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SENATE BILL 6610

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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 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.

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

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

36       (c) The issue to be determined at such a hearing is whether or not  
37 the person may be released conditionally without substantial danger to

1 other persons, or substantial likelihood of committing criminal acts  
2 jeopardizing public safety or security.

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

25 ~~((+3))~~ (4) If the court determines that receiving regular or  
26 periodic medication or other medical treatment shall be a condition of  
27 the committed person's release, then the court shall require him or her  
28 to report to a physician or other medical or mental health practitioner  
29 for the medication or treatment. In addition to submitting any report  
30 required by RCW 10.77.160, the physician or other medical or mental  
31 health practitioner shall immediately upon the released person's  
32 failure to appear for the medication or treatment report the failure to  
33 the court, to the prosecuting attorney of the county in which the  
34 released person was committed, to the secretary, and to the supervising  
35 community corrections officer.

36 ~~((+4))~~ (5) Any person, whose application for conditional release  
37 has been denied, may reapply after a period of six months from the date  
38 of denial.

1       **Sec. 3.** RCW 10.77.200 and 2000 c 94 s 16 are each amended to read  
2 as follows:

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

11       (2) In instances in which persons have not made application for  
12 release, but the secretary believes, after consideration of the reports  
13 filed under RCW 10.77.060, 10.77.110, 10.77.140, and 10.77.160, and  
14 other reports and evaluations provided by professionals familiar with  
15 the case, that reasonable grounds exist for release, the secretary may  
16 petition the court.

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

36       (~~(3)~~) (4) Nothing contained in this chapter shall prohibit the  
37 patient from petitioning the court for release or conditional release  
38 from the institution in which he or she is committed. The issue to be

1 determined on such proceeding is whether the petitioner, as a result of  
2 a mental disease or defect, is a substantial danger to other persons,  
3 or presents a substantial likelihood of committing criminal acts  
4 jeopardizing public safety or security, unless kept under further  
5 control by the court or other persons or institutions.

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

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

10 (1) An independent public safety review panel shall be established  
11 for the purpose of advising the secretary and the courts regarding all  
12 recommendations to (a) change a committed person's legal status, (b)  
13 allow furloughs or temporary leaves accompanied by staff, or (c) permit  
14 movement about the grounds of the treatment facility, with or without  
15 the accompaniment of staff of any person committed under this chapter.

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

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

27 (3) Before the secretary may recommend a conditional release under  
28 RCW 10.77.150 (1) or (2) or approve a release under RCW 10.77.200 (1)  
29 or (2), the secretary shall submit the committed person's application  
30 and the department's risk assessment and recommendation to the public  
31 safety review panel. The public safety review panel shall complete an  
32 independent assessment and written determination of the public safety  
33 risk of the secretary's proposed conditional release recommendations  
34 pursuant to RCW 10.77.150 and 10.77.200 and shall submit the  
35 determination to the secretary. The public safety review panel may,  
36 within funds appropriated for this purpose, request additional  
37 assessments to supplement the information provided by the secretary to

1 complete its assessment and determination. The public safety review  
2 panel may support the department's conditional release recommendation,  
3 or may recommend the secretary modify or withdraw the department's  
4 recommendation.

5 (4) The determination from the public safety review panel regarding  
6 the proposed conditional release under RCW 10.77.150 or full release  
7 under RCW 10.77.200 shall be provided to the court considering the  
8 release petition along with the materials submitted by the department  
9 pursuant to RCW 10.77.150 and RCW 10.77.200.

10 (5) The public safety review panel shall receive administrative and  
11 financial support from the department. The department, in consultation  
12 with the public safety review panel, may adopt rules to implement this  
13 section, as necessary.

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

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

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