
ENGROSSED SECOND SUBSTITUTE SENATE BILL 6274

State of Washington

58th Legislature

2004 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Regala, Stevens, Hargrove and Kline)

READ FIRST TIME 02/10/04.

1 AN ACT Relating to competency restoration; amending RCW 10.77.010;
2 reenacting and amending RCW 71.05.390; adding new sections to chapter
3 10.77 RCW; creating new sections; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that recent state and
6 federal case law requires clarification of state statutes with regard
7 to competency evaluations and involuntary medication ordered in the
8 context of competency restoration.

9 The legislature finds that the court in *Born v. Thompson*, 117 Wn.
10 App. 57 (2003) interpreted the term "nonfatal injuries" in a manner
11 that conflicts with the stated intent of the legislature to: "(1)
12 Clarify that it is the nature of a person's current conduct, current
13 mental condition, history, and likelihood of committing future acts
14 that pose a threat to public safety or himself or herself, rather than
15 simple categorization of offenses, that should determine treatment
16 procedures and level; ... and (3) provide additional opportunities for
17 mental health treatment for persons whose conduct threatens himself or
18 herself or threatens public safety and has led to contact with the
19 criminal justice system" as stated in section 1, chapter 297, Laws of

1 1998. Consequently, the legislature intends to clarify that it
2 intended "nonfatal injuries" to be interpreted in a manner consistent
3 with the purposes of the competency restoration statutes.

4 The legislature also finds that the decision in *Sell v. United*
5 *States*, ___U.S. ___ (2003), requires a determination whether a
6 particular criminal offense is "serious" in the context of competency
7 restoration and the state's duty to protect the public. The
8 legislature further finds that, in order to adequately protect the
9 public and in order to provide additional opportunities for mental
10 health treatment for persons whose conduct threatens themselves or
11 threatens public safety and has led to contact with the criminal
12 justice system in the state, the determination of those criminal
13 offenses that are "serious" offenses must be made consistently
14 throughout the state. In order to facilitate this consistency, the
15 legislature intends to determine those offenses that are serious in
16 every case as well as the standards by which other offenses may be
17 determined to be serious. The legislature also intends to clarify that
18 a court may, to the extent permitted by federal law and required by the
19 *Sell* decision, inquire into the civil commitment status of a defendant
20 and may be told, if known.

21 **Sec. 2.** RCW 10.77.010 and 2000 c 94 s 12 are each amended to read
22 as follows:

23 As used in this chapter:

24 (1) "Admission" means acceptance based on medical necessity, of a
25 person as a patient.

26 (2) "Commitment" means the determination by a court that a person
27 should be detained for a period of either evaluation or treatment, or
28 both, in an inpatient or a less-restrictive setting.

29 (3) "Conditional release" means modification of a court-ordered
30 commitment, which may be revoked upon violation of any of its terms.

31 (4) "County designated mental health professional" has the same
32 meaning as provided in RCW 71.05.020.

33 (5) A "criminally insane" person means any person who has been
34 acquitted of a crime charged by reason of insanity, and thereupon found
35 to be a substantial danger to other persons or to present a substantial
36 likelihood of committing criminal acts jeopardizing public safety or

1 security unless kept under further control by the court or other
2 persons or institutions.

3 (6) "Department" means the state department of social and health
4 services.

5 (7) "Detention" or "detain" means the lawful confinement of a
6 person, under the provisions of this chapter, pending evaluation.

7 (8) "Developmental disabilities professional" means a person who
8 has specialized training and three years of experience in directly
9 treating or working with persons with developmental disabilities and is
10 a psychiatrist or psychologist, or a social worker, and such other
11 developmental disabilities professionals as may be defined by rules
12 adopted by the secretary.

13 (9) "Developmental disability" means the condition as defined in
14 RCW 71A.10.020(3).

15 (10) "Discharge" means the termination of hospital medical
16 authority. The commitment may remain in place, be terminated, or be
17 amended by court order.

18 (11) "Furlough" means an authorized leave of absence for a resident
19 of a state institution operated by the department designated for the
20 custody, care, and treatment of the criminally insane, consistent with
21 an order of conditional release from the court under this chapter,
22 without any requirement that the resident be accompanied by, or be in
23 the custody of, any law enforcement or institutional staff, while on
24 such unescorted leave.

25 (12) "Habilitative services" means those services provided by
26 program personnel to assist persons in acquiring and maintaining life
27 skills and in raising their levels of physical, mental, social, and
28 vocational functioning. Habilitative services include education,
29 training for employment, and therapy. The habilitative process shall
30 be undertaken with recognition of the risk to the public safety
31 presented by the individual being assisted as manifested by prior
32 charged criminal conduct.

33 (13) "History of one or more violent acts" means violent acts
34 committed during: (a) The ten-year period of time prior to the filing
35 of criminal charges; plus (b) the amount of time equal to time spent
36 during the ten-year period in a mental health facility or in
37 confinement as a result of a criminal conviction.

1 (14) "Incompetency" means a person lacks the capacity to understand
2 the nature of the proceedings against him or her or to assist in his or
3 her own defense as a result of mental disease or defect.

4 (15) "Indigent" means any person who is financially unable to
5 obtain counsel or other necessary expert or professional services
6 without causing substantial hardship to the person or his or her
7 family.

8 (16) "Individualized service plan" means a plan prepared by a
9 developmental disabilities professional with other professionals as a
10 team, for an individual with developmental disabilities, which shall
11 state:

12 (a) The nature of the person's specific problems, prior charged
13 criminal behavior, and habilitation needs;

14 (b) The conditions and strategies necessary to achieve the purposes
15 of habilitation;

16 (c) The intermediate and long-range goals of the habilitation
17 program, with a projected timetable for the attainment;

18 (d) The rationale for using this plan of habilitation to achieve
19 those intermediate and long-range goals;

20 (e) The staff responsible for carrying out the plan;

21 (f) Where relevant in light of past criminal behavior and due
22 consideration for public safety, the criteria for proposed movement to
23 less-restrictive settings, criteria for proposed eventual release, and
24 a projected possible date for release; and

25 (g) The type of residence immediately anticipated for the person
26 and possible future types of residences.

27 (17) "Professional person" means:

28 (a) A psychiatrist licensed as a physician and surgeon in this
29 state who has, in addition, completed three years of graduate training
30 in psychiatry in a program approved by the American medical association
31 or the American osteopathic association and is certified or eligible to
32 be certified by the American board of psychiatry and neurology or the
33 American osteopathic board of neurology and psychiatry;

34 (b) A psychologist licensed as a psychologist pursuant to chapter
35 18.83 RCW; or

36 (c) A social worker with a master's or further advanced degree from
37 an accredited school of social work or a degree deemed equivalent under
38 rules adopted by the secretary.

1 (18) "Release" means legal termination of the court-ordered
2 commitment under the provisions of this chapter.

3 (19) "Secretary" means the secretary of the department of social
4 and health services or his or her designee.

5 (20) "Treatment" means any currently standardized medical or mental
6 health procedure including medication.

7 (21) "Violent act" means behavior that: (a)(i) Resulted in; (ii)
8 if completed as intended would have resulted in; or (iii) was
9 threatened to be carried out by a person who had the intent and
10 opportunity to carry out the threat and would have resulted in,
11 homicide, nonfatal injuries, or substantial damage to property; or (b)
12 recklessly creates an immediate risk of serious physical injury to
13 another person. As used in this subsection, "nonfatal injuries" means
14 physical pain or injury, illness, or an impairment of physical
15 condition. "Nonfatal injuries" shall be construed to be consistent
16 with the definition of "bodily injury," as defined in RCW 9A.04.110.

17 NEW SECTION. Sec. 3. A new section is added to chapter 10.77 RCW
18 to read as follows:

19 (1) For purposes of determining whether a court may authorize
20 involuntary medication for the purpose of competency restoration
21 pursuant to RCW 10.77.090, a pending charge involving any one or more
22 of the following crimes is a serious offense per se in the context of
23 competency restoration:

24 (a) Any violent offense, sex offense, serious traffic offense, and
25 most serious offense, as those terms are defined in RCW 9.94A.030;

26 (b) Any offense, except nonfelony counterfeiting offenses, included
27 in crimes against persons in RCW 9.94A.411;

28 (c) Any offense contained in chapter 9.41 RCW (firearms and
29 dangerous weapons);

30 (d) Any offense listed as domestic violence in RCW 10.99.020;

31 (e) Any offense listed as a harassment offense in chapter 9A.46
32 RCW;

33 (f) Any violation of chapter 69.50 RCW that is a class B felony; or

34 (g) Any city or county ordinance or statute that is equivalent to
35 an offense referenced in this subsection.

36 (2)(a) In a particular case, a court may determine that a pending
37 charge not otherwise defined as serious by state or federal law or by

1 a city or county ordinance is, nevertheless, a serious offense within
2 the context of competency restoration treatment when the conduct in the
3 charged offense falls within the standards established in (b) of this
4 subsection.

5 (b) To determine that the particular case is a serious offense
6 within the context of competency restoration, the court must consider
7 the following factors and determine that one or more of the following
8 factors creates a situation in which the offense is serious:

9 (i) The charge includes an allegation that the defendant actually
10 inflicted bodily or emotional harm on another person or that the
11 defendant created a reasonable apprehension of bodily or emotional harm
12 to another;

13 (ii) The extent of the impact of the alleged offense on the basic
14 human need for security of the citizens within the jurisdiction;

15 (iii) The number and nature of related charges pending against the
16 defendant;

17 (iv) The length of potential confinement if the defendant is
18 convicted; and

19 (v) The number of potential and actual victims or persons impacted
20 by the defendant's alleged acts.

21 (3)(a) Any city or county may, by ordinance, determine that
22 nonfelony offenses not otherwise defined as serious by state or federal
23 law are nonetheless "serious offenses" within the context of competency
24 restoration treatment when the offense falls within the standards
25 established in (b) of this subsection.

26 (b) The city or county must consider the following factors and
27 determine that one or more of the following factors creates a situation
28 in which the offense is serious:

29 (i) The offense includes an element that the defendant actually
30 inflicted bodily or emotional harm on another person or that the
31 defendant created a reasonable apprehension of bodily or emotional harm
32 to another person;

33 (ii) The extent of the impact of the offense on the basic human
34 need for security of the citizens within the jurisdiction;

35 (iii) The length of potential confinement applicable to the
36 offense; and

37 (iv) The number of potential and actual victims or persons impacted
38 by the defendant's alleged acts.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 10.77 RCW
2 to read as follows:

3 When the court must make a determination whether to order
4 involuntary medications for the purpose of competency restoration or
5 for maintenance of competency, the court shall inquire, and shall be
6 told, and to the extent that the prosecutor or defense attorney is
7 aware, whether the defendant is the subject of a pending civil
8 commitment proceeding or has been ordered into involuntary treatment
9 pursuant to a civil commitment proceeding.

10 **Sec. 5.** RCW 71.05.390 and 2000 c 94 s 9, 2000 c 75 s 6, and 2000
11 c 74 s 7 are each reenacted and amended to read as follows:

12 Except as provided in this section, the fact of admission and all
13 information and records compiled, obtained, or maintained in the course
14 of providing services to either voluntary or involuntary recipients of
15 services at public or private agencies shall be confidential.

16 Information and records may be disclosed only:

17 (1) In communications between qualified professional persons to
18 meet the requirements of this chapter, in the provision of services or
19 appropriate referrals, or in the course of guardianship proceedings.
20 The consent of the patient, or his or her guardian, shall be obtained
21 before information or records may be disclosed by a professional person
22 employed by a facility unless provided to a professional person: (a)
23 Employed by the facility; (b) who has medical responsibility for the
24 patient's care; (c) who is a county designated mental health
25 professional; (d) who is providing services under chapter 71.24 RCW;
26 (e) who is employed by a state or local correctional facility where the
27 person is confined; or (f) who is providing evaluation, treatment, or
28 follow-up services under chapter 10.77 RCW.

29 (2) When the communications regard the special needs of a patient
30 and the necessary circumstances giving rise to such needs and the
31 disclosure is made by a facility providing outpatient services to the
32 operator of a care facility in which the patient resides.

33 (3) When the person receiving services, or his or her guardian,
34 designates persons to whom information or records may be released, or
35 if the person is a minor, when his or her parents make such
36 designation.

1 (4) To the extent necessary for a recipient to make a claim, or for
2 a claim to be made on behalf of a recipient for aid, insurance, or
3 medical assistance to which he or she may be entitled.

4 (5) For either program evaluation or research, or both: PROVIDED,
5 That the secretary adopts rules for the conduct of the evaluation or
6 research, or both. Such rules shall include, but need not be limited
7 to, the requirement that all evaluators and researchers must sign an
8 oath of confidentiality substantially as follows:

9 "As a condition of conducting evaluation or research concerning
10 persons who have received services from (fill in the facility, agency,
11 or person) I,, agree not to divulge, publish, or
12 otherwise make known to unauthorized persons or the public any
13 information obtained in the course of such evaluation or research
14 regarding persons who have received services such that the person who
15 received such services is identifiable.

16 I recognize that unauthorized release of confidential information
17 may subject me to civil liability under the provisions of state law.

18 /s/

19 (6)(a) To the courts as necessary to the administration of this
20 chapter or to a court ordering an evaluation or treatment under chapter
21 10.77 RCW solely for the purpose of preventing the entry of any
22 evaluation or treatment order that is inconsistent with any order
23 entered under this chapter.

24 (b) To a court or its designee in which a motion under chapter
25 10.77 RCW has been made for involuntary medication of a defendant for
26 the purpose of competency restoration.

27 (c) Disclosure under this subsection is mandatory for the purpose
28 of the health insurance portability and accountability act.

29 (7) To law enforcement officers, public health officers, or
30 personnel of the department of corrections or the indeterminate
31 sentence review board for persons who are the subject of the records
32 and who are committed to the custody of the department of corrections
33 or indeterminate sentence review board which information or records are
34 necessary to carry out the responsibilities of their office. Except
35 for dissemination of information released pursuant to RCW 71.05.425 and
36 4.24.550, regarding persons committed under this chapter under RCW

1 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
2 defined in RCW 9.94A.030, the extent of information that may be
3 released is limited as follows:

4 (a) Only the fact, place, and date of involuntary commitment, the
5 fact and date of discharge or release, and the last known address shall
6 be disclosed upon request; and

7 (b) The law enforcement and public health officers or personnel of
8 the department of corrections or indeterminate sentence review board
9 shall be obligated to keep such information confidential in accordance
10 with this chapter; and

11 (c) Additional information shall be disclosed only after giving
12 notice to said person and his or her counsel and upon a showing of
13 clear, cogent, and convincing evidence that such information is
14 necessary and that appropriate safeguards for strict confidentiality
15 are and will be maintained. However, in the event the said person has
16 escaped from custody, said notice prior to disclosure is not necessary
17 and that the facility from which the person escaped shall include an
18 evaluation as to whether the person is of danger to persons or property
19 and has a propensity toward violence.

20 (8) To the attorney of the detained person.

21 (9) To the prosecuting attorney as necessary to carry out the
22 responsibilities of the office under RCW 71.05.330(2) and
23 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access
24 to records regarding the committed person's treatment and prognosis,
25 medication, behavior problems, and other records relevant to the issue
26 of whether treatment less restrictive than inpatient treatment is in
27 the best interest of the committed person or others. Information shall
28 be disclosed only after giving notice to the committed person and the
29 person's counsel.

30 (10) To appropriate law enforcement agencies and to a person, when
31 the identity of the person is known to the public or private agency,
32 whose health and safety has been threatened, or who is known to have
33 been repeatedly harassed, by the patient. The person may designate a
34 representative to receive the disclosure. The disclosure shall be made
35 by the professional person in charge of the public or private agency or
36 his or her designee and shall include the dates of commitment,
37 admission, discharge, or release, authorized or unauthorized absence
38 from the agency's facility, and only such other information that is

1 pertinent to the threat or harassment. The decision to disclose or not
2 shall not result in civil liability for the agency or its employees so
3 long as the decision was reached in good faith and without gross
4 negligence.

5 (11) To appropriate law enforcement agencies, upon request, all
6 necessary and relevant information in the event of a crisis or emergent
7 situation that poses a significant and imminent risk to the public.
8 The decision to disclose or not shall not result in civil liability for
9 the mental health service provider or its employees so long as the
10 decision was reached in good faith and without gross negligence.

11 (12) To the persons designated in RCW 71.05.425 for the purposes
12 described in that section.

13 (13) Civil liability and immunity for the release of information
14 about a particular person who is committed to the department under RCW
15 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
16 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

17 (14) To a patient's next of kin, guardian, or conservator, if any,
18 in the event of death, as provided in RCW 71.05.400.

19 (15) To the department of health for the purposes of determining
20 compliance with state or federal licensure, certification, or
21 registration rules or laws. However, the information and records
22 obtained under this subsection are exempt from public inspection and
23 copying pursuant to chapter 42.17 RCW.

24 The fact of admission, as well as all records, files, evidence,
25 findings, or orders made, prepared, collected, or maintained pursuant
26 to this chapter shall not be admissible as evidence in any legal
27 proceeding outside this chapter without the written consent of the
28 person who was the subject of the proceeding except in a subsequent
29 criminal prosecution of a person committed pursuant to RCW 71.05.280(3)
30 or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter
31 10.77 RCW due to incompetency to stand trial or in a civil commitment
32 proceeding pursuant to chapter 71.09 RCW. The records and files
33 maintained in any court proceeding pursuant to this chapter shall be
34 confidential and available subsequent to such proceedings only to the
35 person who was the subject of the proceeding or his or her attorney.
36 In addition, the court may order the subsequent release or use of such
37 records or files only upon good cause shown if the court finds that

1 appropriate safeguards for strict confidentiality are and will be
2 maintained.

3 NEW SECTION. **Sec. 6.** The department of social and health services
4 shall study and identify in its budget request to the office of
5 financial management the need, options, and plans to address the
6 increasing need for capacity in the forensic units of the state
7 hospitals.

8 NEW SECTION. **Sec. 7.** If any provision of this act or its
9 application to any person or circumstance is held invalid, the
10 remainder of the act or the application of the provision to other
11 persons or circumstances is not affected.

12 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
13 preservation of the public peace, health, or safety, or support of the
14 state government and its existing public institutions, and takes effect
15 immediately.

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