

HB 1059 - S AMD 378

By Senators O'Ban, Darneille

ADOPTED 4/13/2015

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

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

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

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

17 (3) The department, on request of the committed person, shall
18 allow a record of the annual review interview to be preserved by
19 audio recording and made available to the committed person.

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

22 (5) The department (~~of social and health services~~) shall file
23 (~~this periodic~~) the report with the court that committed the person
24 under this chapter. The report shall be in the form of a declaration
25 or certification in compliance with the requirements of RCW 9A.72.085
26 and shall be prepared by a professionally qualified person as defined
27 by rules adopted by the secretary. A copy of the report shall be
28 served on the prosecuting agency involved in the initial commitment
29 and upon the committed person and his or her counsel.

30 (6)(a) The committed person may retain, or if he or she is
31 indigent and so requests, the court may appoint a qualified expert or
32 a professional person to examine him or her, and such expert or

1 professional person shall have access to all records concerning the
2 person.

3 ~~((2))~~ (b) Any report prepared by the expert or professional
4 person and any expert testimony on the committed person's behalf is
5 not admissible in a proceeding pursuant to RCW 71.09.090, unless the
6 committed person participated in the most recent interview and
7 evaluation completed by the department.

8 (7) If an unconditional release trial is ordered pursuant to RCW
9 71.09.090, this section is suspended until the completion of that
10 trial. If the individual is found either by jury or the court to
11 continue to meet the definition of a sexually violent predator, the
12 department must conduct an examination pursuant to this section no
13 later than one year after the date of the order finding that the
14 individual continues to be a sexually violent predator. The
15 examination must comply with the requirements of this section.

16 (8) During any period of confinement pursuant to a criminal
17 conviction, or for any period of detention awaiting trial on criminal
18 charges, this section is suspended. Upon the return of the person
19 committed under this chapter to the custody of the department, the
20 department shall initiate an examination of the person's mental
21 condition. The examination must comply with the requirements of
22 subsection (1) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (13) "Risk potential activity" or "risk potential facility" means
39 an activity or facility that provides a higher incidence of risk to
40 the public from persons conditionally released from the special

1 commitment center. Risk potential activities and facilities include:
2 Public and private schools, school bus stops, licensed day care and
3 licensed preschool facilities, public parks, publicly dedicated
4 trails, sports fields, playgrounds, recreational and community
5 centers, churches, synagogues, temples, mosques, public libraries,
6 public and private youth camps, and others identified by the
7 department following the hearings on a potential site required in RCW
8 71.09.315. For purposes of this chapter, "school bus stops" does not
9 include bus stops established primarily for public transit.

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

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

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

27 (17) "Sexually violent offense" means an act committed on,
28 before, or after July 1, 1990, that is: (a) An act defined in Title
29 9A RCW as rape in the first degree, rape in the second degree by
30 forcible compulsion, rape of a child in the first or second degree,
31 statutory rape in the first or second degree, indecent liberties by
32 forcible compulsion, indecent liberties against a child under age
33 fourteen, incest against a child under age fourteen, or child
34 molestation in the first or second degree; (b) a felony offense in
35 effect at any time prior to July 1, 1990, that is comparable to a
36 sexually violent offense as defined in (a) of this subsection, or any
37 federal or out-of-state conviction for a felony offense that under
38 the laws of this state would be a sexually violent offense as defined
39 in this subsection; (c) an act of murder in the first or second
40 degree, assault in the first or second degree, assault of a child in

1 the first or second degree, kidnapping in the first or second degree,
2 burglary in the first degree, residential burglary, or unlawful
3 imprisonment, which act, either at the time of sentencing for the
4 offense or subsequently during civil commitment proceedings pursuant
5 to this chapter, has been determined beyond a reasonable doubt to
6 have been sexually motivated, as that term is defined in RCW
7 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is
8 an attempt, criminal solicitation, or criminal conspiracy to commit
9 one of the felonies designated in (a), (b), or (c) of this
10 subsection.

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

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

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

24 **Sec. 3.** RCW 71.09.096 and 2009 c 409 s 10 are each amended to
25 read as follows:

26 (1) If the court or jury determines that conditional release to a
27 less restrictive alternative is in the best interest of the person
28 and includes conditions that would adequately protect the community,
29 and the court determines that the minimum conditions set forth in RCW
30 71.09.092 and in this section are met, the court shall enter judgment
31 and direct a conditional release.

32 (2) The court shall impose any additional conditions necessary to
33 ensure compliance with treatment and to protect the community. If the
34 court finds that conditions do not exist that will both ensure the
35 person's compliance with treatment and protect the community, then
36 the person shall be remanded to the custody of the department of
37 social and health services for control, care, and treatment in a
38 secure facility as designated in RCW 71.09.060(1).

1 (3) If the service provider designated by the court to provide
2 inpatient or outpatient treatment or to monitor or supervise any
3 other terms and conditions of a person's placement in a less
4 restrictive alternative is other than the department of social and
5 health services or the department of corrections, then the service
6 provider so designated must agree in writing to provide such
7 treatment, monitoring, or supervision in accord with this section.
8 Any person providing or agreeing to provide treatment, monitoring, or
9 supervision services pursuant to this chapter may be compelled to
10 testify and any privilege with regard to such person's testimony is
11 deemed waived.

12 (4) Prior to authorizing any release to a less restrictive
13 alternative, the court shall impose such conditions upon the person
14 as are necessary to ensure the safety of the community. The court
15 shall order the department of corrections to investigate the less
16 restrictive alternative and recommend any additional conditions to
17 the court. These conditions shall include, but are not limited to the
18 following: Specification of residence, prohibition of contact with
19 potential or past victims, prohibition of alcohol and other drug use,
20 participation in a specific course of inpatient or outpatient
21 treatment that may include monitoring by the use of polygraph and
22 plethysmograph, monitoring through the use of global positioning
23 satellite technology, supervision by a department of corrections
24 community corrections officer, a requirement that the person remain
25 within the state unless the person receives prior authorization by
26 the court, and any other conditions that the court determines are in
27 the best interest of the person or others. A copy of the conditions
28 of release shall be given to the person and to any designated service
29 providers.

30 (5)(a) Prior to authorizing release to a less restrictive
31 alternative, the court shall consider whether it is appropriate to
32 release the person to the person's county of commitment. To ensure
33 equitable distribution of releases, and prevent the disproportionate
34 grouping of persons subject to less restrictive orders in any one
35 county, or in any one jurisdiction or community within a county, the
36 legislature finds it is appropriate for releases to a less
37 restrictive alternative to occur in the person's county of
38 commitment, unless the court determines that the person's return to
39 his or her county of commitment would be inappropriate considering
40 any court-issued protection orders, victim safety concerns, the

1 availability of appropriate treatment or facilities that would
2 adequately protect the community, negative influences on the person,
3 or the location of family or other persons or organizations offering
4 support to the person. When the department or court assists in
5 developing a placement under this section which is outside of the
6 county of commitment, and there are two or more options for
7 placement, it shall endeavor to develop the placement in a manner
8 that does not have a disproportionate effect on a single county.

9 (b) If the committed person is not conditionally released to his
10 or her county of commitment, the department shall provide the law and
11 justice council of the county in which the person is conditionally
12 released with notice and a written explanation.

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

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

18 (6) Any service provider designated to provide inpatient or
19 outpatient treatment shall monthly, or as otherwise directed by the
20 court, submit to the court, to the department of social and health
21 services facility from which the person was released, to the
22 prosecuting agency, and to the supervising community corrections
23 officer, a report stating whether the person is complying with the
24 terms and conditions of the conditional release to a less restrictive
25 alternative.

26 ~~((+6))~~ (7) Each person released to a less restrictive
27 alternative shall have his or her case reviewed by the court that
28 released him or her no later than one year after such release and
29 annually thereafter until the person is unconditionally discharged.
30 Review may occur in a shorter time or more frequently, if the court,
31 in its discretion on its own motion, or on motion of the person, the
32 secretary, or the prosecuting agency so determines. The sole question
33 to be determined by the court is whether the person shall continue to
34 be conditionally released to a less restrictive alternative. The
35 court in making its determination shall be aided by the periodic
36 reports filed pursuant to subsection ~~((+5))~~ (6) of this section and
37 the opinions of the secretary and other experts or professional
38 persons.

1 NEW SECTION. **Sec. 4.** Sections 1 and 2 of this act are necessary
2 for the immediate preservation of the public peace, health, or
3 safety, or support of the state government and its existing public
4 institutions, and take effect July 1, 2015."

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5 On page 1, line 1 of the title, after "predators;" strike the
6 remainder of the title and insert "amending RCW 71.09.070, 71.09.020,
7 and 71.09.096; providing an effective date; and declaring an
8 emergency."

EFFECT: Prior to authorizing the conditional release of a person who is committed as an SVP to a less-restrictive alternative, the court must consider whether it is appropriate for the conditional release to occur to the person's county of commitment. The person's county of commitment means the county of the court which ordered the person's commitment.

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