
HOUSE BILL 2122

State of Washington

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By Representatives Fagan, Goodman, Schmick, Takko, Short, Nealey, Klippert, Stanford, Pettigrew, Orwall, Johnson, Hayes, Farrell, Rodne, Ross, Fitzgibbon, Kirby, Green, Moscoso, Magendanz, and Lias; by request of Attorney General

Prefiled 12/12/13.

1 AN ACT Relating to sexually violent predators; amending RCW
2 71.09.070 and 71.09.020; and providing an effective date.

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

4 **Sec. 1.** RCW 71.09.070 and 2011 2nd sp.s. c 7 s 1 are each amended
5 to read as follows:

6 (1) Each person committed under this chapter shall have a current
7 examination of his or her mental condition made by the department (~~of~~
8 ~~social and health services~~) at least once every year. (~~The annual~~
9 ~~report shall include~~)

10 (2) The evaluator must prepare a report that includes consideration
11 of whether:

12 (a) The committed person currently meets the definition of a
13 sexually violent predator (~~and whether~~);

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

16 (c) Conditions can be imposed that would adequately protect the
17 community.

18 (3) The evaluator must indicate in the report whether the committed
19 person participated in the interview and examination.

1 ~~(4)~~ The department (~~of social and health services~~) shall file
2 (~~this periodic~~) the report with the court that committed the person
3 under this chapter. The report shall be in the form of a declaration
4 or certification in compliance with the requirements of RCW 9A.72.085
5 and shall be prepared by a professionally qualified person as defined
6 by rules adopted by the secretary. A copy of the report shall be
7 served on the prosecuting agency involved in the initial commitment and
8 upon the committed person and his or her counsel.

9 (5) If the committed person participated in the most recent
10 interview and evaluation completed by the department, the committed
11 person may retain, or if he or she is indigent and so requests, the
12 court may appoint a qualified expert or a professional person to
13 examine him or her, and such expert or professional person shall have
14 access to all records concerning the person.

15 ~~((+2))~~ (6) The committed person must provide proof of compliance
16 with this section to the court when requesting appointment of an expert
17 or professional person.

18 (7) If an unconditional release trial is ordered pursuant to RCW
19 71.09.090, this section is suspended until the completion of that
20 trial. If the individual is found either by jury or the court to
21 continue to meet the definition of a sexually violent predator, the
22 department must conduct an examination pursuant to this section no
23 later than one year after the date of the order finding that the
24 individual continues to be a sexually violent predator. The
25 examination must comply with the requirements of this section.

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

33 **Sec. 2.** RCW 71.09.020 and 2009 c 409 s 1 are each amended to read
34 as follows:

35 Unless the context clearly requires otherwise, the definitions in
36 this section apply throughout this chapter.

- 1 (1) "Department" means the department of social and health
2 services.
- 3 (2) "Health care facility" means any hospital, hospice care center,
4 licensed or certified health care facility, health maintenance
5 organization regulated under chapter 48.46 RCW, federally qualified
6 health maintenance organization, federally approved renal dialysis
7 center or facility, or federally approved blood bank.
- 8 (3) "Health care practitioner" means an individual or firm licensed
9 or certified to engage actively in a regulated health profession.
- 10 (4) "Health care services" means those services provided by health
11 professionals licensed pursuant to RCW 18.120.020(4).
- 12 (5) "Health profession" means those licensed or regulated
13 professions set forth in RCW 18.120.020(4).
- 14 (6) "Less restrictive alternative" means court-ordered treatment in
15 a setting less restrictive than total confinement which satisfies the
16 conditions set forth in RCW 71.09.092. A less restrictive alternative
17 may not include placement in the community protection program as
18 pursuant to RCW 71A.12.230.
- 19 (7) "Likely to engage in predatory acts of sexual violence if not
20 confined in a secure facility" means that the person more probably than
21 not will engage in such acts if released unconditionally from detention
22 on the sexually violent predator petition. Such likelihood must be
23 evidenced by a recent overt act if the person is not totally confined
24 at the time the petition is filed under RCW 71.09.030.
- 25 (8) "Mental abnormality" means a congenital or acquired condition
26 affecting the emotional or volitional capacity which predisposes the
27 person to the commission of criminal sexual acts in a degree
28 constituting such person a menace to the health and safety of others.
- 29 (9) "Personality disorder" means an enduring pattern of inner
30 experience and behavior that deviates markedly from the expectations of
31 the individual's culture, is pervasive and inflexible, has onset in
32 adolescence or early adulthood, is stable over time and leads to
33 distress or impairment. Purported evidence of a personality disorder
34 must be supported by testimony of a licensed forensic psychologist or
35 psychiatrist.
- 36 (10) "Predatory" means acts directed towards: (a) Strangers; (b)
37 individuals with whom a relationship has been established or promoted

1 for the primary purpose of victimization; or (c) persons of casual
2 acquaintance with whom no substantial personal relationship exists.

3 (11) "Prosecuting agency" means the prosecuting attorney of the
4 county where the person was convicted or charged or the attorney
5 general if requested by the prosecuting attorney, as provided in RCW
6 71.09.030.

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

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

24 (14) "Secretary" means the secretary of social and health services
25 or the secretary's designee.

26 (15) "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 facilities
29 include total confinement facilities, secure community transition
30 facilities, and any residence used as a court-ordered placement under
31 RCW 71.09.096.

32 (16) "Secure community transition facility" means a residential
33 facility for persons civilly committed and conditionally released to a
34 less restrictive alternative under this chapter. A secure community
35 transition facility has supervision and security, and either provides
36 or ensures the provision of sex offender treatment services. Secure
37 community transition facilities include but are not limited to the

1 facility established pursuant to RCW 71.09.250(1)(a)(i) and any
2 community-based facilities established under this chapter and operated
3 by the secretary or under contract with the secretary.

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

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

32 (19) "Total confinement facility" means a secure facility that
33 provides supervision and sex offender treatment services in a total
34 confinement setting. Total confinement facilities include the special
35 commitment center and any similar facility designated as a total
36 confinement facility by the secretary.

37 (20) "Treatment" means the sex offender specific treatment program

1 at the special commitment center or a specific course of sex offender
2 treatment pursuant to RCW 71.09.092 (1) and (2).

3 NEW SECTION. **Sec. 3.** This act takes effect July 1, 2014.

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