person or  
18 that the person was in violation of in the context of the person's  
19 criminal history and underlying mental conditions;

20 (ii) The degree to which the violation was intentional or grossly  
21 negligent;

22 (iii) The ability and willingness of the released person to  
23 strictly comply with the conditional release order;

24 (iv) The degree of progress made by the person in community-based  
25 treatment; and

26 (v) The risk to the public or particular persons if the conditional  
27 release continues under the conditional release order that was  
28 violated.

29 (b) Any factor alone, or in combination, shall support the court's  
30 determination to revoke the conditional release order.

31 (7) If the court determines the state has met its burden referenced  
32 in subsection (5)(c) of this section, and the issue before the court is  
33 modification of the court's conditional release order, the court shall  
34 modify the conditional release order by adding conditions if the court  
35 determines that the person is in need of additional care, monitoring,  
36 supervision, or treatment. The court has authority to modify its  
37 conditional release order by substituting a new treatment provider,

1 requiring new housing for the person, or imposing such additional  
2 supervision conditions as the court deems appropriate.

3 (8) A person whose conditional release has been revoked shall be  
4 remanded to the custody of the secretary for control, care, and  
5 treatment in a total confinement facility as designated in RCW  
6 71.09.060(1). The person is thereafter eligible for conditional  
7 release only in accord with the provisions of RCW 71.09.090 and related  
8 statutes.

9 NEW SECTION. Sec. 12. A new section is added to chapter 71.09 RCW  
10 to read as follows:

11 The department of social and health services shall provide to the  
12 prosecuting agency a copy of all reports made by the department to law  
13 enforcement in which a person detained or committed under this chapter  
14 is named or listed as a suspect, witness, or victim, as well as a copy  
15 of all reports received from law enforcement.

16 **Sec. 13.** RCW 71.09.112 and 2002 c 19 s 1 are each amended to read  
17 as follows:

18 A person subject to court order under the provisions of this  
19 chapter who is thereafter convicted of a criminal offense remains under  
20 the jurisdiction of the department and shall be returned to the custody  
21 of the department following: (1) Completion of the criminal sentence;  
22 or (2) release from confinement in a state, federal, or local  
23 correctional facility(~~(, and shall be returned to the custody of the~~  
24 ~~department)~~). Any conditional release order shall be immediately  
25 revoked upon conviction for a criminal offense.

26 This section does not apply to persons subject to a court order  
27 under the provisions of this chapter who are thereafter sentenced to  
28 life without the possibility of release.

29 **Sec. 14.** RCW 71.09.350 and 2004 c 38 s 14 are each amended to read  
30 as follows:

31 (1) Examinations and treatment of sexually violent predators who  
32 are conditionally released to a less restrictive alternative under this  
33 chapter shall be conducted only by certified sex offender treatment  
34 providers or certified affiliate sex offender treatment providers under  
35 chapter 18.155 RCW unless the court or the department of social and

1 health services finds that: (a) The (~~court-ordered less restrictive~~  
2 ~~alternative placement is located in another state; (b) the~~) treatment  
3 provider is employed by the department; or (~~(c)~~) (b)(i) all certified  
4 sex offender treatment providers or certified affiliate sex offender  
5 treatment providers become unavailable to provide treatment within a  
6 reasonable geographic distance of the person's home, as determined in  
7 rules adopted by the department of social and health services; and (ii)  
8 the evaluation and treatment plan comply with the rules adopted by the  
9 department of social and health services.

10 A treatment provider approved by the department of social and  
11 health services under (~~(c)~~) (b) of this subsection, who is not  
12 certified by the department of health, shall consult with a certified  
13 sex offender treatment provider during the person's period of treatment  
14 to ensure compliance with the rules adopted by the department of  
15 health. The frequency and content of the consultation shall be based  
16 on the recommendation of the certified sex offender treatment provider.

17 (2) A treatment provider, whether or not he or she is employed or  
18 approved by the department of social and health services under  
19 subsection (1) of this section or otherwise certified, may not perform  
20 or provide treatment of sexually violent predators under this section  
21 if the treatment provider has been:

22 (a) Convicted of a sex offense, as defined in RCW 9.94A.030;

23 (b) Convicted in any other jurisdiction of an offense that under  
24 the laws of this state would be classified as a sex offense as defined  
25 in RCW 9.94A.030; or

26 (c) Suspended or otherwise restricted from practicing any health  
27 care profession by competent authority in any state, federal, or  
28 foreign jurisdiction.

29 (3) Nothing in this section prohibits a qualified expert from  
30 examining or evaluating a sexually violent predator who has been  
31 conditionally released for purposes of presenting an opinion in court  
32 proceedings.

33 NEW SECTION. **Sec. 15.** This act applies to all persons currently  
34 committed or awaiting commitment under chapter 71.09 RCW either on,  
35 before, or after the effective date of this act, whether confined in a  
36 secure facility or on conditional release.



1        NEW SECTION.    **Sec. 16.** This act is necessary for the immediate  
2 preservation of the public peace, health, or safety, or support of the  
3 state government and its existing public institutions, and takes effect  
4 immediately.

5        NEW SECTION.    **Sec. 17.** If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

Passed by the Senate April 22, 2009.

Passed by the House April 1, 2009.

Approved by the Governor May 7, 2009.

Filed in Office of Secretary of State May 8, 2009.