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**SUBSTITUTE HOUSE BILL 1390**

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**State of Washington**

**69th Legislature**

**2025 Regular Session**

**By** House Early Learning & Human Services (originally sponsored by Representatives Goodman, Farivar, Thai, Peterson, Reed, and Salahuddin; by request of Department of Social and Health Services)

READ FIRST TIME 02/11/25.

1 AN ACT Relating to repealing the community protection program;  
2 amending RCW 71.09.020 and 71.09.060; creating new sections;  
3 repealing RCW 71A.12.200, 71A.12.210, 71A.12.220, 71A.12.230,  
4 71A.12.240, 71A.12.250, 71A.12.260, and 71A.12.280; providing an  
5 effective date; and providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** The legislature intends to end the  
8 community protection program to allow clients of the developmental  
9 disabilities administration to obtain less restrictive service  
10 options. This act is not intended to reduce the supportive services  
11 that clients of the developmental disabilities administration  
12 receive.

13 NEW SECTION. **Sec. 2.** (1) By December 31, 2025, the department  
14 of social and health services shall develop and implement a plan to  
15 transition all individuals participating in the community protection  
16 program into other services or programs.

17 (2) This section expires July 1, 2026.

18 **Sec. 3.** RCW 71.09.020 and 2021 c 236 s 2 are each amended to  
19 read as follows:

1 Unless the context clearly requires otherwise, the definitions in  
2 this section apply throughout this chapter.

3 (1) "Department" means the department of social and health  
4 services.

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

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

15 (4) "Health care practitioner" means an individual or firm  
16 licensed or certified to engage actively in a regulated health  
17 profession.

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

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

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

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

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

37 (10) "Personality disorder" means an enduring pattern of inner  
38 experience and behavior that deviates markedly from the expectations  
39 of the individual's culture, is pervasive and inflexible, has onset  
40 in adolescence or early adulthood, is stable over time and leads to

1 distress or impairment. Purported evidence of a personality disorder  
2 must be supported by testimony of a licensed forensic psychologist or  
3 psychiatrist.

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

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

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

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

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

31 (16) "Secure community transition facility" means a residential  
32 facility for persons civilly committed and conditionally released to  
33 a less restrictive alternative under this chapter. A secure community  
34 transition facility has supervision and security, and either provides  
35 or ensures the provision of sex offender treatment services. Secure  
36 community transition facilities include but are not limited to the  
37 facility established pursuant to RCW 71.09.250(1)(a)(i) and any  
38 community-based facilities established under this chapter and  
39 operated by the secretary or under contract with the secretary.

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

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

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

36 (20) "Total confinement facility" means a secure facility that  
37 provides supervision and sex offender treatment services in a total  
38 confinement setting. Total confinement facilities include the special  
39 commitment center and any similar facility designated as a total  
40 confinement facility by the secretary.

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

4 **Sec. 4.** RCW 71.09.060 and 2023 c 453 s 28 are each amended to  
5 read as follows:

6 (1) The court or jury shall determine whether, beyond a  
7 reasonable doubt, the person is a sexually violent predator. In  
8 determining whether or not the person would be likely to engage in  
9 predatory acts of sexual violence if not confined in a secure  
10 facility, the fact finder may consider only placement conditions and  
11 voluntary treatment options that would exist for the person if  
12 unconditionally released from detention on the sexually violent  
13 predator petition. (~~The community protection program under RCW  
14 71A.12.230 may not be considered as a placement condition or  
15 treatment option available to the person if unconditionally released  
16 from detention on a sexually violent predator petition.~~) When the  
17 determination is made by a jury, the verdict must be unanimous.

18 If, on the date that the petition is filed, the person was living  
19 in the community after release from custody, the state must also  
20 prove beyond a reasonable doubt that the person had committed a  
21 recent overt act. If the state alleges that the prior sexually  
22 violent offense that forms the basis for the petition for commitment  
23 was an act that was sexually motivated as provided in RCW  
24 71.09.020(18)(c), the state must prove beyond a reasonable doubt that  
25 the alleged sexually violent act was sexually motivated as defined in  
26 RCW 9.94A.030.

27 If the court or jury determines that the person is a sexually  
28 violent predator, the person shall be committed to the custody of the  
29 department of social and health services for placement in a secure  
30 facility operated by the department of social and health services for  
31 control, care, and treatment until such time as: (a) The person's  
32 condition has so changed that the person no longer meets the  
33 definition of a sexually violent predator; or (b) conditional release  
34 to a less restrictive alternative as set forth in RCW 71.09.092 is in  
35 the best interest of the person and conditions can be imposed that  
36 would adequately protect the community.

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

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

10 (2) If the person charged with a sexually violent offense has  
11 been found incompetent to stand trial, and is about to be or has been  
12 released pursuant to RCW 10.77.086(7), and his or her commitment is  
13 sought pursuant to subsection (1) of this section, the court shall  
14 first hear evidence and determine whether the person did commit the  
15 act or acts charged if the court did not enter a finding prior to  
16 dismissal under RCW 10.77.086(7) that the person committed the act or  
17 acts charged. The hearing on this issue must comply with all the  
18 procedures specified in this section. In addition, the rules of  
19 evidence applicable in criminal cases shall apply, and all  
20 constitutional rights available to defendants at criminal trials,  
21 other than the right not to be tried while incompetent, shall apply.  
22 After hearing evidence on this issue, the court shall make specific  
23 findings on whether the person did commit the act or acts charged,  
24 the extent to which the person's incompetence or developmental  
25 disability affected the outcome of the hearing, including its effect  
26 on the person's ability to consult with and assist counsel and to  
27 testify on his or her own behalf, the extent to which the evidence  
28 could be reconstructed without the assistance of the person, and the  
29 strength of the prosecution's case. If, after the conclusion of the  
30 hearing on this issue, the court finds, beyond a reasonable doubt,  
31 that the person did commit the act or acts charged, it shall enter a  
32 final order, appealable by the person, on that issue, and may proceed  
33 to consider whether the person should be committed pursuant to this  
34 section.

35 (3) Except as otherwise provided in this chapter, the state shall  
36 comply with RCW 10.77.220 while confining the person. During all  
37 court proceedings where the person is present, the person shall be  
38 detained in a secure facility. If the proceedings last more than one  
39 day, the person may be held in the county jail for the duration of  
40 the proceedings, except the person may be returned to the

1 department's custody on weekends and court holidays if the court  
2 deems such a transfer feasible. The county shall be entitled to  
3 reimbursement for the cost of housing and transporting the person  
4 pursuant to rules adopted by the secretary. The department shall not  
5 place the person, even temporarily, in a facility on the grounds of  
6 any state mental facility or regional habilitation center because  
7 these institutions are insufficiently secure for this population.

8 (4) A court has jurisdiction to order a less restrictive  
9 alternative placement only after a hearing ordered pursuant to RCW  
10 71.09.090 following initial commitment under this section and in  
11 accord with the provisions of this chapter.

12 NEW SECTION. **Sec. 5.** The following acts or parts of acts are  
13 each repealed:

14 (1) RCW 71A.12.200 (Community protection program—Legislative  
15 approval) and 2006 c 303 s 1;

16 (2) RCW 71A.12.210 (Community protection program—Application) and  
17 2006 c 303 s 2;

18 (3) RCW 71A.12.220 (Community protection program—Definitions) and  
19 2006 c 303 s 3;

20 (4) RCW 71A.12.230 (Community protection program—Risk assessment  
21 —Written notification—Written determination) and 2006 c 303 s 4;

22 (5) RCW 71A.12.240 (Community protection program—Appeals—Rules—  
23 Notice) and 2006 c 303 s 5;

24 (6) RCW 71A.12.250 (Community protection program—Services—  
25 Reviews—Rules) and 2006 c 303 s 6;

26 (7) RCW 71A.12.260 (Community protection program—Less restrictive  
27 residential placement) and 2006 c 303 s 7; and

28 (8) RCW 71A.12.280 (Community protection program—Rules,  
29 guidelines, and policy manuals) and 2006 c 303 s 9.

30 NEW SECTION. **Sec. 6.** Sections 3 through 5 of this act take  
31 effect January 1, 2026.

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