
SENATE BILL 6549

State of Washington

61st Legislature

2010 Regular Session

By Senators Hargrove, Carrell, and Roach

Read first time 01/18/10. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to the establishment of the psychiatric security
2 review board to supervise persons acquitted by reason of insanity;
3 amending RCW 10.77.110, 10.77.010, 10.77.120, 10.77.170, and 71.09.030;
4 adding new sections to chapter 10.77 RCW; and repealing RCW 10.77.140,
5 10.77.150, 10.77.155, 10.77.160, 10.77.180, 10.77.190, and 10.77.200.

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

7 **Sec. 1.** RCW 10.77.110 and 2000 c 94 s 14 are each amended to read
8 as follows:

9 (1) If a defendant is acquitted of a crime by reason of insanity,
10 and it is found that he or she is not a substantial danger to other
11 persons, and does not present a substantial likelihood of committing
12 criminal acts jeopardizing public safety or security, unless kept under
13 further control by the court or other persons or institutions, the
14 court shall direct the defendant's release.

15 (2) If it is found that such defendant is a substantial danger to
16 other persons, or presents a substantial likelihood of committing
17 criminal acts jeopardizing public safety or security, unless kept under
18 further control by the court or other persons or institutions, the
19 court shall order (~~his or her~~) that the defendant be placed under the

1 jurisdiction of the psychiatric security review board for supervision
2 of the care and treatment of the defendant for a period of jurisdiction
3 equal to the maximum sentence provided by statute for the crime for
4 which the person was acquitted by reason of insanity. The court shall
5 commit the defendant to the custody of the secretary with an order for
6 the hospitalization(~~(, or any appropriate alternative treatment less~~
7 ~~restrictive than detention in a state mental hospital, pursuant to the~~
8 ~~terms of this chapter.~~

9 ~~(2) If the defendant has been found not guilty by reason of~~
10 ~~insanity and a substantial danger, or presents a substantial likelihood~~
11 ~~of committing criminal acts jeopardizing public safety or security, so~~
12 ~~as to require treatment then the secretary shall immediately cause the~~
13 ~~defendant to be evaluated to ascertain if the defendant is~~
14 ~~developmentally disabled. When appropriate, and subject to available~~
15 ~~funds, the defendant may be committed to a program specifically~~
16 ~~reserved for the treatment and training of developmentally disabled~~
17 ~~persons. A person so committed shall receive habilitation services~~
18 ~~according to an individualized service plan specifically developed to~~
19 ~~treat the behavior which was the subject of the criminal proceedings.~~
20 ~~The treatment program shall be administered by developmental~~
21 ~~disabilities professionals and others trained specifically in the needs~~
22 ~~of developmentally disabled persons. The treatment program shall~~
23 ~~provide physical security to a degree consistent with the finding that~~
24 ~~the defendant is dangerous and may incorporate varying conditions of~~
25 ~~security and alternative sites when the dangerousness of any particular~~
26 ~~defendant makes this necessary. The department may limit admissions to~~
27 ~~this specialized program in order to ensure that expenditures for~~
28 ~~services do not exceed amounts appropriated by the legislature and~~
29 ~~allocated by the department for such services. The department may~~
30 ~~establish admission priorities in the event that the number of eligible~~
31 ~~persons exceeds the limits set by the department)) of the defendant.~~

32 (3) If it is found that such defendant is not a substantial danger
33 to other persons, and does not present a substantial likelihood of
34 committing criminal acts jeopardizing public safety or security, but
35 that he or she is in need of control by the court or other persons or
36 institutions, the court shall order that the defendant be placed under
37 the jurisdiction of the psychiatric security review board for
38 supervision of the care and treatment of the defendant for a period of

1 jurisdiction equal to the maximum sentence provided by statute for the
2 crime for which the person was acquitted by reason of insanity, and
3 shall direct the defendant's conditional release.

4 (4) Whenever the court orders a defendant to be placed under the
5 jurisdiction of the psychiatric security review board, it shall make
6 specific findings on whether there is a victim of the crime for which
7 the defendant has been acquitted by reason of insanity and, if so,
8 whether the victim wishes to be notified of any psychiatric security
9 review board hearings concerning the defendant and of any conditional
10 release, discharge, or escape of the defendant. The court shall
11 include such findings in its order, and notify the psychiatric security
12 review board in writing of its orders and findings concerning the
13 defendant.

14 NEW SECTION. Sec. 2. A new section is added to chapter 10.77 RCW
15 to read as follows:

16 (1) The psychiatric security review board shall consist of five
17 members appointed by the governor with the consent of the senate. The
18 board shall be affiliated with the indeterminate sentence review board
19 under chapter 9.95 RCW, and may share administrative resources with
20 same, or employ and administer its own employees or resources with the
21 approval of the governor. The board members are distinct from the
22 members of the indeterminate sentence review board, as provided in this
23 chapter.

24 (2) The membership of the board may not include any prosecuting
25 attorney, deputy prosecuting attorney, or public defender. The
26 governor shall appoint:

27 (a) A psychiatrist experienced in the criminal justice system and
28 not otherwise employed on a full-time basis by the department or a
29 community mental health or developmental disabilities program;

30 (b) A licensed psychologist experienced in the criminal justice
31 system and not otherwise employed on a full-time basis by the
32 department or a community mental health or developmental disabilities
33 program;

34 (c) A member with substantial experience in the processes of
35 community supervision, probation, and parole;

36 (d) A lawyer with substantial experience in criminal trial
37 practice; and

1 (e) A member of the general public.

2 (3) The term of office of each member is four years, and shall
3 expire on April 15th of the expiration year. The governor at any time
4 may remove any member for inefficiency, neglect of duty, or malfeasance
5 in office. Before the expiration of the term of a member, the governor
6 shall appoint a successor. A member is eligible for reappointment. If
7 there is a vacancy for any cause, the governor shall make an
8 appointment to become immediately effective for the unexpired term.

9 (4) The governor may provide for compensation for expenses incurred
10 by members of the board during the discharge of the members' duties and
11 may provide for salaries of board members consistently with the
12 provisions of chapter 43.03 RCW.

13 (5) The board shall select one of its members as chairperson to
14 serve for a one-year term with such duties and powers as the panel
15 determines. A majority of the voting members of the board constitutes
16 a quorum for the transaction of business of the board.

17 (6) The board shall meet at state hospitals or at other places
18 determined by the board at such times as may be necessary to conduct
19 its business. The superintendents of the state hospitals shall upon
20 request provide suitable quarters for the board and assistants while in
21 the discharge of its duties. A meeting of the board may be called by
22 the chairperson, or by a majority of the members of the board.

23 NEW SECTION. **Sec. 3.** A new section is added to chapter 10.77 RCW
24 to read as follows:

25 No person committed by the court under RCW 10.77.110 to a state
26 hospital under the jurisdiction of the psychiatric security review
27 board shall be held in the hospital or facility for more than ninety
28 days from the date of the court's commitment order without an initial
29 hearing before the board to determine whether the person should be
30 conditionally released or discharged.

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

33 (1) If the psychiatric security review board finds, upon its
34 initial hearing, that the person presents a substantial danger to
35 others or presents a substantial likelihood of committing criminal acts
36 jeopardizing public safety or security and is not a proper subject for

1 conditional release, the board shall order the person committed to the
2 custody of the secretary for a period of treatment at a state hospital.
3 The period of commitment ordered by the board may not exceed the
4 maximum sentence provided by statute for the crime for which the person
5 was acquitted by reason of insanity.

6 (2) If at any time after the commitment of a person under the
7 jurisdiction of the board to a state hospital the superintendent of the
8 hospital is of the opinion that the person is no longer affected by
9 mental disease or defect, or, if so affected, no longer presents a
10 substantial danger to others or a substantial likelihood of committing
11 criminal acts jeopardizing public safety or security, or that the
12 person continues to be affected by mental disease or defect and
13 continues to present a substantial danger to others or a substantial
14 likelihood of committing criminal acts jeopardizing public safety or
15 security, but that the person can be controlled with proper care,
16 medication, supervision, and treatment if conditionally released, the
17 superintendent shall apply to the board for an order of discharge or
18 conditional release. The application shall be accompanied by a report
19 setting forth the facts supporting the opinion of the superintendent,
20 and copies shall be served upon the attorney general. If the
21 application is for conditional release, the application must also be
22 accompanied by a verified conditional release plan. The board shall
23 hold a hearing on the application within sixty days of its receipt.

24 (3) The attorney representing the state may choose a psychiatrist
25 or licensed psychologist to examine the person prior to any decision by
26 the board on discharge or conditional release. The results of the
27 examination shall be in writing and filed with the board, and shall
28 include, but need not be limited to, an opinion as to the mental
29 condition of the person, whether the person presents a substantial
30 danger to others or a substantial likelihood of committing criminal
31 acts jeopardizing public safety or security, and whether the person
32 could be adequately controlled with treatment as a condition of
33 release.

34 (4) Any person under the jurisdiction of the board who has been
35 committed to a state hospital may apply to the board for an order of
36 discharge or conditional release upon the grounds:

37 (a) That the person is no longer affected by mental disease or
38 defect;

1 (b) If so affected, that the person no longer presents a
2 substantial danger to others or a substantial likelihood of committing
3 criminal acts jeopardizing public safety or security; or

4 (c) That the person continues to be affected by a mental disease or
5 defect and would continue to present a substantial danger to others or
6 a substantial likelihood of committing criminal acts jeopardizing
7 public safety or security without treatment, but that the person can be
8 adequately controlled and given proper care and treatment if placed on
9 conditional release.

10 (5) When application is made under subsection (4) of this section,
11 the board shall require that a report from the superintendent of the
12 hospital or the director of the secure intensive community inpatient
13 facility be prepared and transmitted as provided in subsection (2) of
14 this section. The applicant must prove by a preponderance of the
15 evidence the applicant's fitness for discharge or conditional release
16 under the standards of subsection (4) of this section, unless more than
17 two years have passed since the state had the burden of proof on that
18 issue, in which case the state shall have the burden of proving by a
19 preponderance of the evidence the applicant's lack of fitness for
20 discharge or conditional release. Applications for discharge or
21 conditional release under subsection (4) of this section shall not be
22 filed more often than once every six months commencing with the date of
23 the initial board hearing.

24 (6) The board is not required to hold a hearing on a first
25 application under subsection (4) of this section any sooner than ninety
26 days after the initial hearing. However, hearings resulting from any
27 subsequent requests shall be held within sixty days of the filing of
28 the application.

29 (7) In no case shall a person be held pursuant to this section for
30 a period of time exceeding two years without a hearing before the board
31 to determine whether the person should be conditionally released or
32 discharged.

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

35 (1) The psychiatric security review board may order conditional
36 release of a person under its jurisdiction if it determines after a
37 hearing that (a) the person presents a substantial danger to other

1 persons or a substantial likelihood of committing criminal acts
2 jeopardizing public safety or security; (b) this danger can be
3 adequately controlled with supervision and treatment; and (c) necessary
4 supervision and treatment are available to the person upon conditional
5 release. The board may impose such conditions as are in the best
6 interests of justice, the protection of society, and the welfare of the
7 person.

8 (i) If the order of conditional release includes a requirement for
9 the committed person to report to a community corrections officer, the
10 order shall also specify that the conditionally released person shall
11 be under the supervision of the secretary of corrections or designee
12 and shall follow explicitly the instructions of the secretary of
13 corrections including reporting as directed to a community corrections
14 officer, remaining within prescribed geographical boundaries, and
15 notifying the community corrections officer prior to making any change
16 in the person's address or employment.

17 (ii) When a conditionally released person is required by the terms
18 of his or her conditional release to report to a physician, department
19 of corrections community corrections officer, or medical or mental
20 health practitioner on a regular or periodic basis, the physician,
21 department of corrections community corrections officer, medical or
22 mental health practitioner, or other such person shall monthly, for the
23 first six months after release and semiannually thereafter, or as
24 otherwise directed by the board, submit to the board and the secretary
25 a report describing the progress of the person and stating whether the
26 person is adhering to the terms and conditions of his or her
27 conditional release. In addition to this report, a physician or
28 medical or mental health practitioner shall immediately report a
29 failure by the person to appear for required medication or treatment to
30 the supervising community corrections officer and the board.

31 (2) If at any time while the person is under the jurisdiction of
32 the board it appears to the board or its chairperson that the person
33 has violated the terms of the conditional release or that the mental
34 health of the individual has changed, the board or its chairperson may
35 order the person returned for evaluation or treatment to a state
36 hospital designated by the secretary. A written order of the board, or
37 its chairperson on behalf of the board, is sufficient warrant for any
38 law enforcement officer to take into custody such person and transport

1 the person accordingly. The board shall conduct a hearing within
2 twenty days following the return of the person into custody. Notice of
3 the time and place of the hearing shall be given to the person, his or
4 her counsel, and the attorney general. Following hearing, the board
5 may continue the person on the same or modified terms of conditional
6 release or, if it finds by a preponderance of the evidence that the
7 person is affected by mental disease or defect and presents substantial
8 danger to other persons or a substantial likelihood of committing
9 criminal acts jeopardizing public safety or security and cannot be
10 adequately controlled if conditional release is continued, it may order
11 the person committed to the custody of the secretary for further
12 treatment. The burden of proof to demonstrate the person's unfitness
13 for conditional release is on the state. A person in custody pursuant
14 to this subsection has the same rights as any person appearing before
15 the board under section 6 of this act.

16 (3) Any person responsible for the supervision of a person on
17 conditional release, any peace officer, or the secretary may take a
18 person on conditional release into custody or request that the person
19 be taken into custody if there is reasonable cause to believe the
20 person is a substantial danger to others because of mental disease or
21 defect and that the person is in need of immediate care, custody, or
22 treatment. Any person taken into custody pursuant to this subsection
23 shall be transported as soon as practicable to a state hospital and the
24 secretary shall provide notice to the board. A person taken into
25 custody under this subsection has the same rights as any person
26 appearing before the board under section 6 of this act.

27 (4)(a) Any person conditionally released under this section may
28 apply to the board for discharge from or modification of an order of
29 conditional release on the ground that the person is no longer affected
30 by mental disease or defect or, if still so affected, no longer
31 presents a substantial danger to others or a substantial likelihood of
32 committing criminal acts jeopardizing public safety or security.
33 Notice of the hearing on an application for discharge or modification
34 of an order of conditional release shall be made to the attorney
35 general. The board shall schedule a hearing within forty-five days,
36 and shall not continue the hearing except for good cause. The
37 applicant, at the hearing pursuant to this subsection, must prove by a
38 preponderance of the evidence the applicant's fitness for discharge or

1 modification of the order of conditional release. Applications by the
2 person for discharge or modification of conditional release shall not
3 be filed more often than once every six months.

4 (b) Any person or agency responsible for supervision or treatment
5 pursuant to an order of conditional release may apply to the board for
6 a modification or discharge of an order of conditional release. The
7 application shall be accompanied by a report setting forth the facts
8 supporting the application. The board shall conduct a hearing to
9 determine if the conditions of release shall be continued, modified, or
10 terminated.

11 (5) Any person who has been placed under the jurisdiction of the
12 board and who has spent five years on conditional release shall be
13 brought before the board for hearing within thirty days of the
14 expiration of the five-year period. The board shall review the
15 person's status and determine whether the person should be discharged
16 from the jurisdiction of the board.

17 (6) The total period of commitment and conditional release ordered
18 pursuant to this section may not exceed the maximum sentence provided
19 by statute for the crime for which the person was found guilty except
20 for insanity.

21 (7) Copies of all reports submitted to the board pursuant to this
22 section shall be furnished upon request to the person and the person's
23 counsel.

24 (8) For purposes of this section, a person affected by a mental
25 disease or defect in a state of remission is considered to have a
26 mental disease or defect requiring supervision when the disease may,
27 with reasonable medical probability, occasionally become active and,
28 when active, render the person a danger to others. The person may be
29 continued on conditional release by the board as provided in this
30 section.

31 (9) In determining whether a person should be committed to a state
32 hospital or to a secure intensive community inpatient facility,
33 conditionally released, or discharged, the board shall have as its
34 primary concern the protection of society.

35 (10) The board shall maintain and keep current the medical, social,
36 and criminal history of all persons committed to its jurisdiction.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 10.77 RCW
2 to read as follows:

3 (1) The psychiatric security review board shall conduct hearings
4 upon any application for discharge, conditional release, commitment, or
5 modification under sections 3 through 5 of this act.

6 (2) At any time, the board may appoint a psychiatrist or licensed
7 psychologist to examine a person under the jurisdiction of the board
8 and to submit a report to the board. Reports filed with the board
9 pursuant to the examination shall include, but need not be limited to,
10 an opinion as to the mental condition of the person and whether the
11 person presents a substantial danger to others or a substantial
12 likelihood of committing criminal acts jeopardizing public safety or
13 security, and whether the person can be adequately controlled with
14 treatment as a condition of release. To facilitate the examination of
15 the person, the board may order the person placed in the temporary
16 custody of a state hospital.

17 (3) The board may make the determination regarding discharge or
18 conditional release based upon the written reports submitted pursuant
19 to this section or section 3 of this act. If any member of the board
20 desires further information from the examining psychiatrist or licensed
21 psychologist who submitted the report, these persons shall be summoned
22 by the board to give testimony. The board shall consider all evidence
23 available to it which is material, relevant, and reliable regarding the
24 issues before the board. Such evidence may include but is not limited
25 to the record of trial, the information supplied by the attorney
26 representing the state, or by any other interested party, including the
27 person, and information concerning the person's mental condition and
28 the entire psychiatric and criminal history of the person. All
29 evidence of a type commonly relied upon by reasonably prudent persons
30 in the conduct of their serious affairs shall be admissible at
31 hearings. Testimony from witnesses shall be taken under oath or
32 affirmation.

33 (4) The board shall furnish written notice of any hearing under
34 this section to the person who is the subject of the hearing, his or
35 her attorney, the attorney general, the prosecuting attorney of the
36 county from which the person was committed, and any victims of the
37 crime for which the person was acquitted by reason of insanity who have

1 requested to receive such notice within a reasonable time prior to the
2 hearing. The notice shall include:

3 (a) The time, place, and location of the hearing;

4 (b) The nature of the hearing and the specific action for which a
5 hearing has been requested, the issues to be considered at the hearing,
6 and a reference to the particular sections of the statutes and rules
7 involved;

8 (c) A statement of the authority and jurisdiction under which the
9 hearing is to be held;

10 (d) A statement of all rights under subsection (5) of this section.

11 (5) At the hearing, the person about whom the hearing is being held
12 shall have the right to:

13 (a) Appear at all proceedings held pursuant to this section, except
14 board deliberations;

15 (b) Cross-examine all witnesses appearing to testify at the
16 hearing;

17 (c) Subpoena witnesses and documents;

18 (d) Be represented by legal counsel, and to have counsel appointed
19 if financially eligible;

20 (e) Examine all information, documents, and reports which the board
21 considers. If then available to the board, the information, documents,
22 and reports shall be disclosed to counsel for the person prior to the
23 hearing so as to allow examination.

24 (6) A record shall be kept of all hearings before the board, except
25 board deliberations.

26 (7) Upon request of any party before the board, or on its own
27 motion, the board may continue a hearing for a reasonable period not to
28 exceed sixty days to obtain additional information or testimony or for
29 other good cause shown.

30 (8) Within fifteen days following the conclusion of the hearing,
31 the board shall provide to the person, his or her counsel, and the
32 counsel representing the state written notice of the board's decision.

33 (9) The burden of proof on all issues at hearings of the board
34 shall be by a preponderance of the evidence.

35 (10) The attorney general may represent the state at contested
36 hearings before the board unless the prosecuting attorney of the county
37 from which the person was committed elects to represent the state. The
38 prosecuting attorney of the county from which the person was committed

1 shall cooperate with the attorney general in securing the material
2 necessary for presenting a contested hearing before the board. If the
3 prosecuting attorney elects to represent the state, the prosecuting
4 attorney shall give timely written notice of such election to the
5 attorney general, the board, and the attorney representing the person.

6 (11) When a person over whom the board exercises its jurisdiction
7 is adversely affected or aggrieved by a final order of the board, the
8 person is entitled to judicial review of the final order. The person
9 is entitled counsel on judicial review. Petition for review must be
10 filed at the court of appeals within sixty days of the order for which
11 review is sought. The board shall submit to the court the record of
12 the proceeding or, if the person agrees, a shortened record. Filing of
13 a petition for review does not stay the panel's order, but the panel or
14 the court of appeals may order a stay upon application on such terms as
15 are deemed proper.

16 NEW SECTION. **Sec. 7.** A new section is added to chapter 10.77 RCW
17 to read as follows:

18 (1) Upon request of any party to a hearing before the board, the
19 board or its designated representatives shall issue, or the board on
20 its own motion may issue, a subpoena requiring the attendance and
21 testimony of witnesses.

22 (2) Upon request of any party to the hearing before the board and
23 upon a proper showing of the general relevance and reasonable scope of
24 the documentary or physical evidence sought, the board or its
25 designated representative shall issue, or the board on its own motion
26 may issue, a subpoena duces tecum.

27 (3) If any person fails to comply with a subpoena issued under
28 subsection (1) or (2) of this section or any party or witness refuses
29 to testify regarding any matter on which the party or witness may be
30 lawfully interrogated, the judge of the superior court of any county,
31 on the application of the board or its designated representative or of
32 the party requesting the issuance of the subpoena, shall compel
33 obedience by proceedings for contempt as in the case of disobedience of
34 the requirements of a subpoena issued by the court.

35 (4) If any person, agency, or facility fails to comply with an
36 order of the board issued pursuant to subsection (2) of this section,
37 the judge of a superior court of any county, on application of the

1 board or its designated representative, shall compel obedience by
2 proceedings for contempt as in the case of disobedience of the
3 requirements of an order issued by the court.

4 NEW SECTION. **Sec. 8.** A new section is added to chapter 10.77 RCW
5 to read as follows:

6 In addition to persons committed to its jurisdiction under RCW
7 10.77.110, the board shall assume jurisdiction over all persons who are
8 currently or hereafter become committed to a state hospital for
9 inpatient treatment pursuant to a judgment of acquittal by reason of
10 insanity entered before the effective date of this section. Persons
11 acquitted by reason of insanity who have been conditionally released
12 under court supervision as of the effective date of this section shall
13 remain under court supervision until their conditional release expires
14 or is revoked or terminated by the court.

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

17 The superintendent of a state hospital shall notify the board at
18 the earliest practicable time of any escape or proposed furlough or
19 change of status that would allow unescorted grounds privileges for any
20 person within the jurisdiction of the board.

21 **Sec. 10.** RCW 10.77.010 and 2005 c 504 s 106 are each amended to
22 read 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) A "criminally insane" person means any person who has been
32 acquitted of a crime charged by reason of insanity, and thereupon found
33 to be a substantial danger to other persons or to present a substantial
34 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 (5) "Department" means the state department of social and health
4 services.

5 (6) "Designated mental health professional" has the same meaning as
6 provided in RCW 71.05.020.

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

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

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

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

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

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

35 (13) "History of one or more violent acts" means violent acts
36 committed during: (a) The ten-year period of time prior to the filing
37 of criminal charges; plus (b) the amount of time equal to time spent

1 during the ten-year period in a mental health facility or in
2 confinement as a result of a criminal conviction.

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

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

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

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

16 (b) The conditions and strategies necessary to achieve the purposes
17 of habilitation;

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

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

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

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

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

29 (17) "Professional person" means:

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

36 (b) A psychologist licensed as a psychologist pursuant to chapter
37 18.83 RCW; or

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

4 (18) "Registration records" include all the records of the
5 department, regional support networks, treatment facilities, and other
6 persons providing services to the department, county departments, or
7 facilities which identify persons who are receiving or who at any time
8 have received services for mental illness.

9 (19) "Release" means legal termination of the court-ordered
10 commitment under the provisions of this chapter.

11 (20) "Secretary" means the secretary of the department of social
12 and health services or his or her designee.

13 (21) "Treatment" means any currently standardized medical or mental
14 health procedure including medication.

15 (22) "Treatment records" include registration and all other records
16 concerning persons who are receiving or who at any time have received
17 services for mental illness, which are maintained by the department, by
18 regional support networks and their staffs, and by treatment
19 facilities. Treatment records do not include notes or records
20 maintained for personal use by a person providing treatment services
21 for the department, regional support networks, or a treatment facility
22 if the notes or records are not available to others.

23 (23) "Violent act" means behavior that: (a)(i) Resulted in; (ii)
24 if completed as intended would have resulted in; or (iii) was
25 threatened to be carried out by a person who had the intent and
26 opportunity to carry out the threat and would have resulted in,
27 homicide, nonfatal injuries, or substantial damage to property; or (b)
28 recklessly creates an immediate risk of serious physical injury to
29 another person. As used in this subsection, "nonfatal injuries" means
30 physical pain or injury, illness, or an impairment of physical
31 condition. "Nonfatal injuries" shall be construed to be consistent
32 with the definition of "bodily injury," as defined in RCW 9A.04.110.

33 (24) "Board" means the psychiatric security review board.

34 **Sec. 11.** 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
37 individualized treatment for persons committed as criminally insane at

1 one or several of the state institutions or facilities under his or her
2 direction and control (~~((wherein persons committed as criminally insane
3 may be confined. Such persons shall be under the custody and control
4 of the secretary to the same extent as are other persons who are
5 committed to the secretary's custody, but such provision shall be made
6 for their control, care, and treatment as is proper in view of their
7 condition. In order that the secretary may adequately determine the
8 nature of the mental illness or developmental disability of the person
9 committed to him or her as criminally insane, and in order for))~~). Any
10 person so committed shall not be released from the control of the
11 secretary except upon order by the psychiatric security review board or
12 a court of competent jurisdiction.

13 (2) ~~The secretary ((to place such individuals in a proper
14 facility,))~~ shall order immediate evaluation of all persons who are
15 committed to the custody of the secretary as criminally insane (~~((shall
16 be promptly examined))~~) by qualified personnel (~~((in such a manner as to
17 provide a proper evaluation and diagnosis of such individual))~~).

18 (a) ~~The examinations of all ((developmentally disabled))~~ persons
19 with developmental disabilities committed under this chapter shall be
20 performed by developmental disabilities professionals. (~~((Any person so
21 committed shall not be released from the control of the secretary save
22 upon the order of a court of competent jurisdiction made after a
23 hearing and judgment of release.~~

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

1 (b) When appropriate, and subject to available funds, the secretary
2 may place the defendant in a program specifically reserved for the
3 treatment and training of persons with developmental disabilities. A
4 person so committed shall receive habilitation services according to an
5 individualized service plan specifically developed to treat the
6 behavior which was the subject of the criminal proceedings. The
7 treatment program shall be administered by developmental disabilities
8 professionals and others trained specifically in the needs of persons
9 with developmental disabilities. The treatment program shall provide
10 appropriate physical security and may incorporate varying conditions of
11 security and alternative sites when the dangerousness of any particular
12 defendant makes this necessary. The department may limit admissions to
13 this specialized program in order to ensure that expenditures for
14 services do not exceed amounts appropriated by the legislature and
15 allocated by the department for such services. The department may
16 establish admission priorities in the event that the number of eligible
17 persons exceeds the limits set by the department.

18 (c) Whenever the psychiatric security review board requires the
19 preparation of a predischarge or preconditional release plan before a
20 hearing or as a condition of granting discharge or conditional release
21 for a person committed to a state hospital under RCW 10.77.110 or
22 section 5 of this act, the department is responsible for and shall
23 prepare the plan. In preparing a conditional release plan, the
24 department shall act to ensure the maximum amount of federal financial
25 participation in the supervision and treatment of persons under board
26 jurisdiction, and shall pursue any necessary amendments to the medicaid
27 state plan in furtherance of this end.

28 **Sec. 12.** RCW 10.77.170 and 1973 1st ex.s. c 117 s 17 are each
29 amended to read as follows:

30 As funds are available, the secretary may provide payment to a
31 person conditionally released pursuant to (~~RCW 10.77.150~~) section 5
32 of this act, consistent with the provisions of RCW 72.02.100 and
33 72.02.110, and may adopt rules and regulations to do so.

34 **Sec. 13.** RCW 71.09.030 and 2009 c 409 s 3 are each amended to read
35 as follows:

36 (1) A petition may be filed alleging that a person is a sexually

1 violent predator and stating sufficient facts to support such
2 allegation when it appears that: (a) A person who at any time
3 previously has been convicted of a sexually violent offense is about to
4 be released from total confinement; (b) a person found to have
5 committed a sexually violent offense as a juvenile is about to be
6 released from total confinement; (c) a person who has been charged with
7 a sexually violent offense and who has been determined to be
8 incompetent to stand trial is about to be released, or has been
9 released, pursuant to RCW 10.77.086(4); (d) a person who has been found
10 not guilty by reason of insanity of a sexually violent offense is about
11 to be released, or has been released, pursuant to RCW 10.77.020(3),
12 10.77.110 (1) or (3), or (~~10.77.150~~) section 5 of this act; or (e) a
13 person who at any time previously has been convicted of a sexually
14 violent offense and has since been released from total confinement and
15 has committed a recent overt act.

16 (2) The petition may be filed by:

17 (a) The prosecuting attorney of a county in which:

18 (i) The person has been charged or convicted with a sexually
19 violent offense;

20 (ii) A recent overt act occurred involving a person covered under
21 subsection (1)(e) of this section; or

22 (iii) The person committed a recent overt act, or was charged or
23 convicted of a criminal offense that would qualify as a recent overt
24 act, if the only sexually violent offense charge or conviction occurred
25 in a jurisdiction other than Washington; or

26 (b) The attorney general, if requested by the county prosecuting
27 attorney identified in (a) of this subsection. If the county
28 prosecuting attorney requests that the attorney general file and
29 prosecute a case under this chapter, then the county shall charge the
30 attorney general only the fees, including filing and jury fees, that
31 would be charged and paid by the county prosecuting attorney, if the
32 county prosecuting attorney retained the case.

33 NEW SECTION. **Sec. 14.** The following acts or parts of acts are
34 each repealed:

35 (1) RCW 10.77.140 (Periodic examinations--Developmentally
36 disabled--Reports--Notice to court) and 1998 c 297 s 40, 1989 c 420 s
37 8, 1974 ex.s. c 198 s 12, & 1973 1st ex.s. c 117 s 14;

1 (2) RCW 10.77.150 (Conditional release--Application--Order--
2 Procedure) and 1998 c 297 s 41, 1993 c 31 s 6, 1982 c 112 s 1, 1974
3 ex.s. c 198 s 13, & 1973 1st ex.s. c 117 s 15;

4 (3) RCW 10.77.155 (Conditional release, furlough--Secretary's
5 recommendation) and 1994 c 150 s 1;

6 (4) RCW 10.77.160 (Conditional release--Reports) and 1993 c 31 s 7
7 & 1973 1st ex.s. c 117 s 16;

8 (5) RCW 10.77.180 (Conditional release--Periodic review of case)
9 and 1998 c 297 s 42, 1993 c 31 s 9, 1974 ex.s. c 198 s 14, & 1973 1st
10 ex.s. c 117 s 18;

11 (6) RCW 10.77.190 (Conditional release--Revocation or modification
12 of terms--Procedure) and 1998 c 297 s 43, 1993 c 31 s 10, 1982 c 112 s
13 2, 1974 ex.s. c 198 s 15, & 1973 1st ex.s. c 117 s 19; and

14 (7) RCW 10.77.200 (Release--Procedure) and 2000 c 94 s 16, 1998 c
15 297 s 44, 1993 c 31 s 11, 1989 c 420 s 11, 1983 c 25 s 2, 1974 ex.s. c
16 198 s 16, & 1973 1st ex.s. c 117 s 20.

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