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**SUBSTITUTE SENATE BILL 6610**

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**State of Washington                      61st Legislature                      2010 Regular Session**

**By** Senate Human Services & Corrections (originally sponsored by Senators Hargrove and McAuliffe; by request of Governor Gregoire)

READ FIRST TIME 02/05/10.

1            AN ACT Relating to improving procedures relating to the commitment  
2 of persons found not guilty by reason of insanity; amending RCW  
3 10.77.120, 10.77.150, 10.77.160, 10.77.190, and 10.77.200; adding new  
4 sections to chapter 10.77 RCW; creating a new section; and providing an  
5 expiration date.

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

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

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

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

- 1 (a) A psychiatrist;
- 2 (b) A licensed clinical psychologist;
- 3 (c) A representative of the department of corrections;
- 4 (d) A prosecutor or a representative of a prosecutor's association;
- 5 (e) A representative of law enforcement or a law enforcement
- 6 association;
- 7 (f) A consumer and family advocate representative; and
- 8 (g) A public defender.

9 (3) Thirty days prior to issuing a recommendation for conditional  
10 release under RCW 10.77.150 or forty-five days prior to issuing a  
11 recommendation for release under RCW 10.77.200, the secretary shall  
12 submit its recommendation with the committed person's application and  
13 the department's risk assessment to the public safety review panel.  
14 The public safety review panel shall complete an independent assessment  
15 of the public safety risk entailed by the secretary's proposed  
16 conditional release recommendation or release recommendation and  
17 provide this assessment in writing to the secretary. The public safety  
18 review panel may, within funds appropriated for this purpose, request  
19 additional evaluations of the committed person. The public safety  
20 review panel may indicate whether it is in agreement with the  
21 secretary's recommendation, or whether it would issue a different  
22 recommendation. The secretary shall provide the panel's assessment  
23 when it is received along with any supporting documentation, including  
24 all previous reports of evaluations of the committed person in the  
25 person's hospital record, to the court, prosecutor in the county that  
26 ordered the person's commitment, and counsel for the committed person.

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

32 (5) The department shall provide administrative and financial  
33 support to the public safety review panel. The department, in  
34 consultation with the public safety review panel, may adopt rules to  
35 implement this section.

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

1 (a) Whether the public safety review panel has observed a change in  
2 statewide consistency of evaluations and decisions concerning changes  
3 in the commitment status of persons found not guilty by reason of  
4 insanity;

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

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

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

10 If the secretary determines that a person committed to the custody  
11 of the secretary for treatment as criminally insane presents an  
12 unreasonable safety risk which, based on behavior and clinical history,  
13 is not manageable in a state hospital setting, the secretary may  
14 arrange for the placement of the person in any facility operated by the  
15 secretary or the secretary of the department of corrections, provided  
16 that appropriate mental health treatment is provided to the person and  
17 the person is afforded his or her rights under RCW 10.77.140,  
18 10.77.150, and 10.77.200.

19 **Sec. 3.** RCW 10.77.120 and 2000 c 94 s 15 are each amended to read  
20 as follows:

21 (1) The secretary shall ~~((forthwith))~~ provide adequate care and  
22 individualized treatment to persons found criminally insane at one or  
23 several of the state institutions or facilities under ~~((his or her))~~  
24 the direction and control ~~((wherein persons committed as criminally~~  
25 ~~insane may be confined. Such persons shall be under the custody and~~  
26 ~~control of the secretary to the same extent as are other persons who~~  
27 ~~are committed to the secretary's custody, but such provision shall be~~  
28 ~~made for their control, care, and treatment as is proper in view of~~  
29 ~~their condition))~~ of the secretary. In order that the secretary may  
30 adequately determine the nature of the mental illness or developmental  
31 disability of the person committed ~~((to him or her))~~ as criminally  
32 insane, ~~((and in order for the secretary to place such individuals in~~  
33 ~~a proper facility,))~~ all persons who are committed to the secretary as  
34 criminally insane shall be promptly examined by qualified personnel in  
35 ~~((such a manner as))~~ order to provide a proper evaluation and diagnosis  
36 of such individual. The examinations of all ~~((developmentally~~

1 ~~disabled~~) persons with developmental disabilities committed under this  
2 chapter shall be performed by developmental disabilities professionals.  
3 Any person so committed shall not be released from the control of the  
4 secretary (~~save upon the~~) except by order of a court of competent  
5 jurisdiction made after a hearing and judgment of release.

6 (2) Whenever there is a hearing which the committed person is  
7 entitled to attend, the secretary shall send (~~him or her~~) the person  
8 in the custody of one or more department employees to the county  
9 (~~where~~) in which the hearing is to be held at the time the case is  
10 called for trial. During the time the person is absent from the  
11 facility, (~~he or she shall~~) the person may be confined in a facility  
12 designated by and arranged for by the department, (~~and~~) but shall at  
13 all times be deemed to be in the custody of the department employee and  
14 provided necessary treatment. If the decision of the hearing remits  
15 the person to custody, the department employee shall (~~forthwith~~)  
16 return the person to such institution or facility designated by the  
17 secretary. If the state appeals an order of release, such appeal shall  
18 operate as a stay, and the person shall remain in custody (~~shall so~~  
19 ~~remain~~) and be (~~forthwith~~) returned to the institution or facility  
20 designated by the secretary until a final decision has been rendered in  
21 the cause.

22 **Sec. 4.** RCW 10.77.150 and 1998 c 297 s 41 are each amended to read  
23 as follows:

24 (1) Persons examined pursuant to RCW 10.77.140 may make application  
25 to the secretary for conditional release. The secretary shall, after  
26 considering the reports of experts or professional persons conducting  
27 the examination pursuant to RCW 10.77.140, forward to the court of the  
28 county which ordered the person's commitment the person's application  
29 for conditional release as well as the secretary's recommendations  
30 concerning the application and any proposed terms and conditions upon  
31 which the secretary reasonably believes the person can be conditionally  
32 released. Conditional release may also contemplate partial release for  
33 work, training, or educational purposes.

34 (2) In an instance in which a person examined pursuant to RCW  
35 10.77.140 has not made application to the secretary for conditional  
36 release, but the secretary, after considering the reports of experts or  
37 professional persons conducting the examination pursuant to RCW

1 10.77.140, reasonably believes the person may be conditionally  
2 released, the secretary may submit a recommendation for release to the  
3 court of the county that ordered the person's commitment. The attorney  
4 general shall represent the secretary in this proceeding. The  
5 secretary's recommendation must include any proposed terms and  
6 conditions upon which the secretary reasonably believes the person may  
7 be conditionally released. Conditional release may also include  
8 partial release for work, training, or educational purposes.

9 (3)(a) The court of the county which ordered the person's  
10 commitment, upon receipt of an application or recommendation for  
11 conditional release with the secretary's recommendation for conditional  
12 release terms and conditions, shall within thirty days schedule a  
13 hearing. The court may schedule a hearing on applications recommended  
14 for disapproval by the secretary.

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

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

25 (d) The court, after the hearing, shall rule on the secretary's  
26 recommendations, and if it disapproves of conditional release, may do  
27 so only on the basis of substantial evidence. The court may modify the  
28 suggested terms and conditions on which the person is to be  
29 conditionally released. Pursuant to the determination of the court  
30 after hearing, the committed person shall thereupon be released on such  
31 conditions as the court determines to be necessary, or shall be  
32 remitted to the custody of the secretary. If the order of conditional  
33 release includes a requirement for the committed person to report to a  
34 community corrections officer, the order shall also specify that the  
35 conditionally released person shall be under the supervision of the  
36 secretary of corrections or such person as the secretary of corrections  
37 may designate and shall follow explicitly the instructions of the  
38 secretary of corrections including reporting as directed to a community

1 corrections officer, remaining within prescribed geographical  
2 boundaries, and notifying the community corrections officer prior to  
3 making any change in the offender's address or employment.

4 ~~((+3))~~ (4) If the court determines that receiving regular or  
5 periodic medication or other medical treatment shall be a condition of  
6 the committed person's release, then the court shall require him or her  
7 to report to a physician or other medical or mental health practitioner  
8 for the medication or treatment. In addition to submitting any report  
9 required by RCW 10.77.160, the physician or other medical or mental  
10 health practitioner shall immediately upon the released person's  
11 failure to appear for the medication or treatment or upon a change in  
12 mental health that renders the patient a potential risk to the public  
13 report ~~((the failure))~~ to the court, to the prosecuting attorney of the  
14 county in which the released person was committed, to the secretary,  
15 and to the supervising community corrections officer.

16 ~~((+4))~~ (5) Any person, whose application for conditional release  
17 has been denied, may reapply after a period of six months from the date  
18 of denial.

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

21 When a conditionally released person is required by the terms of  
22 his or her conditional release to report to a physician, department of  
23 corrections community corrections officer, or medical or mental health  
24 practitioner on a regular or periodic basis, the physician, department  
25 of corrections community corrections officer, medical or mental health  
26 practitioner, or other such person shall monthly, for the first six  
27 months after release and semiannually thereafter, or as otherwise  
28 directed by the court, submit to the court, the secretary, the  
29 institution from which released, and to the prosecuting attorney of the  
30 county in which the person was committed, a report stating whether the  
31 person is adhering to the terms and conditions of his or her  
32 conditional release, and detailing any arrests or criminal charges  
33 filed and any significant change in the person's mental condition or  
34 other circumstances.

35 **Sec. 6.** RCW 10.77.190 and 1998 c 297 s 43 are each amended to read  
36 as follows:

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

8 (2) If the prosecuting attorney, the secretary of social and health  
9 services, the secretary of corrections, or the court, after examining  
10 the report filed with them pursuant to RCW 10.77.160, or based on other  
11 information received by them, reasonably believes that a conditionally  
12 released person is failing to adhere to the terms and conditions of his  
13 or her conditional release the court or secretary of social and health  
14 services or the secretary of corrections may order that the  
15 conditionally released person be apprehended and taken into custody  
16 (~~((until such time as a hearing can be scheduled to determine the facts  
17 and whether or not the person's conditional release should be revoked  
18 or modified))~~). The court shall be notified of the apprehension before  
19 the close of the next judicial day (~~((of the apprehension))~~). The court  
20 shall schedule a hearing within thirty days to determine whether or not  
21 the person's conditional release should be modified or revoked. Both  
22 the prosecuting attorney and the conditionally released person shall  
23 have the right to request an immediate mental examination of the  
24 conditionally released person. If the conditionally released person is  
25 indigent, the court or secretary of social and health services or the  
26 secretary of corrections or their designees shall, upon request, assist  
27 him or her in obtaining a qualified expert or professional person to  
28 conduct the examination.

29 (3) If the hospital or facility designated to provide outpatient  
30 care determines that a conditionally released person presents a threat  
31 to public safety, the hospital or facility shall immediately notify the  
32 secretary of social and health services or the secretary of corrections  
33 or their designees. The secretary shall order that the conditionally  
34 released person be apprehended and taken into custody.

35 (4) The court, upon receiving notification of the apprehension,  
36 shall promptly schedule a hearing. The issue to be determined is  
37 whether the conditionally released person did or did not adhere to the  
38 terms and conditions of his or her release, or whether the person

1 presents a threat to public safety. Pursuant to the determination of  
2 the court upon such hearing, the conditionally released person shall  
3 either continue to be conditionally released on the same or modified  
4 conditions or his or her conditional release shall be revoked and he or  
5 she shall be committed subject to release only in accordance with  
6 provisions of this chapter.

7 **Sec. 7.** RCW 10.77.200 and 2000 c 94 s 16 are each amended to read  
8 as follows:

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

17 (2) In an instance in which a person has not made an application  
18 for release, but the secretary believes, after consideration of the  
19 reports filed under RCW 10.77.060, 10.77.110, 10.77.140, and 10.77.160,  
20 and other reports and evaluations provided by professionals familiar  
21 with the case, that reasonable grounds exist for release, the secretary  
22 may petition the court. The attorney general shall represent the  
23 secretary in this proceeding.

24 (3) The petition shall be served upon the court and the prosecuting  
25 attorney. The court, upon receipt of the petition for release, shall  
26 within forty-five days order a hearing. Continuance of the hearing  
27 date shall only be allowed for good cause shown. The prosecuting  
28 attorney shall represent the state, and shall have the right to have  
29 the petitioner examined by an expert or professional person of the  
30 prosecuting attorney's choice. If the petitioner is indigent, and the  
31 person so requests, the court shall appoint a qualified expert or  
32 professional person to examine him or her. If the petitioner (~~is~~  
33 ~~developmentally disabled~~) has a developmental disability, the  
34 examination shall be performed by a developmental disabilities  
35 professional. The hearing shall be before a jury if demanded by either  
36 the petitioner or the prosecuting attorney. The burden of proof shall  
37 be upon the petitioner to show by a preponderance of the evidence that



1 the petitioner no longer presents, as a result of a mental disease or  
2 defect, a substantial danger to other persons, or a substantial  
3 likelihood of committing criminal acts jeopardizing public safety or  
4 security, unless kept under further control by the court or other  
5 persons or institutions.

6 ~~((3))~~ (4) For purposes of this section, a person affected by a  
7 mental disease or defect in a state of remission is considered to have  
8 a mental disease or defect requiring supervision when the disease may,  
9 with reasonable medical probability, occasionally become active and,  
10 when active, render the person a danger to others. The court may  
11 continue such a person on conditional release.

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

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

22 NEW SECTION. Sec. 8. (1) The institute for public policy shall,  
23 in collaboration with the department of social and health services and  
24 other applicable entities, undertake a search for validated mental  
25 health assessment tools in each of the following 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.

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