

ESB 6610 - H AMD 1591

By Representative Green

ADOPTED 03/10/2010

1 Strike everything after the enacting clause and insert the
2 following:

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

5 (1) The secretary shall establish an independent public safety
6 review panel for the purpose of advising the secretary and the courts
7 with respect to persons who have been found not guilty by reason of
8 insanity. The panel shall provide advice regarding all
9 recommendations: (a) For a change in commitment status; (b) to allow
10 furloughs or temporary leaves accompanied by staff; or (c) to permit
11 movement about the grounds of the treatment facility, with or without
12 the accompaniment of staff.

13 (2) The members of the public safety review panel shall be
14 appointed by the governor for a renewable term of three years and shall
15 include the following:

- 16 (a) A psychiatrist;
17 (b) A licensed clinical psychologist;
18 (c) A representative of the department of corrections;
19 (d) A prosecutor or a representative of a prosecutor's association;
20 (e) A representative of law enforcement or a law enforcement
21 association;
22 (f) A consumer and family advocate representative; and
23 (g) A public defender or a representative of a defender's
24 association.

25 (3) Thirty days prior to issuing a recommendation for conditional
26 release under RCW 10.77.150 or forty-five days prior to issuing a
27 recommendation for release under RCW 10.77.200, the secretary shall
28 submit its recommendation with the committed person's application and
29 the department's risk assessment to the public safety review panel.
30 The public safety review panel shall complete an independent assessment

1 of the public safety risk entailed by the secretary's proposed
2 conditional release recommendation or release recommendation and
3 provide this assessment in writing to the secretary. The public safety
4 review panel may, within funds appropriated for this purpose, request
5 additional evaluations of the committed person. The public safety
6 review panel may indicate whether it is in agreement with the
7 secretary's recommendation, or whether it would issue a different
8 recommendation. The secretary shall provide the panel's assessment
9 when it is received along with any supporting documentation, including
10 all previous reports of evaluations of the committed person in the
11 person's hospital record, to the court, prosecutor in the county that
12 ordered the person's commitment, and counsel for the committed person.

13 (4) The secretary shall notify the public safety review panel at
14 appropriate intervals concerning any changes in the commitment or
15 custody status of persons found not guilty by reason of insanity. The
16 panel shall have access, upon request, to a committed person's complete
17 hospital record.

18 (5) The department shall provide administrative and financial
19 support to the public safety review panel. The department, in
20 consultation with the public safety review panel, may adopt rules to
21 implement this section.

22 (6) By December 1, 2014, the public safety review panel shall
23 report to the appropriate legislative committees the following:

24 (a) Whether the public safety review panel has observed a change in
25 statewide consistency of evaluations and decisions concerning changes
26 in the commitment status of persons found not guilty by reason of
27 insanity;

28 (b) Whether the public safety review panel should be given the
29 authority to make release decisions and monitor release conditions;

30 (c) Any other issues the public safety review panel deems relevant.

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

33 (1) If the secretary determines in writing that a person committed
34 to the custody of the secretary for treatment as criminally insane
35 presents an unreasonable safety risk which, based on behavior, clinical
36 history, and facility security is not manageable in a state hospital
37 setting, the secretary may place the person in any secure facility

1 operated by the secretary or the secretary of the department of
2 corrections. Any person affected by this provision shall receive
3 appropriate mental health treatment governed by a formalized treatment
4 plan targeted at mental health rehabilitation needs and shall be
5 afforded his or her rights under RCW 10.77.140, 10.77.150, and
6 10.77.200. The secretary of the department of social and health
7 services shall retain legal custody of any person placed under this
8 section and review any placement outside of a department mental health
9 hospital every three months, or sooner if warranted by the person's
10 mental health status, to determine if the placement remains
11 appropriate.

12 (2) Beginning December 1, 2010, and every six months thereafter,
13 the secretary shall report to the governor and the appropriate
14 committees of the legislature regarding the use of the authority under
15 this section to transfer persons to a secure facility. The report
16 shall include information related to the number of persons who have
17 been placed in a secure facility operated by the secretary or the
18 secretary of the department of corrections, and the length of time that
19 each such person has been in the secure facility.

20 (3) This section expires June 30, 2015.

21 NEW SECTION. **Sec. 3.** (1) The Washington state institute for
22 public policy shall, in collaboration with the department of social and
23 health services and other applicable entities, undertake a search for
24 validated mental health assessment tools in each of the following
25 areas:

26 (a) An assessment tool or combination of tools to be used by
27 individuals performing court-ordered competency assessments and level
28 of risk assessments of defendants pursuant to chapter 10.77 RCW; and

29 (b) An assessment tool or combination of tools to be used by
30 individuals developing recommendations to courts as to the
31 appropriateness of conditional release from inpatient treatment of
32 criminally insane patients pursuant to chapter 10.77 RCW.

33 (2) This section expires June 30, 2011.

34 **Sec. 4.** RCW 10.77.120 and 2000 c 94 s 15 are each amended to read
35 as follows:

36 (1) The secretary shall (~~forthwith~~) provide adequate care and

1 individualized treatment to persons found criminally insane at one or
2 several of the state institutions or facilities under ~~((his or her))~~
3 the direction and control ~~((wherein persons committed as criminally~~
4 ~~insane may be confined. Such persons shall be under the custody and~~
5 ~~control of the secretary to the same extent as are other persons who~~
6 ~~are committed to the secretary's custody, but such provision shall be~~
7 ~~made for their control, care, and treatment as is proper in view of~~
8 ~~their condition))~~ of the secretary. In order that the secretary may
9 adequately determine the nature of the mental illness or developmental
10 disability of the person committed ~~((to him or her))~~ as criminally
11 insane, ~~((and in order for the secretary to place such individuals in~~
12 ~~a proper facility,))~~ all persons who are committed to the secretary as
13 criminally insane shall be promptly examined by qualified personnel in
14 ~~((such a manner as))~~ order to provide a proper evaluation and diagnosis
15 of such individual. The examinations of all ~~((developmentally~~
16 ~~disabled))~~ persons with developmental disabilities committed under this
17 chapter shall be performed by developmental disabilities professionals.
18 Any person so committed shall not be released from the control of the
19 secretary ~~((save upon the))~~ except by order of a court of competent
20 jurisdiction made after a hearing and judgment of release.

21 (2) Whenever there is a hearing which the committed person is
22 entitled to attend, the secretary shall send ~~((him or her))~~ the person
23 in the custody of one or more department employees to the county
24 ~~((where))~~ in which the hearing is to be held at the time the case is
25 called for trial. During the time the person is absent from the
26 facility, ~~((he or she shall))~~ the person may be confined in a facility
27 designated by and arranged for by the department, ~~((and))~~ but shall at
28 all times be deemed to be in the custody of the department employee and
29 provided necessary treatment. If the decision of the hearing remits
30 the person to custody, the department employee shall ~~((forthwith))~~
31 return the person to such institution or facility designated by the
32 secretary. If the state appeals an order of release, such appeal shall
33 operate as a stay, and the person shall remain in custody ~~((shall so~~
34 ~~remain))~~ and be ~~((forthwith))~~ returned to the institution or facility
35 designated by the secretary until a final decision has been rendered in
36 the cause.

1 **Sec. 5.** RCW 10.77.150 and 1998 c 297 s 41 are each amended to read
2 as follows:

3 (1) Persons examined pursuant to RCW 10.77.140 may make application
4 to the secretary for conditional release. The secretary shall, after
5 considering the reports of experts or professional persons conducting
6 the examination pursuant to RCW 10.77.140, forward to the court of the
7 county which ordered the person's commitment the person's application
8 for conditional release as well as the secretary's recommendations
9 concerning the application and any proposed terms and conditions upon
10 which the secretary reasonably believes the person can be conditionally
11 released. Conditional release may also contemplate partial release for
12 work, training, or educational purposes.

13 (2) In instances in which persons examined pursuant to RCW
14 10.77.140 have not made application to the secretary for conditional
15 release, but the secretary, after considering the reports of experts or
16 professional persons conducting the examination pursuant to RCW
17 10.77.140, reasonably believes the person may be conditionally
18 released, the secretary may submit a recommendation for release to the
19 court of the county that ordered the person's commitment. The
20 secretary's recommendation must include any proposed terms and
21 conditions upon which the secretary reasonably believes the person may
22 be conditionally released. Conditional release may also include
23 partial release for work, training, or educational purposes. Notice of
24 the secretary's recommendation under this subsection must be provided
25 to the person for whom the secretary has made the recommendation for
26 release and to his or her attorney.

27 (3)(a) The court of the county which ordered the person's
28 commitment, upon receipt of an application or recommendation for
29 conditional release with the secretary's recommendation for conditional
30 release terms and conditions, shall within thirty days schedule a
31 hearing. The court may schedule a hearing on applications recommended
32 for disapproval by the secretary.

33 (b) The prosecuting attorney shall represent the state at such
34 hearings and shall have the right to have the patient examined by an
35 expert or professional person of the prosecuting attorney's choice. If
36 the committed person is indigent, and he or she so requests, the court
37 shall appoint a qualified expert or professional person to examine the
38 person on his or her behalf.

1 (c) The issue to be determined at such a hearing is whether or not
2 the person may be released conditionally without substantial danger to
3 other persons, or substantial likelihood of committing criminal acts
4 jeopardizing public safety or security.

5 (d) The court, after the hearing, shall rule on the secretary's
6 recommendations, and if it disapproves of conditional release, may do
7 so only on the basis of substantial evidence. The court may modify the
8 suggested terms and conditions on which the person is to be
9 conditionally released. Pursuant to the determination of the court
10 after hearing, the committed person shall thereupon be released on such
11 conditions as the court determines to be necessary, or shall be
12 remitted to the custody of the secretary. If the order of conditional
13 release includes a requirement for the committed person to report to a
14 community corrections officer, the order shall also specify that the
15 conditionally released person shall be under the supervision of the
16 secretary of corrections or such person as the secretary of corrections
17 may designate and shall follow explicitly the instructions of the
18 secretary of corrections including reporting as directed to a community
19 corrections officer, remaining within prescribed geographical
20 boundaries, and notifying the community corrections officer prior to
21 making any change in the offender's address or employment. If the
22 order of conditional release includes a requirement for the committed
23 person to report to a community corrections officer, the community
24 corrections officer shall notify the secretary or the secretary's
25 designee, if the person is not in compliance with the court-ordered
26 conditions of release.

27 (~~(3)~~) (4) If the court determines that receiving regular or
28 periodic medication or other medical treatment shall be a condition of
29 the committed person's release, then the court shall require him or her
30 to report to a physician or other medical or mental health practitioner
31 for the medication or treatment. In addition to submitting any report
32 required by RCW 10.77.160, the physician or other medical or mental
33 health practitioner shall immediately upon the released person's
34 failure to appear for the medication or treatment or upon a change in
35 mental health condition that renders the patient a potential risk to
36 the public report (~~the failure~~) to the court, to the prosecuting
37 attorney of the county in which the released person was committed, to
38 the secretary, and to the supervising community corrections officer.

1 (~~(4)~~) (5) Any person, whose application for conditional release
2 has been denied, may reapply after a period of six months from the date
3 of denial.

4 **Sec. 6.** RCW 10.77.160 and 1993 c 31 s 7 are each amended to read
5 as follows:

6 When a conditionally released person is required by the terms of
7 his or her conditional release to report to a physician, department of
8 corrections community corrections officer, or medical or mental health
9 practitioner on a regular or periodic basis, the physician, department
10 of corrections community corrections officer, medical or mental health
11 practitioner, or other such person shall monthly, for the first six
12 months after release and semiannually thereafter, or as otherwise
13 directed by the court, submit to the court, the secretary, the
14 institution from which released, and to the prosecuting attorney of the
15 county in which the person was committed, a report stating whether the
16 person is adhering to the terms and conditions of his or her
17 conditional release, and detailing any arrests or criminal charges
18 filed and any significant change in the person's mental health
19 condition or other circumstances.

20 **Sec. 7.** RCW 10.77.190 and 1998 c 297 s 43 are each amended to read
21 as follows:

22 (1) Any person submitting reports pursuant to RCW 10.77.160, the
23 secretary, or the prosecuting attorney may petition the court to, or
24 the court on its own motion may schedule an immediate hearing for the
25 purpose of modifying the terms of conditional release if the petitioner
26 or the court believes the released person is failing to adhere to the
27 terms and conditions of his or her conditional release or is in need of
28 additional care and treatment.

29 (2) If the prosecuting attorney, the secretary of social and health
30 services, the secretary of corrections, or the court, after examining
31 the report filed with them pursuant to RCW 10.77.160, or based on other
32 information received by them, reasonably believes that a conditionally
33 released person is failing to adhere to the terms and conditions of his
34 or her conditional release the court or secretary of social and health
35 services or the secretary of corrections may order that the
36 conditionally released person be apprehended and taken into custody

1 (~~until such time as a hearing can be scheduled to determine the facts~~
2 ~~and whether or not the person's conditional release should be revoked~~
3 ~~or modified~~)). The court shall be notified of the apprehension before
4 the close of the next judicial day (~~of the apprehension~~). The court
5 shall schedule a hearing within thirty days to determine whether or not
6 the person's conditional release should be modified or revoked. Both
7 the prosecuting attorney and the conditionally released person shall
8 have the right to request an immediate mental examination of the
9 conditionally released person. If the conditionally released person is
10 indigent, the court or secretary of social and health services or the
11 secretary of corrections or their designees shall, upon request, assist
12 him or her in obtaining a qualified expert or professional person to
13 conduct the examination.

14 (3) If the hospital or facility designated to provide outpatient
15 care determines that a conditionally released person presents a threat
16 to public safety, the hospital or facility shall immediately notify the
17 secretary of social and health services or the secretary of corrections
18 or their designees. The secretary shall order that the conditionally
19 released person be apprehended and taken into custody.

20 (4) The court, upon receiving notification of the apprehension,
21 shall promptly schedule a hearing. The issue to be determined is
22 whether the conditionally released person did or did not adhere to the
23 terms and conditions of his or her release, or whether the person
24 presents a threat to public safety. Pursuant to the determination of
25 the court upon such hearing, the conditionally released person shall
26 either continue to be conditionally released on the same or modified
27 conditions or his or her conditional release shall be revoked and he or
28 she shall be committed subject to release only in accordance with
29 provisions of this chapter.

30 **Sec. 8.** RCW 10.77.200 and 2000 c 94 s 16 are each amended to read
31 as follows:

32 (1) Upon application by the committed or conditionally released
33 person, the secretary shall determine whether or not reasonable grounds
34 exist for release. In making this determination, the secretary may
35 consider the reports filed under RCW 10.77.060, 10.77.110, 10.77.140,
36 and 10.77.160, and other reports and evaluations provided by

1 professionals familiar with the case. If the secretary approves the
2 release he or she then shall authorize the person to petition the
3 court.

4 (2) In instances in which persons have not made application for
5 release, but the secretary believes, after consideration of the reports
6 filed under RCW 10.77.060, 10.77.110, 10.77.140, and 10.77.160, and
7 other reports and evaluations provided by professionals familiar with
8 the case, that reasonable grounds exist for release, the secretary may
9 petition the court. If the secretary petitions the court for release
10 under this subsection, notice of the petition must be provided to the
11 person who is the subject of the petition and to his or her attorney.

12 (3) The petition shall be served upon the court and the prosecuting
13 attorney. The court, upon receipt of the petition for release, shall
14 within forty-five days order a hearing. Continuance of the hearing
15 date shall only be allowed for good cause shown. The prosecuting
16 attorney shall represent the state, and shall have the right to have
17 the petitioner examined by an expert or professional person of the
18 prosecuting attorney's choice. If the petitioner is indigent, and the
19 person so requests, the court shall appoint a qualified expert or
20 professional person to examine him or her. If the petitioner (~~is~~
21 developmentally disabled)) has a developmental disability, the
22 examination shall be performed by a developmental disabilities
23 professional. The hearing shall be before a jury if demanded by either
24 the petitioner or the prosecuting attorney. The burden of proof shall
25 be upon the petitioner to show by a preponderance of the evidence that
26 the petitioner no longer presents, as a result of a mental disease or
27 defect, a substantial danger to other persons, or a substantial
28 likelihood of committing criminal acts jeopardizing public safety or
29 security, unless kept under further control by the court or other
30 persons or institutions.

31 ((+3)) (4) For purposes of this section, a person affected by a
32 mental disease or defect in a state of remission is considered to have
33 a mental disease or defect requiring supervision when the disease may,
34 with reasonable medical probability, occasionally become active and,
35 when active, render the person a danger to others. Upon a finding that
36 the petitioner has a mental disease or defect in a state of remission
37 under this subsection, the court may deny release, or place or continue
38 such a person on conditional release.

1 (5) Nothing contained in this chapter shall prohibit the patient
2 from petitioning the court for release or conditional release from the
3 institution in which he or she is committed. The issue to be
4 determined on such proceeding is whether the petitioner, as a result of
5 a mental disease or defect, is a substantial danger to other persons,
6 or presents a substantial likelihood of committing criminal acts
7 jeopardizing public safety or security, unless kept under further
8 control by the court or other persons or institutions.

9 (6) Nothing contained in this chapter shall prohibit the committed
10 person from petitioning for release by writ of habeas corpus.

11 NEW SECTION. **Sec. 9.** A new section is added to chapter 10.77 RCW
12 to read as follows:

13 For persons who have received court approval for conditional
14 release, the secretary or the secretary's designee shall supervise the
15 person's compliance with the court-ordered conditions of release. The
16 level of supervision provided by the secretary shall correspond to the
17 level of the person's public safety risk. In undertaking supervision
18 of persons under this section, the secretary shall coordinate with any
19 treatment providers designated pursuant to RCW 10.77.150(3), any
20 department of corrections staff designated pursuant to RCW
21 10.77.150(2), and local law enforcement, if appropriate. The secretary
22 shall adopt rules to implement this section."

23 Correct the title.

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