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HOUSE BILL 1232

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State of Washington

62nd Legislature

2011 Regular Session

By Representative Appleton

Read first time 01/17/11. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to secure community transition facilities; and  
2 amending RCW 71.09.090, 71.09.092, and 71.09.305.

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

4 **Sec. 1.** RCW 71.09.090 and 2010 1st sp.s. c 28 s 2 are each amended  
5 to read as follows:

6 (1) If the secretary determines that the person's condition has so  
7 changed that either: (a) The person no longer meets the definition of  
8 a sexually violent predator; or (b) conditional release to a less  
9 restrictive alternative is in the best interest of the person and  
10 conditions can be imposed that adequately protect the community, the  
11 secretary shall authorize the person to petition the court for  
12 conditional release to a less restrictive alternative or unconditional  
13 discharge. The petition shall be filed with the court and served upon  
14 the prosecuting agency responsible for the initial commitment. The  
15 court, upon receipt of the petition for conditional release to a less  
16 restrictive alternative or unconditional discharge, shall within forty-  
17 five days order a hearing.

18 (2)(a) Nothing contained in this chapter shall prohibit the person  
19 from otherwise petitioning the court for conditional release to a less

1 restrictive alternative or unconditional discharge without the  
2 secretary's approval. The secretary shall provide the committed person  
3 with an annual written notice of the person's right to petition the  
4 court for conditional release to a less restrictive alternative or  
5 unconditional discharge over the secretary's objection. The notice  
6 shall contain a waiver of rights. The secretary shall file the notice  
7 and waiver form and the annual report with the court. If the person  
8 does not affirmatively waive the right to petition, the court shall set  
9 a show cause hearing to determine whether probable cause exists to  
10 warrant a hearing on whether the person's condition has so changed  
11 that: (i) He or she no longer meets the definition of a sexually  
12 violent predator; or (ii) conditional release to a proposed less  
13 restrictive alternative would be in the best interest of the person and  
14 conditions can be imposed that would adequately protect the community.

15 (b) The committed person shall have a right to have an attorney  
16 represent him or her at the show cause hearing, which may be conducted  
17 solely on the basis of affidavits or declarations, but the person is  
18 not entitled to be present at the show cause hearing. At the show  
19 cause hearing, the prosecuting attorney or attorney general shall  
20 present prima facie evidence establishing that the committed person  
21 continues to meet the definition of a sexually violent predator and  
22 that a less restrictive alternative is not in the best interest of the  
23 person and conditions cannot be imposed that adequately protect the  
24 community. In making this showing, the state may rely exclusively upon  
25 the annual report prepared pursuant to RCW 71.09.070. The committed  
26 person may present responsive affidavits or declarations to which the  
27 state may reply.

28 (c) If the court at the show cause hearing determines that either:  
29 (i) The state has failed to present prima facie evidence that the  
30 committed person continues to meet the definition of a sexually violent  
31 predator and that no proposed less restrictive alternative is in the  
32 best interest of the person and conditions cannot be imposed that would  
33 adequately protect the community; or (ii) probable cause exists to  
34 believe that the person's condition has so changed that: (A) The  
35 person no longer meets the definition of a sexually violent predator;  
36 or (B) release to a proposed less restrictive alternative would be in  
37 the best interest of the person and conditions can be imposed that

1 would adequately protect the community, then the court shall set a  
2 hearing on either or both issues.

3 (d) If the court has not previously considered the issue of release  
4 to a less restrictive alternative, either through a trial on the merits  
5 or through the procedures set forth in RCW 71.09.094(1), the court  
6 shall consider whether release to a less restrictive alternative would  
7 be in the best interests of the person and conditions can be imposed  
8 that would adequately protect the community, without considering  
9 whether the person's condition has changed. The court may not find  
10 probable cause for a trial addressing less restrictive alternatives  
11 unless a proposed less restrictive alternative placement meeting the  
12 conditions of RCW 71.09.092 is presented to the court at the show cause  
13 hearing.

14 (3) If the secretary has not authorized the person to petition the  
15 court pursuant to subsection (1) of this section, and if the person and  
16 the prosecuting agency have retained experts who agree that conditional  
17 release to a secure community transition facility is in the best  
18 interests of the person and conditions can be imposed that would  
19 adequately protect the community, the person and the prosecuting agency  
20 may jointly petition the court for a hearing.

21 (4)(a) At the hearing resulting from subsection (1) or (2) of this  
22 section, the committed person shall be entitled to be present and to  
23 the benefit of all constitutional protections that were afforded to the  
24 person at the initial commitment proceeding. The prosecuting agency  
25 shall represent the state and shall have a right to a jury trial and to  
26 have the committed person evaluated by experts chosen by the state.  
27 The department is responsible for the cost of one expert or  
28 professional person to conduct an evaluation on the prosecuting  
29 agency's behalf. The committed person shall also have the right to a  
30 jury trial and the right to have experts evaluate him or her on his or  
31 her behalf and the court shall appoint an expert if the person is  
32 indigent and requests an appointment.

33 (b) Whenever any person is subjected to an evaluation under (a) of  
34 this subsection, the department is responsible for the cost of one  
35 expert or professional person conducting an evaluation on the person's  
36 behalf. When the person wishes to be evaluated by a qualified expert  
37 or professional person of his or her own choice, such expert or  
38 professional person must be permitted to have reasonable access to the

1 person for the purpose of such evaluation, as well as to all relevant  
2 medical and psychological records and reports. In the case of a person  
3 who is indigent, the court shall, upon the person's request, assist the  
4 person in obtaining an expert or professional person to perform an  
5 evaluation or participate in the hearing on the person's behalf.  
6 Nothing in this chapter precludes the person from paying for additional  
7 expert services at his or her own expense.

8 (c) If the issue at the hearing is whether the person should be  
9 unconditionally discharged, the burden of proof shall be upon the state  
10 to prove beyond a reasonable doubt that the committed person's  
11 condition remains such that the person continues to meet the definition  
12 of a sexually violent predator. Evidence of the prior commitment trial  
13 and disposition is admissible. The recommitment proceeding shall  
14 otherwise proceed as set forth in RCW 71.09.050 and 71.09.060.

15 (d) If the issue at the hearing is whether the person should be  
16 conditionally released to a less restrictive alternative, the burden of  
17 proof at the hearing shall be upon the state to prove beyond a  
18 reasonable doubt that conditional release to any proposed less  
19 restrictive alternative either: (i) Is not in the best interest of the  
20 committed person; or (ii) does not include conditions that would  
21 adequately protect the community. Evidence of the prior commitment  
22 trial and disposition is admissible.

23 (e) If the issue at the hearing is whether the person should be  
24 conditionally released to a secure community transition facility  
25 pursuant to a petition filed under subsection (3) of this section, the  
26 court shall determine whether conditional release to a secure community  
27 transition facility is in the best interests of the person and  
28 conditions can be imposed that would adequately protect the community.

29 ~~((4))~~ (5)(a) Probable cause exists to believe that a person's  
30 condition has "so changed," under subsection (2) of this section, only  
31 when evidence exists, since the person's last commitment trial, or less  
32 restrictive alternative revocation proceeding, of a substantial change  
33 in the person's physical or mental condition such that the person  
34 either no longer meets the definition of a sexually violent predator or  
35 that a conditional release to a less restrictive alternative is in the  
36 person's best interest and conditions can be imposed to adequately  
37 protect the community.

1 (b) A new trial proceeding under subsection (~~(3)~~) (4) of this  
2 section may be ordered, or a trial proceeding may be held, only when  
3 there is current evidence from a licensed professional of one of the  
4 following and the evidence presents a change in condition since the  
5 person's last commitment trial proceeding:

6 (i) An identified physiological change to the person, such as  
7 paralysis, stroke, or dementia, that renders the committed person  
8 unable to commit a sexually violent act and this change is permanent;  
9 or

10 (ii) A change in the person's mental condition brought about  
11 through positive response to continuing participation in treatment  
12 which indicates that the person meets the standard for conditional  
13 release to a less restrictive alternative or that the person would be  
14 safe to be at large if unconditionally released from commitment.

15 (c) For purposes of this section, a change in a single demographic  
16 factor, without more, does not establish probable cause for a new trial  
17 proceeding under subsection (~~(3)~~) (4) of this section. As used in  
18 this section, a single demographic factor includes, but is not limited  
19 to, a change in the chronological age, marital status, or gender of the  
20 committed person.

21 (~~(5)~~) (6) The jurisdiction of the court over a person civilly  
22 committed pursuant to this chapter continues until such time as the  
23 person is unconditionally discharged.

24 **Sec. 2.** RCW 71.09.092 and 2009 c 409 s 9 are each amended to read  
25 as follows:

26 (1) Except as provided in subsection (2) of this section, before  
27 the court may enter an order directing conditional release to a less  
28 restrictive alternative, it must find the following: (~~(1)~~) (a) The  
29 person will be treated by a treatment provider who is qualified to  
30 provide such treatment in the state of Washington under chapter 18.155  
31 RCW; (~~(2)~~) (b) the treatment provider has presented a specific course  
32 of treatment and has agreed to assume responsibility for such treatment  
33 and will report progress to the court on a regular basis, and will  
34 report violations immediately to the court, the prosecutor, the  
35 supervising community corrections officer, and the superintendent of  
36 the special commitment center; (~~(3)~~) (c) housing exists in Washington  
37 that is sufficiently secure to protect the community, and the person or

1 agency providing housing to the conditionally released person has  
2 agreed in writing to accept the person, to provide the level of  
3 security required by the court, and immediately to report to the court,  
4 the prosecutor, the supervising community corrections officer, and the  
5 superintendent of the special commitment center if the person leaves  
6 the housing to which he or she has been assigned without authorization;  
7 ~~((4))~~ (d) the person is willing to comply with the treatment provider  
8 and all requirements imposed by the treatment provider and by the  
9 court; and ~~((5))~~ (e) the person will be under the supervision of the  
10 department of corrections and is willing to comply with supervision  
11 requirements imposed by the department of corrections.

12 (2) The court may enter an order directing conditional release to  
13 a secure community transition facility pursuant to RCW 71.09.090(3)  
14 when it finds that subsections (1)(a), (b), (d), and (e) of this  
15 section are met.

16 **Sec. 3.** RCW 71.09.305 and 2002 c 68 s 6 are each amended to read  
17 as follows:

18 (1) Unless otherwise ordered by the court:

19 (a) Residents of a secure community transition facility shall wear  
20 electronic monitoring devices at all times. To the extent that  
21 electronic monitoring devices that employ global positioning system  
22 technology are available and funds for this purpose are appropriated by  
23 the legislature, the department shall use these devices.

24 (b) Except as provided in (c) of this subsection, at least one  
25 staff member, or other court-authorized and department-approved person  
26 must escort each resident when the resident leaves the secure community  
27 transition facility for appointments, employment, or other approved  
28 activities. Escorting persons must supervise the resident closely and  
29 maintain close proximity to the resident. The escort must immediately  
30 notify the department of any serious violation, as defined in RCW  
31 71.09.325, by the resident and must immediately notify law enforcement  
32 of any violation of law by the resident. The escort may not be a  
33 relative of the resident or a person with whom the resident has, or has  
34 had, a dating relationship as defined in RCW 26.50.010.

35 (c) A resident may leave the secure community transition facility  
36 without an escort if:

1       (i) The resident has progressed in treatment to the point that a  
2 significant change in routine will not cause the resident to regress to  
3 the point that the resident presents a greater risk to the community;

4       (ii) The secretary has provided prior written approval for the  
5 activity; and

6       (iii) The resident wears an electronic monitoring device at all  
7 times.

8       (2) Staff members of the special commitment center and any other  
9 total confinement facility and any secure community transition facility  
10 must be trained in self-defense and appropriate crisis responses  
11 including incident de-escalation. Prior to escorting a person outside  
12 of a facility, staff members must also have training in the offense  
13 pattern of the offender they are escorting.

14       (3) Any escort must carry a cellular telephone or a similar device  
15 at all times when escorting a resident of a secure community transition  
16 facility.

17       (4) The department shall require training in offender pattern,  
18 self-defense, and incident response for all court-authorized escorts  
19 who are not employed by the department or the department of  
20 corrections.

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