
ENGROSSED SENATE BILL 6610

State of Washington

61st Legislature

2010 Regular Session

By Senators Hargrove and McAuliffe; by request of Governor Gregoire

Read first time 01/19/10. Referred to Committee on Human Services & Corrections.

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, 10.77.200, and 10.77.220;
4 adding new sections to chapter 10.77 RCW; creating a new section; and
5 providing an 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 place
14 the person in any secure facility operated by the secretary or the
15 secretary of the department of corrections, provided that appropriate
16 mental health treatment is provided to the person and the person is
17 afforded his or her rights under RCW 10.77.140, 10.77.150, and
18 10.77.200. The secretary of the department of social and health
19 services shall retain legal custody of any person placed under this
20 section.

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

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

1 (~~such a manner as~~) order to provide a proper evaluation and diagnosis
2 of such individual. The examinations of all (~~developmentally~~
3 ~~disabled~~) persons with developmental disabilities committed under this
4 chapter shall be performed by developmental disabilities professionals.
5 Any person so committed shall not be released from the control of the
6 secretary (~~save upon the~~) except by order of a court of competent
7 jurisdiction made after a hearing and judgment of release.

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

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

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

36 (2) In an instance in which a person examined pursuant to RCW
37 10.77.140 has not made application to the secretary for conditional

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

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

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

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

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

1 may designate and shall follow explicitly the instructions of the
2 secretary of corrections including reporting as directed to a community
3 corrections officer, remaining within prescribed geographical
4 boundaries, and notifying the community corrections officer prior to
5 making any change in the offender's address or employment.

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

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

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

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

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

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

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

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

37 (4) The court, upon receiving notification of the apprehension,
38 shall promptly schedule a hearing. The issue to be determined is

1 whether the conditionally released person did or did not adhere to the
2 terms and conditions of his or her release, or whether the person
3 presents a threat to public safety. Pursuant to the determination of
4 the court upon such hearing, the conditionally released person shall
5 either continue to be conditionally released on the same or modified
6 conditions or his or her conditional release shall be revoked and he or
7 she shall be committed subject to release only in accordance with
8 provisions of this chapter.

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

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

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

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

1 the petitioner or the prosecuting attorney. The burden of proof shall
2 be upon the petitioner to show by a preponderance of the evidence that
3 the petitioner no longer presents, as a result of a mental disease or
4 defect, a substantial danger to other persons, or a substantial
5 likelihood of committing criminal acts jeopardizing public safety or
6 security, unless kept under further control by the court or other
7 persons or institutions.

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

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

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

24 **Sec. 8.** RCW 10.77.220 and 1982 c 112 s 3 are each amended to read
25 as follows:

26 No person confined pursuant to this chapter shall be incarcerated
27 in a state correctional institution or facility(~~(:—PROVIDED,—That~~
28 ~~nothing herein shall prohibit)), except as provided in section 2 of
29 this act. This section does not apply to confinement in a mental
30 health facility located wholly within a correctional institution.
31 Confinement in a county jail or other local facility while awaiting
32 either placement in a treatment program or a court hearing pursuant to
33 this chapter is permitted for no more than seven days.~~

34 NEW SECTION. **Sec. 9.** (1) The institute for public policy shall,
35 in collaboration with the department of social and health services and

1 other applicable entities, undertake a search for validated mental
2 health assessment tools in each of the following areas:

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

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

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

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