

ESSB 5176 - H COMM AMD
By Committee on Judiciary

NOT CONSIDERED

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that persons with a
4 mental illness or developmental disability are more likely to be
5 victimized by crime than to be perpetrators of crime. The legislature
6 further finds that there are a small number of individuals who commit
7 repeated violent acts against others while suffering from the effects
8 of a mental illness and/or developmental disability that both
9 contributes to their criminal behaviors and renders them legally
10 incompetent to be held accountable for those behaviors. The
11 legislature further finds that the primary statutory mechanisms
12 designed to protect the public from violent behavior, either criminal
13 commitment to a corrections institution, or long-term commitment as not
14 guilty by reason of insanity, are unavailable due to the legal
15 incompetence of these individuals to stand trial. The legislature
16 further finds that the existing civil system of short-term commitments
17 under the Washington's involuntary treatment act is insufficient to
18 protect the public from these violent acts. Finally, the legislature
19 finds that changes to the involuntary treatment act to account for this
20 small number of individuals is necessary in order to serve Washington's
21 compelling interest in public safety and to provide for the proper care
22 of these individuals.

23 **Sec. 2.** RCW 10.77.086 and 2012 c 256 s 6 are each amended to read
24 as follows:

25 (1)(a) If the defendant is charged with a felony and determined to
26 be incompetent, until he or she has regained the competency necessary
27 to understand the proceedings against him or her and assist in his or
28 her own defense, or has been determined unlikely to regain competency

1 pursuant to RCW 10.77.084(1)(b), but in any event for a period of no
2 longer than ninety days, the court:

3 (i) Shall commit the defendant to the custody of the secretary who
4 shall place such defendant in an appropriate facility of the department
5 for evaluation and treatment; or

6 (ii) May alternatively order the defendant to undergo evaluation
7 and treatment at some other facility as determined by the department,
8 or under the guidance and control of a professional person.

9 (b) For a defendant whose highest charge is a class C felony, or a
10 class B felony that is not classified as violent under RCW 9.94A.030,
11 the maximum time allowed for the initial period of commitment for
12 competency restoration is forty-five days.

13 (2) On or before expiration of the initial period of commitment
14 under subsection (1) of this section the court shall conduct a hearing,
15 at which it shall determine whether or not the defendant is
16 incompetent.

17 (3) If the court finds by a preponderance of the evidence that a
18 defendant charged with a felony is incompetent, the court shall have
19 the option of extending the order of commitment or alternative
20 treatment for an additional period of ninety days, but the court must
21 at the time of extension set a date for a prompt hearing to determine
22 the defendant's competency before the expiration of the second
23 restoration period. The defendant, the defendant's attorney, or the
24 prosecutor has the right to demand that the hearing be before a jury.
25 No extension shall be ordered for a second or third restoration period
26 as provided in subsection (4) of this section if the defendant's
27 incompetence has been determined by the secretary to be solely the
28 result of a developmental disability which is such that competence is
29 not reasonably likely to be regained during an extension.

30 (4) For persons charged with a felony, at the hearing upon the
31 expiration of the second restoration period or at the end of the first
32 restoration period, in the case of a defendant with a developmental
33 disability, if the jury or court finds that the defendant is
34 incompetent, the charges shall be dismissed without prejudice, and the
35 court shall (~~either order the release of the defendant or~~) order the
36 defendant be committed to a state hospital (~~or secure mental health~~
37 ~~facility~~) as defined in RCW 72.23.010 for up to seventy-two hours
38 starting from admission to the facility, excluding Saturdays, Sundays,

1 and holidays, for evaluation for the purpose of filing a civil
2 commitment petition under chapter 71.05 RCW. The criminal charges
3 shall not be dismissed if the court or jury finds that: (a) The
4 defendant (i) is a substantial danger to other persons; or (ii)
5 presents a substantial likelihood of committing criminal acts
6 jeopardizing public safety or security; and (b) there is a substantial
7 probability that the defendant will regain competency within a
8 reasonable period of time. In the event that the court or jury makes
9 such a finding, the court may extend the period of commitment for up to
10 an additional six months.

11 **Sec. 3.** RCW 10.77.270 and 2010 c 263 s 1 are each amended to read
12 as follows:

13 (1) The secretary shall establish an independent public safety
14 review panel for the purpose of advising the secretary and the courts
15 with respect to persons who have been found not guilty by reason of
16 insanity, or persons committed under the involuntary treatment act
17 where the court has made a special finding under RCW 71.05.280(3)(b).

18 The panel shall provide advice regarding all recommendations to the
19 secretary, decisions by the secretary, or actions pending in court:

20 (a) For a change in commitment status; (b) to allow furloughs or
21 temporary leaves accompanied by staff; (c) whether to seek a commitment
22 term under RCW 71.05.320; or ((+e)) (d) to permit movement about the
23 grounds of the treatment facility, with or without the accompaniment of
24 staff.

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

28 (a) A psychiatrist;

29 (b) A licensed clinical psychologist;

30 (c) A representative of the department of corrections;

31 (d) A prosecutor or a representative of a prosecutor's association;

32 (e) A representative of law enforcement or a law enforcement
33 association;

34 (f) A consumer and family advocate representative; and

35 (g) A public defender or a representative of a defender's
36 association.

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

19 (4) The secretary shall notify the public safety review panel at
20 appropriate intervals concerning any changes in the commitment or
21 custody status of persons found not guilty by reason of insanity, or
22 persons committed under the involuntary treatment act where the court
23 has made a special finding under RCW 71.05.280(3)(b). The panel shall
24 have access, upon request, to a committed person's complete hospital
25 record, and any other records deemed necessary by the public safety
26 review panel.

27 (5) The department shall provide administrative and financial
28 support to the public safety review panel. The department, in
29 consultation with the public safety review panel, may adopt rules to
30 implement this section.

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

33 (a) Whether the public safety review panel has observed a change in
34 statewide consistency of evaluations and decisions concerning changes
35 in the commitment status of persons found not guilty by reason of
36 insanity;

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

1 (c) Whether further changes in the law are necessary to enhance
2 public safety in cases where incompetency prevents operation of the
3 criminal justice system and/or long-term commitment of the criminally
4 insane; and

5 (d) Any other issues the public safety review panel deems relevant.

6 **Sec. 4.** RCW 71.05.280 and 2008 c 213 s 6 are each amended to read
7 as follows:

8 At the expiration of the fourteen-day period of intensive treatment
9 or a restoration period under RCW 10.77.086, a person may be confined
10 for further treatment pursuant to RCW 71.05.320 if:

11 (1) Such person after having been taken into custody for evaluation
12 and treatment has threatened, attempted, or inflicted: (a) Physical
13 harm upon the person of another or himself or herself, or substantial
14 damage upon the property of another, and (b) as a result of mental
15 disorder presents a likelihood of serious harm; or

16 (2) Such person was taken into custody as a result of conduct in
17 which he or she attempted or inflicted physical harm upon the person of
18 another or himself or herself, or substantial damage upon the property
19 of others, and continues to present, as a result of mental disorder, a
20 likelihood of serious harm; or

21 (3) Such person has been determined to be incompetent and criminal
22 charges have been dismissed pursuant to RCW 10.77.086(4), and has
23 committed acts constituting a felony, and as a result of a mental
24 disorder or developmental disability, presents a substantial likelihood
25 of repeating similar acts.

26 (a) In any proceeding pursuant to this subsection it shall not be
27 necessary to show intent, willfulness, or state of mind as an element
28 of the crime;

29 (b) For any person subject to commitment under this subsection
30 where the charge underlying the finding of incompetence is for a felony
31 classified as violent under RCW 9.94A.030, the court shall determine
32 whether the acts the person committed constitute a violent offense
33 under RCW 9.94A.030; or

34 (4) Such person is gravely disabled.

35 **Sec. 5.** RCW 71.05.320 and 2009 c 323 s 2 are each amended to read
36 as follows:

1 (1) If the court or jury finds that grounds set forth in RCW
2 71.05.280 have been proven and that the best interests of the person or
3 others will not be served by a less restrictive treatment which is an
4 alternative to detention, the court shall remand him or her to the
5 custody of the department or to a facility certified for ninety day
6 treatment by the department for a further period of intensive treatment
7 not to exceed ninety days from the date of judgment. If the grounds
8 set forth in RCW 71.05.280(3) are the basis of commitment, then the
9 period of treatment may be up to but not exceed one hundred eighty days
10 from the date of judgment in a facility certified for one hundred
11 eighty day treatment by the department.

12 (2) If the court or jury finds that grounds set forth in RCW
13 71.05.280 have been proven, but finds that treatment less restrictive
14 than detention will be in the best interest of the person or others,
15 then the court shall remand him or her to the custody of the department
16 or to a facility certified for ninety day treatment by the department
17 or to a less restrictive alternative for a further period of less
18 restrictive treatment not to exceed ninety days from the date of
19 judgment. If the grounds set forth in RCW 71.05.280(3) are the basis
20 of commitment, then the period of treatment may be up to but not exceed
21 one hundred eighty days from the date of judgment.

22 (3) The person shall be released from involuntary treatment at the
23 expiration of the period of commitment imposed under subsection (1) or
24 (2) of this section unless the superintendent or professional person in
25 charge of the facility in which he or she is confined, or in the event
26 of a less restrictive alternative, the designated mental health
27 professional, files a new petition for involuntary treatment on the
28 grounds that the committed person:

29 (a) During the current period of court ordered treatment: (i) Has
30 threatened, attempted, or inflicted physical harm upon the person of
31 another, or substantial damage upon the property of another, and (ii)
32 as a result of mental disorder or developmental disability presents a
33 likelihood of serious harm; or

34 (b) Was taken into custody as a result of conduct in which he or
35 she attempted or inflicted serious physical harm upon the person of
36 another, and continues to present, as a result of mental disorder or
37 developmental disability a likelihood of serious harm; or

1 (c)(i) Is in custody pursuant to RCW 71.05.280(3) and as a result
2 of mental disorder or developmental disability continues to
3 present(~~s~~) a substantial likelihood of repeating (~~similar~~) acts
4 (~~considering~~) similar to the charged criminal behavior, when
5 considering the person's life history, progress in treatment, and the
6 public safety. (ii) In cases under this subsection where the court has
7 made an affirmative special finding under RCW 71.05.280(3)(b), the
8 commitment shall continue for up to an additional one hundred eighty
9 day period whenever the petition presents prima facie evidence that the
10 person continues to suffer from a mental disorder or developmental
11 disability that results in a substantial likelihood that the person
12 will commit acts similar to the charged criminal behavior, unless the
13 person presents proof through an admissible expert opinion that the
14 person's condition has so changed such that the mental disorder or
15 developmental disability no longer presents a substantial likelihood
16 that the person will commit acts similar to the charged criminal
17 behavior. The additional commitment period may include transfer to a
18 specialized program of intensive support and treatment, which may be
19 initiated prior to or after release from the state hospital; or

20 (d) Continues to be gravely disabled.

21 If the conduct required to be proven in (b) and (c) of this
22 subsection was found by a judge or jury in a prior trial under this
23 chapter, it shall not be necessary to prove such conduct again.

24 (4) For a person committed under subsection (2) of this section who
25 has been remanded to a period of less restrictive treatment, in
26 addition to the grounds specified in subsection (3) of this section,
27 the designated mental health professional may file a new petition for
28 continued less restrictive treatment if:

29 (a) The person was previously committed by a court to detention for
30 involuntary mental health treatment during the thirty-six months that
31 preceded the person's initial detention date during the current
32 involuntary commitment cycle, excluding any time spent in a mental
33 health facility or in confinement as a result of a criminal conviction;

34 (b) In view of the person's treatment history or current behavior,
35 the person is unlikely to voluntarily participate in outpatient
36 treatment without an order for less restrictive treatment; and

37 (c) Outpatient treatment that would be provided under a less
38 restrictive treatment order is necessary to prevent a relapse,

1 decompensation, or deterioration that is likely to result in the person
2 presenting a likelihood of serious harm or the person becoming gravely
3 disabled within a reasonably short period of time.

4 (5) A new petition for involuntary treatment filed under subsection
5 (3) or (4) of this section shall be filed and heard in the superior
6 court of the county of the facility which is filing the new petition
7 for involuntary treatment unless good cause is shown for a change of
8 venue. The cost of the proceedings shall be borne by the state.

9 (6) The hearing shall be held as provided in RCW 71.05.310, and if
10 the court or jury finds that the grounds for additional confinement as
11 set forth in this section are present, the court may order the
12 committed person returned for an additional period of treatment not to
13 exceed one hundred eighty days from the date of judgment. At the end
14 of the one hundred eighty day period of commitment, the committed
15 person shall be released unless a petition for another one hundred
16 eighty day period of continued treatment is filed and heard in the same
17 manner as provided in this section. Successive one hundred eighty day
18 commitments are permissible on the same grounds and pursuant to the
19 same procedures as the original one hundred eighty day commitment.
20 However, a commitment is not permissible under subsection (4) of this
21 section if thirty-six months have passed since the last date of
22 discharge from detention for inpatient treatment that preceded the
23 current less restrictive alternative order, nor shall a commitment
24 under subsection (4) of this section be permissible if the likelihood
25 of serious harm in subsection (4)(c) of this section is based solely on
26 harm to the property of others.

27 (7) No person committed as provided in this section may be detained
28 unless a valid order of commitment is in effect. No order of
29 commitment can exceed one hundred eighty days in length.

30 **Sec. 6.** RCW 71.05.425 and 2011 c 305 s 5 are each amended to read
31 as follows:

32 (1)(a) Except as provided in subsection (2) of this section, at the
33 earliest possible date, and in no event later than thirty days before
34 conditional release, final release, authorized leave under RCW
35 71.05.325(2), or transfer to a facility other than a state mental
36 hospital, the superintendent shall send written notice of conditional
37 release, release, authorized leave, or transfer of a person committed

1 under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex,
2 violent, or felony harassment offense pursuant to RCW 10.77.086(4) to
3 the following:

4 (i) The chief of police of the city, if any, in which the person
5 will reside; (~~and~~)

6 (ii) The sheriff of the county in which the person will reside; and

7 (iii) The prosecuting attorney of the county in which the criminal
8 charges against the committed person were dismissed.

9 (b) The same notice as required by (a) of this subsection shall be
10 sent to the following, if such notice has been requested in writing
11 about a specific person committed under RCW 71.05.280(3) or
12 71.05.320(3)(c) following dismissal of a sex, violent, or felony
13 harassment offense pursuant to RCW 10.77.086(4):

14 (i) The victim of the sex, violent, or felony harassment offense
15 that was dismissed pursuant to RCW 10.77.086(4) preceding commitment
16 under RCW 71.05.280(3) or 71.05.320(3)(c) or the victim's next of kin
17 if the crime was a homicide;

18 (ii) Any witnesses who testified against the person in any court
19 proceedings;

20 (iii) Any person specified in writing by the prosecuting attorney.
21 Information regarding victims, next of kin, or witnesses requesting the
22 notice, information regarding any other person specified in writing by
23 the prosecuting attorney to receive the notice, and the notice are
24 confidential and shall not be available to the person committed under
25 this chapter; and

26 (iv) The chief of police of the city, if any, and the sheriff of
27 the county, if any, which had jurisdiction of the person on the date of
28 the applicable offense.

29 (c) The thirty-day notice requirements contained in this subsection
30 shall not apply to emergency medical transfers.

31 (d) The existence of the notice requirements in this subsection
32 will not require any extension of the release date in the event the
33 release plan changes after notification.

34 (2) If a person committed under RCW 71.05.280(3) or 71.05.320(3)(c)
35 following dismissal of a sex, violent, or felony harassment offense
36 pursuant to RCW 10.77.086(4) escapes, the superintendent shall
37 immediately notify, by the most reasonable and expedient means
38 available, the chief of police of the city and the sheriff of the

1 county in which the person escaped and in which the person resided
2 immediately before the person's arrest and the prosecuting attorney of
3 the county in which the criminal charges against the committed person
4 were dismissed. If previously requested, the superintendent shall also
5 notify the witnesses and the victim of the sex, violent, or felony
6 harassment offense that was dismissed pursuant to RCW 10.77.086(4)
7 preceding commitment under RCW 71.05.280(3) or 71.05.320(3) or the
8 victim's next of kin if the crime was a homicide. In addition, the
9 secretary shall also notify appropriate parties pursuant to RCW
10 71.05.390(18). If the person is recaptured, the superintendent shall
11 send notice to the persons designated in this subsection as soon as
12 possible but in no event later than two working days after the
13 department learns of such recapture.

14 (3) If the victim, the victim's next of kin, or any witness is
15 under the age of sixteen, the notice required by this section shall be
16 sent to the parent or legal guardian of the child.

17 (4) The superintendent shall send the notices required by this
18 chapter to the last address provided to the department by the
19 requesting party. The requesting party shall furnish the department
20 with a current address.

21 (5) For purposes of this section the following terms have the
22 following meanings:

23 (a) "Violent offense" means a violent offense under RCW 9.94A.030;

24 (b) "Sex offense" means a sex offense under RCW 9.94A.030;

25 (c) "Next of kin" means a person's spouse, state registered
26 domestic partner, parents, siblings, and children;

27 (d) "Felony harassment offense" means a crime of harassment as
28 defined in RCW 9A.46.060 that is a felony.

29 **Sec. 7.** RCW 10.77.200 and 2010 c 263 s 8 are each amended to read
30 as follows:

31 (1) Upon application by the committed or conditionally released
32 person, the secretary shall determine whether or not reasonable grounds
33 exist for release. In making this determination, the secretary may
34 consider the reports filed under RCW 10.77.060, 10.77.110, 10.77.140,
35 and 10.77.160, and other reports and evaluations provided by
36 professionals familiar with the case. If the secretary approves the

1 release he or she then shall authorize the person to petition the
2 court.

3 (2) In instances in which persons have not made application for
4 release, but the secretary believes, after consideration of the reports
5 filed under RCW 10.77.060, 10.77.110, 10.77.140, and 10.77.160, and
6 other reports and evaluations provided by professionals familiar with
7 the case, that reasonable grounds exist for release, the secretary may
8 petition the court. If the secretary petitions the court for release
9 under this subsection, notice of the petition must be provided to the
10 person who is the subject of the petition and to his or her attorney.

11 (3) The petition shall be served upon the court and the prosecuting
12 attorney. The court, upon receipt of the petition for release, shall
13 within forty-five days order a hearing. Continuance of the hearing
14 date shall only be allowed for good cause shown. The prosecuting
15 attorney shall represent the state, and shall have the right to have
16 the ~~((petitioner))~~ person who is the subject of the petition examined
17 by an expert or professional person of the prosecuting attorney's
18 choice. If the secretary is the petitioner, the attorney general shall
19 represent the secretary. If the ~~((petitioner))~~ person who is the
20 subject of the petition is indigent, and the person so requests, the
21 court shall appoint a qualified expert or professional person to
22 examine him or her. If the ~~((petitioner))~~ person who is the subject of
23 the petition has a developmental disability, the examination shall be
24 performed by a developmental disabilities professional. The hearing
25 shall be before a jury if demanded by either the petitioner or the
26 prosecuting attorney. The burden of proof shall be upon the petitioner
27 to show by a preponderance of the evidence that the ~~((petitioner))~~
28 person who is the subject of the petition no longer presents, as a
29 result of a mental disease or defect, a substantial danger to other
30 persons, or a substantial likelihood of committing criminal acts
31 jeopardizing public safety or security, unless kept under further
32 control by the court or other persons or institutions. If the person
33 who is the subject of the petition will be transferred to a state
34 correctional institution or facility upon release to serve a sentence
35 for any class A felony, the petitioner must show that the person's
36 mental disease or defect is manageable within a state correctional
37 institution or facility, but must not be required to prove that the

1 person does not present either a substantial danger to other persons,
2 or a substantial likelihood of committing criminal acts jeopardizing
3 public safety or security, if released.

4 (4) For purposes of this section, a person affected by a mental
5 disease or defect in a state of remission is considered to have a
6 mental disease or defect requiring supervision when the disease may,
7 with reasonable medical probability, occasionally become active and,
8 when active, render the person a danger to others. Upon a finding that
9 the ((~~petitioner~~)) person who is the subject of the petition has a
10 mental disease or defect in a state of remission under this subsection,
11 the court may deny release, or place or continue such a person on
12 conditional release.

13 (5) Nothing contained in this chapter shall prohibit the patient
14 from petitioning the court for release or conditional release from the
15 institution in which he or she is committed. The petition shall be
16 served upon the court, the prosecuting attorney, and the secretary.
17 Upon receipt of such petition, the secretary shall develop a
18 recommendation as provided in subsection (1) of this section and
19 provide the secretary's recommendation to all parties and the court.
20 The issue to be determined on such proceeding is whether the
21 ((~~petitioner~~)) patient, as a result of a mental disease or defect, is
22 a substantial danger to other persons, or presents a substantial
23 likelihood of committing criminal acts jeopardizing public safety or
24 security, unless kept under further control by the court or other
25 persons or institutions.

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

28 NEW SECTION. Sec. 8. If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected."

32 Correct the title.

EFFECT: (1) Removes all sections of the bill aside from section

10, which adds requirements regarding transfers and petitions for release of persons civilly committed after being acquitted on insanity grounds.

(2) Adds all of the provisions of E2SHB 1114, which do the following:

(a) States legislative findings primarily regarding the inability of the current civil commitment system to address a small number of offenders who repeatedly commit violent acts while suffering from a mental illness or developmental disability, and who are incompetent to stand trial.

(b) Requires that all evaluations under the involuntary treatment act (ITA) of persons who have had felony charges dismissed due to incompetency occur at a state hospital. (No substantive change from equivalent section in ESSB 5176.)

(c) Makes changes to the ITA commitment procedure for persons who have had violent felony charges dismissed due to incompetency: (i) At the initial petition the court must make an additional finding as to whether or not the person committed a violent offense; (ii) if the court makes an affirmative finding, commitment past the initial term may continue for up to an additional 180 days upon prima facie evidence that the commitment criteria are met unless the committed person provides an expert opinion that the person's condition has changed; and (iii) additional terms of commitment in cases in which an affirmative finding has been made may include transfer to a specialized intensive support and treatment program.

(d) Requires the independent public safety review panel to provide advice regarding recommended changes in commitment status and decisions to seek or not to seek commitment of persons found at the initial ITA petition to have committed a violent offense. The panel must report to the legislature as to whether further changes in the law are necessary to address public safety issues related to incompetent criminal defendants.

(e) Requires notice to the prosecutor prior to a change in commitment status of a person committed following dismissal of a sex, violent, or felony harassment offense. (No change from equivalent section in ESSB 5176.)

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