
SENATE BILL 5739

State of Washington

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2023 Regular Session

By Senator Fortunato

1 AN ACT Relating to providing notice to members of the community
2 where a sexually violent predator will reside; and amending RCW
3 71.09.140 and 71.09.096.

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

5 **Sec. 1.** RCW 71.09.140 and 2021 c 236 s 8 are each amended to
6 read as follows:

7 (1)(a) At the earliest possible date, and in no event later than
8 30 days before conditional release, change of address for a person on
9 conditional release, or unconditional discharge, except in the event
10 of escape, the department of social and health services shall send
11 written notice of conditional release, unconditional discharge, or
12 escape, to the following:

13 (i) The chief of police of the city, if any, in which the person
14 will reside or in which placement will be made under a less
15 restrictive alternative;

16 (ii) The sheriff of the county in which the person will reside or
17 in which placement will be made under a less restrictive alternative;
18 ((and))

19 (iii) The sheriff of the county where the person was last
20 convicted of a sexually violent offense, if the department does not
21 know where the person will reside;

1 (iv) The members of the community in which the person being
2 released will reside. For purposes of this section "member of the
3 community" means any person with a primary residence located in the
4 same local jurisdiction that the person being released will reside;
5 and

6 (v) The members of the legislature of any district where the
7 person being released will reside.

8 The department shall notify the state patrol of the release of
9 all sexually violent predators and that information shall be placed
10 in the Washington crime information center for dissemination to all
11 law enforcement.

12 (b) A return to total confinement or to a secure community
13 transition facility pending revocation or modification proceedings is
14 not considered a change of address for purposes of (a) of this
15 subsection, and an additional community notification process is not
16 required, unless conditional release is revoked under RCW 71.09.098
17 or the return lasts longer than 90 days.

18 (2) The same notice as required by subsection (1) of this section
19 shall be sent to the following if such notice has been requested in
20 writing about a specific person found to be a sexually violent
21 predator under this chapter:

22 (a) The victim or victims of any sexually violent offenses for
23 which the person was convicted in the past or the victim's next of
24 kin if the crime was a homicide. "Next of kin" as used in this
25 section means a person's spouse, parents, siblings, and children;

26 (b) Any witnesses who testified against the person in his or her
27 commitment trial under RCW 71.09.060; and

28 (c) Any person specified in writing by the prosecuting agency.

29 Information regarding victims, next of kin, or witnesses
30 requesting the notice, information regarding any other person
31 specified in writing by the prosecuting agency to receive the notice,
32 and the notice are confidential and shall not be available to the
33 committed person.

34 (3) If a person committed as a sexually violent predator under
35 this chapter escapes from a department of social and health services
36 facility, the department shall immediately notify, by the most
37 reasonable and expedient means available, the chief of police of the
38 city and the sheriff of the county in which the committed person
39 resided immediately before his or her commitment as a sexually
40 violent predator, or immediately before his or her incarceration for

1 his or her most recent offense. If previously requested, the
2 department shall also notify the witnesses and the victims of the
3 sexually violent offenses for which the person was convicted in the
4 past or the victim's next of kin if the crime was a homicide. If the
5 person is recaptured, the department shall send notice to the persons
6 designated in this subsection as soon as possible but in no event
7 later than two working days after the department learns of such
8 recapture.

9 (4) If the victim or victims of any sexually violent offenses for
10 which the person was convicted in the past or the victim's next of
11 kin, or any witness is under the age of 16, the notice required by
12 this section shall be sent to the parents or legal guardian of the
13 child.

14 (5) The department of social and health services shall send the
15 notices required by this chapter to the last address provided to the
16 department by the requesting party. The requesting party shall
17 furnish the department with a current address.

18 (6) Nothing in this section shall impose any liability upon a
19 chief of police of a city or sheriff of a county for failing to
20 request in writing a notice as provided in subsection (1) of this
21 section.

22 (7) The notice required by subsections (1) and (2) of this
23 section shall include the address where the person will reside. If
24 the department does not know where the person will reside, the
25 required notice will clearly state that there is no known address for
26 where the person will reside.

27 **Sec. 2.** RCW 71.09.096 and 2021 c 236 s 6 are each amended to
28 read as follows:

29 (1) If the court or jury determines that conditional release to a
30 less restrictive alternative is in the best interest of the person
31 and includes conditions that would adequately protect the community,
32 and the court determines that the minimum conditions set forth in RCW
33 71.09.092 and in this section are met, the court shall enter judgment
34 and direct a conditional release.

35 (2) The court shall impose any additional conditions necessary to
36 ensure compliance with treatment and to protect the community. If the
37 court finds that conditions do not exist that will both ensure the
38 person's compliance with treatment and protect the community, then
39 the person shall be remanded to the custody of the department of

1 social and health services for control, care, and treatment in a
2 secure facility as designated in RCW 71.09.060(1).

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

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

1 authorization by the court, and any other conditions that the court
2 determines are in the best interest of the person or others. A copy
3 of the conditions of release shall be given to the person and to any
4 designated service providers.

5 (b) To the greatest extent possible, the person, person's
6 counsel, prosecuting agency responsible for the initial commitment,
7 treatment provider, supervising community corrections officer, and
8 appropriate clinical staff of the special commitment center shall
9 meet and collaborate to craft individualized, narrowly tailored, and
10 empirically based conditions to present to the court to help
11 facilitate the person's successful transition to the community.

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

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

1 (ii) If the department does not support or recommend conditional
2 release to a less restrictive alternative due to a clinical
3 determination, the department shall document its objection and
4 certify that the department is developing the less restrictive
5 alternative pursuant to a court order and not because of a clinical
6 determination.

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

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

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

19 (d) For purposes of this section, the person's county of
20 commitment means the county of the court which ordered the person's
21 commitment.

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

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

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

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

29 (iii) Regular contacts with providers of court-ordered treatment
30 services;

31 (iv) Community escorts, if needed;

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

34 (vi) Financial support for necessary housing;

35 (vii) Life skills training and disability accommodations, if
36 needed; and

37 (viii) Assistance in pursuing benefits, education, and
38 employment.

39 (b) At the time the department of corrections is ordered to
40 investigate a proposed less restrictive alternative placement,

1 subject to the availability of amounts appropriated for this specific
2 purpose, the department shall assign a social worker to assist the
3 person with discharge planning, pursuing benefits, and coordination
4 of care prior to release.

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

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

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

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

27 (8) Each person released to a less restrictive alternative shall
28 have his or her case reviewed by the court that released him or her
29 no later than one year after such release and annually thereafter
30 until the person is unconditionally discharged. Review may occur in a
31 shorter time or more frequently, if the court, in its discretion on
32 its own motion, or on motion of the person, the secretary, or the
33 prosecuting agency so determines. The questions to be determined by
34 the court are whether the person shall continue to be conditionally
35 released to a less restrictive alternative, and if so, whether a
36 modification to the person's less restrictive alternative order is
37 appropriate to ensure the conditional release remains in the best
38 interest of the person and adequate to protect the victim and the
39 community. The court in making its determination shall be aided by
40 the periodic reports filed pursuant to subsection (7) of this section

1 and the opinions of the secretary and other experts or professional
2 persons.

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