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**ENGROSSED SUBSTITUTE SENATE BILL 5176**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** Senate Human Services & Corrections (originally sponsored by Senators Hargrove, Carrell, and Hewitt)

READ FIRST TIME 02/21/13.

1        AN ACT Relating to criminal incompetency and civil commitment;  
2 amending RCW 10.77.086, 10.77.088, 10.77.270, 71.05.235, 71.05.280,  
3 71.05.290, 71.05.320, 71.05.425, 10.77.200, and 10.77.065; and creating  
4 a new section.

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

6        NEW SECTION.    **Sec. 1.** The legislature finds that persons with a  
7 mental illness or developmental disability are more likely to be  
8 victimized by crime than to be perpetrators of crime. The legislature  
9 finds that it is appropriate to lengthen the term of civil commitment  
10 available for the small number of persons who receive commitment on the  
11 basis of the commission of an offense classified as violent under RCW  
12 9.94A.030 who, based on a mental disorder, present a substantial  
13 likelihood of committing similar acts after criminal charges that  
14 include a violent offense under RCW 9.94A.030 have been dismissed based  
15 on incompetence to stand trial that cannot be restored within the  
16 treatment periods authorized by RCW 10.77.086.

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

1 (1)(a) If the defendant is charged with a felony and determined to  
2 be incompetent, until he or she has regained the competency necessary  
3 to understand the proceedings against him or her and assist in his or  
4 her own defense, or has been determined unlikely to regain competency  
5 pursuant to RCW 10.77.084(1)(b), but in any event for a period of no  
6 longer than ninety days, the court:

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

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

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

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

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

34 (4) For persons charged with a felony, at the hearing upon the  
35 expiration of the second restoration period or at the end of the first  
36 restoration period, in the case of a defendant with a developmental  
37 disability, if the jury or court finds that the defendant is  
38 incompetent, the charges shall be dismissed without prejudice, and the

1 court shall (~~either order the release of the defendant or~~) order the  
2 defendant be committed to a state hospital (~~or secure mental health~~  
3 ~~facility~~) as defined in RCW 72.23.010 for up to seventy-two hours  
4 starting from admission to the facility, excluding Saturdays, Sundays,  
5 and holidays, for evaluation for the purpose of filing a civil  
6 commitment petition. The criminal charges shall not be dismissed if  
7 the court or jury finds that: (a) The defendant (i) is a substantial  
8 danger to other persons; or (ii) presents a substantial likelihood of  
9 committing criminal acts jeopardizing public safety or security; and  
10 (b) there is a substantial probability that the defendant will regain  
11 competency within a reasonable period of time. In the event that the  
12 court or jury makes such a finding, the court may extend the period of  
13 commitment for up to an additional six months.

14 **Sec. 3.** RCW 10.77.088 and 2007 c 375 s 5 are each amended to read  
15 as follows:

16 (1)(a) If the defendant is charged with a nonfelony crime which is  
17 a serious offense (~~as identified in~~) under RCW 10.77.092 and found by  
18 the court to be not competent, (~~then~~) the court shall order the  
19 secretary to place the defendant:

20 (i) At a secure mental health facility in the custody of the  
21 department or an agency designated by the department for mental health  
22 treatment and restoration of competency. The placement shall not  
23 exceed fourteen days in addition to any unused time of the evaluation  
24 under RCW 10.77.060. The court shall compute this total period and  
25 include its computation in the order. The fourteen-day period plus any  
26 unused time of the evaluation under RCW 10.77.060 shall be considered  
27 to include only the time the defendant is actually at the facility and  
28 shall be in addition to reasonable time for transport to or from the  
29 facility;

30 (ii) On conditional release for up to ninety days for mental health  
31 treatment and restoration of competency; or

32 (iii) Any combination of this subsection.

33 (b)(i) If the proceedings are dismissed under RCW 10.77.084 and the  
34 defendant was on conditional release at the time of dismissal, the  
35 court shall order the designated mental health professional within that  
36 county to evaluate the defendant pursuant to chapter 71.05 RCW. The  
37 evaluation may be conducted in any location chosen by the professional.

1 (ii) If the defendant was in custody and not on conditional release  
2 at the time of dismissal, the defendant shall be detained and sent to  
3 an evaluation and treatment facility (~~(for up to)~~) within seventy-two  
4 hours, excluding Saturdays, Sundays, and holidays, for evaluation for  
5 purposes of filing a petition under chapter 71.05 RCW. A designated  
6 mental health professional or other professional person agreed upon by  
7 the department and regional support network must be permitted to screen  
8 the defendant prior to transport and release the defendant if civil  
9 commitment criteria are not met, provided that notification is provided  
10 under RCW 10.77.065(4). The seventy-two-hour period shall commence  
11 upon the next nonholiday weekday following the court order and shall  
12 run to the end of the last nonholiday weekday within the seventy-two-  
13 hour period.

14 (2) If the defendant is charged with a nonfelony crime that is not  
15 a serious offense as defined in RCW 10.77.092(~~(+)~~), the court (~~(may~~  
16 ~~stay or)~~) shall dismiss (~~(proceedings)~~) the charges and detain the  
17 defendant for sufficient time to allow the designated mental health  
18 professional to evaluate the defendant (~~(and consider initial detention~~  
19 ~~proceedings)~~) for commitment under chapter 71.05 RCW. (~~(The court must~~  
20 ~~give notice to all parties at least twenty-four hours before the~~  
21 ~~dismissal of any proceeding under this subsection, and provide an~~  
22 ~~opportunity for a hearing on whether to dismiss the proceedings.)~~)

23 **Sec. 4.** RCW 10.77.270 and 2010 c 263 s 1 are each amended to read  
24 as follows:

25 (1) The secretary shall establish an independent public safety  
26 review panel for the purpose of advising the secretary and the courts  
27 with respect to persons who have been found not guilty by reason of  
28 insanity, or persons committed for an indefinite period under RCW  
29 71.05.290(3). The panel shall provide advice regarding all  
30 recommendations by the secretary: (a) For a change in commitment  
31 status; (b) to allow furloughs or temporary leaves accompanied by  
32 staff; or (c) to permit movement about the grounds of the treatment  
33 facility, with or without the accompaniment of staff.

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

37 (a) A psychiatrist;

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

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 secretary shall notify the public safety review panel at  
33 least thirty days prior to the planned termination of a commitment for  
34 a person committed for an indefinite period under RCW 71.05.290(3).

35 (6) The department shall provide administrative and financial  
36 support to the public safety review panel. The department, in  
37 consultation with the public safety review panel, may adopt rules to  
38 implement this section.

1       ~~((6))~~ (7) By December 1, 2014, the public safety review panel  
2 shall report to the appropriate legislative committees the following:

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

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

9       (c) Whether changes in the law are appropriate concerning persons  
10 committed for an indefinite period under RCW 71.05.290(3); and

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

12       **Sec. 5.** RCW 71.05.235 and 2008 c 213 s 5 are each amended to read  
13 as follows:

14       (1) ~~((If an individual is referred to a designated mental health~~  
15 ~~professional under RCW 10.77.088(1)(b)(i),)) The designated mental~~  
16 ~~health professional shall ((examine the individual))~~ evaluate  
17 individuals referred under RCW 10.77.088(1)(b)(i) within forty-eight  
18 hours. ~~((If the designated mental health professional determines it is~~  
19 ~~not appropriate to detain the individual or petition for a ninety day~~  
20 ~~less restrictive alternative under RCW 71.05.230(4), that decision~~  
21 ~~shall be immediately presented to the superior court for hearing. The~~  
22 ~~court shall hold a hearing to consider the decision of the designated~~  
23 ~~mental health professional not later than the next judicial day. At~~  
24 ~~the hearing the superior court shall review the determination of the~~  
25 ~~designated mental health professional and determine whether an order~~  
26 ~~should be entered requiring the person to be evaluated at an evaluation~~  
27 ~~and treatment facility. No person referred to an evaluation and~~  
28 ~~treatment facility may be held at the facility longer than seventy two~~  
29 ~~hours.))~~

30       (2) If an individual is ~~((placed in))~~ sent to an evaluation and  
31 treatment facility under RCW 10.77.088(1)(b)(ii), a professional person  
32 shall evaluate the individual within seventy-two hours from admission  
33 to the facility, excluding Saturdays, Sundays, and holidays, for  
34 purposes of ~~((determining whether to file a ninety day inpatient or~~  
35 ~~outpatient petition under chapter 71.05 RCW. Before expiration of the~~  
36 ~~seventy two — hour — evaluation — period — authorized — under — RCW~~  
37 ~~10.77.088(1)(b)(ii), the professional person shall file a petition or,~~

1 ~~if the recommendation of the professional person is to release the~~  
2 ~~individual, present his or her recommendation to the superior court of~~  
3 ~~the county in which the criminal charge was dismissed. The superior~~  
4 ~~court shall review the recommendation not later than forty eight hours,~~  
5 ~~excluding Saturdays, Sundays, and holidays, after the recommendation is~~  
6 ~~presented. If the court rejects the recommendation to unconditionally~~  
7 ~~release the individual, the court may order the individual detained at~~  
8 ~~a designated evaluation and treatment facility for not more than a~~  
9 ~~seventy two hour evaluation and treatment period and direct the~~  
10 ~~individual to appear at a surety hearing before that court within~~  
11 ~~seventy two hours, or the court may release the individual but direct~~  
12 ~~the individual to appear at a surety hearing set before that court~~  
13 ~~within eleven days, at which time the prosecutor may file a petition~~  
14 ~~under this chapter for ninety day inpatient or outpatient treatment.~~  
15 ~~If a petition is filed by the prosecutor, the court may order that the~~  
16 ~~person named in the petition be detained at the evaluation and~~  
17 ~~treatment facility that performed the evaluation under this subsection~~  
18 ~~or order the respondent to be in outpatient treatment. If a petition~~  
19 ~~is filed but the individual fails to appear in court for the surety~~  
20 ~~hearing, the court shall order that a mental health professional or~~  
21 ~~peace officer shall take such person or cause such person to be taken~~  
22 ~~into custody and placed in an evaluation and treatment facility to be~~  
23 ~~brought before the court the next judicial day after detention. Upon~~  
24 ~~the individual's first appearance in court after a petition has been~~  
25 ~~filed, proceedings under RCW 71.05.310 and 71.05.320 shall commence.~~  
26 ~~For an individual subject to this subsection,)) filing a petition under~~  
27 ~~this chapter. The ((prosecutor or)) professional person may directly~~  
28 ~~file a petition for ((ninety day inpatient or outpatient treatment and~~  
29 ~~no)) ninety days of treatment under RCW 71.05.280 without filing a~~  
30 ~~petition for initial detention or fourteen-day detention ((is required~~  
31 ~~before such a petition may be filed)).~~

32 ((The court shall conduct the hearing on the petition filed under  
33 this subsection within five judicial days of the date the petition is  
34 filed. The court may continue the hearing upon the written request of  
35 the person named in the petition or the person's attorney, for good  
36 cause shown, which continuance shall not exceed five additional  
37 judicial days. If the person named in the petition requests a jury  
38 trial, the trial shall commence within ten judicial days of the date of

1 ~~the filing of the petition. The burden of proof shall be by clear,~~  
2 ~~cogent, and convincing evidence and shall be upon the petitioner. The~~  
3 ~~person shall be present at such proceeding, which shall in all respects~~  
4 ~~accord with the constitutional guarantees of due process of law and the~~  
5 ~~rules of evidence pursuant to RCW 71.05.360 (8) and (9).~~

6 ~~During the proceeding the person named in the petition shall~~  
7 ~~continue to be detained and treated until released by order of the~~  
8 ~~court. If no order has been made within thirty days after the filing~~  
9 ~~of the petition, not including any extensions of time requested by the~~  
10 ~~detained person or his or her attorney, the detained person shall be~~  
11 ~~released.~~

12 ~~(3) If a designated mental health professional or the professional~~  
13 ~~person and prosecuting attorney for the county in which the criminal~~  
14 ~~charge was dismissed or attorney general, as appropriate, stipulate~~  
15 ~~that the individual does not present a likelihood of serious harm or is~~  
16 ~~not gravely disabled, the hearing under this section is not required~~  
17 ~~and the individual, if in custody, shall be released.~~

18 ~~(4) The individual shall have the rights specified in RCW 71.05.360~~  
19 ~~(8) and (9).)~~

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

22 At the expiration of the fourteen-day period of intensive  
23 treatment, a person may be confined for further treatment pursuant to  
24 RCW 71.05.320 if:

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

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

35 (3) Such person has been determined to be incompetent and criminal  
36 charges have been dismissed pursuant to RCW 10.77.086(4), and has  
37 committed acts constituting a felony, and as a result of a mental



1 disorder, presents a substantial likelihood of repeating similar acts.  
2 In any proceeding pursuant to this subsection it shall not be necessary  
3 to show intent, willfulness, or state of mind as an element of the  
4 crime, and the court shall further determine whether the dismissed  
5 criminal charges include a violent offense under RCW 9.94A.030, and  
6 also determine whether the person has committed acts that would  
7 constitute a violent offense under RCW 9.94A.030; or

8 (4) Such person is gravely disabled.

9 **Sec. 7.** RCW 71.05.290 and 2009 c 217 s 3 are each amended to read  
10 as follows:

11 (1) At any time during a person's fourteen day intensive treatment  
12 period, the professional person in charge of a treatment facility or  
13 his or her professional designee or the designated mental health  
14 professional may petition the superior court for an order requiring  
15 such person to undergo an additional period of treatment. Such  
16 petition must be based on one or more of the grounds set forth in RCW  
17 71.05.280.

18 (2) The petition shall summarize the facts which support the need  
19 for further confinement and shall be supported by affidavits signed by:

20 (a) Two examining physicians;

21 (b) One examining physician and examining mental health  
22 professional;

23 (c) Two psychiatric advanced registered nurse practitioners;

24 (d) One psychiatric advanced registered nurse practitioner and a  
25 mental health professional; or

26 (e) An examining physician and an examining psychiatric advanced  
27 registered nurse practitioner. The affidavits shall describe in detail  
28 the behavior of the detained person which supports the petition and  
29 shall explain what, if any, less restrictive treatments which are  
30 alternatives to detention are available to such person, and shall state  
31 the willingness of the affiant to testify to such facts in subsequent  
32 judicial proceedings under this chapter.

33 (3) If a person has been determined to be incompetent pursuant to  
34 RCW 10.77.086(4), then the professional person in charge of the  
35 treatment facility or his or her professional designee or the  
36 designated mental health professional may directly file a petition  
37 (~~for one hundred eighty day treatment~~) under RCW 71.05.280(3). The

1 length of commitment shall be for one hundred eighty days, or if the  
2 court determines that the dismissed charges include a violent offense  
3 under RCW 9.94A.030 and determines the person committed acts  
4 constituting a violent offense under RCW 9.94A.030, the commitment  
5 shall last until such time as the person no longer meets grounds for  
6 involuntary commitment, or until such a time as the commitment period  
7 ends as provided in subsection (4) of this section. No petition for  
8 initial detention or fourteen day detention is required before such a  
9 petition may be filed.

10 (4) For a person committed for an indefinite period under RCW  
11 71.05.280(3) based on dismissal of a violent offense under RCW  
12 9.94A.030 and a determination that the person committed acts  
13 constituting a violent offense under RCW 9.94A.030, at the time of  
14 commitment the court shall set a review date in one hundred eighty  
15 days. The commitment shall end on the review date unless the  
16 superintendent or professional person in charge of the facility or  
17 designated mental health professional files a petition for review  
18 alleging that the person continues to meet one or more of the grounds  
19 for involuntary commitment specified in RCW 71.05.320(3). The petition  
20 for review shall be submitted in the form specified in subsection (2)  
21 of this section. The court shall approve the petition for review and  
22 set a new review date in one hundred eighty days if the review petition  
23 presents prima facie evidence that the person continues to meet one or  
24 more grounds for commitment specified in RCW 71.05.320(3), except that  
25 the court shall schedule a hearing as provided in RCW 71.05.310 if the  
26 person presents proof that the person's condition has so changed that  
27 the person no longer meets one or more of the grounds for involuntary  
28 commitment. The person shall be entitled to counsel upon filing of a  
29 petition for review under this subsection.

30 **Sec. 8.** RCW 71.05.320 and 2009 c 323 s 2 are each amended to read  
31 as follows:

32 (1) If the court or jury finds that grounds set forth in RCW  
33 71.05.280 have been proven and that the best interests of the person or  
34 others will not be served by a less restrictive treatment which is an  
35 alternative to detention, the court shall remand him or her to the  
36 custody of the department or to a facility certified for ninety day  
37 treatment by the department for a further period of intensive treatment

1 not to exceed ninety days from the date of judgment. If the grounds  
2 set forth in RCW 71.05.280(3) are the basis of commitment, then the  
3 period of treatment (~~((may be up to but not exceed one hundred eighty  
4 days from the date of judgment))~~) shall be for the time period specified  
5 in RCW 71.05.290(3) in a facility certified for one hundred eighty day  
6 treatment by the department.

7 (2) If the court or jury finds that grounds set forth in RCW  
8 71.05.280 have been proven, but finds that treatment less restrictive  
9 than detention will be in the best interest of the person or others,  
10 then the court shall remand him or her to the custody of the department  
11 or to a facility certified for ninety day treatment by the department  
12 or to a less restrictive alternative for a further period of less  
13 restrictive treatment not to exceed ninety days from the date of  
14 judgment. If the grounds set forth in RCW 71.05.280(3) are the basis  
15 of commitment, then the period of treatment (~~((may be up to but not  
16 exceed one hundred eighty days from the date of judgment))~~) shall be for  
17 the time period specified in RCW 71.05.290(3).

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

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

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

34 (c) Is in custody pursuant to RCW 71.05.280(3) and as a result of  
35 mental disorder (~~((or developmental disability))~~) presents a substantial  
36 likelihood of repeating similar acts considering the charged criminal  
37 behavior, life history, progress in treatment, and the public safety;  
38 or

1 (d) Continues to be gravely disabled.

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

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

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

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

18 (c) Outpatient treatment that would be provided under a less  
19 restrictive treatment order is necessary to prevent a relapse,  
20 decompensation, or deterioration that is likely to result in the person  
21 presenting a likelihood of serious harm or the person becoming gravely  
22 disabled within a reasonably short period of time.

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

28 (6) The hearing shall be held as provided in RCW 71.05.310, and if  
29 the court or jury finds that the grounds for additional confinement as  
30 set forth in this section are present, the court may order the  
31 committed person returned for an additional period of treatment not to  
32 exceed one hundred eighty days from the date of judgment. At the end  
33 of the one hundred eighty day period of commitment, the committed  
34 person shall be released unless a petition for another one hundred  
35 eighty day period of continued treatment is filed and heard in the same  
36 manner as provided in this section. Successive one hundred eighty day  
37 commitments are permissible on the same grounds and pursuant to the  
38 same procedures as the original one hundred eighty day commitment.

1 However, a commitment is not permissible under subsection (4) of this  
2 section if thirty-six months have passed since the last date of  
3 discharge from detention for inpatient treatment that preceded the  
4 current less restrictive alternative order, nor shall a commitment  
5 under subsection (4) of this section be permissible if the likelihood  
6 of serious harm in subsection (4)(c) of this section is based solely on  
7 harm to the property of others.

8 (7) No person committed as provided in this section may be detained  
9 unless a valid order of commitment is in effect. No order of  
10 commitment can exceed one hundred eighty days in length, except as  
11 provided in RCW 71.05.290(3).

12 **Sec. 9.** RCW 71.05.425 and 2011 c 305 s 5 are each amended to read  
13 as follows:

14 (1)(a) Except as provided in subsection (2) of this section, at the  
15 earliest possible date, and in no event later than thirty days before  
16 conditional release, final release, authorized leave under RCW  
17 71.05.325(2), or transfer to a facility other than a state mental  
18 hospital, the superintendent shall send written notice of conditional  
19 release, release, authorized leave, or transfer of a person committed  
20 under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex,  
21 violent, or felony harassment offense pursuant to RCW 10.77.086(4) to  
22 the following:

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

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

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

28 (b) The same notice as required by (a) of this subsection shall be  
29 sent to the following, if such notice has been requested in writing  
30 about a specific person committed under RCW 71.05.280(3) or  
31 71.05.320(3)(c) following dismissal of a sex, violent, or felony  
32 harassment offense pursuant to RCW 10.77.086(4):

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

1 (ii) Any witnesses who testified against the person in any court  
2 proceedings;

3 (iii) Any person specified in writing by the prosecuting attorney.  
4 Information regarding victims, next of kin, or witnesses requesting the  
5 notice, information regarding any other person specified in writing by  
6 the prosecuting attorney to receive the notice, and the notice are  
7 confidential and shall not be available to the person committed under  
8 this chapter; and

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

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

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

17 (2) If a person committed under RCW 71.05.280(3) or 71.05.320(3)(c)  
18 following dismissal of a sex, violent, or felony harassment offense  
19 pursuant to RCW 10.77.086(4) escapes, the superintendent shall  
20 immediately notify, by the most reasonable and expedient means  
21 available, the chief of police of the city and the sheriff of the  
22 county in which the person escaped and in which the person resided  
23 immediately before the person's arrest and the prosecuting attorney of  
24 the county in which the criminal charges against the committed person  
25 were dismissed. If previously requested, the superintendent shall also  
26 notify the witnesses and the victim of the sex, violent, or felony  
27 harassment offense that was dismissed pursuant to RCW 10.77.086(4)  
28 preceding commitment under RCW 71.05.280(3) or 71.05.320(3) or the  
29 victim's next of kin if the crime was a homicide. In addition, the  
30 secretary shall also notify appropriate parties pursuant to RCW  
31 71.05.390(18). If the person is recaptured, the superintendent shall  
32 send notice to the persons designated in this subsection as soon as  
33 possible but in no event later than two working days after the  
34 department learns of such recapture.

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

1 (4) The superintendent shall send the notices required by this  
2 chapter to the last address provided to the department by the  
3 requesting party. The requesting party shall furnish the department  
4 with a current address.

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

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

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

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

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

13 **Sec. 10.** RCW 10.77.200 and 2010 c 263 s 8 are each amended to read  
14 as follows:

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

23 (2) In instances in which persons have not made application for  
24 release, but the secretary believes, after consideration of the reports  
25 filed under RCW 10.77.060, 10.77.110, 10.77.140, and 10.77.160, and  
26 other reports and evaluations provided by professionals familiar with  
27 the case, that reasonable grounds exist for release, the secretary may  
28 petition the court. If the secretary petitions the court for release  
29 under this subsection, notice of the petition must be provided to the  
30 person who is the subject of the petition and to his or her attorney.

31 (3) The petition shall be served upon the court and the prosecuting  
32 attorney. The court, upon receipt of the petition for release, shall  
33 within forty-five days order a hearing. Continuance of the hearing  
34 date shall only be allowed for good cause shown. The prosecuting  
35 attorney shall represent the state, and shall have the right to have  
36 the (~~petitioner~~) person who is the subject of the petition examined  
37 by an expert or professional person of the prosecuting attorney's

1 choice. If the secretary is the petitioner, the attorney general shall  
2 represent the secretary. If the ((~~petitioner~~)) person who is the  
3 subject of the petition is indigent, and the person so requests, the  
4 court shall appoint a qualified expert or professional person to  
5 examine him or her. If the ((~~petitioner~~)) person who is the subject of  
6 the petition has a developmental disability, the examination shall be  
7 performed by a developmental disabilities professional. The hearing  
8 shall be before a jury if demanded by either the petitioner or the  
9 prosecuting attorney. The burden of proof shall be upon the petitioner  
10 to show by a preponderance of the evidence that the ((~~petitioner~~))  
11 person who is the subject of the petition no longer presents, as a  
12 result of a mental disease or defect, a substantial danger to other  
13 persons, or a substantial likelihood of committing criminal acts  
14 jeopardizing public safety or security, unless kept under further  
15 control by the court or other persons or institutions. If the person  
16 who is the subject of the petition will be transferred to a state  
17 correctional institution or facility upon release to serve a sentence  
18 for any class A felony, the petitioner must show that the person's  
19 mental disease or defect is manageable within a state correctional  
20 institution or facility, but must not be required to prove that the  
21 person does not present either a substantial danger to other persons,  
22 or a substantial likelihood of committing criminal acts jeopardizing  
23 public safety or security, if released.

24 (4) 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. Upon a finding that  
29 the ((~~petitioner~~)) person who is the subject of the petition has a  
30 mental disease or defect in a state of remission under this subsection,  
31 the court may deny release, or place or continue such a person on  
32 conditional release.

33 (5) Nothing contained in this chapter shall prohibit the patient  
34 from petitioning the court for release or conditional release from the  
35 institution in which he or she is committed. The petition shall be  
36 served upon the court, the prosecuting attorney, and the secretary.  
37 Upon receipt of such petition, the secretary shall develop a  
38 recommendation as provided in subsection (1) of this section and



1 provide the secretary's recommendation to all parties and the court.

2 The issue to be determined on such proceeding is whether the  
3 (~~petitioner~~) patient, as a result of a mental disease or defect, is  
4 a substantial danger to other persons, or presents 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 (6) Nothing contained in this chapter shall prohibit the committed  
9 person from petitioning for release by writ of habeas corpus.

10 **Sec. 11.** RCW 10.77.065 and 2012 c 256 s 4 are each amended to read  
11 as follows:

12 (1)(a)(i) The expert conducting the evaluation shall provide his or  
13 her report and recommendation to the court in which the criminal  
14 proceeding is pending. For a competency evaluation of a defendant who  
15 is released from custody, if the evaluation cannot be completed within  
16 twenty-one days due to a lack of cooperation by the defendant, the  
17 evaluator shall notify the court that he or she is unable to complete  
18 the evaluation because of such lack of cooperation.

19 (ii) A copy of the report and recommendation shall be provided to  
20 the designated mental health professional, the prosecuting attorney,  
21 the defense attorney, and the professional person at the local  
22 correctional facility where the defendant is being held, or if there is  
23 no professional person, to the person designated under (a)(iv) of this  
24 subsection. Upon request, the evaluator shall also provide copies of  
25 any source documents relevant to the evaluation to the designated  
26 mental health professional.

27 (iii) Any facility providing inpatient services related to  
28 competency shall discharge the defendant as soon as the facility  
29 determines that the defendant is competent to stand trial. Discharge  
30 shall not be postponed during the writing and distribution of the  
31 evaluation report. Distribution of an evaluation report by a facility  
32 providing inpatient services shall ordinarily be accomplished within  
33 two working days or less following the final evaluation of the  
34 defendant. If the defendant is discharged to the custody of a local  
35 correctional facility, the local correctional facility must continue  
36 the medication regimen prescribed by the facility, when clinically  
37 appropriate, unless the defendant refuses to cooperate with medication.

1 (iv) If there is no professional person at the local correctional  
2 facility, the local correctional facility shall designate a  
3 professional person as defined in RCW 71.05.020 or, in cooperation with  
4 the regional support network, a professional person at the regional  
5 support network to receive the report and recommendation.

6 (v) Upon commencement of a defendant's evaluation in the local  
7 correctional facility, the local correctional facility must notify the  
8 evaluator of the name of the professional person, or person designated  
9 under (a)(iv) of this subsection, to receive the report and  
10 recommendation.

11 (b) If the evaluator concludes, under RCW 10.77.060(3)(f), the  
12 person should be evaluated by a designated mental health professional  
13 under chapter 71.05 RCW, the court shall order such evaluation be  
14 conducted prior to release from confinement when the person is  
15 acquitted or convicted and sentenced to confinement for twenty-four  
16 months or less, or when charges are dismissed pursuant to a finding of  
17 incompetent to stand trial.

18 (2) The designated mental health professional shall provide written  
19 notification within twenty-four hours of the results of the  
20 determination whether to commence proceedings under chapter 71.05 RCW.  
21 The notification shall be provided to the persons identified in  
22 subsection (1)(a) of this section.

23 (3) The prosecuting attorney shall provide a copy of the results of  
24 any proceedings commenced by the designated mental health professional  
25 under subsection (2) of this section to the secretary.

26 (4) A facility, designated mental health professional, or  
27 professional person conducting a civil commitment evaluation under RCW  
28 10.77.086(4) or 10.77.088(1)(b)(ii) that makes a determination to  
29 release the person instead of filing a civil commitment petition must  
30 provide written notification to the prosecuting attorney and defense  
31 attorney within twenty-four hours of the determination.

32 (5) The fact of admission and all information and records compiled,  
33 obtained, or maintained in the course of providing services under this  
34 chapter may also be disclosed to the courts solely to prevent the entry  
35 of any evaluation or treatment order that is inconsistent with any  
36 order entered under chapter 71.05 RCW.

1        NEW\_SECTION.   **Sec. 12.**   If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

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