

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6493

62nd Legislature
2012 Regular Session

Passed by the Senate March 7, 2012
YEAS 49 NAYS 0

President of the Senate

Passed by the House March 6, 2012
YEAS 93 NAYS 0

Speaker of the House of Representatives

Approved

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 6493** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6493

AS AMENDED BY THE HOUSE

Passed Legislature - 2012 Regular Session

State of Washington 62nd Legislature 2012 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Regala, Hargrove, Stevens, Harper, Kline, Carrell, and Shin)

READ FIRST TIME 02/03/12.

1 AN ACT Relating to sexually violent predator civil commitment
2 cases; amending RCW 2.70.020, 71.09.040, 71.09.050, 71.09.080,
3 71.09.090, 71.09.110, 71.09.120, and 71.09.140; adding a new section to
4 chapter 2.70 RCW; adding new sections to chapter 71.09 RCW; creating
5 new sections; and providing an effective date.

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

7 **Sec. 1.** RCW 2.70.020 and 2008 c 313 s 4 are each amended to read
8 as follows:

9 The director shall:

10 (1) Administer all state-funded services in the following program
11 areas:

12 (a) Trial court criminal indigent defense, as provided in chapter
13 10.101 RCW;

14 (b) Appellate indigent defense, as provided in this chapter;

15 (c) Representation of indigent parents qualified for appointed
16 counsel in dependency and termination cases, as provided in RCW
17 13.34.090 and 13.34.092;

18 (d) Extraordinary criminal justice cost petitions, as provided in
19 RCW 43.330.190;

1 (e) Compilation of copies of DNA test requests by persons convicted
2 of felonies, as provided in RCW 10.73.170;

3 (f) Representation of indigent respondents qualified for appointed
4 counsel in sexually violent predator civil commitment cases, as
5 provided in chapter 71.09 RCW;

6 (2) Submit a biennial budget for all costs related to the office's
7 program areas;

8 (3) Establish administrative procedures, standards, and guidelines
9 for the office's program areas, including cost-efficient systems that
10 provide for authorized recovery of costs;

11 (4) Provide oversight and technical assistance to ensure the
12 effective and efficient delivery of services in the office's program
13 areas;

14 (5) Recommend criteria and standards for determining and verifying
15 indigency. In recommending criteria for determining indigency, the
16 director shall compile and review the indigency standards used by other
17 state agencies and shall periodically submit the compilation and report
18 to the legislature on the appropriateness and consistency of such
19 standards;

20 (6) Collect information regarding indigent defense services funded
21 by the state and report annually to the advisory committee, the
22 legislature, and the supreme court;

23 (7) Coordinate with the supreme court and the judges of each
24 division of the court of appeals to determine how appellate attorney
25 services should be provided.

26 The office of public defense shall not provide direct
27 representation of clients.

28 NEW SECTION. Sec. 2. A new section is added to chapter 2.70 RCW
29 to read as follows:

30 In providing indigent defense services for sexually violent
31 predator civil commitment cases under chapter 71.09 RCW, the director
32 shall:

33 (1) In accordance with state contracting laws, contract with
34 persons admitted to practice law in this state and organizations
35 employing persons admitted to practice law in this state for the
36 provision of legal services to indigent persons;

1 (2) Establish annual contract fees for defense legal services
2 within amounts appropriated based on court rules and court orders;

3 (3) Ensure an indigent person qualified for appointed counsel has
4 one contracted counsel appointed to assist him or her. Upon a showing
5 of good cause, the court may order additional counsel;

6 (4) Consistent with court rules and court orders, establish
7 procedures for the reimbursement of expert witness and other
8 professional and investigative costs;

9 (5) Review and analyze existing caseload standards and make
10 recommendations for updating caseload standards as appropriate;

11 (6) Annually, with the first report due December 1, 2013, submit a
12 report to the chief justice of the supreme court, the governor, and the
13 legislature, with all pertinent data on the operation of indigent
14 defense services for commitment proceedings under this section,
15 including:

16 (a) Recommended levels of appropriation to maintain adequate
17 indigent defense services to the extent constitutionally required;

18 (b) The time to trial for all commitment trial proceedings
19 including a list of the number of continuances granted, the party that
20 requested the continuance, the county where the proceeding is being
21 heard, and, if available, the reason the continuance was granted;

22 (c) Recommendations for policy changes, including changes in
23 statutes and changes in court rules, which may be appropriate for the
24 improvement of sexually violent predator civil commitment proceedings.

25 NEW SECTION. **Sec. 3.** (1) All powers, duties, and functions of the
26 department of social and health services and the special commitment
27 center pertaining to indigent defense under chapter 71.09 RCW are
28 transferred to the office of public defense.

29 (2)(a) The office of public defense may request any written
30 materials in the possession of the department of social and health
31 services and the special commitment center pertaining to the powers,
32 functions, and duties transferred, which shall be delivered to the
33 custody of the office of public defense. Materials may be transferred
34 electronically and/or in hard copy, as agreed by the agencies. All
35 funds, credits, or other assets held in connection with the powers,
36 functions, and duties transferred shall be assigned to the office of
37 public defense.

1 (b) Any appropriations made to the department of social and health
2 services for carrying out the powers, functions, and duties transferred
3 shall, on July 1, 2012, be transferred and credited to the office of
4 public defense.

5 (3) Notwithstanding the effective date of this section, if
6 implementation of office of public defense contracts would result in
7 the substitution of counsel within one hundred eighty days of a
8 scheduled trial date, the director of the office of public defense may
9 continue defense services with existing counsel to facilitate
10 continuity of effective representation and avoid further continuance of
11 a trial. When existing counsel is maintained, payment to complete the
12 trial shall be prorated based on standard contract fees established by
13 the office of public defense under section 2 of this act and, at the
14 director's discretion, may include extraordinary compensation based on
15 attorney documentation.

16 **Sec. 4.** RCW 71.09.040 and 2009 c 409 s 4 are each amended to read
17 as follows:

18 (1) Upon the filing of a petition under RCW 71.09.030, the judge
19 shall determine whether probable cause exists to believe that the
20 person named in the petition is a sexually violent predator. If such
21 determination is made the judge shall direct that the person be taken
22 into custody and notify the office of public defense of the potential
23 need for representation.

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

1 probable cause filed pursuant to RCW 71.09.030. The state may
2 supplement this with additional documentary evidence or live testimony.
3 The person may be held in total confinement at the county jail until
4 the trial court renders a decision after the conclusion of the seventy-
5 two hour probable cause hearing. The county shall be entitled to
6 reimbursement for the cost of housing and transporting the person
7 pursuant to rules adopted by the secretary.

8 (3) At the probable cause hearing, the person shall have the
9 following rights in addition to the rights previously specified: (a)
10 To be represented by counsel, and if the person is indigent as defined
11 in RCW 10.101.010, to have office of public defense contracted counsel
12 appointed as provided in RCW 10.101.020; (b) to present evidence on his
13 or her behalf; (c) to cross-examine witnesses who testify against him
14 or her; (d) to view and copy all petitions and reports in the court
15 file. The court must permit a witness called by either party to
16 testify by telephone. Because this is a special proceeding, discovery
17 pursuant to the civil rules shall not occur until after the hearing has
18 been held and the court has issued its decision.

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

32 **Sec. 5.** RCW 71.09.050 and 2010 1st sp.s. c 28 s 1 are each amended
33 to read as follows:

34 (1) Within forty-five days after the completion of any hearing held
35 pursuant to RCW 71.09.040, the court shall conduct a trial to determine
36 whether the person is a sexually violent predator. The trial may be
37 continued upon the request of either party and a showing of good cause,

1 or by the court on its own motion in the due administration of justice,
2 and when the respondent will not be substantially prejudiced. ((The
3 department is responsible for the cost of one expert or professional
4 person to conduct an evaluation on the prosecuting agency's behalf.))
5 The prosecuting agency shall have a right to a current evaluation of
6 the person by experts chosen by the state. The judge may require the
7 person to complete any or all of the following procedures or tests if
8 requested by the evaluator: (a) A clinical interview; (b)
9 psychological testing; (c) plethysmograph testing; and (d) polygraph
10 testing. The judge may order the person to complete any other
11 procedures and tests relevant to the evaluation. The state is
12 responsible for the costs of the evaluation. At all stages of the
13 proceedings under this chapter, any person subject to this chapter
14 shall be entitled to the assistance of counsel, and if the person is
15 indigent as defined in RCW 10.101.010, the court, as provided in RCW
16 10.101.020, shall appoint office of public defense contracted counsel
17 to assist him or her. The person shall be confined in a secure
18 facility for the duration of the trial.

19 (2) Whenever any indigent person is subjected to an evaluation
20 under this chapter, the ((department)) office of public defense is
21 responsible for the cost of one expert or professional person to
22 conduct an evaluation on the person's behalf. When the person wishes
23 to be evaluated by a qualified expert or professional person of his or
24 her own choice, the expert or professional person must be permitted to
25 have reasonable access to the person for the purpose of such
26 evaluation, as well as to all relevant medical and psychological
27 records and reports. In the case of a person who is indigent, the
28 court shall, upon the person's request, assist the person in obtaining
29 an expert or professional person to perform an evaluation or
30 participate in the trial on the person's behalf. Nothing in this
31 chapter precludes the person from paying for additional expert services
32 at his or her own expense.

33 (3) The person, the prosecuting agency, or the judge shall have the
34 right to demand that the trial be before a twelve-person jury. If no
35 demand is made, the trial shall be before the court.

36 **Sec. 6.** RCW 71.09.080 and 2010 c 218 s 2 are each amended to read
37 as follows:

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

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

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

20 (3) Any person committed pursuant to this chapter has the right to
21 adequate care and individualized treatment. The department of social
22 and health services shall keep records detailing all medical, expert,
23 and professional care and treatment received by a committed person, and
24 shall keep copies of all reports of periodic examinations made pursuant
25 to this chapter. All such records and reports shall be made available
26 upon request only to: The committed person, his or her attorney, the
27 prosecuting (~~attorney~~) agency, the court, the protection and advocacy
28 agency, or another expert or professional person who, upon proper
29 showing, demonstrates a need for access to such records.

30 (4) At the time a person is taken into custody or transferred into
31 a facility pursuant to a petition under this chapter, the professional
32 person in charge of such facility or his or her designee shall take
33 reasonable precautions to inventory and safeguard the personal property
34 of the persons detained or transferred. A copy of the inventory,
35 signed by the staff member making it, shall be given to the person
36 detained and shall, in addition, be open to inspection to any
37 responsible relative, subject to limitations, if any, specifically
38 imposed by the detained person. For purposes of this subsection,

1 "responsible relative" includes the guardian, conservator, attorney,
2 spouse, parent, adult child, or adult brother or sister of the person.
3 The facility shall not disclose the contents of the inventory to any
4 other person without consent of the patient or order of the court.

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

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

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

23 **Sec. 7.** RCW 71.09.090 and 2011 2nd sp.s. c 7 s 2 are each amended
24 to read as follows:

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

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

17 (b) The committed person shall have a right to have an attorney
18 represent him or her at the show cause hearing, which may be conducted
19 solely on the basis of affidavits or declarations, but the person is
20 not entitled to be present at the show cause hearing. At the show
21 cause hearing, the prosecuting (~~(attorney or attorney general)~~) agency
22 shall present prima facie evidence establishing that the committed
23 person continues to meet the definition of a sexually violent predator
24 and that a less restrictive alternative is not in the best interest of
25 the person and conditions cannot be imposed that adequately protect the
26 community. In making this showing, the state may rely exclusively upon
27 the annual report prepared pursuant to RCW 71.09.070. The committed
28 person may present responsive affidavits or declarations to which the
29 state may reply.

30 (c) If the court at the show cause hearing determines that either:
31 (i) The state has failed to present prima facie evidence that the
32 committed person continues to meet the definition of a sexually violent
33 predator and that no proposed less restrictive alternative is in the
34 best interest of the person and conditions cannot be imposed that would
35 adequately protect the community; or (ii) probable cause exists to
36 believe that the person's condition has so changed that: (A) The
37 person no longer meets the definition of a sexually violent predator;
38 or (B) release to a proposed less restrictive alternative would be in

1 the best interest of the person and conditions can be imposed that
2 would adequately protect the community, then the court shall set a
3 hearing on either or both issues.

4 (d) If the court has not previously considered the issue of release
5 to a less restrictive alternative, either through a trial on the merits
6 or through the procedures set forth in RCW 71.09.094(1), the court
7 shall consider whether release to a less restrictive alternative would
8 be in the best interests of the person and conditions can be imposed
9 that would adequately protect the community, without considering
10 whether the person's condition has changed. The court may not find
11 probable cause for a trial addressing less restrictive alternatives
12 unless a proposed less restrictive alternative placement meeting the
13 conditions of RCW 71.09.092 is presented to the court at the show cause
14 hearing.

15 (3)(a) At the hearing resulting from subsection (1) or (2) of this
16 section, the committed person shall be entitled to be present and to
17 the benefit of all constitutional protections that were afforded to the
18 person at the initial commitment proceeding. The prosecuting agency
19 shall represent the state and shall have a right to a jury trial and to
20 have the committed person evaluated by experts chosen by the state.
21 ~~((The department is responsible for the cost of one expert or
22 professional person to conduct an evaluation on the prosecuting
23 agency's behalf.))~~ The prosecuting agency shall have a right to a
24 current evaluation of the person by experts chosen by the state. The
25 judge may require the person to complete any or all of the following
26 procedures or tests if requested by the evaluator: (i) A clinical
27 interview; (ii) psychological testing; (iii) plethysmograph testing;
28 and (iv) polygraph testing. The judge may order the person to complete
29 any other procedures and tests relevant to the evaluation. The state
30 is responsible for the costs of the evaluation. The committed person
31 shall also have the right to a jury trial and the right to have experts
32 evaluate him or her on his or her behalf and the court shall appoint an
33 expert if the person is indigent and requests an appointment.

34 (b) Whenever any indigent person is subjected to an evaluation
35 under (a) of this subsection, the ~~((department))~~ office of public
36 defense is responsible for the cost of one expert or professional
37 person conducting an evaluation on the person's behalf. When the
38 person wishes to be evaluated by a qualified expert or professional

1 person of his or her own choice, such expert or professional person
2 must be permitted to have reasonable access to the person for the
3 purpose of such evaluation, as well as to all relevant medical and
4 psychological records and reports. In the case of a person who is
5 indigent, the court shall, upon the person's request, assist the person
6 in obtaining an expert or professional person to perform an evaluation
7 or participate in the hearing on the person's behalf. Nothing in this
8 chapter precludes the person from paying for additional expert services
9 at his or her own expense.

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

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

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

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

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

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

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

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

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

22 NEW SECTION. **Sec. 8.** A new section is added to chapter 71.09 RCW
23 to read as follows:

24 The following activities, unless provided as part of investigation
25 and preparation for any hearing or trial under this chapter, are beyond
26 the scope of representation of an attorney under contract with the
27 office of public defense pursuant to chapter 2.70 RCW for the purposes
28 of providing indigent defense services in sexually violent predator
29 civil commitment proceedings:

30 (1) Investigation or legal representation challenging the
31 conditions of confinement at the special commitment center or any
32 secure community transition facility;

33 (2) Investigation or legal representation for making requests under
34 the public records act, chapter 42.56 RCW;

35 (3) Legal representation or advice regarding filing a grievance
36 with the department as part of its grievance policy or procedure;

1 (4) Such other activities as may be excluded by policy or contract
2 with the office of public defense.

3 NEW SECTION. **Sec. 9.** A new section is added to chapter 71.09 RCW
4 to read as follows:

5 (1) The office of public defense is responsible for the cost of one
6 expert or professional person conducting an evaluation on an indigent
7 person's behalf as provided in RCW 71.09.050, 71.09.070, or 71.09.090.

8 (2) Expert evaluations are capped at ten thousand dollars, to
9 include all professional fees, travel, per diem, and other costs.
10 Partial evaluations are capped at five thousand five hundred dollars
11 and expert services apart from an evaluation, exclusive of testimony at
12 trial or depositions, are capped at six thousand dollars.

13 (3) The office of public defense will pay for the costs related to
14 the evaluation of an indigent person by an additional examiner or in
15 excess of the stated fee caps only upon a finding by the superior court
16 that such appointment or extraordinary fees are for good cause.

17 **Sec. 10.** RCW 71.09.110 and 2010 1st sp.s. c 28 s 3 are each
18 amended to read as follows:

19 The department of social and health services shall be responsible
20 for ~~((all))~~ the costs relating to the ~~((evaluation and))~~ treatment of
21 persons committed to their custody whether in a secure facility or
22 under a less restrictive alternative ~~((under any provision of))~~ as
23 provided in this chapter. ~~((The secretary shall adopt rules to contain~~
24 ~~costs relating to reimbursement for evaluation services.))~~
25 Reimbursement may be obtained by the department for the cost of care
26 and treatment of persons committed to its custody whether in a secure
27 facility or under a less restrictive alternative pursuant to RCW
28 43.20B.330 through 43.20B.370.

29 **Sec. 11.** RCW 71.09.120 and 1990 c 3 s 1012 are each amended to
30 read as follows:

31 (1) In addition to any other information required to be released
32 under this chapter, the department is authorized, pursuant to RCW
33 4.24.550, to release relevant information that is necessary to protect
34 the public, concerning a specific sexually violent predator committed
35 under this chapter.

1 (2) The department and the courts are authorized to release to the
2 office of public defense records needed to implement the office's
3 administration of public defense in these cases, including research,
4 reports, and other functions as required by RCW 2.70.020 and section 2
5 of this act. The office of public defense shall maintain the
6 confidentiality of all confidential information included in the
7 records.

8 (3) The inspection or copying of any nonexempt public record by
9 persons residing in a civil commitment facility for sexually violent
10 predators may be enjoined following procedures identified in RCW
11 42.56.565. The injunction may be requested by:

12 (a) An agency or its representative;

13 (b) A person named in the record or his or her representative;

14 (c) A person to whom the request specifically pertains or his or
15 her representative.

16 **Sec. 12.** RCW 71.09.140 and 1995 c 216 s 17 are each amended to
17 read as follows:

18 (1) At the earliest possible date, and in no event later than
19 thirty days before conditional release or unconditional discharge,
20 except in the event of escape, the department of social and health
21 services shall send written notice of conditional release,
22 unconditional discharge, or escape, to the following:

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

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

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

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

35 (2) The same notice as required by subsection (1) of this section
36 shall be sent to the following if such notice has been requested in

1 writing about a specific person found to be a sexually violent predator
2 under this chapter:

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

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

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

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

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

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

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

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

4 NEW SECTION. **Sec. 13.** If specific funding for the purposes of
5 this act, referencing this act by bill or chapter number, is not
6 provided by June 30, 2012, in the omnibus appropriations act, this act
7 is null and void.

8 NEW SECTION. **Sec. 14.** This act takes effect July 1, 2012.

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