
SENATE BILL 6359

State of Washington

65th Legislature

2018 Regular Session

By Senator O'Ban

1 AN ACT Relating to concerning limiting and clarifying the legal
2 requirements for the conditional release of sexually violent
3 predators to a less restrictive environment; and amending RCW
4 71.09.096.

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

6 **Sec. 1.** RCW 71.09.096 and 2015 c 278 s 3 are each amended to
7 read as follows:

8 (1) If the court or jury determines that conditional release to a
9 less restrictive alternative is in the best interest of the person
10 and includes conditions that would adequately protect the community,
11 and the court determines that the minimum conditions set forth in RCW
12 71.09.092 and in this section are met, the court shall enter judgment
13 and direct a conditional release.

14 (2) The court shall impose any additional conditions necessary to
15 ensure compliance with treatment and to protect the community. If the
16 court finds that conditions do not exist that will both ensure the
17 person's compliance with treatment and protect the community, then
18 the person shall be remanded to the custody of the department of
19 social and health services for control, care, and treatment in a
20 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 following an evidentiary
39 hearing that the person's return to his or her county of commitment
40 would be (~~inappropriate~~) a substantial threat to public safety

1 considering any court-issued protection orders((~~τ~~)) and any specific,
2 articulated threat to victim safety ((~~concerns, the availability~~))
3 that cannot be addressed by court-ordered electronic monitoring to
4 include use of global positioning satellite technology, or the
5 unavailability of appropriate treatment or facilities that would
6 adequately protect the community((~~, negative influences on the~~
7 person, or the location of family or other persons or organizations
8 offering support to the person)). The burden of proof by clear and
9 convincing evidence is upon the state of Washington at the hearing,
10 and in each case the state must file with the court and serve upon
11 the prospective receiving county at least sixty days before the
12 hearing a statistical summary showing, by county of commitment and by
13 receiving county, the number of all less restrictive alternative
14 releases under this chapter both to county of commitment and to other
15 than county of commitment for the preceding five years. When the
16 ((~~department or court~~)) state assists in developing a placement under
17 this section which is outside of the county of commitment, ((and
18 there are two or more options for placement,)) it shall ((endeavor
19 to)) develop the placement in a manner that does not have a
20 disproportionate effect on a single county and state in writing its
21 rationale in this regard.

22 (b) If, pursuant to a motion, proposed order, or otherwise, the
23 committed person is not to be conditionally released to his or her
24 county of commitment, the department shall provide the law and
25 justice council of the county in which the person is proposed to be
26 conditionally released with notice and a written explanation at least
27 sixty days before the court hearing concerning release on a less
28 restrictive alternative. Before approving any release order to other
29 than the county of commitment, the state must provide the prospective
30 receiving county with at least sixty days written notice. If the
31 county elects, it may intervene as a party in the proceeding, conduct
32 discovery, and offer evidence and argument at the hearing. If the
33 release is approved, the court must enter specific findings of fact
34 concerning the decision. Release to a county other than the county of
35 commitment shall not be based upon maintaining continuity with a
36 current or prior treatment provider where the county of commitment
37 has a population in excess of four hundred fifty thousand according
38 to the latest census data or a more recent official estimate of the
39 state office of financial management, nor where the county of
40 commitment has available one or more treatment providers who meet the

1 requirements of chapter 18.155 RCW. Before any release outside the
2 county of commitment, the state must certify to the court by means of
3 sworn evidence, and the court must find, that the state has contacted
4 every treatment provider certified under chapter 18.155 RCW in the
5 county of commitment and that each such provider has refused to
6 accept the person for treatment that would meet the requirements of
7 RCW 71.09.092. A person who is unwilling to accept treatment from a
8 qualified and willing treatment provider in the county of commitment
9 shall not be granted release. The availability of recommended
10 counseling or treatment for issues other than sex offender treatment,
11 including but not limited to chemical dependency, domestic violence,
12 and anger management, shall not be a basis to release outside the
13 county of commitment. The presence outside the county of commitment
14 of a "support network" such as one or more family members, friends,
15 or other acquaintances shall not be a basis to release to other than
16 the county of commitment. Release to other than the county of
17 commitment shall not be based on an effort to limit the travel
18 distance or travel time for treatment or other purposes.

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

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

24 (6) Any service provider designated to provide inpatient or
25 outpatient treatment shall monthly, or as otherwise directed by the
26 court, submit to the court, to the department of social and health
27 services facility from which the person was released, to the
28 prosecuting agency, to the law and justice council of the county in
29 which the person is released, and to the supervising community
30 corrections officer, a report stating whether the person is complying
31 with the terms and conditions of the conditional release to a less
32 restrictive alternative.

33 (7) Each person released to a less restrictive alternative shall
34 have his or her case reviewed by the court that released him or her
35 no later than one year after such release and annually thereafter
36 until the person is unconditionally discharged. Review may occur in a
37 shorter time or more frequently, if the court, in its discretion on
38 its own motion, or on motion of the person, the secretary, or the
39 prosecuting agency so determines. The sole question to be determined
40 by the court is whether the person shall continue to be conditionally

1 released to a less restrictive alternative. The court in making its
2 determination shall be aided by the periodic reports filed pursuant
3 to subsection (6) of this section and the opinions of the secretary
4 and other experts or professional persons.

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