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**SUBSTITUTE SENATE BILL 5202**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senate Human Services & Corrections (originally sponsored by Senators Regala and Hargrove)

READ FIRST TIME 02/21/11.

1       AN ACT Relating to sexually violent predators; amending RCW  
2 71.09.040, 71.09.060, 71.09.070, 71.09.090, 71.09.094, and 71.09.098;  
3 adding a new section to chapter 71.09 RCW; creating new sections; and  
4 declaring an emergency.

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

6       NEW SECTION.   **Sec. 1.** (1) Both federal and Washington courts have  
7 recognized on many occasions that the commitment process in chapter  
8 71.09 RCW is a civil process. Nevertheless, Washington has continued  
9 to provide extra constitutional rights in chapter 71.09 RCW more  
10 associated with criminal law processes. The legislature is convinced  
11 that these processes have at times led to a focus on litigation rather  
12 than treatment.

13       (2) The legislature intends to retain the high bar of reasonable  
14 doubt for a person's original commitment, but eliminate the requirement  
15 for a unanimous jury verdict normally reserved for criminal trials.  
16 The legislature finds that once it is established that a person is a  
17 sexually violent predator, a subsequent trial on the issue of whether  
18 the person continues to meet the sexually violent predator definition  
19 should not be held unless there is sufficient evidence that

1 demonstrates a change in the person's condition since his or her last  
2 civil commitment trial proceeding. The legislature is also convinced  
3 that the clear and convincing evidence standard of proof used in other  
4 civil commitment proceedings in Washington should be equally applicable  
5 here.

6 **Sec. 2.** RCW 71.09.040 and 2009 c 409 s 4 are each amended to read  
7 as follows:

8 (1) Upon the filing of a petition under RCW 71.09.030, the judge  
9 shall determine whether probable cause exists to believe that the  
10 person named in the petition is a sexually violent predator. If such  
11 determination is made the judge shall direct that the person be taken  
12 into custody.

13 (2)(a) Within seventy-two hours after a person is taken into  
14 custody pursuant to subsection (1) of this section, the court shall  
15 provide the person with notice of, and an opportunity to appear in  
16 person at, a hearing to contest probable cause as to whether the person  
17 is a sexually violent predator.

18 (b) In order to assist the person at the hearing, within twenty-  
19 four hours of service of the petition, the prosecuting agency shall  
20 provide to the person or his or her counsel a copy of all materials  
21 provided to the prosecuting agency by the referring agency pursuant to  
22 RCW 71.09.025, or obtained by the prosecuting agency pursuant to RCW  
23 71.09.025(1) (c) and (d).

24 (c) At ~~((this))~~ the hearing, the court shall ~~((a))~~ (i) verify the  
25 person's identity, and ~~((b))~~ (ii) determine whether probable cause  
26 exists to believe that the person is a sexually violent predator. ~~((At~~  
27 ~~the probable cause hearing,))~~

28 (d) The state may rely upon the petition and certification for  
29 determination of probable cause filed pursuant to RCW 71.09.030. The  
30 state may supplement this with additional documentary evidence or live  
31 testimony.

32 (e) The person may be held in total confinement at the county jail  
33 until the trial court renders a decision after the conclusion of the  
34 seventy-two hour probable cause hearing. The county shall be entitled  
35 to reimbursement for the cost of housing and transporting the person  
36 pursuant to rules adopted by the ~~((secretary))~~ department.

1 (3) At the probable cause hearing, the person shall have the  
2 following rights in addition to the rights previously specified: (a)  
3 To be represented by counsel; (b) to present evidence on his or her  
4 behalf; (c) to cross-examine witnesses who testify against him or her;  
5 and (d) to view and copy all petitions and reports in the court file.  
6 The court must permit a witness called by either party to testify by  
7 telephone. (~~Because this~~)

8 (4) The probable cause hearing is a special proceeding(~~(7)~~) and  
9 therefore discovery pursuant to RCW 71.09.070 or the civil rules shall  
10 not occur until after the hearing has been held and the court has  
11 issued its decision.

12 (~~(4)~~) (5)(a) If the probable cause determination is made, the  
13 judge shall direct that the person be transferred to an appropriate  
14 facility for an evaluation as to whether the person is a sexually  
15 violent predator. The evaluation shall be conducted by a person deemed  
16 to be professionally qualified, pursuant to rules developed by the  
17 department, to conduct such an examination (~~pursuant to rules~~  
18 ~~developed by the department of social and health services~~)).

19 (b) The judge shall require the person to complete any or all of  
20 the following procedures or tests if requested by the evaluator: (i)  
21 A clinical interview; (ii) psychological testing; (iii) plethysmograph  
22 testing; and (iv) polygraph testing. The judge may order the person to  
23 complete any other procedures and tests relevant to the evaluation.

24 (c) The evaluation shall be completed regardless of whether a  
25 previous evaluation was performed before filing the petition for civil  
26 commitment.

27 (d) The evaluation shall be conducted pursuant to rules developed  
28 by the department of social and health services. In adopting (~~such~~)  
29 rules pursuant to this section, the department (~~of social and health~~  
30 ~~services~~) shall consult with the department of health and the  
31 department of corrections.

32 (e) In no event shall the person be released from confinement prior  
33 to trial. (~~A witness called by either party shall be permitted to~~  
34 ~~testify by telephone.~~)

35 **Sec. 3.** RCW 71.09.060 and 2009 c 409 s 6 are each amended to read  
36 as follows:

1           (1)(a) The court or jury shall determine whether, beyond a  
2 reasonable doubt, the person is a sexually violent predator.

3           (b) When the determination is made by a jury, a verdict is reached  
4 when ten of twelve jurors agree.

5           (2)(a) In determining whether or not the person would be likely to  
6 engage in predatory acts of sexual violence if not confined in a secure  
7 facility, the fact finder may consider only placement conditions and  
8 voluntary treatment options that would exist for the person if  
9 unconditionally released from detention on the sexually violent  
10 predator petition. The community protection program under RCW  
11 71A.12.230 may not be considered as a placement condition or treatment  
12 option available to the person if unconditionally released from  
13 detention on a sexually violent predator petition. (~~When the~~  
14 ~~determination is made by a jury, the verdict must be unanimous.~~)

15           (b) If, on the date that the petition is filed, the person was  
16 living in the community after release from custody, the state must also  
17 prove beyond a reasonable doubt that the person had committed a recent  
18 overt act. If the state alleges that the prior sexually violent  
19 offense that forms the basis for the petition for commitment was an act  
20 that was sexually motivated as provided in RCW 71.09.020(~~(+15)~~)  
21 (17)(c), the state must prove beyond a reasonable doubt that the  
22 alleged sexually violent act was sexually motivated as defined in RCW  
23 9.94A.030.

24           (3)(a) If the court or jury determines that the person is a  
25 sexually violent predator, the person shall be committed to the custody  
26 of the department of social and health services for placement in a  
27 secure facility operated by the department of social and health  
28 services for control, care, and treatment until such time as: (~~(+a)~~)

29 (i) The person's condition has so changed that the person no longer  
30 meets the definition of a sexually violent predator; or (~~(+b)~~) (ii)  
31 conditional release to a less restrictive alternative as set forth in  
32 RCW 71.09.092 is in the best interest of the person and conditions can  
33 be imposed that would adequately protect the community.

34           (b) If the court or (~~unanimous~~) jury decides that the state has  
35 not met its burden of proving that the person is a sexually violent  
36 predator, the court shall direct the person's release.

37           (c) If the jury is unable to reach a (~~unanimous~~) verdict, the  
38 court shall declare a mistrial and set a retrial within forty-five days

1 of the date of the mistrial unless the prosecuting agency earlier moves  
2 to dismiss the petition. The retrial may be continued upon the request  
3 of either party accompanied by a showing of good cause, or by the court  
4 on its own motion in the due administration of justice provided that  
5 the respondent will not be substantially prejudiced. In no event may  
6 the person be released from confinement prior to retrial or dismissal  
7 of the case.

8 ~~((+2))~~ (4)(a) If the person charged with a sexually violent  
9 offense has been found incompetent to stand trial, and is about to be  
10 or has been released pursuant to RCW 10.77.086(4), and his or her  
11 commitment is sought pursuant to ~~((subsection (1) of))~~ this section,  
12 the court shall first hear evidence and determine whether the person  
13 did commit the act or acts charged if the court did not enter a finding  
14 prior to dismissal under RCW 10.77.086(4) that the person committed the  
15 act or acts charged.

16 (b) The hearing on this issue must comply with all the procedures  
17 specified in this section. In addition, the rules of evidence  
18 applicable in criminal cases shall apply, and all constitutional rights  
19 available to defendants at criminal trials, other than the right not to  
20 be tried while incompetent, shall apply.

21 (c) After hearing evidence ~~((on this issue))~~, the court shall make  
22 specific findings on whether the person did commit the act or acts  
23 charged, the extent to which the person's incompetence or developmental  
24 disability affected the outcome of the hearing, including its effect on  
25 the person's ability to consult with and assist counsel and to testify  
26 on his or her own behalf, the extent to which the evidence could be  
27 reconstructed without the assistance of the person, and the strength of  
28 the prosecution's case.

29 (d) ~~((, after the conclusion of the hearing on this issue,))~~ the  
30 court finds, beyond a reasonable doubt, that the person did commit the  
31 act or acts charged, it shall enter a final order, appealable by the  
32 person ~~((,))~~ on that issue, and may proceed to consider whether the  
33 person should be committed pursuant to this section.

34 ~~((+3))~~ (5) Except as otherwise provided in this chapter, the state  
35 shall comply with RCW 10.77.220 while confining the person. During all  
36 court proceedings where the person is present, the person shall be  
37 detained in a secure facility. If the proceedings last more than one  
38 day, the person may be held in the county jail for the duration of the

1 proceedings, except the person may be returned to the department's  
2 custody on weekends and court holidays if the court deems such a  
3 transfer feasible. The county shall be entitled to reimbursement for  
4 the cost of housing and transporting the person pursuant to rules  
5 adopted by the secretary. The department shall not place the person,  
6 even temporarily, in a facility on the grounds of any state mental  
7 facility or regional habilitation center because these institutions are  
8 insufficiently secure for this population.

9 ~~((4))~~ (6) A court has jurisdiction to order a less restrictive  
10 alternative placement only after a hearing ordered pursuant to RCW  
11 71.09.090 following initial commitment under this section and in accord  
12 with the provisions of this chapter.

13 **Sec. 4.** RCW 71.09.070 and 2001 c 286 s 8 are each amended to read  
14 as follows:

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

19 (2) The examination shall include an in-person interview of the  
20 committed person by the evaluator.

21 (3) The evaluator shall prepare a report that includes  
22 consideration of whether:

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

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

27 (c) Conditions can be imposed that would adequately protect the  
28 community.

29 (4) The department ~~((of social and health services))~~ shall file  
30 ~~((this periodic))~~ the report with the court that committed the person  
31 under this chapter. The report shall be in the form of a declaration  
32 or certification in compliance with the requirements of RCW 9A.72.085  
33 and shall be prepared by a professionally qualified person as defined  
34 by rules adopted by the secretary. A copy of the report shall be  
35 served on the prosecuting agency involved in the initial commitment and  
36 upon the committed person and his or her counsel.

1       (5) Provided that the committed person participated in the most  
2 recent interview and evaluation completed by the department, the  
3 committed person may retain, or if he or she is indigent and so  
4 requests, the court may appoint a qualified expert or a professional  
5 person to examine him or her, and such expert or professional person  
6 shall have access to all records concerning the person.

7       (6) The committed person shall provide proof of compliance with  
8 this section to the court when requesting appointment of an expert or  
9 professional person.

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

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

24       (2)(a) Nothing contained in this chapter shall prohibit the person  
25 from otherwise petitioning the court for conditional release to a less  
26 restrictive alternative or unconditional discharge without the  
27 secretary's approval. The secretary shall provide the committed person  
28 with an annual written notice of the person's right to petition the  
29 court for conditional release to a less restrictive alternative or  
30 unconditional discharge over the secretary's objection. The notice  
31 shall contain a waiver of rights. The secretary shall file the notice  
32 and waiver form and the (~~annual~~) report prepared pursuant to RCW  
33 71.09.070 with the court. If the person does not affirmatively waive  
34 the right to petition, the court shall set a show cause hearing to  
35 determine whether probable cause exists to warrant a hearing on whether  
36 the person's condition has so changed that: (i) He or she no longer  
37 meets the definition of a sexually violent predator; or (ii)

1 conditional release to a proposed less restrictive alternative would be  
2 in the best interest of the person and conditions can be imposed that  
3 would adequately protect the community.

4 (b) The committed person shall have a right to have an attorney  
5 represent him or her at the show cause hearing, which may be conducted  
6 solely on the basis of affidavits or declarations, but the person is  
7 not entitled to be present at the show cause hearing. At the show  
8 cause hearing, the prosecuting (~~(attorney or attorney general)~~) agency  
9 shall present prima facie evidence establishing that the committed  
10 person continues to meet the definition of a sexually violent predator  
11 and that a less restrictive alternative is not in the best interest of  
12 the person and conditions cannot be imposed that adequately protect the  
13 community. In making this showing, the (~~(state)~~) prosecuting agency  
14 may rely exclusively upon the (~~(annual)~~) report prepared pursuant to  
15 RCW 71.09.070. (~~(The committed person may present responsive~~  
16 ~~affidavits or declarations to which the state may reply.)~~)

17 (c) If the prosecuting agency meets its foregoing prima facie  
18 burden, the committed person shall then bear the burden to show, by a  
19 preponderance of the evidence, that his or her condition has so changed  
20 since entry of the most recent commitment order that he or she no  
21 longer meets the definition of a sexually violent predator, or that a  
22 proposed less restrictive alternative is in his or her best interest  
23 and includes conditions that can be imposed that adequately protect the  
24 community. The prosecuting agency may reply. Absent a finding of good  
25 cause by the trial court, only documentary evidence may be submitted to  
26 the court at the show cause hearing. The court shall not consider  
27 release to a less restrictive alternative unless a proposal meeting the  
28 conditions of RCW 71.09.092 is presented to the court at the show cause  
29 hearing.

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

1 or (B) release to a proposed less restrictive alternative would be in  
2 the best interest of the person and conditions can be imposed that  
3 would adequately protect the community, then the court shall set a  
4 hearing on either or both issues.

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

16 (3)(a) At the hearing resulting from subsection (1) or (2) of this  
17 section, the committed person shall be entitled to be present and to  
18 the benefit of all constitutional protections that were afforded to the  
19 person at the initial commitment proceeding. The prosecuting agency  
20 shall represent the state and shall have a right to a jury trial and to  
21 have the committed person evaluated by experts chosen by the state.  
22 The department is responsible for the cost of one expert or  
23 professional person to conduct an evaluation on the prosecuting  
24 agency's behalf. The committed person shall also have the right to a  
25 jury trial and the right to have experts evaluate him or her on his or  
26 her behalf and the court shall appoint an expert if the person is  
27 indigent and requests an appointment. Evaluations pursuant to this  
28 section shall be subject to all requirements specified in RCW  
29 71.09.040.

30 (b) Whenever any person is subjected to an evaluation under (a) of  
31 this subsection, the department is responsible for the cost of one  
32 expert or professional person conducting an evaluation on the person's  
33 behalf. When the person wishes to be evaluated by a qualified expert  
34 or professional person of his or her own choice, such expert or  
35 professional person must be permitted to have reasonable access to the  
36 person for the purpose of such evaluation, as well as to all relevant  
37 medical and psychological records and reports. In the case of a person  
38 who is indigent, the court shall, upon the person's request, assist the

1 person in obtaining an expert or professional person to perform an  
2 evaluation or participate in the hearing on the person's behalf.  
3 Nothing in this chapter precludes the person from paying for additional  
4 expert services at his or her own expense.

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

13 (d) If the issue at the hearing is whether the person should be  
14 conditionally released to a less restrictive alternative, the burden of  
15 proof at the hearing shall be upon the ((state)) prosecuting agency to  
16 prove ((~~beyond a reasonable doubt~~)) by clear and convincing evidence  
17 that conditional release to any proposed less restrictive alternative  
18 either:

19 (i) Is not in the best interest of the committed person; or

20 (ii) Does not include conditions that would adequately protect the  
21 community. ((~~Evidence of the prior commitment trial and disposition is~~  
22 ~~admissible.~~))

23 (e) Evidence of the prior commitment trial and disposition is  
24 admissible in any proceeding under this subsection. The proceeding  
25 shall otherwise proceed as set forth in RCW 71.09.050 and 71.09.060.

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

35 (b) A new trial proceeding under subsection (3) of this section may  
36 be ordered, or a trial proceeding may be held, only when there is  
37 current evidence from a licensed professional of one of the following

1 and the evidence presents a change in condition since the person's last  
2 commitment trial proceeding:

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

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

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

18 (5) The jurisdiction of the court over a person civilly committed  
19 pursuant to this chapter continues until such time as the person is  
20 unconditionally discharged.

21 **Sec. 6.** RCW 71.09.094 and 2001 c 286 s 11 are each amended to read  
22 as follows:

23 (1) Upon the conclusion of the evidence in a hearing held pursuant  
24 to RCW 71.09.090 or through summary judgment proceedings prior to such  
25 a hearing, if the court finds that there is no legally sufficient  
26 evidentiary basis for a reasonable jury to find that the conditions set  
27 forth in RCW 71.09.092 have been met, the court shall grant a motion by  
28 the state for a judgment as a matter of law on the issue of conditional  
29 release to a less restrictive alternative.

30 (2) Whenever the issue of conditional release to a proposed less  
31 restrictive alternative is submitted to the jury, the court shall  
32 instruct the jury to return a verdict in substantially the following  
33 form: Has the state proved (~~(beyond a reasonable doubt)~~) by clear and  
34 convincing evidence that either: (a) The proposed less restrictive  
35 alternative is not in the best interests of respondent; or (b) the  
36 proposed less restrictive alternative does not include conditions that  
37 would adequately protect the community? Answer: Yes or No.

1       (3) Whenever the issue of unconditional release is submitted to the  
2 jury, the court shall instruct the jury to return a verdict in  
3 substantially the following form: Has the state proved by clear and  
4 convincing evidence that the committed person's condition remains such  
5 that the person continues to meet the definition of a sexually violent  
6 predator? Answer: Yes or No.

7       **Sec. 7.** RCW 71.09.098 and 2009 c 409 s 11 are each amended to read  
8 as follows:

9       (1) Any service provider submitting reports pursuant to RCW  
10 71.09.096(6), the supervising community corrections officer, the  
11 prosecuting agency, or the secretary's designee may petition the court  
12 for an immediate hearing for the purpose of revoking or modifying the  
13 terms of the person's conditional release to a less restrictive  
14 alternative if the petitioner believes the released person: (a)  
15 Violated or is in violation of the terms and conditions of the court's  
16 conditional release order; or (b) is in need of additional care,  
17 monitoring, supervision, or treatment.

18       (2) The community corrections officer or the secretary's designee  
19 may restrict the person's movement in the community until the petition  
20 is determined by the court. The person may be taken into custody if:

21       (a) The supervising community corrections officer, the secretary's  
22 designee, or a law enforcement officer reasonably believes the person  
23 has violated or is in violation of the court's conditional release  
24 order; or

25       (b) The supervising community corrections officer or the  
26 secretary's designee reasonably believes that the person is in need of  
27 additional care, monitoring, supervision, or treatment because the  
28 person presents a danger to himself or herself or others if his or her  
29 conditional release under the conditions imposed by the court's release  
30 order continues.

31       (3)(a) Persons taken into custody pursuant to subsection (2) of  
32 this section shall:

33       (i) Not be released until such time as a hearing is held to  
34 determine whether to revoke or modify the person's conditional release  
35 order and the court has issued its decision; and

36       (ii) Be held in the county jail, at a secure community transition

1 facility, or at the total confinement facility, at the discretion of  
2 the secretary's designee.

3 (b) The court shall be notified before the close of the next  
4 judicial day that the person has been taken into custody and shall  
5 promptly schedule a hearing.

6 (4) Before any hearing to revoke or modify the person's conditional  
7 release order, both the prosecuting agency and the released person  
8 shall have the right to request an immediate (~~(mental examination)~~)  
9 evaluation of the released person. If the conditionally released  
10 person is indigent, the court shall, upon request, assist him or her in  
11 obtaining a qualified expert or professional person to conduct the  
12 (~~(examination)~~) evaluation. Evaluations pursuant to this section shall  
13 be subject to all requirements specified in RCW 71.09.040.

14 (5) At any hearing to revoke or modify the conditional release  
15 order:

16 (a) The prosecuting agency shall represent the state, including  
17 determining whether to proceed with revocation or modification of the  
18 conditional release order;

19 (b) Hearsay evidence is admissible if the court finds that it is  
20 otherwise reliable; and

21 (c) The state shall bear the burden of proving by a preponderance  
22 of the evidence that the person has violated or is in violation of the  
23 court's conditional release order or that the person is in need of  
24 additional care, monitoring, supervision, or treatment.

25 (6)(a) If the court determines that the state has met its burden  
26 referenced in subsection (5)(c) of this section, and the issue before  
27 the court is revocation of the court's conditional release order, the  
28 court shall consider the evidence presented by the parties and the  
29 following factors relevant to whether continuing the person's  
30 conditional release is in the person's best interests or adequate to  
31 protect the community:

32 (i) The nature of the condition that was violated by the person or  
33 that the person was in violation of in the context of the person's  
34 criminal history and underlying mental conditions;

35 (ii) The degree to which the violation was intentional or grossly  
36 negligent;

37 (iii) The ability and willingness of the released person to  
38 strictly comply with the conditional release order;

1 (iv) The degree of progress made by the person in community-based  
2 treatment; and

3 (v) The risk to the public or particular persons if the conditional  
4 release continues under the conditional release order that was  
5 violated.

6 (b) Any factor alone, or in combination, shall support the court's  
7 determination to revoke the conditional release order.

8 (7) If the court determines the state has met its burden referenced  
9 in subsection (5)(c) of this section, and the issue before the court is  
10 modification of the court's conditional release order, the court shall  
11 modify the conditional release order by adding conditions if the court  
12 determines that the person is in need of additional care, monitoring,  
13 supervision, or treatment. The court has authority to modify its  
14 conditional release order by substituting a new treatment provider,  
15 requiring new housing for the person, or imposing such additional  
16 supervision conditions as the court deems appropriate.

17 (8) A person whose conditional release has been revoked shall be  
18 remanded to the custody of the secretary for control, care, and  
19 treatment in a total confinement facility as designated in RCW  
20 71.09.060(1). The person is thereafter eligible for conditional  
21 release only in accord with the provisions of RCW 71.09.090 and related  
22 statutes.

23 NEW SECTION. **Sec. 8.** A new section is added to chapter 71.09 RCW  
24 to read as follows:

25 The provisions of this chapter shall be liberally construed to  
26 serve the remedial purposes of the chapter, including protection of the  
27 public from sexually violent predators and the provision of treatment  
28 for sexually violent predators.

29 NEW SECTION. **Sec. 9.** This act applies to all individuals  
30 currently committed or awaiting commitment under chapter 71.09 RCW  
31 either on, before, or after the effective date of this section, whether  
32 confined in a secure facility or on conditional release.

33 NEW SECTION. **Sec. 10.** If any provision of this act or its  
34 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 11.** This act is necessary for the immediate  
4 preservation of the public peace, health, or safety, or support of the  
5 state government and its existing public institutions, and takes effect  
6 immediately.

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