
HOUSE BILL 1390

State of Washington

69th Legislature

2025 Regular Session

By Representatives Goodman, Farivar, Thai, Peterson, Reed, and Salahuddin; by request of Department of Social and Health Services

Read first time 01/20/25. Referred to Committee on Early Learning & Human Services.

1 AN ACT Relating to repealing the community protection program;
2 amending RCW 71.09.020 and 71.09.060; and repealing RCW 71A.12.200,
3 71A.12.210, 71A.12.220, 71A.12.230, 71A.12.240, 71A.12.250,
4 71A.12.260, and 71A.12.280.

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, or combination
39 thereof that has either caused harm of a sexually violent nature or
40 creates a reasonable apprehension of such harm in the mind of an

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

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

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

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

29 **Sec. 2.** RCW 71.09.060 and 2023 c 453 s 28 are each amended to
30 read as follows:

31 (1) The court or jury shall determine whether, beyond a
32 reasonable doubt, the person is a sexually violent predator. In
33 determining whether or not the person would be likely to engage in
34 predatory acts of sexual violence if not confined in a secure
35 facility, the fact finder may consider only placement conditions and
36 voluntary treatment options that would exist for the person if
37 unconditionally released from detention on the sexually violent
38 predator petition. (~~The community protection program under RCW~~
39 ~~71A.12.230 may not be considered as a placement condition or~~

1 ~~treatment option available to the person if unconditionally released~~
2 ~~from detention on a sexually violent predator petition.))~~ When the
3 determination is made by a jury, the verdict must be unanimous.

4 If, on the date that the petition is filed, the person was living
5 in the community after release from custody, the state must also
6 prove beyond a reasonable doubt that the person had committed a
7 recent overt act. If the state alleges that the prior sexually
8 violent offense that forms the basis for the petition for commitment
9 was an act that was sexually motivated as provided in RCW
10 71.09.020(18)(c), the state must prove beyond a reasonable doubt that
11 the alleged sexually violent act was sexually motivated as defined in
12 RCW 9.94A.030.

13 If the court or jury determines that the person is a sexually
14 violent predator, the person shall be committed to the custody of the
15 department of social and health services for placement in a secure
16 facility operated by the department of social and health services for
17 control, care, and treatment until such time as: (a) The person's
18 condition has so changed that the person no longer meets the
19 definition of a sexually violent predator; or (b) conditional release
20 to a less restrictive alternative as set forth in RCW 71.09.092 is in
21 the best interest of the person and conditions can be imposed that
22 would adequately protect the community.

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

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

35 (2) If the person charged with a sexually violent offense has
36 been found incompetent to stand trial, and is about to be or has been
37 released pursuant to RCW 10.77.086(7), and his or her commitment is
38 sought pursuant to subsection (1) of this section, the court shall
39 first hear evidence and determine whether the person did commit the
40 act or acts charged if the court did not enter a finding prior to

1 dismissal under RCW 10.77.086(7) that the person committed the act or
2 acts charged. The hearing on this issue must comply with all the
3 procedures specified in this section. In addition, the rules of
4 evidence applicable in criminal cases shall apply, and all
5 constitutional rights available to defendants at criminal trials,
6 other than the right not to be tried while incompetent, shall apply.
7 After hearing evidence on this issue, the court shall make specific
8 findings on whether the person did commit the act or acts charged,
9 the extent to which the person's incompetence or developmental
10 disability affected the outcome of the hearing, including its effect
11 on the person's ability to consult with and assist counsel and to
12 testify on his or her own behalf, the extent to which the evidence
13 could be reconstructed without the assistance of the person, and the
14 strength of the prosecution's case. If, after the conclusion of the
15 hearing on this issue, the court finds, beyond a reasonable doubt,
16 that the person did commit the act or acts charged, it shall enter a
17 final order, appealable by the person, on that issue, and may proceed
18 to consider whether the person should be committed pursuant to this
19 section.

20 (3) Except as otherwise provided in this chapter, the state shall
21 comply with RCW 10.77.220 while confining the person. During all
22 court proceedings where the person is present, the person shall be
23 detained in a secure facility. If the proceedings last more than one
24 day, the person may be held in the county jail for the duration of
25 the proceedings, except the person may be returned to the
26 department's custody on weekends and court holidays if the court
27 deems such a transfer feasible. The county shall be entitled to
28 reimbursement for the cost of housing and transporting the person
29 pursuant to rules adopted by the secretary. The department shall not
30 place the person, even temporarily, in a facility on the grounds of
31 any state mental facility or regional habilitation center because
32 these institutions are insufficiently secure for this population.

33 (4) A court has jurisdiction to order a less restrictive
34 alternative placement only after a hearing ordered pursuant to RCW
35 71.09.090 following initial commitment under this section and in
36 accord with the provisions of this chapter.

37 NEW SECTION. **Sec. 3.** The following acts or parts of acts are
38 each repealed:

- 1 (1) RCW 71A.12.200 (Community protection program—Legislative
2 approval) and 2006 c 303 s 1;
- 3 (2) RCW 71A.12.210 (Community protection program—Application) and
4 2006 c 303 s 2;
- 5 (3) RCW 71A.12.220 (Community protection program—Definitions) and
6 2006 c 303 s 3;
- 7 (4) RCW 71A.12.230 (Community protection program—Risk assessment
8 —Written notification—Written determination) and 2006 c 303 s 4;
- 9 (5) RCW 71A.12.240 (Community protection program—Appeals—Rules—
10 Notice) and 2006 c 303 s 5;
- 11 (6) RCW 71A.12.250 (Community protection program—Services—
12 Reviews—Rules) and 2006 c 303 s 6;
- 13 (7) RCW 71A.12.260 (Community protection program—Less restrictive
14 residential placement) and 2006 c 303 s 7; and
- 15 (8) RCW 71A.12.280 (Community protection program—Rules,
16 guidelines, and policy manuals) and 2006 c 303 s 9.

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