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SENATE BILL 5278

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State of Washington                      65th Legislature                      2017 Regular Session

By Senators Padden, Pedersen, and Kuderer

Read first time 01/19/17. Referred to Committee on Law & Justice.

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 recommending  
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.

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

1 ordered the person's commitment, and counsel for the committed  
2 person.

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

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

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

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

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

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

27 ~~(d) Any other issues the public safety review panel deems~~  
28 ~~relevant.))~~ The panel may adopt procedural and other rules necessary

29 to perform its functions. Hearings of the panel may be conducted in  
30 groups of four members designated by the panel chair. When conducting  
31 adjudicative functions, the panel shall have the authority to issue  
32 subpoenas and to compel compliance with its orders. Panel members are  
33 not removable during their term except for cause as determined by the  
34 Thurston county superior court.

35 (7) All panel decisions and recommendations must be made  
36 available to the public. All panel proceedings, except deliberations,  
37 must be open to the public. When practical and convenient, all panel  
38 adjudicative hearings must be held at western state hospital or  
39 eastern state hospital. If a person committed under this chapter is  
40 not a resident at the facility where the hearing is held, the panel



1 may allow the defendant to appear by telephone or video in lieu of a  
2 personal appearance. The panel may allow attorneys to appear by  
3 telephone or video and present witnesses in this manner. The panel  
4 shall follow all constitutional requirements applicable to civil  
5 commitment proceedings in conducting its hearings.

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

14 NEW SECTION. Sec. 17. The provisions of this act apply to all  
15 commitments under RCW 10.77.110, and all commitments made with a  
16 special finding under RCW 71.05.280(3), that exist before, on, or  
17 after the 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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