

Supreme Court No. 79331-0

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

In re the Detention of

KEVIN AMBERS,

Appellant.

CLERK



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RECEIVED
SUPERIOR COURT
STATE OF WASHINGTON

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE GREGORY CANOVA

**APPELLANT'S STATEMENT OF ADDITIONAL
AUTHORITY**

DENNIS P. CARROLL, WSBA# 24410
The Defender Association
810 Third Ave., 8th Floor
Seattle, WA 98104

Appellant, Kevin Ambers, submits the following as additional authority:

1. Substitute House Bill 2262 (Chapter 45, Laws of 1992) (Attached as Appendix A), amending RCW 71.09.090(2) such that “safe to be at large” is the same standard as “not likely to engage in predatory acts of sexual violence.” SHB 2262 states, in part:

If the court at the show cause hearing determines that probable cause exists to believe that the person’s mental abnormality or personality disorder has so changed that the person is safe to be at large and [D] will <D] [A] IS <A] not [> LIKELY TO <A] engage in [A] PREDATORY <A] acts of sexual violence if discharged, then the court shall set a hearing on the issue.

Sec. 7(2).

2. Final Bill Report ESHB 2262 (Chapter 45, Laws of 1992) (Attached as Appendix B), explaining the change to the review provision (above) stating, in part:

The criteria for release of committed sexually violent predators is changed to be consistent with the criteria for commitment so that the state will have to prove that the person “is likely to engage” rather than “will engage” in predatory acts of sexual violence if released. When the committed person is moving for release the committed person will have to prove that he or she “is not likely to engage” rather than “will not engage” in sexually violent acts.

Appendix B, p. 2.

3. Senate Bill 5088 (Chapter 216, Laws of 1995) (Attached as Appendix C), deleting “safe to be at large” from the review provisions in RCW 71.09.090. SB 5088 states, in part:

The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that he committed person’s mental abnormality or personality disorder remains such that the person is **[D]** not safe to be at large and if released is **<D]** likely to engage in predatory acts of sexual violence **[A]** IF CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR UNCONDITIONALLY DISCHARGED **<A]**.

Sec. 9 (2).

4. Legislative history for Senate Bill 5088 (Chapter 216, Laws of 1995) including Final Bill Report 5088, House Bill Report 5088, Senate Bill Report 5088 (Appendix D), none of which indicate the 1995 amendment referenced above (Ch. 216, L. 1995) intended to change the review standard for unconditional release.

Dated this 5 day of February, 2007.

Respectfully submitted,



Dennis P. Carroll, WSBA# 24410
Attorney for Appellant

APPENDIX A

LEXSEE 1992 WA CH 45

WASHINGTON ADVANCE LEGISLATIVE SERVICE

52ND LEGISLATURE
(1992 Regular Session)

SUBSTITUTE HOUSE BILL NO. 2262

(Chapter 45, Laws of 1992)

1992 Wa. ALS 45; 1992 Wa. Laws 45; 1992 Wa. Ch. 45; 1992 Wa. HB 2262

BILL TRACKING SUMMARY FOR THIS DOCUMENT

SYNOPSIS: AN ACT Relating to refinements of the community protection act of 1990; amending RCW 9.94A.151, 9.94A.155, 71.09.030, 13.40.160, and 71.09.090; reenacting and amending RCW 9.94A.120; adding a new section to chapter 71.09 RCW; creating a new section; and declaring an emergency.

NOTICE: [A>UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED<A]
[D>Text within these symbols is deleted<D]

To view the next section, type .np* and TRANSMIT.
To view a specific section, transmit p* and the section number. E.g. p*1

Be it enacted by the Legislature of the State of Washington:

[*1] Sec. 1. RCW 9.94A.151 and 1990 c 3 s 122 are each amended to read as follows:

[A> (1)(A) WHEN IT APPEARS THAT A PERSON WHO HAS BEEN CONVICTED OF A SEXUALLY VIOLENT OFFENSE MAY MEET THE CRITERIA OF A SEXUALLY VIOLENT PREDATOR AS DEFINED IN RCW 71.09.020(1), THE AGENCY WITH JURISDICTION OVER THE PERSON SHALL REFER THE PERSON IN WRITING TO THE PROSECUTING ATTORNEY OF THE COUNTY WHERE THAT PERSON WAS CONVICTED, T <A>three months [D> before <D] [A> PRIOR TO <A] the anticipated release from total confinement [D> of a person convicted of a sex offense as defined in RCW 9.94A.030 that was committed between June 30, 1984, and July 1, 1988, the department shall notify in writing the prosecuting attorney of the county where the person was convicted. The department <D][A> .

(B) THE AGENCY <A] shall inform the prosecutor of the following:

[D> (1) <D] [A> (I) <A] The person's name, identifying factors, anticipated future residence, and offense history;
[A> AND

(II) DOCUMENTATION OF INSTITUTIONAL ADJUSTMENT AND ANY TREATMENT RECEIVED. <A]

(2) [D> A brief narrative describing the person's conduct during confinement and any treatment received; and

(3) Whether the department recommends that a civil commitment petition be filed under RCW 71.09.030. <D] [A> THIS SECTION APPLIES TO ACTS COMMITTED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS ACT.

(3) <A] The [D> department <D] [A> AGENCY WITH JURISDICTION, <A] its employees, and officials shall be immune from liability for any good-faith conduct under this section.

[A] (4) AS USED IN THIS SECTION, "AGENCY WITH JURISDICTION" MEANS THAT AGENCY WITH THE AUTHORITY TO DIRECT THE RELEASE OF A PERSON SERVING A SENTENCE OR TERM OF CONFINEMENT AND INCLUDES THE DEPARTMENT OF CORRECTIONS, THE INDETERMINATE SENTENCE REVIEW BOARD, AND THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES. <A]

[*2] Sec. 2. RCW 9.94A.155 and 1990 c 3 s 121 are each amended to read as follows:

(1) At the earliest possible date, and in no event later than ten days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, [A] RELEASE, <A] community placement, work release placement, furlough, or escape about a specific inmate convicted of a violent offense or a sex offense as defined by RCW 9.94A.030, to [D] all of <D] the following:

(a) The chief of police of the city, if any, in which the inmate will reside or in which placement will be made in a work release program; and

(b) The sheriff of the county in which the inmate will reside or in which placement will be made in a work release program[A].

THE SHERIFF OF THE COUNTY WHERE THE OFFENDER WAS CONVICTED SHALL BE NOTIFIED IF THE DEPARTMENT DOES NOT KNOW WHERE THE OFFENDER WILL RESIDE. THE DEPARTMENT SHALL NOTIFY THE STATE PATROL OF THE RELEASE OF ALL SEX OFFENDERS, AND THAT INFORMATION SHALL BE PLACED IN THE WASHINGTON CRIME INFORMATION CENTER FOR DISSEMINATION TO ALL LAW ENFORCEMENT <A].

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific inmate convicted of a violent offense or a sex offense as defined by RCW 9.94A.030:

(a) The victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide;

(b) Any witnesses who testified against the inmate in any court proceedings involving the violent offense; and

(c) Any person specified in writing by the prosecuting attorney. Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate.

(3) If an inmate convicted of a violent offense or a sex offense as defined by RCW 9.94A.030 escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses and the victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(4) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(5) The department of corrections shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(6) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Next of kin" means a person's spouse, parents, siblings and children.

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

[*3] NEW SECTION. Sec. 3. A new section is added to chapter 71.09 RCW to read as follows:

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(1)(a) When it appears that a person may meet the criteria of a sexually violent predator as defined in RCW 71.09.020(1), the agency with jurisdiction shall refer the person in writing to the prosecuting attorney of the county where that person was charged, three months prior to:

- (i) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense;
- (ii) The anticipated release from total confinement of a person found to have committed a sexually violent offense as a juvenile;
- (iii) Release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to RCW 10.77.090(3); or
- (iv) Release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to RCW 10.77.020(3).

(b) The agency shall inform the prosecutor of the following:

- (i) The person's name, identifying factors, anticipated future residence, and offense history; and
 - (ii) Documentation of institutional adjustment and any treatment received.
- (2) This section applies to acts committed before, on, or after the effective date of this act.
- (3) The agency, its employees, and officials shall be immune from liability for any good-faith conduct under this section.
- (4) As used in this section, "agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement and includes the department of corrections, the indeterminate sentence review board, and the department of social and health services.

[*4] Sec. 4. RCW 71.09.030 and 1990 1st ex.s. c 12 s 3 are each amended to read as follows:

When it appears that: (1) The [D> sentence <D] [A> TERM OF TOTAL CONFINEMENT <A] of a person who has been convicted of a sexually violent offense is about to expire, or has expired on, before, or after July 1, 1990; (2) the term of [A> TOTAL <A] confinement of a person found to have committed a sexually violent offense as a juvenile is about to expire, or has expired on, before, or after July 1, 1990; (3) a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial is about to be released, or has been released on, before, or after July 1, 1990, pursuant to RCW 10.77.090(3); or (4) a person who has been found not guilty by reason of insanity of a sexually violent offense is about to be released, or has been released on, before, or after July 1, 1990, pursuant to RCW 10.77.020(3); and it appears that the person may be a sexually violent predator, the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney may file a petition alleging that the person is a "sexually violent predator" and stating sufficient facts to support such allegation.

[*5] Sec. 5. RCW 9.94A.120 and 1991 c 221 s 2, 1991 c 181 s 3, and 1991 c 104 s 3 are each reenacted and amended to read as follows:

When a person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (5), and (7) of this section, the court shall impose a sentence within the sentence range for the offense.

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(3) Whenever a sentence outside the standard range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard range shall be a determine sentence.

(4) An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years. An offender convicted of the crime of assault in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years. An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years, and shall not be eligible for furlough, work release or other authorized leave of absence from the correctional facility during such minimum five-year term except for the purpose of commit-

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ment to an inpatient treatment facility. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section.

(5) In sentencing a first-time offender the court may waive the imposition of a sentence within the sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include up to two years of community supervision, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

- (a) Devote time to a specific employment or occupation;
- (b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;
- (c) Pursue a prescribed, secular course of study or vocational training;
- (d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (e) Report as directed to the court and a community corrections officer.
- (f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.

(6) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement, community service work, a term of community supervision not to exceed one year, and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(7)(a)(i) When an offender is convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense and has no prior convictions for a sex offense or any other felony sex offenses in this or any other state, the sentencing court, on its own motion or the motion of the state or the defendant, may order an examination to determine whether the defendant is amenable to treatment.

The report of the examination shall include at a minimum the following: The defendant's version of the facts and the official version of the facts, the defendant's offense history, an assessment of problems in addition to alleged deviant behaviors, the offender's social and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the defendant's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (A) Frequency and type of contact between offender and therapist;
- (B) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (C) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;
- (D) Anticipated length of treatment; and
- (E) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(ii) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sexual offender sentencing alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this subsection. If the court determines that this special sex offender sentencing alternative is appropriate, the court shall then impose a sentence within the sentence range. If this sentence is less than

eight years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(A) The court shall place the defendant on community supervision for the length of the suspended sentence or three years, whichever is greater; and

(B) The court shall order treatment for any period up to three years in duration. The court in its discretion shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court, and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. In addition, as conditions of the suspended sentence, the court may impose other sentence conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:

(I) Devote time to a specific employment or occupation;

(II) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(III) Report as directed to the court and a community corrections officer;

(IV) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030, perform community service work, or any combination thereof; or

(V) Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime.

(iii) The sex offender therapist shall submit quarterly reports on the defendant's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, defendant's compliance with requirements, treatment activities, the defendant's relative progress in treatment, and any other material as specified by the court at sentencing.

(iv) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment. Prior to the treatment termination hearing, the treatment professional and community corrections officer shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community supervision conditions. Either party may request and the court may order another evaluation regarding the advisability of termination from treatment. The defendant shall pay the cost of any additional evaluation ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (A) Modify conditions of community supervision, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community supervision.

(v) The court may revoke the suspended sentence at any time during the period of community supervision and order execution of the sentence if: (A) The defendant violates the conditions of the suspended sentence, or (B) the court finds that the defendant is failing to make satisfactory progress in treatment. All confinement time served during the period of community supervision shall be credited to the offender if the suspended sentence is revoked.

(vi) [A] EXCEPT AS PROVIDED IN (A)(VII) OF THIS SUBSECTION, A [A]fter July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW.

[A] (VII) A SEX OFFENDER THERAPIST WHO EXAMINES OR TREATS A SEX OFFENDER PURSUANT TO THIS SUBSECTION (7) DOES NOT HAVE TO BE CERTIFIED BY THE DEPARTMENT OF HEALTH PURSUANT TO CHAPTER 18.155 RCW IF THE COURT FINDS THAT: (A) THE OFFENDER HAS ALREADY MOVED TO ANOTHER STATE OR PLANS TO MOVE TO ANOTHER STATE FOR REASONS OTHER THAN CIRCUMVENTING THE CERTIFICATION REQUIREMENTS; (B) NO CERTIFIED PROVIDERS ARE AVAILABLE FOR TREATMENT WITHIN A REASONABLE GEOGRAPHICAL DISTANCE OF THE OFFENDER'S HOME; AND (C) THE EVALUATION AND TREATMENT PLAN COMPLY WITH THIS SUBSECTION (7) AND THE RULES ADOPTED BY THE DEPARTMENT OF HEALTH. [A]

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For purposes of this subsection, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(b) When an offender is convicted of any felony sex offense committed before July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, order the offender committed for up to thirty days to the custody of the secretary of social and health services for evaluation and report to the court on the offender's amenability to treatment at these facilities. If the secretary of social and health services cannot begin the evaluation within thirty days of the court's order of commitment, the offender shall be transferred to the state for confinement pending an opportunity to be evaluated at the appropriate facility. The court shall review the reports and may order that the term of confinement imposed be served in the sexual offender treatment program at the location determined by the secretary of social and health services or the secretary's designee, only if the report indicates that the offender is amenable to the treatment program provided at these facilities. The offender shall be transferred to the state pending placement in the treatment program. Any offender who has escaped from the treatment program shall be referred back to the sentencing court.

if the offender does not comply with the conditions of the treatment program, the secretary of social and health services may refer the matter to the sentencing court. The sentencing court shall commit the offender to the department of corrections to serve the balance of the term of confinement.

if the offender successfully completes the treatment program before the expiration of the term of confinement, the court may convert the balance of confinement to community supervision and may place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (iii) Report as directed to the court and a community corrections officer;
- (iv) Undergo available outpatient treatment.

if the offender violates any of the terms of community supervision, the court may order the offender to serve out the balance of the community supervision term in confinement in the custody of the department of corrections.

after June 30, 1993, this subsection (b) shall cease to have effect.

(c) When an offender commits any felony sex offense on or after July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department of corrections to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.

except for an offender who has been convicted of a violation of RCW 9A.33.040 or 9A.44.050, if the offender completes the treatment program before the expiration of his term of confinement, the department of corrections may request the court to convert the balance of confinement to community supervision and to place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (iii) Report as directed to the court and a community corrections officer;
- (iv) Undergo available outpatient treatment.

if the offender violates any of the terms of his community supervision, the court may order the offender to serve out the balance of his community supervision term in confinement in the custody of the department of corrections.

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nothing in (c) of this subsection shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection (c) does not apply to any crime committed after July 1, 1990.

(d) Offenders convicted and sentenced for a sex offense committed prior to July 1, 1987, may, subject to available funds, request an evaluation by the department of corrections to determine whether they are amendable to treatment. If the offender is determined to be amenable to treatment, the offender may request placement in a treatment program within a correctional facility operated by the department. Placement in such treatment program is subject to available funds.

(8)(a) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or serious violent offense committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of the earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community placement shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Unless a condition is waived by the court, the terms of community placement for offenders sentenced pursuant to this section shall include the following conditions:

(i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(ii) The offender shall work at department of corrections-approved education, employment, and/or community service;

(iii) The offender shall not consumer controlled substances except pursuant to lawfully issued prescriptions;

(iv) An offender in community custody shall not unlawfully possess controlled substances; and

(v) The offender shall pay supervision fees as determined by the department of corrections.

(c) The court may also order any of the following special conditions:

(i) The offender shall remain within, or outside of, a specified geographical boundary;

(ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(iii) The offender shall participate in crime-related treatment or counseling services;

(iv) The offender shall not consume alcohol;

(v) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

(vi) The offender shall comply with any crime-related prohibitions.

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(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing court, upon recommendation of the department of corrections.

(9) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(10) If a sentence imposed includes payment of a legal financial obligation, the sentence shall specify the total amount of the legal financial obligation owed, and shall require the offender to pay a specified monthly sum toward that legal financial obligation. Restitution to victims shall be paid prior to any other payments of monetary obligations. Any legal financial obligation that is imposed by the court may be collected by the department, which shall deliver the amount paid to the county clerk for credit. The offender's compliance with payment of legal financial obligations shall be supervised by the department. All monetary payments ordered shall be paid no later than ten years after the last date of release from confinement pursuant to a felony conviction or the date the sentence was entered. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation. Nothing in this section makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations. If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order.

(11) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a court may not impose a sentence providing for a term of confinement or community supervision or community placement which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(12) All offenders sentenced to terms involving community supervision, community service, community placement, or legal financial obligation shall be under the supervision of the secretary of the department of corrections or such person as the secretary may designate and shall follow explicitly the instructions of the secretary including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment.

(13) All offenders sentenced to terms involving community supervision, community service, or community placement under the supervision of the department of corrections shall not own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

(14) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(15) A departure from the standards in RCW 9.94A.400 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in subsections (2) and (3) of this section, and may be appealed by the defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

(16) The court shall order restitution whenever the offender is convicted of a felony that results in injury to any person or damage to or loss of property, whether the offender is sentenced to confinement or placed under community supervision, unless extraordinary circumstances exist that make restitution inappropriate in the court's judgment. The court shall set forth the extraordinary circumstances in the record if it does not order restitution.

(17) As a part of any sentence, the court may impose and enforce an order that relates directly to the circumstances of the crime for which the offender has been convicted, prohibiting the offender from having any contact with other specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community supervision or community placement.

(18) In any sentence of partial confinement, the court may require the defendant to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

(19) All court-ordered legal financial obligations collected by the department and remitted to the county clerk shall be credited and paid where restitution is ordered. Restitution shall be paid prior to any other payment of monetary obligations.

[*6] Sec. 6. RCW 13.40.160 and 1990 c 3 s 302 are each amended to read as follows:

(1) When the respondent is found to be a serious offender, the court shall commit the offender to the department for the standard range of disposition for the offense, as indicated in option A of schedule D-3, RCW 13.40.0357 except as provided in subsection (5) of this section.

If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option B of schedule D-3, RCW 13.40.0357. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determine and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2), as now or hereafter amended, shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230, as now or hereafter amended, by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230 as now or hereafter amended.

(2) Where the respondent is found to be a minor or first offender, the court shall order that the respondent serve a term of community supervision as indicated in option A or option B of schedule D-1, RCW 13.40.0357 except as provided in subsection (5) of this section. If the court determines that a disposition of community supervision would effectuate a manifest injustice the court may impose another disposition under option C of schedule D-1, RCW 13.40.0357. Except as provided in subsection (5) of this section, a disposition other than a community supervision may be imposed only after the court enters reasons upon which it bases its conclusions that imposition of community supervision would effectuate a manifest injustice. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2), as now or hereafter amended, shall be used to determine the range. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

Except for disposition of community supervision or a disposition imposed pursuant to subsection (5) of this section, a disposition may be appealed as provided in RCW 13.40.230, as now or hereafter amended, by the state or the respondent. A disposition of community supervision or a disposition imposed pursuant to subsection (5) of this section may not be appealed under RCW 13.40.230 as now or hereafter amended.

(3) Where a respondent is found to have committed an offense for which the respondent declined to enter into a diversion agreement, the court shall impose a term of community supervision limited to the conditions allowed in a diversion agreement as provided in RCW 13.40.080(2) as now or hereafter amended.

(4) If a respondent is found to be a middle offender:

(a) The court shall impose a determine disposition with the standard range(s) for such offense, as indicated in option A of schedule D-2, RCW 13.40.0357 except as provided in subsection (5) of this section: PROVIDED, That if the standard range includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement; or

(b) The court shall impose a determinate disposition of community supervision and/or up to thirty days confinement, as indicated in option B of schedule D-2, RCW 13.40.0357 in which case, if confinement has been imposed, the court shall state either aggravating or mitigating factors as set forth in RCW 13.40.150 as now or hereafter amended.

(c) Only if the court concludes, and enters reasons for its conclusions, that disposition as provided in subsection (4)(a) or (b) of this section would effectuate a manifest injustice, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2), as now or hereafter amended, shall be used to determine the range. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

(d) A disposition pursuant to subsection (4)(c) of this section is appealable under RCW 13.40.230, as now or hereafter amended, by the state or the respondent. A disposition pursuant to subsection (4) (a) or (b) of this section is not appealable under RCW 13.40.230 as now or hereafter amended.

(5) When a serious, middle, or minor first offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined in RCW 9.94A.030, and has no history of a prior sex offense, the court, on its own motion or the motion of the state or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of problems in addition to alleged deviant behaviors, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the respondent's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (a)(i) Frequency and type of contact between the offender and therapist;
- (ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;
- (iv) Anticipated length of treatment; and
- (v) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

After receipt of reports of the examinations, the court shall then consider whether the offender and the community will benefit from use of this special sex offender disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this special sex offender disposition alternative is appropriate, then the court shall impose a determinate disposition with the standard range for the offense, and the court may suspend the execution of the disposition and place the offender on community supervision for up to two years. As a condition of the suspended disposition, the court may impose the conditions of community supervision and other conditions, including up to thirty days of confinement and requirements that the offender do any one or more of the following:

- (b)(i) Devote time to a specific education, employment, or occupation;
- (ii) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The respondent shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the probation counselor, and the court, and shall not change providers without court approval after a hearing if the prosecutor or probation counselor object to the change;
- (iii) Remain within prescribed geographical boundaries and notify the court or the probation counselor prior to any change in the offender's address, educational program, or employment;
- (iv) Report to the prosecutor and the probation counselor prior to any change in a sex offender treatment provider. This change shall have prior approval by the court;
- (v) Report as directed to the court and a probation counselor;
- (vi) Pay all court-ordered legal financial obligations, perform community service, or any combination thereof; or
- (vii) Make restitution to the victim for the cost of any counseling reasonably related to the offense.

The sex offender treatment provider shall submit quarterly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

[A] EXCEPT AS PROVIDED IN THIS SUBSECTION (5), A [A]fter July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW. [A] A SEX OFFENDER THERAPIST WHO EXAMINES OR TREATS A JUVENILE SEX OFFENDER PURSUANT TO THIS SUBSECTION DOES NOT HAVE TO BE CERTIFIED BY THE DEPARTMENT OF HEALTH PURSUANT TO CHAPTER 18.155 RCW IF THE COURT FINDS THAT: (A) THE OFFENDER HAS ALREADY MOVED TO ANOTHER STATE OR PLANS TO MOVE TO ANOTHER STATE FOR REASONS OTHER THAN CIRCUMVENTING THE CERTIFICATION REQUIREMENT; (B) NO CERTIFIED PROVIDERS ARE AVAILABLE FOR TREATMENT WITHIN A REASONABLE GEOGRAPHICAL DISTANCE OF THE OFFENDER'S HOME; AND (C) THE EVALUATION AND TREATMENT PLAN COMPLY WITH THIS SUBSECTION (5) AND THE RULES ADOPTED BY THE DEPARTMENT OF HEALTH. [A]

If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the sentence. The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury or person or property as a direct result of the crime charged. "Victim" may also include a known parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(6) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(7) Except as provided for in subsection (5) of this section, the court shall not suspend or defer the imposition or the execution of the disposition.

(8) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense.

[*7] Sec. 7. RCW 71.09.090 and 1990 c 3 s 1009 are each amended to read as follows:

(1) If the secretary of the department of social and health services determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to [D] commit [D] [A] ENGAGE IN [A] predatory acts of sexual violence if released, the secretary shall authorize the person to petition the court for release. The petition shall be served upon the court and the prosecuting attorney. The court, upon receipt of the petition for release, shall within forty-five days order a hearing. The prosecuting attorney or the attorney general, if requested by the county, shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of his or her choice. The hearing shall be before a jury if demanded by either the petitioner or the prosecuting attorney or attorney general. The burden of proof shall be upon the prosecuting attorney or attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and that if discharged is likely to [D] commit [D] [A] ENGAGE IN [A] predatory acts of sexual violence.

(2) Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for discharge without the secretary's approval. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for release over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall forward the notice and waiver form to the court with the annual report. If the person does not affirmatively waive the right to petition, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she is safe to be at large. The committed person shall have a right to have an attorney represent him or her at the show cause hearing but the person is not entitled to be present at the show cause hearing. If the court at the show cause hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and [D] will [D] [A] IS [A] not [A] LIKELY TO [A] engage in [A] PREDATORY [A] acts of sexual violence if discharged, then the court shall set a hearing on the issue. At the hearing, the committed person shall be entitled to be present and to the benefit of all constitutional protections that were afforded to the person at the initial commitment proceeding. The prosecuting attorney or the attorney general if requested by the county shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed

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1992 Wa. HB 2262

person shall also have the right to have experts evaluate him or her on his or her behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be at large and if released [D] will <D> [A] IS LIKELY TO <A> engage in [A] predatory <A> acts of sexual violence.

[*8] NEW SECTION. Sec. 8. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[*9] NEW SECTION. Sec. 9. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

[*10] NEW SECTION. Sec. 10. This act applies to sex offenses committed on, before, or after the effective date of this act.

HISTORY:

Approved by the Governor March 26, 1992; Effective March 26, 1992

APPENDIX B

FINAL BILL REPORT

ESHB 2262

C 45 L 92
Synopsis As Enacted

Brief Description: Refining the community protection act of 1990.

By House Committee on Judiciary (originally sponsored by Representatives Appelwick, Padden, Wineberry, Riley, Tate, Wang, Roland, Winsley, Paris, May, Bowman, Orr and Van Luven; by request of Department of Corrections, Dept. of Social and Health Services and Indeterminate Sentence Review Board).

House Committee on Judiciary
Senate Committee on Law & Justice

Background: In 1990, the Legislature passed a comprehensive act concerning sex offenders which was termed the Community Protection Act of 1990.

The act created a procedure for the civil commitment of sexually violent predators. Three months before a sex offender is released, the Department of Corrections must notify the county prosecutor of the offender's upcoming release. The department must also provide a narrative to the prosecutor describing the offender's conduct in prison, and advise the prosecutor whether the department recommends that the prosecutor file a civil commitment petition. The requirement to notify county prosecutors only applies to the release of sex offenders who committed their crimes between June 30, 1984 and July 1, 1988.

In addition to convicted adult sex offenders, several other sex offenders are eligible for civil commitment, including juveniles, persons found not guilty by reason of insanity, and persons acquitted due to incompetence to stand trial. The Department of Social and Health Services has jurisdiction over these offenders. Further, the Indeterminate Sentence Review Board has jurisdiction over convicted adult sex offenders who committed their crimes before July 1, 1984. No statute requires those agencies to notify prosecutors about the release of sex offenders under their jurisdictions.

An adult offender who has been convicted of a sexually violent offense becomes eligible for civil commitment when the offender's sentence is about to expire or has expired.

Some confusion has existed whether the term "sentence" means that an offender on parole is eligible for civil commitment or whether the offender must be revoked on parole and serve his or her remaining sentence before becoming eligible for civil commitment.

An offender may be civilly committed if the person "is likely to" engage in predatory acts of sexual violence. To block release from civil commitment, the state must prove the person "will engage" in predatory acts of violence. To gain release, the person must show that he or she "will not" engage in predatory acts of sexual violence.

The Community Protection Act requires that therapists who treat adult and juvenile sex offenders be certified by the state Department of Health. Some sex offenders may have moved out of state before discovery or may want to move out of state. No exception exists to allow those offenders that would otherwise be eligible for treatment to be treated by a non-certified sex therapist.

The Department of Corrections must notify various parties no later than 10 days before a sex or violent offender is paroled, placed in community placement or work release, or furloughed. The statute does not expressly state that the department must notify those parties when the offender is released.

Summary: Three months before the anticipated release from custody of a person who may be eligible for civil commitment, the agency that has jurisdiction over the person must refer the person to the appropriate county prosecuting attorney. "Agency" means the Department of Corrections, the Indeterminate Sentence Review Board, or the Department of Social and Health Services as appropriate. The agency must document the person's institutional adjustment and any treatment received. The agency does not have to prepare a narrative description.

The eligibility criteria for civil commitment are amended to indicate a person is eligible for civil commitment when the person's term of total confinement is about to expire or has expired.

The criteria for release of committed sexually violent predators is changed to be consistent with the criteria for commitment so that the state will have to prove that the person "is likely to engage" rather than "will engage" in predatory acts of sexual violence if released. When the committed person is moving for release the committed person will have to prove that he or she "is not likely to engage" rather than "will not engage" in sexually violent acts.

Sex offenders who have moved or are going to move out of state may, under certain circumstances, be treated by therapists who are not certified in the state of Washington.

The Department of Corrections must provide notice of a sex offender's release at least 10 days before the offender's release. If the department does not know where the sex offender will reside, the department must send notice to the county sheriff and the chief of police in the city and county where the offender was convicted. The department must also notify the State Patrol which must put the information into the crime information center for dissemination to law enforcement.

Votes on Final Passage:

House	98	0	
Senate	49	0	(Senate amended)
House	96	0	(House concurred)

Effective: March 26, 1992

APPENDIX C

LEXSEE 1995 WA CH 216

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STATENET
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WASHINGTON 1995 REGULAR SESSION OF THE 54TH LEGISLATURE

SENATE BILL 5088

CHAPTER 216

1995 Wa. ALS 216; 1995 Wa. Ch. 216; 1995 Wa. SB 5088

BILL TRACKING SUMMARY FOR THIS DOCUMENT

SYNOPSIS: AN ACT Relating to sexually violent predators; amending RCW 71.09.020, 71.09.025, 71.09.030, 71.09.040, 71.09.050, 71.09.060, 71.09.070, 71.09.080, 71.09.090, 71.09.110, and 9A.76.120; adding new sections to chapter 71.09 RCW; repealing RCW 71.09.100; and prescribing penalties.

NOTICE: [A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A]
[D> Text within these symbols is deleted <D]

To view the next section, type .np* TRANSMIT.
To view a specific section, transmit p* and the section number. e.g. p*1

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

[*1] Sec. 1. RCW 71.09.020 and 1992 c 145 s 17 are each amended to read as follows:

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

(1) "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence [A> IF NOT CONFINED IN A SECURE FACILITY <A] .

(2) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

(3) [A> "LIKELY TO ENGAGE IN PREDATORY ACTS OF SEXUAL VIOLENCE" MEANS THAT THE PERSON MORE PROBABLY THAN NOT WILL ENGAGE IN SUCH ACTS. SUCH LIKELIHOOD MUST BE EVIDENCED BY A RECENT OVERT ACT IF THE PERSON IS NOT TOTALLY CONFINED AT THE TIME THE PETITION IS FILED UNDER RCW 71.09.030. <A]

[A> (4) <A] "Predatory" means acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization.

[D> (4) <D] [A> (5) "RECENT OVERT ACT" MEANS ANY ACT THAT HAS EITHER CAUSED HARM OF A SEXUALLY VIOLENT NATURE OR CREATES A REASONABLE APPREHENSION OF SUCH HARM. <A]

[A> (6) <A] "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent

liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to chapter 71.09 RCW, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

[A> (7) "LESS RESTRICTIVE ALTERNATIVE" MEANS COURT-ORDERED TREATMENT IN A SETTING LESS RESTRICTIVE THAN TOTAL CONFINEMENT. <A]

[A> (8) "SECRETARY" MEANS THE SECRETARY OF SOCIAL AND HEALTH SERVICES OR HIS OR HER DESIGNEE. <A]

[*2] Sec. 2. RCW 71.09.025 and 1992 c 45 s 3 are each amended to read as follows:

(1)(a) When it appears that a person may meet the criteria of a sexually violent predator as defined in RCW 71.09.020(1), the agency with jurisdiction shall refer the person in writing to the prosecuting attorney of the county where that person was charged, three months prior to:

- (i) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense;
- (ii) The anticipated release from total confinement of a person found to have committed a sexually violent offense as a juvenile;
- (iii) Release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to RCW 10.77.090(3); or
- (iv) Release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to RCW 10.77.020(3).

(b) The agency shall [D> inform <D] [A> PROVIDE <A] the prosecutor [D> of <D] [A> WITH ALL RELEVANT INFORMATION INCLUDING BUT NOT LIMITED TO <A] the following [A> INFORMATION <A] :

- (i) [D> The person's name, identifying factors, anticipated future residence, and offense history; and <D] [A> A COMPLETE COPY OF THE INSTITUTIONAL RECORDS COMPILED BY THE DEPARTMENT OF CORRECTIONS RELATING TO THE PERSON, AND ANY SUCH OUT-OF-STATE DEPARTMENT OF CORRECTIONS' RECORDS, IF AVAILABLE; <A]
- (ii) [D> Documentation of institutional adjustment and any treatment received <D] [A> A COMPLETE COPY, IF APPLICABLE, OF ANY FILE COMPILED BY THE INDETERMINATE SENTENCE REVIEW BOARD RELATING TO THE PERSON; <A]

[A> (III) ALL RECORDS RELATING TO THE PSYCHOLOGICAL OR PSYCHIATRIC EVALUATION AND/OR TREATMENT OF THE PERSON; <A]

[A> (IV) A CURRENT RECORD OF ALL PRIOR ARRESTS AND CONVICTIONS, AND FULL POLICE CASE REPORTS RELATING TO THOSE ARRESTS AND CONVICTIONS; AND <A]

[A> (V) A CURRENT MENTAL HEALTH EVALUATION OR MENTAL HEALTH RECORDS REVIEW <A] .

(2) This section applies to acts committed before, on, or after March 26, 1992.

(3) The agency, its employees, and officials shall be immune from liability for any good-faith conduct under this section.

(4) As used in this section, "agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement and includes the department of corrections, the indeterminate sentence review board, and the department of social and health services.

[*3] Sec. 3. RCW 71.09.030 and 1992 c 45 s 4 are each amended to read as follows:

When it appears that: (1) [D] The term of total confinement of <D] [A] A <A] person who [A] AT ANY TIME PREVIOUSLY <A] has been convicted of a sexually violent offense is about to [D] expire, or has expired <D] [A] BE RELEASED FROM TOTAL CONFINEMENT <A] on, before, or after July 1, 1990; (2) [D] the term of total confinement of <D] a person found to have committed a sexually violent offense as a juvenile is about to [D] expire, or has expired <D] [A] BE RELEASED FROM TOTAL CONFINEMENT <A] on, before, or after July 1, 1990; (3) a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial is about to be released, or has been released on, before, or after July 1, 1990, pursuant to RCW 10.77.090(3); [D] or <D] (4) a person who has been found not guilty by reason of insanity of a sexually violent offense is about to be released, or has been released on, before, or after July 1, 1990, pursuant to RCW 10.77.020(3) [A] , 10.77.110 (1) OR (3), OR 10.77.150; OR (5) A PERSON WHO AT ANY TIME PREVIOUSLY HAS BEEN CONVICTED OF A SEXUALLY VIOLENT OFFENSE AND HAS SINCE BEEN RELEASED FROM TOTAL CONFINEMENT AND HAS COMMITTED A RECENT OVERT ACT <A] ; and it appears that the person may be a sexually violent predator, the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney may file a petition alleging that the person is a "sexually violent predator" and stating sufficient facts to support such allegation.

[*4] Sec. 4. RCW 71.09.040 and 1990 c 3 s 1004 are each amended to read as follows:

[A] (1) <A] Upon the filing of a petition under RCW 71.09.030, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made the judge shall direct that the person be taken into custody [D] and <D] [A] . <A]

[A] (2) WITHIN SEVENTY-TWO HOURS AFTER A PERSON IS TAKEN INTO CUSTODY PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE COURT SHALL PROVIDE THE PERSON WITH NOTICE OF, AND AN OPPORTUNITY TO APPEAR IN PERSON AT, A HEARING TO CONTEST PROBABLE CAUSE AS TO WHETHER THE PERSON IS A SEXUALLY VIOLENT PREDATOR. AT THIS HEARING, THE COURT SHALL (A) VERIFY THE PERSON'S IDENTITY, AND (B) DETERMINE WHETHER PROBABLE CAUSE EXISTS TO BELIEVE THAT THE PERSON IS A SEXUALLY VIOLENT PREDATOR. AT THE PROBABLE CAUSE HEARING, THE STATE MAY RELY UPON THE PETITION AND CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE FILED PURSUANT TO RCW 71.09.030. THE STATE MAY SUPPLEMENT THIS WITH ADDITIONAL DOCUMENTARY EVIDENCE OR LIVE TESTIMONY. <A]

[A] (3) AT THE PROBABLE CAUSE HEARING, THE PERSON SHALL HAVE THE FOLLOWING RIGHTS IN ADDITION TO THE RIGHTS PREVIOUSLY SPECIFIED: (A) TO BE REPRESENTED BY COUNSEL; (B) TO PRESENT EVIDENCE ON HIS OR HER BEHALF; (C) TO CROSS-EXAMINE WITNESSES WHO TESTIFY AGAINST HIM OR HER; (D) TO VIEW AND COPY ALL PETITIONS AND REPORTS IN THE COURT FILE. <A]

[A] (4) IF THE PROBABLE CAUSE DETERMINATION IS MADE, THE JUDGE SHALL DIRECT THAT <A] the person [D] shall <D] be transferred to an appropriate facility for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination pursuant to rules developed by the department of social and health services. In adopting such rules, the department of social and health services shall consult with the department of health and the department of corrections. [A] IN NO EVENT SHALL THE PERSON BE RELEASED FROM CONFINEMENT PRIOR TO TRIAL. <A]

[*5] Sec. 5. RCW 71.09.050 and 1990 c 3 s 1005 are each amended to read as follows:

[A] (1) <A] Within forty-five days after the [D] filing of a petition pursuant to RCW 71.09.030 <D] [A] COMPLETION OF ANY HEARING HELD PURSUANT TO RCW 71.09.040 <A] , the court shall conduct a trial to determine whether the person is a sexually violent predator. [A] THE TRIAL MAY BE CONTINUED UPON THE REQUEST OF EITHER PARTY AND A SHOWING OF GOOD CAUSE, OR BY THE COURT ON ITS OWN MOTION IN THE DUE ADMINISTRATION OF JUSTICE, AND WHEN THE RESPONDENT WILL NOT BE SUBSTANTIALLY PREJUDICED. <A] At all stages of the proceedings under this chapter, any person subject to this chapter shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist him or her. [A] THE PERSON SHALL BE CONFINED IN A SECURE FACILITY FOR THE DURATION OF THE TRIAL. <A]

[A] (2) <A] Whenever any person is subjected to an examination under this chapter, he or she may retain experts or professional persons to perform an examination on their behalf. When the person wishes to be examined by a quali-

fied expert or professional person of his or her own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf.

[A> (3) <A] The person, the prosecuting attorney or attorney general, or the judge shall have the right to demand that the trial be before a [A> TWELVE-PERSON <A] jury. If no demand is made, the trial shall be before the court.

[*6] Sec. 6. RCW 71.09.060 and 1990 1st ex.s. c 12 s 4 are each amended to read as follows:

(1) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. [A> WHEN THE DETERMINATION IS MADE BY A JURY, THE VERDICT MUST BE UNANIMOUS. <A]

[A> IF, ON THE DATE THAT THE PETITION IS FILED, THE PERSON WAS LIVING IN THE COMMUNITY AFTER RELEASE FROM CUSTODY, THE STATE MUST ALSO PROVE BEYOND A REASONABLE DOUBT THAT THE PERSON HAD COMMITTED A RECENT OVERT ACT. <A] If the state alleges that the prior sexually violent offense that forms the basis for the petition for commitment was an act that was sexually motivated as provided in RCW 71.09.020 [D> (4) <D] [A> (6) <A] (c), the state must prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated as defined in RCW 9.94A.030. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the department of social and health services [A> FOR PLACEMENT <A] in a secure facility [A> OPERATED BY THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES <A] for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe [A> EITHER (A) <A] to be at large [A> , OR (B) TO BE RELEASED TO A LESS RESTRICTIVE ALTERNATIVE AS SET FORTH IN SECTION 10 OF THIS ACT <A] . [D> Such control, care, and treatment shall be provided at a facility operated by the department of social and health services. <D] If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release.

(2) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to or has been released pursuant to RCW 10.77.090(3), and his or her commitment is sought pursuant to subsection (1) of this section, the court shall first hear evidence and determine whether the person did commit the act or acts charged if the court did not enter a finding prior to dismissal under RCW 10.77.090(3) that the person committed the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on his or her own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, it shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

(3) The state shall comply with RCW 10.77.220 while confining the person pursuant to this chapter [A> , EXCEPT THAT DURING ALL COURT PROCEEDINGS THE PERSON SHALL BE DETAINED IN A SECURE FACILITY <A] . The facility shall not be located on the grounds of any state mental facility or regional habilitation center because these institutions are insufficiently secure for this population.

[*7] Sec. 7. RCW 71.09.070 and 1990 c 3 s 1007 are each amended to read as follows:

Each person committed under this chapter shall have a current examination of his or her mental condition made at least once every year. [A> THE ANNUAL REPORT SHALL INCLUDE CONSIDERATION OF WHETHER CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE IS IN THE BEST INTEREST OF THE PERSON AND WILL ADEQUATELY PROTECT THE COMMUNITY. <A] The person may retain, or if he or she is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him or her, and such expert or professional person shall have access to all records concerning the person. The periodic report shall be provided to the court that committed the person under this chapter.

[*8] Sec. 8. RCW 71.09.080 and 1990 c 3 s 1008 are each amended to read as follows:

[D> The involuntary detention or commitment of persons under this chapter shall conform to constitutional requirements for care and treatment. <D] [A> (1) ANY PERSON SUBJECTED TO RESTRICTED LIBERTY AS A SEXUALLY VIOLENT PREDATOR PURSUANT TO THIS CHAPTER SHALL NOT FORFEIT ANY LEGAL RIGHT OR SUFFER ANY LEGAL DISABILITY AS A CONSEQUENCE OF ANY ACTIONS TAKEN OR ORDERS MADE, OTHER THAN AS SPECIFICALLY PROVIDED IN THIS CHAPTER. <A]

[A> (2) ANY PERSON COMMITTED PURSUANT TO THIS CHAPTER HAS THE RIGHT TO ADEQUATE CARE AND INDIVIDUALIZED TREATMENT. THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES SHALL KEEP RECORDS DETAILING ALL MEDICAL, EXPERT, AND PROFESSIONAL CARE AND TREATMENT RECEIVED BY A COMMITTED PERSON, AND SHALL KEEP COPIES OF ALL REPORTS OF PERIODIC EXAMINATIONS MADE PURSUANT TO THIS CHAPTER. ALL SUCH RECORDS AND REPORTS SHALL BE MADE AVAILABLE UPON REQUEST ONLY TO: THE COMMITTED PERSON, HIS OR HER ATTORNEY, THE PROSECUTING ATTORNEY, THE COURT, THE PROTECTION AND ADVOCACY AGENCY, OR ANOTHER EXPERT OR PROFESSIONAL PERSON WHO, UPON PROPER SHOWING, DEMONSTRATES A NEED FOR ACCESS TO SUCH RECORDS. <A]

[A> (3) AT THE TIME A PERSON IS TAKEN INTO CUSTODY OR TRANSFERRED INTO A FACILITY PURSUANT TO A PETITION UNDER THIS CHAPTER, THE PROFESSIONAL PERSON IN CHARGE OF SUCH FACILITY OR HIS OR HER DESIGNEE SHALL TAKE REASONABLE PRECAUTIONS TO INVENTORY AND SAFEGUARD THE PERSONAL PROPERTY OF THE PERSONS DETAINED OR TRANSFERRED. A COPY OF THE INVENTORY, SIGNED BY THE STAFF MEMBER MAKING IT, SHALL BE GIVEN TO THE PERSON DETAINED AND SHALL, IN ADDITION, BE OPEN TO INSPECTION TO ANY RESPONSIBLE RELATIVE, SUBJECT TO LIMITATIONS, IF ANY, SPECIFICALLY IMPOSED BY THE DETAINED PERSON. FOR PURPOSES OF THIS SUBSECTION, "RESPONSIBLE RELATIVE" INCLUDES THE GUARDIAN, CONSERVATOR, ATTORNEY, SPOUSE, PARENT, ADULT CHILD, OR ADULT BROTHER OR SISTER OF THE PERSON. THE FACILITY SHALL NOT DISCLOSE THE CONTENTS OF THE INVENTORY TO ANY OTHER PERSON WITHOUT CONSENT OF THE PATIENT OR ORDER OF THE COURT. <A]

[A> (4) NOTHING IN THIS CHAPTER PROHIBITS A PERSON PRESENTLY COMMITTED FROM EXERCISING A RIGHT PRESENTLY AVAILABLE TO HIM OR HER FOR THE PURPOSE OF OBTAINING RELEASE FROM CONFINEMENT, INCLUDING THE RIGHT TO PETITION FOR A WRIT OF HABEAS CORPUS. <A]

[A> (5) NO INDIGENT PERSON MAY BE CONDITIONALLY RELEASED OR UNCONDITIONALLY DISCHARGED UNDER THIS CHAPTER WITHOUT SUITABLE CLOTHING, AND THE SECRETARY SHALL FURNISH THE PERSON WITH SUCH SUM OF MONEY AS IS REQUIRED BY RCW 72.02.100 FOR PERSONS WITHOUT AMPLE FUNDS WHO ARE RELEASED FROM CORRECTIONAL INSTITUTIONS. AS FUNDS ARE AVAILABLE, THE SECRETARY MAY PROVIDE PAYMENT TO THE INDIGENT PERSONS CONDITIONALLY RELEASED PURSUANT TO THIS CHAPTER CONSISTENT WITH THE OPTIONAL PROVISIONS OF RCW 72.02.100 AND 72.02.110, AND MAY ADOPT RULES TO DO SO. <A]

[*9] Sec. 9. RCW 71.09.090 and 1992 c 45 s 7 are each amended to read as follows:

(1) If the secretary [D> of the department of social and health services <D] determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to engage in predatory acts of sexual violence if [A> CONDITIONALLY <A] released [A> TO A LESS RESTRICTIVE ALTERNATIVE OR UNCONDITIONALLY DISCHARGED <A] , the secretary shall authorize the person to petition the court for [A> CONDITIONAL <A] release [A> TO A LESS RESTRICTIVE ALTERNATIVE OR UNCONDITIONAL DISCHARGE <A] . The petition shall be served upon the court and the prosecuting attorney. The court, upon receipt of the petition for [A> CONDITIONAL <A] release [A> TO A LESS RESTRICTIVE ALTERNATIVE OR UNCONDITIONAL DISCHARGE <A] , shall within forty-five days order a hearing. The prosecuting attorney or the attorney general, if requested by the county, shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of his or her choice. The hearing shall be before a jury if demanded by either the petitioner or the prosecuting attorney or attorney general. The burden of proof shall be upon the prosecuting attorney or attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and that if [A> CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR UNCONDITIONALLY <A] discharged is likely to engage in predatory acts of sexual violence.

(2) Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for [A> CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE OR UNCONDITIONAL <A] discharge without the secretary's approval. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for [A> CONDITIONAL <A] release [A> TO A LESS RESTRICTIVE ALTERNATIVE OR UNCONDITIONAL DISCHARGE <A] over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall forward the notice and waiver form to the court with the annual report. If the person does not affirmatively waive the right to petition, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she is safe to be [D> at large <D] [A> CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR UNCONDITIONALLY DISCHARGED <A] . The committed person shall have a right to have an attorney represent him or her at the show cause hearing but the person is not entitled to be present at the show cause hearing. If the court at the show cause hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is [D> safe to be at large and is <D] not likely to engage in predatory acts of sexual violence if [A> CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR UNCONDITIONALLY <A] discharged, then the court shall set a hearing on the issue. At the hearing, the committed person shall be entitled to be present and to the benefit of all constitutional protections that were afforded to the person at the initial commitment proceeding. The prosecuting attorney or the attorney general if requested by the county shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate him or her on his or her behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is [D> not safe to be at large and if released is <D] likely to engage in predatory acts of sexual violence [A> IF CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR UNCONDITIONALLY DISCHARGED <A] .

[A> (3) THE JURISDICTION OF THE COURT OVER A PERSON CIVILLY COMMITTED PURSUANT TO THIS CHAPTER CONTINUES UNTIL SUCH TIME AS THE PERSON IS UNCONDITIONALLY DISCHARGED. <A]

[*10] NEW SECTION. Sec. 10. Before the court may enter an order directing conditional release to a less restrictive alternative, it must find the following: (1) The person will be treated by a treatment provider who is qualified to provide such treatment in the state of Washington under chapter 18.155 RCW; (2) the treatment provider has presented a specific course of treatment and has agreed to assume responsibility for such treatment and will report progress to the court on a regular basis, and will report violations immediately to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center; (3) housing exists that is sufficiently secure to protect the community, and the person or agency providing housing to the conditionally released person has agreed in writing to accept the person, to provide the level of security required by the court, and immediately to report to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center if the person leaves the housing to which he or she has been assigned without authorization; (4) the person is willing to comply with the treatment provider and all requirements imposed by the treatment provider and by the court; and (5) the person is willing to comply with supervision requirements imposed by the department of corrections.

[*11] NEW SECTION. Sec. 11. (1) Upon the conclusion of the evidence in a hearing held pursuant to RCW 71.09.090, if the court finds that there is no legally sufficient evidentiary basis for a reasonable jury to find that the conditions set forth in section 10 of this act have been met, the court shall grant a motion by the state for a judgment as a matter of law on the issue of conditional release to a less restrictive alternative.

(2) Whenever the issue of conditional release to a less restrictive alternative is submitted to the jury, the court shall instruct the jury to return a verdict in substantially the following form: Has the state proved beyond a reasonable doubt that the proposed less restrictive alternative is not in the best interests of respondent or will not adequately protect the community? Answer: Yes or No.

[*12] NEW SECTION. Sec. 12. (1) If the court or jury determines that conditional release to a less restrictive alternative is in the best interest of the person and will adequately protect the community, and the court determines that the minimum conditions set forth in section 9 of this act are met, the court shall enter judgment and direct a conditional release.

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(2) The court shall impose any additional conditions necessary to ensure compliance with treatment and to protect the community. If the court finds that conditions do not exist that will both ensure the person's compliance with treatment and protect the community, then the person shall be remanded to the custody of the department of social and health services for control, care, and treatment in a secure facility as designated in RCW 71.09.060(1).

(3) If the service provider designated to provide inpatient or outpatient treatment or to monitor or supervise any other terms and conditions of a person's placement in a less restrictive alternative is other than the department of social and health services or the department of corrections, then the service provider so designated must agree in writing to provide such treatment.

(4) Prior to authorizing any release to a less restrictive alternative, the court shall impose such conditions upon the person as are necessary to ensure the safety of the community. The court shall order the department of corrections to investigate the less restrictive alternative and recommend any additional conditions to the court. These conditions shall include, but are not limited to the following: Specification of residence, prohibition of contact with potential or past victims, prohibition of alcohol and other drug use, participation in a specific course of inpatient or outpatient treatment that may include monitoring by the use of polygraph and plethysmograph, supervision by a department of corrections community corrections officer, a requirement that the person remain within the state unless the person receives prior authorization by the court, and any other conditions that the court determines are in the best interest of the person or others. A copy of the conditions of release shall be given to the person and to any designated service providers.

(5) Any service provider designated to provide inpatient or outpatient treatment shall monthly, or as otherwise directed by the court, submit to the court, to the department of social and health services facility from which the person was released, to the prosecutor of the county in which the person was found to be a sexually violent predator, and to the supervising community corrections officer, a report stating whether the person is complying with the terms and conditions of the conditional release to a less restrictive alternative.

(6) Each person released to a less restrictive alternative shall have his or her case reviewed by the court that released him or her no later than one year after such release and annually thereafter until the person is unconditionally discharged. Review may occur in a shorter time or more frequently, if the court, in its discretion on its own motion, or on motion of the person, the secretary, or the prosecuting attorney so determines. The sole question to be determined by the court is whether the person shall continue to be conditionally released to a less restrictive alternative. The court in making its determination shall be aided by the periodic reports filed pursuant to subsection (5) of this section and the opinions of the secretary and other experts or professional persons.

[*13] NEW SECTION. Sec. 13. (1) Any service provider submitting reports pursuant to section 12(5) of this act, the supervising community corrections officer, the prosecuting attorney, or the attorney general may petition the court, or the court on its own motion may schedule an immediate hearing, for the purpose of revoking or modifying the terms of the person's conditional release to a less restrictive alternative if the petitioner or the court believes the released person is not complying with the terms and conditions of his or her release or is in need of additional care and treatment.

(2) If the prosecuting attorney, the supervising community corrections officer, or the court, based upon information received by them, reasonably believes that a conditionally released person is not complying with the terms and conditions of his or her conditional release to a less restrictive alternative, the court or community corrections officer may order that the conditionally released person be apprehended and taken into custody until such time as a hearing can be scheduled to determine the facts and whether or not the person's conditional release should be revoked or modified. The court shall be notified before the close of the next judicial day of the person's apprehension. Both the prosecuting attorney and the conditionally released person shall have the right to request an immediate mental examination of the conditionally released person. If the conditionally released person is indigent, the court shall, upon request, assist him or her in obtaining a qualified expert or professional person to conduct the examination.

(3) The court, upon receiving notification of the person's apprehension, shall promptly schedule a hearing. The issue to be determined is whether the state has proven by a preponderance of the evidence that the conditionally released person did not comply with the terms and conditions of his or her release. Hearsay evidence is admissible if the court finds it otherwise reliable. At the hearing, the court shall determine whether the person shall continue to be conditionally released on the same or modified conditions or whether his or her conditional release shall be revoked and he or she shall be committed to total confinement, subject to release only in accordance with provisions of this chapter.

[*14] Sec. 14. RCW 71.09.110 and 1990 c 3 s 1011 are each amended to read as follows:

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The department of social and health services shall be responsible for all costs relating to the evaluation and treatment of persons committed to their custody [A> WHETHER IN A SECURE FACILITY OR UNDER A LESS RESTRICTIVE ALTERNATIVE <A] under any provision of this chapter. Reimbursement may be obtained by the department for the cost of care and treatment of persons committed to its custody [A> WHETHER IN A SECURE FACILITY OR UNDER A LESS RESTRICTIVE ALTERNATIVE <A] pursuant to RCW 43.20B.330 through 43.20B.370.

[*15] Sec. 15. RCW 9A.76.120 and 1982 1st ex.s. c 47 s 24 are each amended to read as follows:

(1) A person is guilty of escape in the second degree if:

(a) He [A> OR SHE <A] escapes from a detention facility; [D> or <D]

(b) Having been charged with a felony or an equivalent juvenile offense, he [A> OR SHE <A] escapes from custody [A> ; OR <A]

[A> (C) HAVING BEEN FOUND TO BE A SEXUALLY VIOLENT PREDATOR AND BEING UNDER AN ORDER OF CONDITIONAL RELEASE, HE OR SHE LEAVES THE STATE OF WASHINGTON WITHOUT PRIOR COURT AUTHORIZATION <A] .

(2) Escape in the second degree is a class C felony.

[*16] NEW SECTION. Sec. 16. In the event of an escape by a person committed under this chapter from a state institution or the disappearance of such a person while on conditional release, the superintendent or community corrections officer shall notify the following as appropriate: Local law enforcement officers, other governmental agencies, the person's relatives, and any other appropriate persons about information necessary for the public safety or to assist in the apprehension of the person.

[*17] NEW SECTION. Sec. 17. (1) At the earliest possible date, and in no event later than thirty days before conditional release or unconditional discharge, except in the event of escape, the department of social and health services shall send written notice of conditional release, unconditional discharge, or escape, to the following:

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

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

(c) The sheriff of the county where the person was last convicted of a sexually violent offense, if the department does not know where the person will reside.

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

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

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

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

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

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

(3) If a person committed as a sexually violent predator under this chapter escapes from a department of social and health services facility, the department shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the committed person resided immediately before his or her commitment as a sexually violent predator, or immediately before his or her incarceration for his or her most recent offense. If previously requested, the department shall also notify the witnesses and the victims of the sexually

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violent offenses for which the person was convicted in the past or the victim's next of kin if the crime was a homicide. If the person is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

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

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

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

[*18] NEW SECTION. Sec. 18. For purposes of sections 19 through 21 of this act:

(1) "Escorted leave" means a leave of absence from a facility housing persons detained or committed pursuant to this chapter under the continuous supervision of an escort.

(2) "Escort" means a correctional officer or other person approved by the superintendent or the superintendent's designee to accompany a resident on a leave of absence and be in visual or auditory contact with the resident at all times.

(3) "Resident" means a person detained or committed pursuant to this chapter.

[*19] NEW SECTION. Sec. 19. The superintendent of any facility housing persons detained or committed pursuant to this chapter may, subject to the approval of the secretary, grant escorted leaves of absence to residents confined in such institutions to:

(1) Go to the bedside of the resident's wife, husband, child, mother or father, or other member of the resident's immediate family who is seriously ill;

(2) Attend the funeral of a member of the resident's immediate family listed in subsection (1) of this section; and

(3) Receive necessary medical or dental care which is not available in the institution.

[*20] NEW SECTION. Sec. 20. A resident shall not be allowed to start a leave of absence under section 19 of this act until the secretary, or the secretary's designee, has notified any county and city law enforcement agency having jurisdiction in the area of the resident's destination.

[*21] NEW SECTION. Sec. 21. (1) The secretary is authorized to adopt rules providing for the conditions under which residents will be granted leaves of absence and providing for safeguards to prevent escapes while on leaves of absence. Leaves of absence granted to residents under section 19 of this act, however, shall not allow or permit any resident to go beyond the boundaries of this state.

(2) The secretary shall adopt rules requiring reimbursement of the state from the resident granted leave of absence, or the resident's family, for the actual costs incurred arising from any leave of absence granted under the authority of section 19 (1) and (2) of this act. No state funds shall be expended in connection with leaves of absence granted under section 19 (1) and (2) of this act unless the resident and the resident's immediate family are indigent and without resources sufficient to reimburse the state for the expenses of such leaves of absence.

[*22] NEW SECTION. Sec. 22. RCW 71.09.100 and 1990 c 3 s 1010 are each repealed.

[*23] NEW SECTION. Sec. 23. Sections 10 through 13 and 16 through 21 of this act are each added to chapter 71.09 RCW.

HISTORY:

Approved by the Governor May 3, 1995; Effective date: July 23, 1995

SPONSOR: Senate Committee on Ways & Means (originally sponsored by Senator Smith)

1995 Wa. ALS 216, *; 1995 Wa. Ch. 216;
1995 Wa. SB 5088

NOTES:

Read first time 03/06/95.

APPENDIX D

SENATE BILL REPORT

2SSB 5088

As Passed Senate, March 14, 1995

Title: An act relating to sexually violent predators.

Brief Description: Revising the law relating to sexual predators.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senator Smith).

Brief History:

Committee Activity: Law & Justice: 1/17/95, 2/1/95 [DPS-WM].

Ways & Means: 2/21/95, 3/6/95 [DP2S].

Passed Senate, 3/14/95, 49-0.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5088 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Smith, Chair; C. Anderson, Vice Chair; Hargrove, Haugen, Johnson, Long, McCaslin, Quigley, Roach and Schow.

Staff: Dick Armstrong (786-7460)

Background: In 1990, the Legislature passed the Community Protection Act in order to address, in a comprehensive manner, the increasing danger posed by sex offenders.

One component of the act is a civil commitment procedure, which is created for a special category of sex offenders known as "sexually violent predators." A sexually violent predator is any person who has been convicted of or charged with a crime of sexual violence, and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory acts of sexual violence.

In 1993, the Washington State Supreme Court found the overall statutory scheme presented in the civil commitment section of the Community Protection Act to be constitutional. In Re Young, 122 Wn. 2d 1 (1993). However, the court did find several aspects of the act which require clarification.

Summary of Bill: Comprehensive revisions are made to the sexually violent predator statute to reflect concerns expressed in recent court decisions; in addition, the operation of the statute is clarified.

The definition of a sexual predator is modified to include a requirement that the person needs to be confined in a secure facility in order to prevent future predatory acts.

A person alleged to be a sexual predator is entitled to a probable cause hearing within 72 hours after he or she has been taken into custody. The detained person has the right to be

represented by an attorney, to present evidence, to cross-examine witnesses, and review all reports in the court file.

The detained person has the right to a 12-person verdict, and the jury determination that the person is a sex predator must be unanimous.

If the person is not totally confined at the time the petition is filed, the state must show a recent overt act.

Procedures are established to allow a sex predator to petition the court for a conditional release by showing that his disorder or abnormality has changed to the extent that he is not likely to engage in predatory acts of sexual violence. In addition, the person must show that a qualified treatment provider is going to provide treatment, that a specific course of treatment is established, that a secure facility is available, that he or she is going to comply with the treatment program approved by the department and the court, and the supervision requirements of DOC.

A court must direct a conditional release if the less restrictive alternative is in the best interest of the person and adequately protects the community. The court may impose treatment conditions and other conditions to protect the public.

Procedures are established to revoke the less restrictive alternative if the person does not comply with the terms and conditions of release.

DSHS is responsible for costs relating to evaluation and treatment of the person in a less restrictive alternative.

The crime of escape in the second degree is established for any person who intentionally leaves the state of Washington without prior court authorization after being found to be a sex predator. A violation is a class C felony.

A superior court may allow an escorted leave for a confined person to visit a seriously ill family member or go to the funeral of a family member.

Various definitions are revised or created. Definitions are created for an "overt act" and "likely to engage in predatory acts of sexual violence."

Appropriation: None.

Fiscal Note: Requested on January 13, 1995.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill is supported by the Prosecutor's and the Attorney General's Offices. The bill addresses significant concerns which were identified in a 1993 Washington State Supreme Court case. The fiscal impact needs to be considered.

Testimony Against: The bill goes beyond what the Supreme Court said about sex predators. The statute does not adequately protect persons subject to confinement. This statute is criminal in nature and is probably unconstitutional.

Testified: PRO: Greg Canova, AG Office; Debbie Ruggles, Sexual Assault Victims; Dennis Marsh, ISRB; CON: Sherry Appleton, WA Defender's Assn.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5088 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rinehart, Chair; Loveland, Vice Chair; Cantu, Finkbeiner, Gaspard, Hochstatter, Johnson, Long, Moyer, Roach, Snyder, Spanel, Strannigan and Winsley.

Staff: Linda Brownell (786-7913)

Testimony For: The maximum range of costs for supervision, treatment, and residential care would be approximately \$100,000 to \$120,000 per person per year but most people would not require the high cost program. Two to three people per year might be eligible in the future for a less restrictive confinement, with an estimated cost range of \$80,000 to \$105,000. There are still a number of cases pending in the Supreme Court and in federal court. Current costs average \$45,000 to \$55,000 per person per year in this program.

Testimony Against: None.

Testified: Bob Boruchowitz, WA Def. Assn. (con); Greg Canova, Attorney General's office (pro).

House Amendment(s): The provision on escorted leave is replaced with new provisions that more closely parallel the escorted leave provisions already in place for prison inmates. Clarification is added concerning the court's jurisdiction over a sexually violent predator. In order to maintain consistency with parallel statutes, the deadline for notification is changed from 10 days to 30 days before a conditional release or unconditional discharge.

HOUSE BILL REPORT

2SSB 5088

As Passed House - Amended:
April 10, 1995

Title: An act relating to sexually violent predators.

Brief Description: Revising the law relating to sexual predators.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senator Smith).

Brief History:

Committee Activity:

Corrections: 3/28/95, 3/29/95 [DPA];

Appropriations: 4/3/95 [DPA(COR)].

Floor Activity:

Amended.

Passed House: 4/10/95, 94-0.

HOUSE COMMITTEE ON CORRECTIONS

Majority Report: Do pass as amended. Signed by 10 members: Representatives Blanton, Vice Chairman; Sherstad, Vice Chairman; Quall, Ranking Minority Member; Tokuda, Assistant Ranking Minority Member; Cole; Dickerson; Koster; Radcliff; K. Schmidt and Schoesler.

Staff: Rick Neidhardt (786-7841).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Corrections. Signed by 29 members: Representatives Silver, Chairman; Clements, Vice Chairman; Huff, Vice Chairman; Pelesky, Vice Chairman; Sommers, Ranking Minority Member; Valle, Assistant Ranking Minority Member; Basich; Brumsickle; Carlson; Chappell; Cooke; Crouse; G. Fisher; Foreman; Grant; Hargrove; Hickel; Jacobsen; Lambert; Lisk; McMorris; Poulsen; Reams; Rust; Sehlin; Sheahan; Talcott; Thibaudeau and Wolfe.

Minority Report: Without recommendation. Signed by 1 member: Representative Dellwo.

Staff: John Woolley (786-7154).

Background: In 1990, Washington adopted the Community Protection Act. One part of the act created a new civil commitment procedure for individuals deemed to be "sexually violent predators."

A sexually violent predator is a person who has been convicted of, or charged with, a crime of sexual violence and who suffers from a mental abnormality or personality disorder that makes the person likely to commit predatory acts of sexual violence.

A judge or jury determines whether the person is a sexually violent predator. If found to be a sexually violent predator, the person is civilly committed and held in a special, secure facility. The facility is located in a Department of Corrections (DOC) institution, but is separately staffed and operated by the Department of Social and Health Services (DSHS).

Civilly committed sexually violent predators are entitled to constitutionally mandated levels of treatment and care.

A sexually violent predator's commitment is indefinite in duration. A sexually violent predator may be released from commitment only after a court hearing which examines whether the person will engage in predatory acts of sexual violence if released. The hearing may be before a judge or a jury.

The overall statutory scheme for committing sexually violent predators was held to be constitutional by the State Supreme Court in 1993. In re Young, 122 Wn.2d 1 (1993). The Court's opinion, however, identified some portions of the statute where the Constitution requires additional procedural protection.

Legislation has been proposed to respond to the Court's opinion in Young and to provide additional clarification.

Summary of Bill:

Definition of sexually violent predator. The definition is limited by adding a requirement that the person is likely to commit predatory acts of sexual violence if not confined in a secure facility. Accordingly, a person does not qualify as a sexually violent predator if some setting short of total confinement will make the person unlikely to commit predatory acts of sexual violence.

Probable cause hearing. A person has a right to a probable cause hearing within 72 hours of being taken into custody. At this hearing, the person is entitled to an attorney, to present evidence, to cross-examine witnesses, and to view and copy documents in the court file.

Timing of trial. Trial is to be conducted within 45 days after completion of the probable cause hearing. The trial may be continued upon motion of any party or the court if a proper showing of justification is made.

Jury trials. A jury shall consist of 12 jurors. A jury verdict must be unanimous.

Recent overt acts. If an alleged sexually violent predator has been in the community prior to the trial, the person cannot be committed unless the state shows the person committed a recent overt act, which is defined as an act that has caused sexually violent harm or created a reasonable apprehension of such harm.

Conditional release to a less restrictive alternative than total confinement. After a sexually violent predator has been committed, a hearing may be held to determine whether the person should be conditionally released to a less restrictive alternative than total confinement. The hearing shall be before a judge or jury. At the hearing, the state has the burden of showing beyond a reasonable doubt that the person is not safe to be released and that if conditionally released the person is likely to engage in predatory acts of sexual violence. The judge or jury must find that the conditional release is in the best interests of the respondent and that the community will be adequately protected.

The court must also find that the person's treatment provider is qualified to provide this treatment, that the treatment provider agrees to be responsible for providing certain specified treatment, that the housing is sufficiently secure to protect the community, that the treatment provider and the person providing housing will make specified reports, that the person being released agrees to comply with all conditions of release.

The court must impose other additional conditions in order to ensure the community's safety, including not contacting potential or past victims, prohibiting alcohol or drug use, participating in specific treatment, being supervised by the Department of Corrections, requiring the person to remain in the state, or other restrictions.

The court must annually review the case of any person conditionally released to a less restrictive alternative placement.

The conditions may be modified, or the release may be revoked, if the court determines the person has violated the release conditions or needs additional care and treatment.

The court's jurisdiction over a sexually violent predator continues until the person is unconditionally discharged.

Annual report. The annual report on a committed person, which details the person's mental condition, must include consideration of whether a less restrictive alternative is appropriate.

Rights while committed. The rights of a committed person are more specifically delineated. The person has the right to adequate care and individualized treatment. Medical records shall be maintained and kept available for review by the committed person and other people involved in the commitment process. The Department of Social and Health Services (DSHS) must take reasonable care to safeguard a committed person's personal property. Committed persons may use other methods for obtaining release, including seeking a writ of habeas corpus. An indigent person being released from commitment must be furnished with suitable clothing and a minimal sum of money.

Miscellaneous provisions. When a person is about to be released from total confinement, and the person could qualify as a sexually violent predator, the agency that has been confining the person is required to furnish full documentation to the prosecutor. The documentation is to include: the entire institutional record; all records of psychological or psychiatric evaluation or treatment; a record of previous arrests and convictions, including police case reports; and a current mental health evaluation.

DSHS is responsible for the costs associated with a person committed as a sexually violent predator, whether the person is in total confinement or is conditionally released to a less restrictive alternative.

Confinement of a person during commitment proceedings shall be in a secure facility.

The process for petitioning for release is expanded to include petitions for conditional release to a less restrictive alternative.

A conditionally released sexually violent predator commits second degree escape if he or she leaves the state without court authorization. The offense is a class C felony.

Notification is to be made to a number of government agencies and individuals, including family members of the victims at least 30 days before a sexually violent predator is conditionally released or unconditionally discharged.

A person committed as a sexually violent predator may be permitted to leave confinement, under escort, in order to attend to seriously ill family members, attend a family member's funeral, or receive necessary dental or medical care.

A provision on frivolous petitions is repealed.

Various definitions are supplied for terms used in these statutes.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Corrections) This bill is in response to a State Supreme Court opinion. The bill addresses the concerns raised in the opinion. It was drafted during many meetings involving interest groups with divergent interests. Under the bill, in order for a person to be committed as a sexually violent predator, the state would have to prove the non-existence of less restrictive alternatives to total confinement. Post-commitment procedures are also created under which a sexually violent predator can be conditionally released to a less restrictive alternative than total confinement. The respondent at a probable cause hearing has more rights regarding confrontation of witnesses than do respondents at similar stages of mental health commitment proceedings or criminal cases. The respondent's attorney can call live witnesses at the probable cause hearing. Filing standards that are more restrictive than those listed in the statute are being used by the End of Sentence Review Committee, the Attorney General's Office, and local prosecutors.

(Appropriations) The bill is supported by prosecutors. It implements the requirements of the recent Supreme Court finding. It will not result in more filings, but does put more requirements on the civil commitment process. The bill responds to specific points of what needs to be done to maintain the constitutionality of the process.

Testimony Against: (Corrections) The bill does not meet the requirements set out in the State Supreme Court opinion. The judge or jury at the time of commitment is not presented with the option of committing the respondent to a less restrictive alternative than total confinement. The judge or jury should have this option at the outset. Less restrictive alternatives can include half-way houses, outpatient treatment, requirements to take medications, 24-hour security at non-DOC facilities, and/or electronic home monitoring. The probable cause hearing is flawed because prosecutors can rely on a written document instead of presenting live witnesses, thereby infringing a respondent's right to confront witnesses. There should be provisions in place to allow for more gradual release. Prosecutors are not bound by the recommendations from the End of Sentence Review Committee, and sometimes file a petition due to pressure from the community. The statute's goal is preventive detention, not treatment. A concern was expressed as to the cost involved in securing police case reports and arrest records.

(Appropriations) The bill is opposed because it does not comply with the recent Supreme Court ruling and does not comply with constitutional requirements.

Testified: (Corrections) Bob Boruchowitz, Washington Defender Association (con); Kit Bail, Indeterminate Sentence Review Board (pro, with a concern); Greg Canova, Attorney General's Office (pro); and Jerry Sheahan, American Civil Liberties Union (con).

(Appropriations) Tom McBride, Washington Association of Prosecuting Attorneys (pro); and Sherry Appleton, Washington Defender Association (con).

FINAL BILL REPORT

2SSB 5088

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Synopsis as Enacted

Brief Description: Revising the law relating to sexual predators.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senator Smith).

Senate Committee on Law & Justice
Senate Committee on Ways & Means
House Committee on Corrections
House Committee on Appropriations

Background: In 1990, the Legislature passed the Community Protection Act in order to address, in a comprehensive manner, the increasing danger posed by sex offenders.

One component of the act is a civil commitment procedure, which is created for a special category of sex offenders known as "sexually violent predators." A sexually violent predator is any person who has been convicted of or charged with a crime of sexual violence, and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory acts of sexual violence.

In 1993, the Washington State Supreme Court found the overall statutory scheme presented in the civil commitment section of the Community Protection Act to be constitutional. In Re Young, 122 Wn. 2d 1 (1993). However, the court did find that several aspects of the act required clarification.

Summary: Comprehensive revisions are made to the sexually violent predator statute to reflect concerns expressed in recent court decisions. In addition, the operation of the statute is clarified.

The definition of a sexual predator is modified to include a requirement that the person needs to be confined in a secure facility in order to prevent future predatory acts.

A person alleged to be a sexual predator is entitled to a probable cause hearing within 72 hours after he or she is taken into custody. The detained person has the right to be represented by an attorney, to present evidence, to cross-examine witnesses, and review all reports in the court file.

The detained person has the right to a 12-person verdict, and the jury determination that the person is a sex predator must be unanimous.

If the person is not totally confined at the time the petition is filed, the state must show a recent overt act.

Procedures are established to allow a sex predator to petition the court for a conditional release by showing that his disorder or abnormality is changed to the extent that he or she is not likely to engage in predatory acts of sexual violence. In addition, the person must show that: (1) a qualified treatment provider is going to provide treatment; (2) a specific course of treatment is established; (3) a secure facility is available; (4) he or she is going to comply with the treatment program approved by the department and the court; and (5) he or she is going to comply with the supervision requirements of the Department of Corrections (DOC).

A court must direct a conditional release if the less restrictive alternative is in the best interest of the person and adequately protects the community. The court may impose treatment conditions and other conditions to protect the public.

Procedures are established to revoke the less restrictive alternative if the person does not comply with the terms and conditions of release.

The Department of Social and Health Services is responsible for costs relating to evaluation and treatment of the person in a less restrictive alternative.

The crime of escape in the second degree is established for any person who intentionally leaves the state of Washington without prior court authorization after being found a sex predator. A violation is a class C felony.

DOC may allow an escorted leave for a confined person to visit a seriously ill family member or go to the funeral of a family member.

Various definitions are revised or created. Definitions are created for an "overt act" and "likely to engage in predatory acts of sexual violence."

Votes on Final Passage:

Senate	49	0	
House	94	0	(House amended)
Senate	43	0	(Senate concurred)

Effective: July 23, 1995