
SUBSTITUTE SENATE BILL 5965

State of Washington

63rd Legislature

2014 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Padden, Darneille, O'Ban, Mullet, Hargrove, Dammeier, Pearson, Fain, Roach, Kohl-Welles, Kline, Conway, Keiser, and McAuliffe; by request of Attorney General)

READ FIRST TIME 01/29/14.

1 AN ACT Relating to sexually violent predators; amending RCW
2 71.09.070 and 71.09.020; and providing an effective date.

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

4 **Sec. 1.** RCW 71.09.070 and 2011 2nd sp.s. c 7 s 1 are each amended
5 to read as follows:

6 (1) Each person committed under this chapter shall have a current
7 examination of his or her mental condition made by the department (~~of~~
8 ~~social and health services~~) at least once every year. (~~The annual~~
9 ~~report shall include~~)

10 (2) The evaluator must prepare a report that includes consideration
11 of whether:

12 (a) The committed person currently meets the definition of a
13 sexually violent predator (~~and whether~~);

14 (b) Conditional release to a less restrictive alternative is in the
15 best interest of the person; and

16 (c) Conditions can be imposed that would adequately protect the
17 community.

18 (3) The department, on request of the committed person, shall allow

1 a record of the annual review interview to be preserved by audio
2 recording and made available to the committed person.

3 (4) The evaluator must indicate in the report whether the committed
4 person participated in the interview and examination.

5 (5) The department ((of social and health services)) shall file
6 ((this periodic)) the report with the court that committed the person
7 under this chapter. The report shall be in the form of a declaration
8 or certification in compliance with the requirements of RCW 9A.72.085
9 and shall be prepared by a professionally qualified person as defined
10 by rules adopted by the secretary. A copy of the report shall be
11 served on the prosecuting agency involved in the initial commitment and
12 upon the committed person and his or her counsel.

13 (6)(a) The committed person may retain, or if he or she is indigent
14 and so requests, the court may appoint a qualified expert or a
15 professional person to examine him or her, and such expert or
16 professional person shall have access to all records concerning the
17 person.

18 (b) Any report prepared by the expert or professional person and
19 any expert testimony on the committed person's behalf is not admissible
20 in a proceeding pursuant to RCW 71.09.090, unless the committed person
21 participated in the most recent interview and evaluation completed by
22 the department.

23 ((+2)) (7) If an unconditional release trial is ordered pursuant
24 to RCW 71.09.090, this section is suspended until the completion of
25 that trial. If the individual is found either by jury or the court to
26 continue to meet the definition of a sexually violent predator, the
27 department must conduct an examination pursuant to this section no
28 later than one year after the date of the order finding that the
29 individual continues to be a sexually violent predator. The
30 examination must comply with the requirements of this section.

31 (8) During any period of confinement pursuant to a criminal
32 conviction, or for any period of detention awaiting trial on criminal
33 charges, this section is suspended. Upon the return of the person
34 committed under this chapter to the custody of the department, the
35 department shall initiate an examination of the person's mental
36 condition. The examination must comply with the requirements of
37 subsection (1) of this section.

1 **Sec. 2.** RCW 71.09.020 and 2009 c 409 s 1 are each amended to read
2 as follows:

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

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

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

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

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

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

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

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

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

33 (9) "Personality disorder" means an enduring pattern of inner
34 experience and behavior that deviates markedly from the expectations of
35 the individual's culture, is pervasive and inflexible, has onset in
36 adolescence or early adulthood, is stable over time and leads to
37 distress or impairment. Purported evidence of a personality disorder

1 must be supported by testimony of a licensed forensic psychologist or
2 psychiatrist.

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

7 (11) "Prosecuting agency" means the prosecuting attorney of the
8 county where the person was convicted or charged or the attorney
9 general if requested by the prosecuting attorney, as provided in RCW
10 71.09.030.

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

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

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

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

36 (16) "Secure community transition facility" means a residential
37 facility for persons civilly committed and conditionally released to a
38 less restrictive alternative under this chapter. A secure community

1 transition facility has supervision and security, and either provides
2 or ensures the provision of sex offender treatment services. Secure
3 community transition facilities include but are not limited to the
4 facility established pursuant to RCW 71.09.250(1)(a)(i) and any
5 community-based facilities established under this chapter and operated
6 by the secretary or under contract with the secretary.

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

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

35 (19) "Total confinement facility" means a secure facility that
36 provides supervision and sex offender treatment services in a total
37 confinement setting. Total confinement facilities include the special

1 commitment center and any similar facility designated as a total
2 confinement facility by the secretary.

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

6 NEW SECTION. **Sec. 3.** This act takes effect July 1, 2014.

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