
HOUSE BILL 1133

State of Washington

69th Legislature

2025 Regular Session

By Representatives Leavitt, Couture, Bronoske, Wylie, Reeves, and Hill; by request of Attorney General

Prefiled 12/24/24. Read first time 01/13/25. Referred to Committee on Community Safety.

1 AN ACT Relating to sexually violent predators; amending RCW
2 71.09.020, 71.09.025, 71.09.030, 71.09.055, 71.09.060, 71.09.070,
3 71.09.090, 71.09.094, 71.09.096, 71.09.250, 71.09.280, and 9.94A.717;
4 and adding new sections to chapter 71.09 RCW.

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

6 **Sec. 1.** RCW 71.09.020 and 2021 c 236 s 2 are each amended to
7 read as follows:

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

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

12 (2) "Fair share principles" and "fair share principles of
13 release" means that each county has adequate options for conditional
14 release housing placements in a number generally equivalent to the
15 number of residents from that county who are subject to total
16 confinement pursuant to this chapter.

17 (3) "Health care facility" means any hospital, hospice care
18 center, licensed or certified health care facility, health
19 maintenance organization regulated under chapter 48.46 RCW, federally
20 qualified health maintenance organization, federally approved renal
21 dialysis center or facility, or federally approved blood bank.

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

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

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

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

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

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

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

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

34 (12) "Prosecuting agency" means the prosecuting attorney of the
35 county where the person was convicted or charged or the attorney
36 general if requested by the prosecuting attorney, as provided in RCW
37 71.09.030.

38 (13) "Recent overt act" means any act, threat, course of conduct,
39 or combination thereof that has either caused harm of a sexually
40 violent nature or creates a reasonable apprehension of such harm in

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

3 (14) "Risk potential activity" or "risk potential facility" means
4 an activity or facility that provides a higher incidence of risk to
5 the public from persons conditionally released from the special
6 commitment center. Risk potential activities and facilities include:
7 Public and private schools, school bus stops, licensed day care and
8 licensed preschool facilities, public parks, publicly dedicated
9 trails, sports fields, playgrounds, recreational and community
10 centers, churches, synagogues, temples, mosques, public libraries,
11 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 (15) "Secretary" means the secretary of social and health
16 services or the secretary's designee.

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

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

32 (18) "Sexually violent offense" means an act committed on,
33 before, or after July 1, 1990, that is: (a) An act defined in Title
34 9A RCW as rape in the first degree, rape in the second degree by
35 forcible compulsion, rape of a child in the first or second degree,
36 statutory rape in the first or second degree, indecent liberties by
37 forcible compulsion, indecent liberties against a child under age
38 fourteen, incest against a child under age fourteen, or child
39 molestation in the first or second degree; (b) a felony offense in
40 effect at any time prior to July 1, 1990, that is comparable to a

1 sexually violent offense as defined in (a) of this subsection, or any
2 federal, military, tribal, or out-of-state conviction for a felony
3 offense that under the laws of this state would be a sexually violent
4 offense as defined in this subsection at the time of the filing of a
5 petition under RCW 71.09.030; (c) an act of murder in the first or
6 second degree, assault in the first or second degree, assault of a
7 child in the first or second degree, kidnapping in the first or
8 second degree, burglary in the first degree, residential burglary, or
9 unlawful imprisonment, which act, either at the time of sentencing
10 for the offense or subsequently during civil commitment proceedings
11 pursuant to this chapter, has been determined beyond a reasonable
12 doubt to have been sexually motivated, as that term is defined in RCW
13 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is
14 an attempt, criminal solicitation, or criminal conspiracy to commit
15 one of the felonies designated in (a), (b), or (c) of this
16 subsection.

17 (19) "Sexually violent predator" means any person who has been
18 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
21 not confined in a secure facility.

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

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

30 **Sec. 2.** RCW 71.09.025 and 2023 c 453 s 26 are each amended to
31 read as follows:

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

38 (i) The anticipated release from total confinement of a person
39 who 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
5 stand trial pursuant to RCW 10.77.086(7); or

6 (iv) Release of a person who has been found not guilty by reason
7 of insanity of a sexually violent offense pursuant to RCW
8 10.77.020(~~(+3)~~) and 10.77.025.

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

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

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

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

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

22 (v) A current mental health evaluation or mental health records
23 review.

24 (c) The prosecuting agency has the authority, consistent with RCW
25 72.09.345(4), to obtain all records relating to the person if the
26 prosecuting agency deems such records are necessary to fulfill its
27 duties under this chapter. The prosecuting agency may only disclose
28 such records in the course of performing its duties pursuant to this
29 chapter, unless otherwise authorized by law.

30 (d) The prosecuting agency has the authority (~~to utilize the~~
31 ~~inquiry judge procedures of chapter 10.27 RCW prior to the filing of~~
32 ~~any action under this chapter~~) to seek the issuance of compulsory
33 process under section 3 of this act for the production of any records
34 (~~(necessary for)~~) relevant to a determination of whether to seek the
35 civil commitment of a person under this chapter. Any records obtained
36 pursuant to this process may only be disclosed by the prosecuting
37 agency in the course of performing its duties pursuant to this
38 chapter, or unless otherwise authorized by law.

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

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

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

8 (1) Whenever the attorney general believes that any person,
9 entity, or agency (a) may be in possession, custody, or control of
10 any original or copy of any book, record, report, memorandum, paper,
11 communication, tabulation, map, chart, photograph, mechanical
12 transcription, or other tangible document or recording, wherever
13 situated, which is believed to be relevant to the determination of
14 whether to seek the civil commitment of a person under this chapter,
15 or (b) may have knowledge of any information which the attorney
16 general believes relevant to such a determination, he or she may,
17 prior to the institution of a civil proceeding thereon, execute in
18 writing and cause to be served upon such a person, a civil
19 investigative demand requiring such person to produce such
20 documentary material and permit inspection and copying, to answer in
21 writing written interrogatories, to give oral testimony, or any
22 combination of such demands pertaining to such documentary material
23 or information.

24 (2) Each demand executed under this section shall:

25 (a) State the relevant sections or subsections authorizing the
26 issuance of the demand and further state that the demand is for the
27 purpose of obtaining information to aid in a determination of whether
28 to seek the civil commitment of a person;

29 (b) If the demand is for the production of documentary material,
30 describe the class or classes of documentary material to be produced
31 with reasonable specificity so as fairly to indicate the material
32 demanded;

33 (c) Prescribe a return date within which the documentary material
34 is to be produced, the answers to written interrogatories are to be
35 made, or a date, time, and place at which oral testimony is to be
36 taken; and

37 (d) Identify the members of the attorney general's staff to whom
38 such documentary material is to be made available for inspection and

1 copying, to whom answers to written interrogatories are to be made,
2 or who are to conduct the examination for oral testimony.

3 (3) No demand executed under this section may:

4 (a) Contain any requirement which would be unreasonable or
5 improper if contained in a subpoena duces tecum, a request for
6 answers to written interrogatories, or a request for deposition upon
7 oral examination issued by a court of this state; or

8 (b) Require the disclosure of any documentary material which
9 would be privileged, or which for any other reason would not be
10 required by a subpoena duces tecum issued by a court of this state.

11 (4) Service of any demand executed under this section may be made
12 by:

13 (a) Delivering a duly executed copy thereof to the person to be
14 served, or, if such person is not a natural person, to any officer or
15 managing agent of the person to be served;

16 (b) Delivering a duly executed copy thereof to the principal
17 place of business in this state of the person to be served; or

18 (c) Mailing by registered or certified mail a duly executed copy
19 thereof addressed to the person to be served at the principal place
20 of business in this state, or, if said person has no place of
21 business in this state, to the person's principal office or place of
22 business.

23 (5) (a) Documentary material demanded under the provisions of this
24 section shall be produced for inspection and copying during normal
25 business hours at the principal office or place of business of the
26 person served, or at such other times and places as may be agreed
27 upon by the person served and the attorney general.

28 (b) Written interrogatories in a demand served under this section
29 shall be answered in the same manner as provided in the civil rules
30 for superior court.

31 (c) The oral testimony of any person obtained from a demand
32 served under this section shall be taken in the same manner as
33 provided in the civil rules for superior court for the taking of
34 depositions. In the course of the deposition, the assistant attorney
35 general conducting the examination may exclude from the place where
36 the examination is held all persons other than the person being
37 examined, the person's counsel, and the officer before whom the
38 testimony is to be taken.

39 (d) Any person compelled to appear by a demand for oral testimony
40 under this section may be accompanied by counsel.

1 (e) The oral testimony of any person obtained from a demand
2 served under this section shall be taken in the county within which
3 the person resides, is found, or transacts business, or in such other
4 place as may be agreed upon between the person served and the
5 attorney general.

6 (6) At any time before the return date specified in the demand,
7 or within 20 days after the demand has been served, whichever period
8 is shorter, a petition to extend the return date for, or to modify or
9 set aside a demand issued under subsection (1) of this section,
10 stating good cause, may be filed in the superior court for Thurston
11 county, or in such other county where the parties reside. A petition
12 by the person on whom the demand is served, stating good cause, to
13 require the attorney general or any person to perform any duty
14 imposed by the provisions of this section, and all other petitions in
15 connection with a demand executed under this section, may be filed in
16 the superior court for Thurston county, or in the county where the
17 parties reside. The court shall have jurisdiction to impose such
18 sanctions as are provided for in the civil rules for superior court
19 with respect to discovery motions.

20 (7) Whenever any person fails to comply with any civil
21 investigative demand for documentary material, answers to written
22 interrogatories, or oral testimony duly served upon them under this
23 section, or whenever satisfactory copying or reproduction of any such
24 material cannot be done and such person refuses to surrender such
25 material, the attorney general may file, in the trial court of
26 general jurisdiction of the county in which such person resides, is
27 found, or transacts business, and serve upon such person a petition
28 for an order of such court for the enforcement of this section,
29 except that if such person transacts business in more than one county
30 such petition shall be filed in the county in which such person
31 maintains their principal place of business, or in such other county
32 as may be agreed upon by the parties to such petition. Whenever any
33 petition is filed in the trial court of general jurisdiction of any
34 county under this section, such court shall have jurisdiction to hear
35 and determine the matter presented and to enter such order or orders
36 as may be required to carry into effect the provisions of this
37 section, and may impose such sanctions as are provided for in the
38 civil rules for superior court with respect to discovery motions.

39 (8) This section shall not be applicable to criminal
40 prosecutions.

1 **Sec. 4.** RCW 71.09.030 and 2023 c 453 s 27 are each amended to
2 read as follows:

3 (1) A petition may be filed alleging that a person is a sexually
4 violent predator and stating sufficient facts to support such
5 allegation when it appears that: (a) A person who at any time
6 previously has been convicted of a sexually violent offense is about
7 to be released from total confinement; (b) a person found to have
8 committed a sexually violent offense as a juvenile is about to be
9 released from total confinement; (c) a person who has been charged
10 with a sexually violent offense and who has been determined to be
11 incompetent to stand trial is about to be released, or has been
12 released, pursuant to RCW 10.77.086(7); (d) a person who has been
13 found not guilty by reason of insanity of a sexually violent offense
14 is about to be released, or has been released, pursuant to RCW
15 10.77.020(~~((3))~~), 10.77.025, 10.77.110 (~~((1) or (3))~~), or 10.77.150;
16 or (e) a person who at any time previously has been convicted of a
17 sexually violent offense and has since been released from total
18 confinement and has committed a recent overt act.

19 (2) The petition may be filed by:

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

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

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

25 (iii) The person committed a recent overt act, or was charged or
26 convicted of a criminal offense that would qualify as a recent overt
27 act, if the only sexually violent offense charge or conviction
28 occurred in a jurisdiction other than Washington, including military
29 or tribal jurisdictions; or

30 (b) The attorney general, if requested by the county prosecuting
31 attorney identified in (a) of this subsection. If the county
32 prosecuting attorney requests that the attorney general file and
33 prosecute a case under this chapter, then the county shall charge the
34 attorney general only the fees, including filing and jury fees, that
35 would be charged and paid by the county prosecuting attorney, if the
36 county prosecuting attorney retained the case.

37 **Sec. 5.** RCW 71.09.055 and 2012 c 257 s 9 are each amended to
38 read as follows:

1 (1) The office of public defense is responsible for the cost of
2 one expert or professional person conducting an evaluation on an
3 indigent person's behalf as provided in RCW 71.09.050, 71.09.070, or
4 (~~71.09.090~~) section 10 of this act.

5 (2) Expert evaluations are capped at (~~ten thousand dollars~~)
6 \$10,000, to include all professional fees, travel, per diem, and
7 other costs. Partial evaluations are capped at (~~five thousand five~~
8 ~~hundred dollars~~) \$5,500 and expert services apart from an
9 evaluation, exclusive of testimony at trial or depositions, are
10 capped at (~~six thousand dollars~~) \$6,000.

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

15 **Sec. 6.** RCW 71.09.060 and 2023 c 453 s 28 are each amended to
16 read as follows:

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

29 If, on the date that the petition is filed, the person was living
30 in the community after release from custody, the state must also
31 prove beyond a reasonable doubt that the person had committed a
32 recent overt act. If the state alleges that the prior sexually
33 violent offense that forms the basis for the petition for commitment
34 was an act that was sexually motivated as provided in RCW
35 71.09.020(18)(c), the state must prove beyond a reasonable doubt that
36 the alleged sexually violent act was sexually motivated as defined in
37 RCW 9.94A.030.

38 If the court or jury determines that the person is a sexually
39 violent predator, the person shall be committed to the custody of the

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

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

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

21 (2) If the person charged with a sexually violent offense has
22 been found incompetent to stand trial, and is about to be or has been
23 released pursuant to RCW 10.77.086(7), and (~~his or her~~) the
24 person's commitment is sought pursuant to subsection (1) of this
25 section, the court shall first hear evidence and determine whether
26 the person did commit the act or acts charged if the court did not
27 enter a finding prior to dismissal under RCW 10.77.086(7) that the
28 person committed the act or acts charged. The hearing on this issue
29 must comply with all the procedures specified in this section. In
30 addition, the rules of evidence applicable in criminal cases shall
31 apply, and all constitutional rights available to defendants at
32 criminal trials, other than the right not to be tried while
33 incompetent, shall apply. After hearing evidence on this issue, the
34 court shall make specific findings on whether the person did commit
35 the act or acts charged, the extent to which the person's
36 incompetence or developmental disability affected the outcome of the
37 hearing, including its effect on the person's ability to consult with
38 and assist counsel and to testify on (~~his or her~~) the person's own
39 behalf, the extent to which the evidence could be reconstructed
40 without the assistance of the person, and the strength of the

1 prosecution's case. If, after the conclusion of the hearing on this
2 issue, the court finds, beyond a reasonable doubt, that the person
3 did commit the act or acts charged, it shall enter a final order,
4 appealable by the person, on that issue, and may proceed to consider
5 whether the person should be committed pursuant to this section.

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

19 (4) A court has jurisdiction to order a less restrictive
20 alternative placement only after a ~~((hearing))~~ trial ordered
21 ~~((pursuant to RCW 71.09.090))~~ under section 8 of this act following
22 initial commitment under this section and in accord with the
23 provisions of this chapter.

24 **Sec. 7.** RCW 71.09.070 and 2019 c 232 s 25 are each amended to
25 read as follows:

26 (1) Each person committed under this chapter shall have a current
27 examination of ~~((his or her))~~ the person's mental condition made by
28 the department at least once every year.

29 (2) The evaluator must prepare a report that includes
30 consideration of whether:

31 (a) The committed person currently meets the definition of a
32 sexually violent predator;

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

35 (c) Conditions can be imposed that would adequately protect the
36 community.

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

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

3 (5) The department shall file the report with the court that
4 committed the person under this chapter. The report shall be in the
5 form of a declaration or certification in compliance with the
6 requirements of chapter 5.50 RCW and shall be prepared by a
7 professionally qualified person as defined by rules adopted by the
8 secretary. A copy of the report shall be served on the prosecuting
9 agency involved in the initial commitment and upon the committed
10 person and (~~his or her~~) the person's counsel.

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

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

21 (7) If an unconditional release trial is ordered pursuant to
22 section 8 of this act or RCW 71.09.090, this section is suspended
23 until the completion of that trial. If the individual is found either
24 by jury or the court to continue to meet the definition of a sexually
25 violent predator, the department must conduct an examination pursuant
26 to this section no later than one year after the date of the order
27 finding that the individual continues to be a sexually violent
28 predator. The examination must comply with the requirements of this
29 section.

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

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

1 (1) (a) After receipt of the annual report prepared under RCW
2 71.09.070, if the secretary determines that the person's condition
3 has so changed that the person no longer meets the definition of a
4 sexually violent predator, the secretary shall authorize the person
5 to petition the court for unconditional discharge. The petition must
6 be filed with the court and served upon the prosecuting agency
7 responsible for the initial commitment. The court, upon receipt of
8 the petition for unconditional discharge, shall within 45 days hold a
9 trial scheduling conference regarding a trial on the issue of
10 unconditional discharge. The committed person's petition shall only
11 be considered by the court at the show cause hearing held pursuant to
12 RCW 71.09.090.

13 (b) After receipt of the annual report prepared pursuant to RCW
14 71.09.070, if the secretary determines that the person's condition
15 has so changed that conditional release to a less restrictive
16 alternative is in the best interest of the person and conditions can
17 be imposed that adequately protect the community, then the secretary
18 shall authorize the person to petition the court for conditional
19 release to a less restrictive alternative. The petition pursuant to
20 this section may not include a proposed less restrictive alternative
21 placement by the committed person, and shall only include the
22 secretary's authorization. The committed person's petition shall only
23 be considered by the court at the show cause hearing held pursuant to
24 RCW 71.09.090. Upon receipt of the petition, the court shall order
25 the department to identify a less restrictive alternative placement
26 that satisfies RCW 71.09.092 (1) through (4). Once identified, notice
27 of the placement shall be filed with the court and served upon the
28 prosecuting agency responsible for the initial commitment, any person
29 or persons identified in RCW 71.09.140(2)(a) who have opted to
30 receive notifications under this chapter, and the person and the
31 person's counsel. If the department cannot identify a placement
32 available to the person that satisfies RCW 71.09.092 (1) through (4)
33 within 90 days, the department shall provide a written certification
34 to the court, the prosecuting agency responsible for the initial
35 commitment, and the person and the person's counsel, detailing the
36 efforts of the department to identify a qualifying placement. Upon
37 the department's certification, the person may propose a placement
38 that satisfies RCW 71.09.092 (1) through (3). After a less
39 restrictive placement has been proposed by either the department or
40 the person, the court shall within 45 days order a hold a trial

1 scheduling conference regarding a trial on the issue of whether the
2 person shall be conditionally released to the proposed less
3 restrictive alternative.

4 (2)(a) If the secretary does not authorize the person to
5 petition, the person may petition the court for conditional release
6 to a less restrictive alternative or unconditional discharge without
7 the secretary's approval pursuant to the procedures of RCW 71.09.090.
8 The secretary shall provide the committed person with an annual
9 written notice of the person's right to petition the court for
10 conditional release to a less restrictive alternative or
11 unconditional discharge over the secretary's objection. A committed
12 person is restricted from petitioning prior to the completion of the
13 annual report and may not petition more than once during the calendar
14 year. The committed person's petition shall only be considered by the
15 court at the show cause hearing pursuant to RCW 71.09.090. The notice
16 must contain a waiver of rights. The secretary shall file the notice
17 and waiver form and the annual report with the court. If the person
18 does not affirmatively waive the right to petition, the court shall
19 set a show cause hearing to determine whether probable cause exists
20 to warrant a trial on whether the person's condition has so changed
21 that:

22 (i) The person no longer meets the definition of a sexually
23 violent predator; or

24 (ii) Conditional release to a proposed less restrictive
25 alternative would be in the best interest of the person and
26 conditions can be imposed that would adequately protect the
27 community.

28 (b) The show cause hearing shall be conducted according to the
29 procedures set forth in RCW 71.09.090.

30 **Sec. 9.** RCW 71.09.090 and 2021 c 236 s 4 are each amended to
31 read as follows:

32 ~~((1)(a) If the secretary determines that the person's condition~~
33 ~~has so changed that the person no longer meets the definition of a~~
34 ~~sexually violent predator, the secretary shall authorize the person~~
35 ~~to petition the court for unconditional discharge. The petition shall~~
36 ~~be filed with the court and served upon the prosecuting agency~~
37 ~~responsible for the initial commitment. The court, upon receipt of~~
38 ~~the petition for unconditional discharge, shall within 45 days order~~
39 ~~a hearing.~~

1 ~~(b) If the secretary determines that the person's condition has~~
2 ~~so changed that conditional release to a less restrictive alternative~~
3 ~~is in the best interest of the person and conditions can be imposed~~
4 ~~that adequately protect the community, then the secretary shall~~
5 ~~authorize the person to petition the court for conditional release to~~
6 ~~a less restrictive alternative. Upon receipt of the petition, the~~
7 ~~court shall order the department to identify a less restrictive~~
8 ~~alternative placement that satisfies RCW 71.09.092 (1) through (4).~~
9 ~~Once identified, notice of the placement shall be filed with the~~
10 ~~court and served upon: The prosecuting agency responsible for the~~
11 ~~initial commitment; any person or persons identified in RCW~~
12 ~~71.09.140(2) (a) who have opted to receive notifications under this~~
13 ~~chapter; and the person and his or her counsel. If the department~~
14 ~~cannot identify a placement available to the person that satisfies~~
15 ~~RCW 71.09.092 (1) through (4) within 90 days, the department shall~~
16 ~~provide a written certification to the court, the prosecuting agency~~
17 ~~responsible for the initial commitment, and the person and his or her~~
18 ~~counsel, detailing the efforts of the department to identify a~~
19 ~~qualifying placement. Upon the department's certification, the person~~
20 ~~may propose a placement that satisfies RCW 71.09.092 (1) through (3).~~
21 ~~After a less restrictive placement has been proposed by either the~~
22 ~~department or the person, the court shall within 45 days order a~~
23 ~~hearing.~~

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

1 ~~(b)(i))~~ (1) The court shall hold a show cause hearing pursuant
2 to this section, unless otherwise waived by the person or unless the
3 person is entitled to a trial on the issue of unconditional discharge
4 pursuant to section 8(1) of this act. The show cause hearing must
5 proceed as set forth in subsections (2) through (8) of this section.

6 (2) Whenever the department is ordered to identify a less
7 restrictive alternative placement under this chapter that satisfies
8 RCW 71.09.092 (1) through (4), the only proposed placement the court
9 may consider at the trial on the issue of conditional release is the
10 one identified and filed by the department.

11 (3) The committed person shall have a right to have an attorney
12 represent him or her at the show cause hearing, which may be
13 conducted solely on the basis of affidavits or declarations, but the
14 person is not entitled to be present at the show cause hearing. The
15 state may rely exclusively upon the annual report prepared pursuant
16 to RCW 71.09.070. The committed person may present responsive
17 affidavits or declarations to which the state may reply. At the show
18 cause hearing, the prosecuting agency shall present prima facie
19 evidence establishing: ((A))

20 (a) That the committed person continues to meet the definition of
21 a sexually violent predator; and ((B) that)

22 (b) That a less restrictive alternative is not in the best
23 interest of the person and conditions cannot be imposed that
24 adequately protect the community.

25 ~~((ii)(A) If the state produces prima facie evidence that the~~
26 ~~committed person continues to be a sexually violent predator, then~~
27 ~~the state's burden under (b)(i)(A) of this subsection is met and an~~
28 ~~unconditional release trial may not be ordered unless the committed~~
29 ~~person produces evidence satisfying: Subsection (4)(a) of this~~
30 ~~section; and subsection (4)(b) (i) or (ii) of this section.~~

31 ~~(B) If the state produces prima facie evidence that a less~~
32 ~~restrictive alternative is not appropriate for the committed person,~~
33 ~~then the state's burden under (b)(i)(B) of this subsection is met,~~
34 ~~and a conditional release trial may not be ordered unless the~~
35 ~~committed person:~~

36 ~~(I) Produces evidence satisfying: Subsection (4)(a) of this~~
37 ~~section; and subsection (4)(b) (i) or (ii) of this section; and~~

38 ~~(II) Presents the court with a specific placement satisfying the~~
39 ~~requirements of RCW 71.09.092.~~

1 ~~(iii) In making the showing required under (b) (i) of this~~
2 ~~subsection, the state may rely exclusively upon the annual report~~
3 ~~prepared pursuant to RCW 71.09.070. The committed person may present~~
4 ~~responsive affidavits or declarations to which the state may reply.~~

5 ~~(c) (i) If the court at the show cause hearing determines that~~
6 ~~either: (A) The state has failed to present prima facie evidence that~~
7 ~~the committed person continues to meet the definition of a sexually~~
8 ~~violent predator; or (B) probable cause exists to believe that the~~
9 ~~person's condition has so changed that the person no longer meets the~~
10 ~~definition of a sexually violent predator, then the court shall set a~~
11 ~~hearing on the issue of unconditional discharge.~~

12 ~~(ii) If the court at the show cause hearing determines that the~~
13 ~~state has failed to present prima facie evidence that no proposed~~
14 ~~less restrictive alternative is in the best interest of the person~~
15 ~~and conditions cannot be imposed that would adequately protect the~~
16 ~~community, the court shall enter an order directing the department to~~
17 ~~propose a less restrictive alternative that satisfies RCW 71.09.092~~
18 ~~(1) through (4). If the department cannot identify a placement~~
19 ~~available to the person that satisfies RCW 71.09.092 (1) through (4)~~
20 ~~within 90 days, the department shall provide a written certification~~
21 ~~to the court, the prosecuting agency responsible for the initial~~
22 ~~commitment, and the person and his or her counsel, detailing the~~
23 ~~efforts of the department to identify a qualifying placement. Upon~~
24 ~~the department's certification, the person may propose a placement~~
25 ~~that satisfies RCW 71.09.092 (1) through (3). After a less~~
26 ~~restrictive placement has been proposed by either the department or~~
27 ~~the person, the court shall set a hearing on the issue of conditional~~
28 ~~release.~~

29 ~~(iii) If the court at the show cause hearing determines, based on~~
30 ~~the evidence submitted by the person, that probable cause exists to~~
31 ~~believe)) (4) (a) If the court at the show cause hearing determines~~
32 ~~that the state has produced prima facie evidence that the committed~~
33 ~~person continues to be a sexually violent predator, then the state's~~
34 ~~burden is met and an unconditional release trial may not be ordered~~
35 ~~unless the committed person produces evidence that probable cause~~
36 ~~exists to believe that the person's condition has so changed that the~~
37 ~~person no longer meets the definition of a sexually violent predator.~~

38 (b) If the court determines that the state has failed to present
39 prima facie evidence that the committed person continues to meet the
40 definition of a sexually violent predator or find that probable cause

1 exists to believe that the person's condition has so changed that the
2 person no longer meets the definition of a sexually violent predator,
3 the court shall set a trial on the issue of unconditional discharge.

4 (5) (a) If the state produces prima facie evidence that a less
5 restrictive alternative is not appropriate for the committed person,
6 then the state's burden is met and a conditional release trial may
7 not be ordered unless the committed person produces evidence that
8 probable cause exists that the person's condition has so changed that
9 release to a less restrictive alternative would be in the best
10 interest of the person and conditions can be imposed that would
11 adequately protect the community.

12 (b) If the court at the show cause hearing determines that the
13 state has failed to present prima facie that no proposed less
14 restrictive alternative is in the best interest of the person and
15 conditions cannot be imposed that would adequately protect the
16 community, the court shall enter an order directing the department to
17 propose a less restrictive alternative that satisfies RCW 71.09.092
18 (1) through (4). If the department cannot identify a placement
19 available to the person that satisfies RCW 71.09.092 (1) through (4)
20 within 90 days, the department shall provide a written certification
21 to the court, the prosecuting agency responsible for the initial
22 commitment, and the person and the person's counsel, detailing the
23 efforts of the department to identify a qualifying placement. Upon
24 the department's certification, the person may propose a placement
25 that satisfies RCW 71.09.092 (1) through (3). After a less
26 restrictive placement has been proposed by either the department or
27 the person, the court shall set a trial on the issue of conditional
28 release.

29 (c) Should the court determine that probable cause exists that
30 the person's condition has so changed that release to a less
31 restrictive alternative would be in the best interest of the person
32 and conditions can be imposed that would adequately protect the
33 community, the court shall set a ((hearing)) trial on the issue of
34 conditional release if the person presents the court with a specific
35 placement that satisfies the requirements of RCW 71.09.092 (1)
36 through (3).

37 (d) If the court has not previously considered the issue of
38 release to a less restrictive alternative, either through a trial on
39 the merits or through the procedures set forth in RCW 71.09.094(1),
40 or if an immediately preceding less restrictive alternative was

1 revoked due to the loss of adequate housing or treatment for reasons
2 other than noncompliance with housing requirements, treatment, or
3 other conditions of the less restrictive alternative, the court shall
4 consider whether release to a less restrictive alternative would be
5 in the best interests of the person and conditions can be imposed
6 that would adequately protect the community, without considering
7 whether the person's condition has changed.

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

26 ~~(b) Whenever any indigent person is subjected to an evaluation~~
27 ~~under (a) of this subsection, the office of public defense is~~
28 ~~responsible for the cost of one expert or professional person~~
29 ~~conducting an evaluation on the person's behalf. When the person~~
30 ~~wishes to be evaluated by a qualified expert or professional person~~
31 ~~of his or her own choice, such expert or professional person must be~~
32 ~~permitted to have reasonable access to the person for the purpose of~~
33 ~~such evaluation, as well as to all relevant medical and psychological~~
34 ~~records and reports. In the case of a person who is indigent, the~~
35 ~~court shall, upon the person's request, assist the person in~~
36 ~~obtaining an expert or professional person to perform an evaluation~~
37 ~~or participate in the hearing on the person's behalf. Nothing in this~~
38 ~~chapter precludes the person from paying for additional expert~~
39 ~~services at his or her own expense.~~

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

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

17 ~~(4)(a))~~ (6)(a) Probable cause exists to believe that a person's
18 condition has "so changed," under ~~((subsection (2)))~~ subsections (4)
19 and (5) of this section, only when evidence exists, since the
20 person's last commitment trial, or less restrictive alternative
21 revocation proceeding, of a substantial change in the person's
22 physical or mental condition such that the person either no longer
23 meets the definition of a sexually violent predator or that a
24 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)))~~ subsections
28 (4) and (5) of this section may be ordered, or a trial proceeding may
29 be held, only when there is current evidence from a licensed
30 professional of one of the following and the evidence presents a
31 change in condition since the person's last commitment trial
32 proceeding:

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

37 (ii) A change in the person's mental condition brought about
38 through positive response to continuing participation in treatment
39 which indicates that the person meets the standard for conditional

1 release to a less restrictive alternative or that the person would be
2 safe to be at large if unconditionally released from commitment.

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

9 (~~(5)~~) (7) When the court enters an order for unconditional
10 discharge of a person from an immediately preceding less restrictive
11 placement, the court must direct the clerk to transmit a copy of the
12 order to the department of corrections for discharge process and
13 termination of cause.

14 (~~(6)~~) (8) The jurisdiction of the court over a person civilly
15 committed pursuant to this chapter continues until such time as the
16 person is unconditionally discharged.

17 (~~(7)~~) (9) During any period of confinement pursuant to a
18 criminal conviction, or for any period of detention awaiting trial on
19 criminal charges, this section is suspended.

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

22 (1) At the trial resulting from RCW 71.09.090 (4) or (5), the
23 committed person shall be entitled to be present and to the benefit
24 of all constitutional protections that were afforded to the person at
25 the initial commitment proceeding. The prosecuting agency shall
26 represent the state and shall have a right to a jury trial and to
27 have the committed person evaluated by experts chosen by the state.
28 The prosecuting agency shall have a right to a current evaluation of
29 the person by experts chosen by the state. The judge may require the
30 person to complete any of the following procedures or tests if
31 requested by the evaluator: (a) A clinical interview; (b)
32 psychological testing; (c) plethysmograph testing; and (d) polygraph
33 testing. The judge may order the person to complete any other
34 procedures and tests relevant to the evaluation. The state is
35 responsible for the costs of the evaluation. The committed person
36 shall also have the right to a jury trial and the right to have
37 experts evaluate the person on their behalf and the court shall
38 appoint an expert if the person is indigent and requests an
39 appointment.

1 (2) Whenever any indigent person is subjected to an evaluation
2 under subsection (1) of this section, the office of public defense is
3 responsible for the cost of one expert or professional person
4 conducting an evaluation on the person's behalf. When the person
5 wishes to be evaluated by a qualified expert or professional person
6 of their own choice, such expert or professional person must be
7 permitted to have reasonable access to the person for the purpose of
8 such evaluation, as well as to all relevant medical and psychological
9 records and reports. In the case of a person who is indigent, the
10 court shall, upon the person's request, assist the person in
11 obtaining an expert or professional person to perform an evaluation
12 or participate in the trial on the person's behalf. Nothing in this
13 chapter precludes the person from paying for additional expert
14 services at the person's own expense.

15 (3) If the issue at the trial is whether the person should be
16 unconditionally discharged, the burden of proof shall be upon the
17 state to prove beyond a reasonable doubt that the committed person's
18 condition remains such that the person continues to meet the
19 definition of a sexually violent predator. Evidence of the prior
20 commitment trial and disposition is admissible. The recommitment
21 proceeding shall otherwise proceed as set forth in RCW 71.09.050 and
22 71.09.060.

23 (4) If the issue at the trial is whether the person should be
24 conditionally released to a less restrictive alternative, the burden
25 of proof at the trial shall be upon the state to prove beyond a
26 reasonable doubt that conditional release to the proposed less
27 restrictive alternative either: (a) Is not in the best interest of
28 the committed person; or (b) does not include conditions that would
29 adequately protect the community. Evidence of the prior commitment
30 trial and disposition is admissible.

31 (5) When the court enters an order for unconditional discharge of
32 a person from an immediately preceding less restrictive placement,
33 the court shall direct the clerk to transmit a copy of the order to
34 the department of corrections for discharge process and termination
35 of cause.

36 **Sec. 11.** RCW 71.09.094 and 2001 c 286 s 11 are each amended to
37 read as follows:

38 (1) Upon the conclusion of the evidence in a ((hearing)) trial
39 held pursuant to ((RCW 71.09.090)) section 10 of this act or through

1 summary judgment proceedings prior to such a ~~((hearing))~~ trial, if
2 the court finds that there is no legally sufficient evidentiary basis
3 for a reasonable jury to find that the conditions set forth in RCW
4 71.09.092 have been met, the court shall grant a motion by the state
5 for a judgment as a matter of law on the issue of conditional release
6 to a less restrictive alternative.

7 (2) Whenever the issue of conditional release to a less
8 restrictive alternative is submitted to the jury, the court shall
9 instruct the jury to return a verdict in substantially the following
10 form: Has the state proved beyond a reasonable doubt that either: (a)
11 The proposed less restrictive alternative is not in the best
12 interests of respondent; or (b) does not include conditions that
13 would adequately protect the community? Answer: Yes or No.

14 **Sec. 12.** RCW 71.09.096 and 2021 c 236 s 6 are each amended to
15 read as follows:

16 (1) If the court or jury determines that ~~((conditional release to
17 a less restrictive alternative is in the best interest of the person
18 and includes conditions that would adequately protect the
19 community,))~~ the state did not meet its burden at the trial held
20 pursuant to section 10(4) of this act and the court determines that
21 the minimum conditions set forth in RCW 71.09.092 ((and in this
22 section)) are met, the court shall enter judgment ((and direct a
23 conditional release)) on the less restrictive alternative at issue at
24 the trial. The court shall also enter judgment on a less restrictive
25 alternative where prior to the trial held pursuant to section 10(4)
26 of this act the state concedes that it cannot meet its burden under
27 RCW 71.09.094(2) and that the minimum conditions set forth in RCW
28 71.09.092 are met. Before directing conditional release, the court
29 shall determine whether conditions exist that will both ensure the
30 person's compliance with treatment and protect the community pursuant
31 to subsection (4) of this section and whether the requirements of
32 this section are met.

33 (2) ~~((The court shall impose any additional conditions necessary
34 to ensure compliance with treatment and to protect the community.))~~
35 If the court finds after considering what conditions to impose
36 pursuant to subsection (4) of this section that conditions do not
37 exist that will both ensure the person's compliance with treatment
38 and protect the community, then the person shall be remanded to the
39 custody of the department of social and health services for control,

1 care, and treatment in a secure facility as designated in RCW
2 71.09.060(1). The court must make specific findings as to why
3 conditions do not exist that will both ensure the person's compliance
4 with treatment and protect the community.

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

16 (4) (a) (~~Prior to authorizing any release to a less restrictive~~
17 ~~alternative, the court shall impose such conditions upon the person~~
18 ~~as are necessary to ensure the safety of the community. In imposing~~
19 ~~conditions, the court must impose a restriction on the proximity of~~
20 ~~the person's residence to public or private schools providing~~
21 ~~instruction to kindergarten or any grades one through 12 in~~
22 ~~accordance with RCW 72.09.340. Courts shall require a minimum~~
23 ~~distance restriction of 500 feet on the proximity of the person's~~
24 ~~residence to child care facilities and public or private schools~~
25 ~~providing instruction to kindergarten or any grades one through 12.~~
26 The)) Upon entering judgment pursuant to subsection (1) of this
27 section or upon the parties' agreement, the court shall order the
28 department of corrections to investigate the less restrictive
29 alternative and, within 60 days of the order to investigate being
30 served on the department of corrections, recommend ((any additional))
31 conditions to the court. ((These conditions shall be individualized
32 to address the person's specific risk factors and criminogenic needs
33 and may include, but are not limited to[,] the following:
34 Specification of residence or restrictions on residence including
35 distance restrictions, specification of contact with a reasonable
36 number of individuals upon the person's request who are verified by
37 the department of corrections to be appropriate social contacts,
38 prohibition of contact with potential or past victims, prohibition of
39 alcohol and other drug use, participation in a specific course of
40 inpatient or outpatient treatment that may include monitoring by the

1 ~~use of polygraph and plethysmograph, monitoring through the use of~~
2 ~~global positioning system technology, supervision by a department of~~
3 ~~corrections community corrections officer, a requirement that the~~
4 ~~person remain within the state unless the person receives prior~~
5 ~~authorization by the court, and any other conditions that the court~~
6 ~~determines are in the best interest of the person or others. A copy~~
7 ~~of the conditions of release shall be given to the person and to any~~
8 ~~designated service providers.))~~

9 (b) After receiving the department of corrections' report and
10 recommendations, and prior to authorizing any release to a less
11 restrictive alternative, the court shall impose such conditions upon
12 the person as are necessary to ensure the safety of the community and
13 ensure the person's compliance with treatment.

14 (i) In imposing conditions, the court must impose a restriction
15 on the proximity of the person's residence to child care centers and
16 to public or private schools providing instruction to kindergarten or
17 any grades one through 12 in accordance with RCW 72.09.340. Courts
18 shall require a minimum distance restriction of 500 feet on the
19 proximity of the person's residence to child care centers and public
20 or private schools providing instruction to kindergarten or any
21 grades one through 12.

22 (ii) Conditions upon the person must also include, but are not
23 limited to, the following: Prohibition of contact with potential or
24 past victims without authorization; prohibition of alcohol and other
25 drug use; participation in a specific course of inpatient or
26 outpatient treatment that may include monitoring by the use of
27 polygraph and plethysmograph; monitoring through the use of global
28 positioning system technology; supervision by a department of
29 corrections community corrections officer; and a requirement that the
30 person remain within the state unless the person receives prior
31 authorization by the court.

32 (iii) As part of its conditions, the court may consider
33 specification of contact with a reasonable number of individuals upon
34 the person's request who are verified by the department of
35 corrections to be appropriate social contacts.

36 (iv) A copy of the conditions of release shall be given to the
37 person and to any designated service providers.

38 (c) To the greatest extent possible, the person, person's
39 counsel, prosecuting agency responsible for the initial commitment,
40 treatment provider, supervising community corrections officer, and

1 appropriate clinical staff of the special commitment center shall
2 meet and collaborate to craft individualized, narrowly tailored, and
3 empirically based conditions to present to the court to help
4 facilitate the person's successful transition to the community.

5 (5) (a) Prior to authorizing release to a less restrictive
6 alternative proposed by the department, the court shall consider
7 whether the person's less restrictive alternative placement is in
8 accordance with fair share principles. To ensure equitable
9 distribution of releases, and prevent the disproportionate grouping
10 of persons subject to less restrictive orders in any one county, or
11 in any one jurisdiction or community within a county, the legislature
12 finds it is appropriate for releases to a less restrictive
13 alternative to occur in a manner that adheres to fair share
14 principles. The legislature recognizes that there may be reasons why
15 the department may not recommend that a person be released to (~~his~~
16 ~~or her~~) the person's county of commitment, including availability of
17 individualized resources, the person's support needs, or when the
18 court determines that the person's return to (~~his~~~~or her~~) the
19 person's county of commitment would be inappropriate considering any
20 court-issued protection orders, victim safety concerns that cannot be
21 addressed through use of global positioning system technology, the
22 unavailability of appropriate treatment or facilities that would
23 adequately protect the community, negative influences on the person,
24 and the location of family or other persons or organizations offering
25 support to the person. If the court authorizes conditional release
26 based on the department's proposal to a county other than the county
27 of commitment, the court shall enter specific findings regarding its
28 decision and identify whether the release remains in line with fair
29 share principles. A party's objection to the department's plan on
30 this basis must be made within 30 days of receiving the plan unless
31 the deficiency was not reasonably discoverable at that time.

32 (b) (i) When the department develops a less restrictive
33 alternative placement under this section, it shall attempt to
34 identify a placement satisfying the requirements of RCW 71.09.092
35 that is aligned with fair share principles. The department shall
36 document its rationale for the recommended placement.

37 (ii) If the department does not support or recommend conditional
38 release to a less restrictive alternative due to a clinical
39 determination, the department shall document its objection and
40 certify that the department is developing the less restrictive

1 alternative pursuant to a court order and not because of a clinical
2 determination.

3 (iii) When the department develops or proposes a less restrictive
4 alternative placement under this chapter, it shall be considered a
5 predisposition recommendation.

6 (iv) In developing, modifying, and enforcing less restrictive
7 alternatives, the department shall be deemed to be performing a
8 quasi-judicial function.

9 (c) If the committed person is not conditionally released to
10 (~~his or her~~) the person's county of commitment, the department
11 shall provide the law and justice council of the county in which the
12 person is conditionally released with notice and a written
13 explanation, including whether the department remains in compliance
14 with fair share principles regarding releases under this chapter.

15 (d) For purposes of this section, the person's county of
16 commitment means the county of the court which ordered the person's
17 commitment.

18 (e) This subsection (5) does not apply to releases to a secure
19 community transition facility under RCW 71.09.250.

20 (6)(a) When ordered by the court, the department must provide
21 less restrictive alternative treatment that includes, at a minimum:

22 (i) The services identified in the person's discharge plan as
23 outlined in RCW 71.09.080(4);

24 (ii) The assignment of a community care coordinator;

25 (iii) Regular contacts with providers of court-ordered treatment
26 services;

27 (iv) Community escorts, if needed;

28 (v) A transition plan that addresses the person's access to
29 continued services upon unconditional discharge;

30 (vi) Financial support for necessary housing;

31 (vii) Life skills training and disability accommodations, if
32 needed; and

33 (viii) Assistance in pursuing benefits, education, and
34 employment.

35 (b) At the time the department of corrections is ordered to
36 investigate a proposed less restrictive alternative placement,
37 subject to the availability of amounts appropriated for this specific
38 purpose, the department shall assign a social worker to assist the
39 person with discharge planning, pursuing benefits, and coordination
40 of care prior to release.

1 (i) The social worker shall assist the person with completing
2 applications for benefits prior to the person's release from total
3 confinement.

4 (ii) To promote continuity of care and the individual's success
5 in the community, the department social worker shall be responsible
6 for initiating a clinical transition of care between the last
7 treating clinician at the special commitment center and the person's
8 designated community treatment provider. This transition between one
9 clinical setting to another shall occur no later than 15 days before
10 an individual's release from the special commitment center.

11 (iii) If applicable, the social worker shall assist the person
12 with locating any needed disability accommodations in the community
13 and with obtaining resources to help address the person's identified
14 life skills needs prior to release from total confinement.

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

23 (8) Each person released to a less restrictive alternative shall
24 have ~~((his or her))~~ the person's case reviewed by the court that
25 released ~~((him or her))~~ the person no later than one year after such
26 release and annually thereafter until the person is unconditionally
27 discharged. Review may occur in a shorter time or more frequently, if
28 the court, in its discretion on its own motion, or on motion of the
29 person, the secretary, or the prosecuting agency so determines. The
30 questions to be determined by the court are whether the person shall
31 continue to be conditionally released to a less restrictive
32 alternative, and if so, whether a modification to the person's less
33 restrictive alternative order is appropriate to ensure the
34 conditional release remains in the best interest of the person and
35 adequate to protect the victim and the community. The court in making
36 its determination shall be aided by the periodic reports filed
37 pursuant to subsection (7) of this section and the opinions of the
38 secretary and other experts or professional persons. This section may
39 not be used as a substitute for a proceeding initiated under RCW
40 71.09.098, nor may it be used to substitute a different sex offender

1 treatment provider or housing other than the ones that were the
2 subject of a judgment under subsection (1) of this section.

3 **Sec. 13.** RCW 71.09.250 and 2021 c 236 s 9 are each amended to
4 read as follows:

5 (1)(a) The secretary is authorized to site, construct, occupy,
6 and operate (i) a secure community transition facility on McNeil
7 Island for persons authorized to petition for a less restrictive
8 alternative under (~~RCW 71.09.090(1)~~) section 8 of this act and who
9 are conditionally released; and (ii) a special commitment center on
10 McNeil Island with up to four hundred four beds as a total
11 confinement facility under this chapter, subject to appropriated
12 funding for those purposes. The secure community transition facility
13 shall be authorized for the number of beds needed to ensure
14 compliance with the orders of the superior courts under this chapter
15 and the federal district court for the western district of
16 Washington. The total number of beds in the secure community
17 transition facility shall be limited to 24, consisting of up to 15
18 transitional beds and up to nine pretransitional beds. The residents
19 occupying the transitional beds shall be the only residents eligible
20 for transitional services occurring in Pierce county. In no event
21 shall more than 15 residents of the secure community transition
22 facility be participating in off-island transitional, educational, or
23 employment activity at the same time in Pierce county. The department
24 shall provide the Pierce county sheriff, or (~~his or her~~) the
25 sheriff's designee, with a list of the 15 residents so designated,
26 along with their photographs and physical descriptions, and the list
27 shall be immediately updated whenever a residential change occurs.
28 The Pierce county sheriff, or (~~his or her~~) the sheriff's designee,
29 shall be provided an opportunity to confirm the residential status of
30 each resident leaving McNeil Island.

31 (b) For purposes of this subsection, "transitional beds" means
32 beds only for residents who are judged by a qualified expert to be
33 suitable to leave the island for treatment, education, and
34 employment.

35 (2)(a) The secretary is authorized to site, either within the
36 secure community transition facility established pursuant to
37 subsection (1)(a)(i) of this section, or within the special
38 commitment center, up to nine pretransitional beds.

1 (b) Residents assigned to pretransitional beds shall not be
2 permitted to leave McNeil Island for education, employment,
3 treatment, or community activities in Pierce county.

4 (c) For purposes of this subsection, "pretransitional beds" means
5 beds for residents whose progress toward a less secure residential
6 environment and transition into more complete community involvement
7 is projected to take substantially longer than a typical resident of
8 the special commitment center.

9 (3) Notwithstanding RCW 36.70A.103 or any other law, this statute
10 preempts and supersedes local plans, development regulations,
11 permitting requirements, inspection requirements, and all other laws
12 as necessary to enable the secretary to site, construct, occupy, and
13 operate a secure community transition facility on McNeil Island and a
14 total confinement facility on McNeil Island.

15 (4) To the greatest extent possible, until June 30, 2003, persons
16 who were not civilly committed from the county in which the secure
17 community transition facility established pursuant to subsection (1)
18 of this section is located may not be conditionally released to a
19 setting in that same county less restrictive than that facility.

20 (5) As of June 26, 2001, the state shall immediately cease any
21 efforts in effect on such date to site secure community transition
22 facilities, other than the facility authorized by subsection (1) of
23 this section, and shall instead site such facilities in accordance
24 with the provisions of this section.

25 (6) The department must:

26 (a) Identify the minimum and maximum number of secure community
27 transition facility beds in addition to the facility established
28 under subsection (1) of this section that may be necessary for the
29 period of May 2004 through May 2007 and provide notice of these
30 numbers to all counties by August 31, 2001; and

31 (b) Develop and publish policy guidelines for the siting and
32 operation of secure community transition facilities.

33 (7)(a) The total number of secure community transition facility
34 beds that may be required to be sited in a county between June 26,
35 2001, and June 30, 2008, may be no greater than the total number of
36 persons civilly committed from that county, or detained at the
37 special commitment center under a pending civil commitment petition
38 from that county where a finding of probable cause had been made on
39 April 1, 2001. The total number of secure community transition
40 facility beds required to be sited in each county between July 1,

1 2008, and June 30, 2015, may be no greater than the total number of
2 persons civilly committed from that county or detained at the special
3 commitment center under a pending civil commitment petition from that
4 county where a finding of probable cause had been made as of July 1,
5 2008.

6 (b) Counties and cities that provide secure community transition
7 facility beds above the maximum number that they could be required to
8 site under this subsection are eligible for a bonus grant under the
9 incentive provisions in RCW 71.09.255. The county where the special
10 commitment center is located shall receive this bonus grant for the
11 number of beds in the facility established in subsection (1) of this
12 section in excess of the maximum number established by this
13 subsection.

14 (c) No secure community transition facilities in addition to the
15 one established in subsection (1) of this section may be required to
16 be sited in the county where the special commitment center is located
17 until after June 30, 2008, provided however, that the county and its
18 cities may elect to site additional secure community transition
19 facilities and shall be eligible under the incentive provisions of
20 RCW 71.09.255 for any additional facilities meeting the requirements
21 of that section.

22 (8) After the department demonstrates the need for additional bed
23 capacity to the appropriate committees of the legislature, and
24 receives approval and funding from the appropriate committees of the
25 legislature to build additional bed capacity, the state is authorized
26 to site and operate secure community transition facilities and other
27 conditional release and transitional facilities in any county in the
28 state in accordance with RCW 71.09.315. In identifying potential
29 counties and sites within a county for the location of a secure
30 community transition facility or other conditional release and
31 transitional facilities, the department shall work with and assist
32 local governments to provide for the equitable distribution of such
33 facilities. In coordinating and deciding upon the siting of secure
34 community transition facilities or other conditional release and
35 transitional facilities within a county, great weight shall be given
36 by the county and cities within the county to:

37 (a) The number and location of existing residential facility beds
38 operated by the department of corrections or the mental health
39 division of the department of social and health services in each
40 jurisdiction in the county; and

1 (b) The number of registered sex offenders classified as level II
2 or level III and the number of sex offenders registered as homeless
3 residing in each jurisdiction in the county.

4 (9) (a) "Equitable distribution" means siting or locating secure
5 community transition facilities and other conditional release and
6 transitional facilities in a manner that will not cause a
7 disproportionate grouping of similar facilities either in any one
8 county, or in any one jurisdiction or community within a county, as
9 relevant; and

10 (b) "Jurisdiction" means a city, town, or geographic area of a
11 county in which distinct political or judicial authority may be
12 exercised.

13 **Sec. 14.** RCW 71.09.280 and 2001 2nd sp.s. c 12 s 212 are each
14 amended to read as follows:

15 When considering whether a person civilly committed under this
16 chapter and conditionally released to a secure community transition
17 facility is appropriate for release to a placement that is less
18 restrictive than that facility, the court shall comply with the
19 procedures set forth in RCW 71.09.090 through 71.09.096 and sections
20 8 and 10 of this act. In addition, the court shall consider whether
21 the person has progressed in treatment to the point that a
22 significant change in the person's routine, including but not limited
23 to a change of employment, education, residence, or sex offender
24 treatment provider will not cause the person to regress to the point
25 that the person presents a greater risk to the community than can
26 reasonably be addressed in the proposed placement.

27 **Sec. 15.** RCW 9.94A.717 and 2020 c 275 s 2 are each amended to
28 read as follows:

29 (1) If an offender sentenced under this chapter or chapter 9.94B
30 RCW is supervised by the department, the offender may earn
31 supervision compliance credit in accordance with procedures that are
32 developed and adopted by the department.

33 (a) The supervision compliance credit shall be awarded to
34 offenders who are in compliance with supervision terms and are making
35 progress towards the goals of their individualized supervision case
36 plan, including: Participation in specific targeted interventions,
37 risk-related programming, or treatment; or completing steps towards

1 specific targeted goals that enhance protective factors and
2 stability, as determined by the department.

3 (b) For each month in compliance with community custody
4 conditions in accordance with (a) of this subsection, an offender may
5 earn supervision compliance credit of ten days.

6 (c) Supervision compliance credit is accrued monthly and time
7 shall not be applied to an offender's term of supervision prior to
8 the earning of the time.

9 (2) An offender is not eligible to earn supervision compliance
10 credit if he or she:

11 (a) Was sentenced under RCW 9.94A.507 or 10.95.030;

12 (b) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or
13 9.94A.670;

14 (c) Is subject to supervision pursuant to RCW 9.94A.745;

15 (d) Has an indeterminate sentence and is subject to parole
16 pursuant to RCW 9.95.017; or

17 (e) Is serving community custody pursuant to early release under
18 RCW 9.94A.730.

19 (3) An offender is not eligible to earn supervision compliance
20 credit on any cause being served concurrently with a less restrictive
21 alternative subject to supervision pursuant to RCW 71.09.092.

22 NEW SECTION. **Sec. 16.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

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