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**SUBSTITUTE HOUSE BILL 2932**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** House Human Services (originally sponsored by Representatives Kelley, Hope, Green, Conway, Hurst, Campbell, Wallace, Simpson, Ericks, Ericksen, Van De Wege, Johnson, Roach, Kirby, McCune, and Morrell; by request of Governor Gregoire)

READ FIRST TIME 02/02/10.

1 AN ACT Relating to improving procedures for assessing and treating  
2 persons with mental illnesses served under chapter 10.77 RCW; amending  
3 RCW 10.77.150 and 10.77.200; adding new sections to chapter 10.77 RCW;  
4 creating a new section; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** (1) The institute for public policy shall,  
7 in collaboration with the department of social and health services and  
8 other applicable entities, undertake a search for validated mental  
9 health assessment tools in each of the following areas:

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

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

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

1       **Sec. 2.** 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 which 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 report the failure to  
35 the court, to the prosecuting attorney of the county in which the  
36 released person was committed, to the secretary, and to the supervising  
37 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. 3.** RCW 10.77.200 and 2000 c 94 s 16 are each amended to read  
5 as follows:

6 (1) Upon application by the committed or conditionally released  
7 person, the secretary shall determine whether or not reasonable grounds  
8 exist for release. In making this determination, the secretary may  
9 consider the reports filed under RCW 10.77.060, 10.77.110, 10.77.140,  
10 and 10.77.160, and other reports and evaluations provided by  
11 professionals familiar with the case. If the secretary approves the  
12 release he or she then shall authorize the person to petition the  
13 court.

14 (2) In instances in which persons have not made application for  
15 release, but the secretary believes, after consideration of the reports  
16 filed under RCW 10.77.060, 10.77.110, 10.77.140, and 10.77.160, and  
17 other reports and evaluations provided by professionals familiar with  
18 the case, that reasonable grounds exist for release, the secretary may  
19 petition the court. If the secretary petitions the court for release  
20 under this subsection, notice of the petition must be provided to the  
21 person who is the subject of the petition and to his or her attorney.

22 (3) The petition shall be served upon the court and the prosecuting  
23 attorney. The court, upon receipt of the petition for release, shall  
24 within forty-five days order a hearing. Continuance of the hearing  
25 date shall only be allowed for good cause shown. The prosecuting  
26 attorney shall represent the state, and shall have the right to have  
27 the petitioner examined by an expert or professional person of the  
28 prosecuting attorney's choice. If the petitioner is indigent, and the  
29 person so requests, the court shall appoint a qualified expert or  
30 professional person to examine him or her. If the petitioner (~~is~~  
31 ~~developmentally disabled~~) has a developmental disability, the  
32 examination shall be performed by a developmental disabilities  
33 professional. The hearing shall be before a jury if demanded by either  
34 the petitioner or the prosecuting attorney. The burden of proof shall  
35 be upon the petitioner to show by a preponderance of the evidence that  
36 the petitioner no longer presents, as a result of a mental disease or  
37 defect, a substantial danger to other persons, or a substantial

1 likelihood of committing criminal acts jeopardizing public safety or  
2 security, unless kept under further control by the court or other  
3 persons or institutions.

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

12 Nothing contained in this chapter shall prohibit the committed  
13 person from petitioning for release by writ of habeas corpus.

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

16 (1) The department shall review the costs of the operation of each  
17 of the following boards and the rates of recidivism and treatment  
18 outcomes for the populations under their jurisdiction as follows:

19 (a) The Oregon psychiatric security review board's administration  
20 of cases involving (i) persons judged to be guilty except for insanity,  
21 (ii) persons who would have been guilty of a felony or misdemeanor  
22 which caused or risked physical injury to another except for insanity,  
23 and (iii) persons affected by mental illness and determined to be a  
24 substantial danger to others; and

25 (b) The Virginia community services boards' administration of cases  
26 involving persons found not guilty by reason of insanity.

27 (2) The department shall report the results of its review to the  
28 appropriate committees of the legislature by December 15, 2010.

29 NEW SECTION. **Sec. 5.** A new section is added to chapter 10.77 RCW  
30 to read as follows:

31 For persons who have received court approval for conditional  
32 release, the secretary, or such person as the secretary shall  
33 designate, shall supervise the person's compliance with the court-  
34 ordered conditions of release. The level of supervision provided by  
35 the secretary shall correspond to the level of the person's assessed  
36 public safety risk. In undertaking supervision of persons under this

1 section, the secretary shall coordinate with any treatment providers  
2 designated pursuant to RCW 10.77.150(3), any department of corrections  
3 staff designated pursuant to RCW 10.77.150(2), and local law  
4 enforcement, if appropriate. The secretary shall adopt rules to  
5 implement this section.

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