
SUBSTITUTE HOUSE BILL 1355

State of Washington

65th Legislature

2017 Regular Session

By House Judiciary (originally sponsored by Representatives Jinkins and Rodne)

READ FIRST TIME 02/06/17.

1 AN ACT Relating to the authority of the public safety review
2 panel; amending RCW 10.77.020, 10.77.110, 10.77.120, 10.77.140,
3 10.77.145, 10.77.150, 10.77.155, 10.77.160, 10.77.163, 10.77.180,
4 10.77.190, 10.77.195, 10.77.200, 10.77.230, and 10.77.270; and
5 creating new sections.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that persons subject
8 to commitment following a determination of not guilty by reason of
9 insanity present unique diagnostic, treatment, supervisory, and
10 public safety challenges that differ substantially from other groups
11 subject to civil commitment. In accord with the practices of some
12 other states, the legislature finds that a centralized, quasi-
13 judicial administrative review board with specialized expertise in
14 the unique nature of this population and their public safety
15 challenges will enhance both patient care and public safety.

16 **Sec. 2.** RCW 10.77.020 and 2006 c 109 s 1 are each amended to
17 read as follows:

18 (1) At any and all stages of the proceedings pursuant to this
19 chapter, any person subject to the provisions of this chapter shall
20 be entitled to the assistance of counsel, and if the person is

1 indigent the court or the public safety review panel shall appoint
2 counsel to assist him or her. A person may waive his or her right to
3 counsel; but such waiver shall only be effective if a court or the
4 panel makes a specific finding that he or she is or was competent to
5 so waive. In making such findings, the court or the panel shall be
6 guided but not limited by the following standards: Whether the person
7 attempting to waive the assistance of counsel, does so understanding:

8 (a) The nature of the charges;

9 (b) The statutory offense included within them;

10 (c) The range of allowable punishments thereunder;

11 (d) Possible defenses to the charges and circumstances in
12 mitigation thereof; and

13 (e) All other facts essential to a broad understanding of the
14 whole matter.

15 (2) Whenever any person is subjected to an examination pursuant
16 to any provision of this chapter, he or she may retain an expert or
17 professional person to perform an examination in his or her behalf.
18 In the case of a person who is indigent, the court or the panel shall
19 upon his or her request assist the person in obtaining an expert or
20 professional person to perform an examination or participate in the
21 hearing on his or her behalf. An expert or professional person
22 obtained by an indigent person pursuant to the provisions of this
23 chapter shall be compensated for his or her services out of funds of
24 the department, in an amount determined by the secretary to be fair
25 and reasonable.

26 (3) Any time the defendant is being examined by court appointed
27 experts or professional persons pursuant to the provisions of this
28 chapter, the defendant shall be entitled to have his or her attorney
29 present.

30 (4) In a competency evaluation conducted under this chapter, the
31 defendant may refuse to answer any question if he or she believes his
32 or her answers may tend to incriminate him or her or form links
33 leading to evidence of an incriminating nature.

34 (5) In a sanity evaluation conducted under this chapter, if a
35 defendant refuses to answer questions or to participate in an
36 examination conducted in response to the defendant's assertion of an
37 insanity defense, the court shall exclude from evidence at trial any
38 testimony or evidence from any expert or professional person obtained
39 or retained by the defendant.

1 **Sec. 3.** RCW 10.77.110 and 2000 c 94 s 14 are each amended to
2 read as follows:

3 (1) If a defendant is acquitted of a crime by reason of insanity,
4 and it is found that he or she is not a substantial danger to other
5 persons, and does not present a substantial likelihood of committing
6 criminal acts jeopardizing public safety or security, unless kept
7 under further control by the court or other persons or institutions,
8 the court shall direct the defendant's release. If it is found that
9 such defendant is a substantial danger to other persons, or presents
10 a substantial likelihood of committing criminal acts jeopardizing
11 public safety or security, unless kept under further control by the
12 court or other persons or institutions, the court shall order his or
13 her hospitalization, or any appropriate alternative treatment less
14 restrictive than detention in a state mental hospital, pursuant to
15 the terms of this chapter.

16 (2) If the defendant has been found not guilty by reason of
17 insanity and a substantial danger, or presents a substantial
18 likelihood of committing criminal acts jeopardizing public safety or
19 security, so as to require treatment then the secretary shall
20 immediately cause the defendant to be evaluated to ascertain if the
21 defendant is (~~developmentally disabled~~) an individual with a
22 developmental disability. When appropriate, and subject to available
23 funds, the defendant may be committed to a program specifically
24 reserved for the treatment and training of (~~developmentally disabled~~
25 ~~persons~~) individuals with developmental disabilities. A person so
26 committed shall receive habilitation services according to an
27 individualized service plan specifically developed to treat the
28 behavior which was the subject of the criminal proceedings. The
29 treatment program shall be administered by developmental disabilities
30 professionals and others trained specifically in the needs of
31 (~~developmentally disabled persons~~) individuals with developmental
32 disabilities. The treatment program shall provide physical security
33 to a degree consistent with the finding that the defendant is
34 dangerous and may incorporate varying conditions of security and
35 alternative sites when the dangerousness of any particular defendant
36 makes this necessary. The department may limit admissions to this
37 specialized program in order to ensure that expenditures for services
38 do not exceed amounts appropriated by the legislature and allocated
39 by the department for such services. The department may establish

1 admission priorities in the event that the number of eligible persons
2 exceeds the limits set by the department.

3 (3) If it is found that such defendant is not a substantial
4 danger to other persons, and does not present a substantial
5 likelihood of committing criminal acts jeopardizing public safety or
6 security, but that he or she is in need of control by the court or
7 other persons or institutions, the court shall direct the defendant's
8 conditional release. Within five judicial days of directing
9 conditional release, the court shall provide a copy of its
10 conditional release order to the public safety review panel. When
11 appropriate for public safety or the best interests of the defendant,
12 the panel may modify the release conditions or add additional
13 conditions. If the panel finds that no reasonable release conditions
14 exist that would prevent the defendant's release from presenting a
15 substantial danger to other persons, or a substantial likelihood of
16 committing criminal acts jeopardizing public safety or security, the
17 panel shall state its reasons and refer the case back to the court
18 for further consideration. The court may then order the defendant
19 hospitalized in a state mental hospital, or conditionally released
20 pursuant to conditions identified by the court and the panel. Upon
21 conditional release, the panel shall assume all further jurisdiction
22 over the matter consistent with this chapter.

23 **Sec. 4.** RCW 10.77.120 and 2010 c 263 s 4 are each amended to
24 read as follows:

25 (1) The secretary shall provide adequate care and individualized
26 treatment to persons found criminally insane at one or several of the
27 state institutions or facilities under the direction and control of
28 the secretary. In order that the secretary may adequately determine
29 the nature of the mental illness or developmental disability of the
30 person committed as criminally insane, all persons who are committed
31 to the secretary as criminally insane shall be promptly examined by
32 qualified personnel in order to provide a proper evaluation and
33 diagnosis of such individual. The examinations of all persons with
34 developmental disabilities committed under this chapter shall be
35 performed by developmental disabilities professionals. Any person so
36 committed shall not be released from the control of the secretary
37 except by order of a court of competent jurisdiction or the public
38 safety review panel, made after a hearing and judgment of release in
39 accordance with the provisions of this chapter.

1 (2) Whenever there is a hearing which the committed person is
2 entitled to attend, the secretary shall send the person in the
3 custody of one or more department employees to the county in which
4 the hearing is to be held at the time the case is called for trial,
5 or to a hearing of the panel, unless the court or panel authorizes
6 the appearance of the person by video or telephonic means. During the
7 time the person is absent from the facility, the person may be
8 confined in a facility designated by and arranged for by the
9 department, but shall at all times be deemed to be in the custody of
10 the department employee and provided necessary treatment. If the
11 decision of the hearing remits the person to custody, the department
12 employee shall return the person to such institution or facility
13 designated by the secretary. If the state appeals an order of
14 release, such appeal shall operate as a stay, and the person shall
15 remain in custody and be returned to the institution or facility
16 designated by the secretary until a final decision has been rendered
17 in the cause.

18 **Sec. 5.** RCW 10.77.140 and 1998 c 297 s 40 are each amended to
19 read as follows:

20 (1) Each person committed to a hospital or other facility or
21 conditionally released pursuant to this chapter shall have a current
22 examination of his or her mental condition made by one or more
23 experts or professional persons at least once every six months. The
24 person may retain, or if the person is indigent and so requests, the
25 ~~((court))~~ public safety review panel may appoint a qualified expert
26 or professional person to examine him or her, and such expert or
27 professional person shall have access to all hospital records
28 concerning the person. In the case of a committed or conditionally
29 released person who is ~~((developmentally disabled))~~ a person with a
30 developmental disability, the expert shall be a developmental
31 disabilities professional. The secretary, upon receipt of the
32 periodic report, shall provide ~~((written notice to the court of~~
33 ~~commitment of compliance with the requirements of this section))~~
34 copies to the panel, the prosecuting attorney, and counsel for the
35 committed person.

36 (2) The panel shall review the progress of each person committed
37 to a hospital or other facility or conditionally released pursuant to
38 this chapter immediately following receipt of the initial six-month

1 report. Thereafter, the panel shall review each case at least once
2 every two years.

3 **Sec. 6.** RCW 10.77.145 and 2010 c 262 s 1 are each amended to
4 read as follows:

5 (1) No person committed to the custody of the department for the
6 determination of competency to stand trial under RCW 10.77.060, the
7 restoration of competency for trial under RCW 10.77.084, 10.77.086,
8 or 10.77.088, or following an acquittal by reason of insanity shall
9 be authorized to leave the facility where the person is confined,
10 except in the following circumstances:

11 (a) In accordance with conditional release or furlough authorized
12 by the public safety review panel if the person was committed
13 following acquittal by reason of insanity, or by a court in other
14 cases;

15 (b) For necessary medical or legal proceedings not available in
16 the facility where the person is confined;

17 (c) For visits to the bedside of a member of the person's
18 immediate family who is seriously ill; or

19 (d) For attendance at the funeral of a member of the person's
20 immediate family.

21 (2) Unless ordered otherwise by the panel if the person was
22 committed following acquittal by reason of insanity, or by a court in
23 other cases, no leave under subsection (1) of this section shall be
24 authorized unless the person who is the subject of the authorization
25 is escorted by a person approved by the secretary. During the
26 authorized leave, the person approved by the secretary must be in
27 visual or auditory contact at all times with the person on authorized
28 leave.

29 (3) Prior to the authorization of any leave under subsection (1)
30 of this section, the secretary must give notification to any county
31 or city law enforcement agency having jurisdiction in the location of
32 the leave destination.

33 **Sec. 7.** RCW 10.77.150 and 2010 c 263 s 5 are each amended to
34 read as follows:

35 (1) Persons examined pursuant to RCW 10.77.140 may make
36 application to the secretary for conditional release. The secretary
37 shall, after considering the reports of experts or professional
38 persons conducting the examination pursuant to RCW 10.77.140, forward

1 to the (~~court of the county which ordered the person's commitment~~)
2 public safety review panel the person's application for conditional
3 release as well as the secretary's recommendations concerning the
4 application and any proposed terms and conditions upon which the
5 secretary reasonably believes the person can be conditionally
6 released. Conditional release may also contemplate partial release
7 for work, training, or educational purposes.

8 (2) In instances in which persons examined pursuant to RCW
9 10.77.140 have not made application to the secretary for conditional
10 release, but the secretary, after considering the reports of experts
11 or professional persons conducting the examination pursuant to RCW
12 10.77.140, reasonably believes the person may be conditionally
13 released, the secretary may submit a recommendation for release to
14 the (~~court of the county that ordered the person's commitment~~)
15 panel. The secretary's recommendation must include any proposed terms
16 and conditions upon which the secretary reasonably believes the
17 person may be conditionally released. Conditional release may also
18 include partial release for work, training, or educational purposes.
19 Notice of the secretary's recommendation under this subsection must
20 be provided to the person for whom the secretary has made the
21 recommendation for release and to his or her attorney.

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

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

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

38 (d) The (~~court~~) panel, after the hearing, shall rule on the
39 secretary's recommendations, and if it disapproves of conditional
40 release, may do so only on the basis of substantial evidence. The

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

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

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

37 **Sec. 8.** RCW 10.77.155 and 1994 c 150 s 1 are each amended to
38 read as follows:

1 (~~No court may,~~) The public safety review panel or a court may
2 not, without a hearing, enter an order conditionally releasing or
3 authorizing the furlough of a person committed under this chapter,
4 unless the secretary has recommended the release or furlough. If the
5 secretary has not recommended the release or furlough, a hearing
6 shall be held under RCW 10.77.150.

7 **Sec. 9.** RCW 10.77.160 and 2010 c 263 s 6 are each amended to
8 read as follows:

9 When a conditionally released person is required by the terms of
10 his or her conditional release to report to a physician, department
11 of corrections community corrections officer, or medical or mental
12 health practitioner on a regular or periodic basis, the physician,
13 department of corrections community corrections officer, medical or
14 mental health practitioner, or other such person shall monthly, for
15 the first six months after release and semiannually thereafter, or as
16 otherwise directed by the (~~court~~) panel, submit to the (~~court~~)
17 panel, the secretary, the institution from which released, and to the
18 prosecuting attorney of the county in which the person was committed,
19 a report stating whether the person is adhering to the terms and
20 conditions of his or her conditional release, and detailing any
21 arrests or criminal charges filed and any significant change in the
22 person's mental health condition or other circumstances.

23 **Sec. 10.** RCW 10.77.163 and 2008 c 213 s 4 are each amended to
24 read as follows:

25 (1) Before a person committed under this chapter is permitted
26 temporarily to leave a treatment facility for any period of time
27 without constant accompaniment by facility staff, the superintendent,
28 professional person in charge of a treatment facility, or his or her
29 professional designee shall in writing notify the prosecuting
30 attorney of any county to which the person is released and the
31 prosecuting attorney of the county in which the criminal charges
32 against the committed person were dismissed, of the decision
33 conditionally to release the person. The notice shall be provided at
34 least forty-five days before the anticipated release and shall
35 describe the conditions under which the release is to occur.

36 (2) In addition to the notice required by subsection (1) of this
37 section, the superintendent of each state institution designated for
38 the custody, care, and treatment of persons committed under this

1 chapter shall notify appropriate law enforcement agencies through the
2 state patrol communications network of the furloughs of persons
3 committed under RCW 10.77.086 or 10.77.110. Notification shall be
4 made at least thirty days before the furlough, and shall include the
5 name of the person, the place to which the person has permission to
6 go, and the dates and times during which the person will be on
7 furlough.

8 (3) Upon receiving notice that a person committed under this
9 chapter is being temporarily released under subsection (1) of this
10 section, the prosecuting attorney may seek a temporary restraining
11 order from the public safety review panel if the person was committed
12 following acquittal by reason of insanity, or from the court in other
13 cases, to prevent the release of the person on the grounds that the
14 person is dangerous to self or others.

15 (4) The notice requirements contained in this section shall not
16 apply to emergency medical furloughs.

17 (5) The existence of the notice requirements contained in this
18 section shall not require any extension of the release date in the
19 event the release plan changes after notification.

20 (6) The notice provisions of this section are in addition to
21 those provided in RCW 10.77.205.

22 **Sec. 11.** RCW 10.77.180 and 1998 c 297 s 42 are each amended to
23 read as follows:

24 Each person conditionally released pursuant to RCW 10.77.150
25 shall have his or her case reviewed by the ~~((court which~~
26 ~~conditionally released him or her))~~ public safety review panel no
27 later than one year after such release and no later than every two
28 years thereafter, such time to be scheduled by the ~~((court))~~ panel.
29 Review may occur in a shorter time or more frequently, if the
30 ~~((court))~~ panel, in its discretion, on its own motion, or on motion
31 of the person, the secretary of social and health services, the
32 secretary of corrections, medical or mental health practitioner, or
33 the prosecuting attorney, so determines. The sole question to be
34 determined by the ~~((court))~~ panel is whether the person shall
35 continue to be conditionally released. The ~~((court))~~ panel in making
36 its determination shall be aided by the periodic reports filed
37 pursuant to RCW 10.77.140 and 10.77.160, and the opinions of the
38 secretary and other experts or professional persons.

1 **Sec. 12.** RCW 10.77.190 and 2010 c 263 s 7 are each amended to
2 read 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~~))
5 public safety review panel to, or the ((~~court~~)) panel on its own
6 motion may schedule an immediate hearing for the purpose of modifying
7 the terms of conditional release if the petitioner or the ((~~court~~))
8 panel believes the released person is failing to adhere to the terms
9 and conditions of his or her conditional release or is in need of
10 additional care and treatment.

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

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

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

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

8 **Sec. 13.** RCW 10.77.195 and 2010 c 263 s 9 are each amended to
9 read as follows:

10 For persons who have received ((court)) approval from the public
11 safety review panel for conditional release, the secretary or the
12 secretary's designee shall supervise the person's compliance with the
13 ((court-ordered)) panel-ordered conditions of release. The level of
14 supervision provided by the secretary shall correspond to the level
15 of the person's public safety risk. In undertaking supervision of
16 persons under this section, the secretary shall coordinate with any
17 treatment providers designated pursuant to RCW 10.77.150(3), any
18 department of corrections staff designated pursuant to RCW
19 10.77.150(2), and local law enforcement, if appropriate. The
20 secretary shall adopt rules to implement this section.

21 **Sec. 14.** RCW 10.77.200 and 2013 c 289 s 7 are each amended to
22 read as follows:

23 (1) Upon application by the committed or conditionally released
24 person, the secretary shall determine whether or not reasonable
25 grounds exist for release. In making this determination, the
26 secretary may consider the reports filed under RCW 10.77.060,
27 10.77.110, 10.77.140, and 10.77.160, and other reports and
28 evaluations provided by professionals familiar with the case. If the
29 secretary approves the release he or she then shall authorize the
30 person to petition the court.

31 (2) In instances in which persons have not made application for
32 release, but the secretary believes, after consideration of the
33 reports filed under RCW 10.77.060, 10.77.110, 10.77.140, and
34 10.77.160, and other reports and evaluations provided by
35 professionals familiar with the case, that reasonable grounds exist
36 for release, the secretary may petition the court. If the secretary
37 petitions the court for release under this subsection, notice of the

1 petition must be provided to the person who is the subject of the
2 petition and to his or her attorney.

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

33 (4) For purposes of this section, a person affected by a mental
34 disease or defect in a state of remission is considered to have a
35 mental disease or defect requiring supervision when the disease may,
36 with reasonable medical probability, occasionally become active and,
37 when active, render the person a danger to others. Upon a finding
38 that the person who is the subject of the petition has a mental
39 disease or defect in a state of remission under this subsection, the

1 court may deny release, or place or continue such a person on
2 conditional release.

3 (5) Nothing contained in this chapter shall prohibit the patient
4 from petitioning the court for release, or petitioning the public
5 safety review panel for conditional release, from the institution in
6 which he or she is committed. The petition shall be (~~served upon~~)
7 filed with the court(~~(τ)~~) or the panel, and served upon the
8 prosecuting attorney(~~(τ)~~) and the secretary. Upon receipt of such
9 petition, the secretary shall develop a recommendation as provided in
10 subsection (1) of this section and provide the secretary's
11 recommendation to all parties and the court or the panel. The issue
12 to be determined on such proceeding is whether the patient, as a
13 result of a mental disease or defect, is a substantial danger to
14 other persons, or presents a substantial likelihood of committing
15 criminal acts jeopardizing public safety or security, unless kept
16 under further control by the court or other persons or institutions.

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

20 **Sec. 15.** RCW 10.77.230 and 1988 c 202 s 16 are each amended to
21 read as follows:

22 Either party may seek appellate review of the judgment of any
23 hearing held pursuant to the provisions of this chapter. Any appeal
24 from a ruling of the public safety review panel shall be considered
25 by the Washington state court of appeals in the division with
26 authority over the county of the person's commitment under this
27 chapter.

28 **Sec. 16.** RCW 10.77.270 and 2013 c 289 s 3 are each amended to
29 read as follows:

30 (1) The secretary shall establish an independent public safety
31 review panel (~~for the purpose of advising~~) to determine conditional
32 release, revocation, and other matters specified in this chapter. In
33 addition, the panel shall advise the secretary and the courts with
34 respect to persons who have been found not guilty by reason of
35 insanity, or persons committed under the involuntary treatment act
36 where the court has made a special finding under RCW 71.05.280(3)(b).
37 The panel shall provide advice regarding all recommendations to the
38 secretary, decisions by the secretary, or actions pending in court:

1 (a) For a change in commitment status; (b) to allow furloughs or
2 temporary leaves accompanied by staff; (c) not to seek further
3 commitment terms under RCW 71.05.320; or (d) to permit movement about
4 the grounds of the treatment facility, with or without the
5 accompaniment of staff.

6 (2) The members of the public safety review panel shall be
7 appointed by the governor for ~~((a))~~ renewable, staggered terms of
8 ~~((three))~~ four years and shall include the following:

9 (a) A psychiatrist;

10 (b) A licensed clinical psychologist;

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

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

14 (e) A representative of law enforcement or a law enforcement
15 association;

16 (f) A consumer and family advocate representative; ~~((and))~~

17 (g) A public defender or a representative of a defender's
18 association; and

19 (h) A community treatment provider with experience treating
20 conditionally released forensic patients.

21 (3) Thirty days prior to issuing a recommendation for conditional
22 release ~~((under RCW 10.77.150 or))~~ of a person committed with a
23 special finding under RCW 71.05.280(3), forty-five days prior to
24 issuing a recommendation for release under RCW 10.77.200, or forty-
25 five days prior to issuing a recommendation for a less restrictive
26 alternative of a person committed with a special finding under RCW
27 71.05.280(3), the secretary shall submit its recommendation with the
28 committed person's application and the department's risk assessment
29 to the public safety review panel. The public safety review panel
30 shall complete an independent assessment of the public safety risk
31 entailed by the secretary's proposed conditional release
32 recommendation or release recommendation and provide this assessment
33 in writing to the secretary. The public safety review panel may,
34 within funds appropriated for this purpose, request additional
35 evaluations of the committed person. The public safety review panel
36 may indicate whether it is in agreement with the secretary's
37 recommendation, or whether it would issue a different recommendation.
38 The secretary shall provide the panel's assessment when it is
39 received along with any supporting documentation, including all
40 previous reports of evaluations of the committed person in the

1 person's hospital record, to the court, prosecutor in the county that
2 ordered the person's commitment, and counsel for the committed
3 person.

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

12 (5) The department shall provide administrative and financial
13 support to the public safety review panel and provide an appropriate
14 venue for panel hearings. The department, in consultation with the
15 public safety review panel, may adopt rules to implement this
16 section.

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

19 ~~(a) Whether the public safety review panel has observed a change~~
20 ~~in statewide consistency of evaluations and decisions concerning~~
21 ~~changes in the commitment status of persons found not guilty by~~
22 ~~reason of insanity;~~

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

25 ~~(c) Whether further changes in the law are necessary to enhance~~
26 ~~public safety when incompetency prevents operation of the criminal~~
27 ~~justice system and long-term commitment of the criminally insane; and~~

28 ~~(d) Any other issues the public safety review panel deems~~
29 ~~relevant.)) The panel may adopt procedural and other rules necessary
30 to perform its functions. Hearings of the panel may be conducted in
31 groups of four members designated by the panel chair. When conducting
32 adjudicative functions, the panel shall have the authority to issue
33 subpoenas and to compel compliance with its orders. Panel members are
34 not removable during their term except for cause as determined by the
35 Thurston county superior court.~~

36 (7) All panel decisions and recommendations must be made
37 available to the public. All panel proceedings, except deliberations,
38 must be open to the public. When practical and convenient, all panel
39 adjudicative hearings must be held at western state hospital or
40 eastern state hospital. If a person committed under this chapter is

1 not a resident at the facility where the hearing is held, the panel
2 may allow the defendant to appear by telephone or video in lieu of a
3 personal appearance. The panel may allow attorneys to appear by
4 telephone or video and present witnesses in this manner. The panel
5 shall follow all constitutional requirements applicable to civil
6 commitment proceedings in conducting its hearings.

7 (8) Each member of the panel shall receive a per diem for
8 attending to panel business that is based on a salary fixed by the
9 governor in accordance with the provisions of RCW 43.03.040. The per
10 diem shall reflect the professional qualifications and experience
11 necessary for each panel position. In addition to a per diem, each
12 member of the panel shall receive travel expenses incurred in the
13 discharge of their official duties in accordance with RCW 43.03.050
14 and 43.03.060.

15 NEW SECTION. Sec. 17. The provisions of this act apply to all
16 commitments under RCW 10.77.110 that exist before, on, or after the
17 effective date of this section.

18 NEW SECTION. Sec. 18. If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

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