
HOUSE BILL 2704

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By Representatives Couture, Leavitt, Griffey, Connors, Barnard, Dufault, Ormsby, Jacobsen, and Eslick

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1 AN ACT Relating to requiring all less restrictive alternatives
2 for sexually violent predators to be operated by the department of
3 social and health services or a contracted provider; amending RCW
4 71.09.020, 71.09.092, and 71.09.097; and providing an effective date.

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 that is operated
10 by the department or a provider under contract with the department,
11 and which satisfies the conditions set forth in RCW 71.09.092. A less
12 restrictive alternative may not include placement in the community
13 protection program as pursuant to RCW 71A.12.230.

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

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

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

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

35 (12) "Prosecuting agency" means the prosecuting attorney of the
36 county where the person was convicted or charged or the attorney
37 general if requested by the prosecuting attorney, as provided in RCW
38 71.09.030.

39 (13) "Recent overt act" means any act, threat, or combination
40 thereof that has either caused harm of a sexually violent nature or

1 creates a reasonable apprehension of such harm in the mind of an
2 objective person who knows of the history and mental condition of the
3 person engaging in the act or behaviors.

4 (14) "Risk potential activity" or "risk potential facility" means
5 an activity or facility that provides a higher incidence of risk to
6 the public from persons conditionally released from the special
7 commitment center. Risk potential activities and facilities include:
8 Public and private schools, school bus stops, licensed day care and
9 licensed preschool facilities, public parks, publicly dedicated
10 trails, sports fields, playgrounds, recreational and community
11 centers, churches, synagogues, temples, mosques, public libraries,
12 public and private youth camps, and others identified by the
13 department following the hearings on a potential site required in RCW
14 71.09.315. For purposes of this chapter, "school bus stops" does not
15 include bus stops established primarily for public transit.

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

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

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

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

1 effect at any time prior to July 1, 1990, that is comparable to a
2 sexually violent offense as defined in (a) of this subsection, or any
3 federal or out-of-state conviction for a felony offense that under
4 the laws of this state would be a sexually violent offense as defined
5 in this subsection; (c) an act of murder in the first or second
6 degree, assault in the first or second degree, assault of a child in
7 the first or second degree, kidnapping in the first or second degree,
8 burglary in the first degree, residential burglary, or unlawful
9 imprisonment, which act, either at the time of sentencing for the
10 offense or subsequently during civil commitment proceedings pursuant
11 to this chapter, has been determined beyond a reasonable doubt to
12 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 71.09.092 and 2021 c 236 s 5 are each amended to
31 read as follows:

32 Before the court may enter an order directing conditional release
33 to a less restrictive alternative, it must find the following: (1)
34 The person will be treated by a treatment provider who is qualified
35 to provide such treatment in the state of Washington under chapter
36 18.155 RCW; (2) the treatment provider has presented a specific
37 course of treatment and has agreed to assume responsibility for such
38 treatment and will report progress to the court on a regular basis,
39 and will report violations immediately to the court, the prosecutor,

1 the supervising community corrections officer, and the superintendent
2 of the special commitment center; (3) housing exists in Washington
3 that complies with distance restrictions, is sufficiently secure to
4 protect the community, is operated by the department or a provider
5 under contract with the department, and the person or agency
6 providing housing to the conditionally released person has agreed in
7 writing to accept the person, to provide the level of security
8 required by the court, and immediately to report to the court, the
9 prosecutor, the supervising community corrections officer, and the
10 superintendent of the special commitment center if the person leaves
11 the housing to which he or she has been assigned without
12 authorization; (4) if the department has proposed housing that is
13 outside of the county of commitment, a documented effort was made by
14 the department to ensure that placement is consistent with fair share
15 principles of release; (5) the person is willing to comply with the
16 treatment provider and all requirements imposed by the treatment
17 provider and by the court; and (6) the person will be under the
18 supervision of the department of corrections and is willing to comply
19 with supervision requirements imposed by the department of
20 corrections.

21 **Sec. 3.** RCW 71.09.097 and 2021 c 236 s 11 are each amended to
22 read as follows:

23 (1) In accordance with RCW 71.09.090, 71.09.092, and 71.09.096,
24 the department shall have the primary responsibility for developing a
25 less restrictive alternative placement and the exclusive authority to
26 contract with providers to operate housing options for individuals
27 qualifying for a less restrictive alternative. To ensure the
28 department has sufficient less restrictive alternative placements to
29 choose from that satisfy the requirements of RCW 71.09.092, subject
30 to the availability of amounts appropriated for this specific
31 purpose, the department shall use a request for proposal process to
32 solicit and contract with housing and treatment providers from across
33 the state and facilitate fair share principles among the counties. In
34 order to increase the number of housing options for individuals
35 qualifying for a less restrictive alternative and ensure the quality
36 and compliance of such housing, the department shall have oversight
37 of the vendors and providers who contract with the state, including
38 the authority to inspect and ensure compliance, (~~negotiate~~) adopt
39 rules to establish and adjust a fee schedule for the rates charged

1 for services, ensure adequate living conditions of housing locations,
2 and terminate contracts. The department shall maintain a statewide
3 accounting of the contracted community housing and treatment
4 providers in each county and provide a biannual report to the
5 legislature and governor by December 1st on the availability and
6 adequacy of less restrictive alternative placements and the
7 department's compliance with fair share principles.

8 (2) To facilitate its duties required under this section, the
9 department shall use the following housing matrix and considerations
10 as a guide to planning and developing less restrictive alternative
11 placements. The following considerations may not be used as a reason
12 to deny a less restrictive alternative placement.

13 (a) Considerations for evaluating a proposed vendor's application
14 for less restrictive alternative housing services shall include
15 applicable state and local zoning and building codes, general housing
16 requirements, availability of public services, and other
17 considerations identified in accordance with RCW 71.09.315. The
18 department shall require the housing provider to provide proof that
19 the facility is in compliance with all local zoning and building
20 codes.

21 (i) General housing requirements include running water,
22 electricity, bedroom and living space of adequate size, and no mold
23 or infestations.

24 (ii) Availability of public services include availability of
25 chaperones and whether the placement is within a reasonable distance
26 to a grocery store, bank, public transportation options, and offices
27 for public services and benefits.

28 (iii) Other considerations include whether the placement is
29 consistent with fair share principles across the counties, whether
30 the placement is within reasonable distance to other current or
31 planned components of the less restrictive alternative, whether the
32 placement is within reasonable distance to employment opportunities,
33 and the reliability of global positioning system technology.

34 (b) Factors for evaluating less restrictive alternative options
35 for a specific individual include sex offender treatment
36 considerations, criminogenic needs and risk factors, protective
37 factors, and the specific needs of the client.

38 (i) Sex offender treatment considerations include whether the
39 housing is within a reasonable distance from the treatment provider,
40 whether the treatment provider is a good therapeutic match with the

1 client, and whether the treatment provider has relevant experience
2 and background to treat the client if the client has special needs.

3 (ii) Criminogenic needs and risk factors include consideration of
4 the person's specific needs and risk factors in evaluating less
5 restrictive alternative options.

6 (iii) Protective factors include whether housing is within a
7 reasonable distance of family, friends, potential hobbies, potential
8 employment, and educational opportunities.

9 (iv) Consideration of the client's specific needs includes
10 assessing the availability of personal care assistance and in-home
11 care assistance, and whether housing is within a reasonable distance
12 of mental health, medical treatment options, and substance use
13 disorder treatment options.

14 NEW SECTION. **Sec. 4.** Sections 1 and 2 of this act take effect
15 August 1, 2027.

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