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HOUSE BILL 2122

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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, Lias, Haler, Appleton, Buys, Morrell, Van De Wege, Ryu, Bergquist, and Robinson; by request of Attorney General

Prefiled 12/12/13. Read first time 01/13/14. Referred to Committee on Public Safety.

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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