CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5415**

Chapter 120, Laws of 2023

68th Legislature

2023 Regular Session

PUBLIC DEFENSE SERVICES—NOT GUILTY BY REASON OF INSANITY

EFFECTIVE DATE: April 20, 2023

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| Passed by the Senate March 6, 2023  Yeas 49 Nays 0  DENNY HECK  **President of the Senate**  Passed by the House April 7, 2023  Yeas 96 Nays 1  LAURIE JINKINS  **Speaker of the House of Representatives** | CERTIFICATE  I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5415** as passed by the Senate and the House of Representatives on the dates hereon set forth.  SARAH BANNISTER  Secretary |
| Approved April 20, 2023 10:23 AM | April 21, 2023 |
| JAY INSLEE  **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

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**SUBSTITUTE SENATE BILL 5415**

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Passed Legislature - 2023 Regular Session

**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Trudeau, Pedersen, Dhingra, Saldaña, Valdez, and C. Wilson)

AN ACT Relating to public defense services for persons committed as not guilty by reason of insanity; amending RCW 2.70.020, 10.77.020, 10.77.140, 10.77.150, 10.77.165, 10.77.180, 10.77.190, 10.77.200, 10.77.205, and 10.77.250; reenacting and amending RCW 10.77.010; adding new sections to chapter 2.70 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. **Sec.**  Out of concern for inconsistent practices for providing postcommitment right to counsel services, the legislature directed the Washington state office of public defense to develop a statewide proposal to administer the right to counsel for persons acquitted by reason of insanity and committed to state psychiatric care.

In response to the office's proposal, the legislature intends that the office of public defense shall administer a program of statewide public defense services to ensure the right to counsel for indigent persons who are committed to state psychiatric care following acquittal by reason of insanity. The legislature intends that the office shall administer these postcommitment public defense services in a manner that provides for statewide effectiveness, efficiency, and equity.

**Sec.**  RCW 2.70.020 and 2021 c 328 s 3 are each amended to read as follows:

The director shall:

(1) Administer all state-funded services in the following program areas:

(a) Trial court criminal indigent defense, as provided in chapter 10.101 RCW;

(b) Appellate indigent defense, as provided in this chapter;

(c) Representation of indigent parents qualified for appointed counsel in dependency and termination cases, as provided in RCW 13.34.090 and 13.34.092;

(d) Extraordinary criminal justice cost petitions, as provided in RCW 43.330.190;

(e) Compilation of copies of DNA test requests by persons convicted of felonies, as provided in RCW 10.73.170;

(f) Representation of indigent respondents qualified for appointed counsel in sexually violent predator civil commitment cases, as provided in chapter 71.09 RCW; and

(g) Representation of indigent persons who are acquitted by reason of insanity and committed to state psychiatric care as provided in chapter 10.77 RCW;

(2) Provide access to attorneys for juveniles contacted by a law enforcement officer for whom a legal consultation is required under RCW 13.40.740;

((~~(2)~~)) (3) Submit a biennial budget for all costs related to the office's program areas;

((~~(3)~~)) (4) Establish administrative procedures, standards, and guidelines for the office's program areas, including cost-efficient systems that provide for authorized recovery of costs;

((~~(4)~~)) (5) Provide oversight and technical assistance to ensure the effective and efficient delivery of services in the office's program areas;

((~~(5)~~)) (6) Recommend criteria and standards for determining and verifying indigency. In recommending criteria for determining indigency, the director shall compile and review the indigency standards used by other state agencies and shall periodically submit the compilation and report to the legislature on the appropriateness and consistency of such standards;

((~~(6)~~)) (7) Collect information regarding indigent defense services funded by the state and report annually to the advisory committee, the legislature, and the supreme court;

((~~(7)~~)) (8) Coordinate with the supreme court and the judges of each division of the court of appeals to determine how appellate attorney services should be provided.

The office of public defense shall not provide direct representation of clients.

NEW SECTION. **Sec.**  A new section is added to chapter 2.70 RCW to read as follows:

In providing postcommitment public defense services for indigent persons who are committed to state psychiatric care following acquittal by reason of insanity under chapter 10.77 RCW, the director shall:

(1) In accordance with state contracting laws, contract with persons admitted to practice law in this state and with government or nongovernment organizations employing persons admitted to practice law in this state;

(2) Establish annual contract fees for public defense legal services within amounts appropriated;

(3) Ensure an indigent person qualified for public defense counsel has contracted counsel appointed to assist him or her;

(4) Consistent with applicable statutes, court orders, and court rules, establish office policies and procedures for the payment of expert costs, other professional and investigative costs, and litigation costs;

(5) Review and analyze existing caseload standards and make recommendations for updating caseload standards as appropriate for this area of legal practice; and

(6) Periodically, as needed, submit reports to the chief justice of the supreme court of the state of Washington, the governor, and the legislature. The purpose of such reports is to communicate new information regarding public defense services for persons who are committed following acquittal by reason of insanity under chapter 10.77 RCW and to recommend changes in statutes and court rules for the improvement of insanity commitment and postcommitment proceedings.

NEW SECTION. **Sec.**  A new section is added to chapter 2.70 RCW to read as follows:

(1) All powers, duties, and functions of county government and the department of social and health services pertaining to public defense services for indigent persons who are committed following acquittal by reason of insanity under chapter 10.77 RCW are transferred to the office of public defense. County government and the department of social and health services shall retain powers, duties, and functions to ensure public defense services for indigent persons prior to acquittal by reason of insanity under chapter 10.77 RCW.

(2)(a) The office of public defense may request copies of records in the possession of a county public defense administrator, the department of social and health services, or the behavioral health administration pertaining to the powers, functions, and duties transferred, which shall be timely delivered to the custody of the office of public defense. In order to implement the office's administration and oversight of postcommitment public defense services authorized by this act, the office of public defense shall be entitled to personal identifying information for any person committed following acquittal by reason of insanity, as well as information about underlying criminal or other pending court proceedings, and the identity of any existing legal counsel. The county public defense administrator, the department of social and health services, or the behavioral health administration shall not require the office of public defense to obtain consent by the person committed following acquittal by reason of insanity in order to share this information. The office of public defense shall maintain the confidentiality of all confidential information included in the records. Records may be transferred electronically or in hard copy, as agreed by the agencies. When the office of public defense has satisfied its business needs related to the transferred records, the office shall destroy the records following appropriate procedures.

(b) All funds, credits, or other assets held by the department of social and health services in connection with the powers, functions, and duties transferred shall be assigned to the office of public defense.

(c) Any appropriations made to the department of social and health services for carrying out the powers, functions, and duties transferred shall, on July 1, 2023, be transferred and credited to the office of public defense.

(3) Notwithstanding July 1, 2023, if implementation of office of public defense contracts would result in the substitution of counsel within 180 days of a scheduled hearing, the director of the office of public defense may continue defense services with existing counsel to facilitate continuity of effective representation and avoid further continuance of a trial. When existing counsel is maintained, payment to complete the trial shall be prorated based on standard contract fees established by the office of public defense under this act and, at the director's discretion, may include extraordinary compensation based on attorney documentation.

**Sec.**  RCW 10.77.010 and 2022 c 288 s 1 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "Admission" means acceptance based on medical necessity, of a person as a patient.

(2) "Authority" means the Washington state health care authority.

(3) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less-restrictive setting.

(4) "Community behavioral health agency" has the same meaning as "licensed or certified behavioral health agency" defined in RCW 71.24.025.

(5) "Conditional release" means modification of a court-ordered commitment, which may be revoked upon violation of any of its terms.

(6) A "criminally insane" person means any person who has been acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions.

(7) "Department" means the state department of social and health services.

(8) "Designated crisis responder" has the same meaning as provided in RCW 71.05.020.

(9) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter, pending evaluation.

(10) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist or psychologist, or a social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

(11) "Developmental disability" means the condition as defined in RCW 71A.10.020((~~(5)~~)).

(12) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order.

(13) "Furlough" means an authorized leave of absence for a resident of a state institution operated by the department designated for the custody, care, and treatment of the criminally insane, consistent with an order of conditional release from the court under this chapter, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or institutional staff, while on such unescorted leave.

(14) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct.

(15) "History of one or more violent acts" means violent acts committed during: (a) The ((~~ten-year~~)) 10-year period of time prior to the filing of criminal charges; plus (b) the amount of time equal to time spent during the ((~~ten-year~~)) 10-year period in a mental health facility or in confinement as a result of a criminal conviction.

(16) "Immediate family member" means a spouse, child, stepchild, parent, stepparent, grandparent, sibling, or domestic partner.

(17) "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

(18) "Indigent" means any person who is indigent as defined in RCW 10.101.010, or financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to the person or his or her family.

(19) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for an individual with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual release, and a projected possible date for release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences.

(20) "Professional person" means:

(a) A psychiatrist licensed as a physician and surgeon in this state who has, in addition, completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology or the American osteopathic board of neurology and psychiatry;

(b) A psychologist licensed as a psychologist pursuant to chapter 18.83 RCW;

(c) A psychiatric advanced registered nurse practitioner, as defined in RCW 71.05.020; or

(d) A social worker with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

(21) "Release" means legal termination of the court-ordered commitment under the provisions of this chapter.

(22) "Secretary" means the secretary of the department of social and health services or his or her designee.

(23) "Treatment" means any currently standardized medical or mental health procedure including medication.

(24) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by behavioral health administrative services organizations and their staffs, by managed care organizations and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, behavioral health administrative services organizations, managed care organizations, or a treatment facility if the notes or records are not available to others.

(25) "Violent act" means behavior that: (a)(i) Resulted in; (ii) if completed as intended would have resulted in; or (iii) was threatened to be carried out by a person who had the intent and opportunity to carry out the threat and would have resulted in, homicide, nonfatal injuries, or substantial damage to property; or (b) recklessly creates an immediate risk of serious physical injury to another person. As used in this subsection, "nonfatal injuries" means physical pain or injury, illness, or an impairment of physical condition. "Nonfatal injuries" shall be construed to be consistent with the definition of "bodily injury," as defined in RCW 9A.04.110.

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

(1) At any and all stages of the proceedings pursuant to this chapter, any person subject to the provisions of this chapter shall be entitled to the assistance of counsel, and if the person is indigent the court shall appoint counsel to assist him or her. Prior to acquittal by reason of insanity under this chapter, the court shall appoint counsel administered by the county where the criminal charges are filed.

At the time an indigent individual is acquitted by reason of insanity and is committed to state psychiatric care, the court shall immediately notify the Washington state office of public defense of the need for representation during the term of commitment. The office of public defense shall provide counsel to represent the person throughout the term of commitment, including during any period of conditional release, until legal termination of commitment and final unconditional release, as provided in chapter 2.70 RCW.

(2) A person may waive his or her right to counsel; but such waiver shall only be effective if a court makes a specific finding that he or she is or was competent to so waive. In making such findings, the court shall be guided but not limited by the following standards: Whether the person attempting to waive the assistance of counsel, does so understanding:

(a) The nature of the charges;

(b) The statutory offense included within them;

(c) The range of allowable punishments thereunder;

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

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

((~~(2)~~)) (3) Whenever any person is subjected to an examination pursuant to any provision of this chapter, he or she may retain an expert or professional person to perform an examination in his or her behalf. In the case of a person who is indigent, the court shall upon his or her request assist the person in obtaining an expert or professional person to perform an examination or participate in the hearing on his or her behalf. An expert or professional person obtained by an indigent person pursuant to the provisions of this chapter shall be compensated for his or her services out of funds of the department, in an amount determined by the secretary to be fair and reasonable, except that an expert or professional person obtained by a person who is committed following acquittal by reason of insanity and committed to state psychiatric care shall be compensated out of funds of the office of public defense as provided in policies and procedures under chapter 2.70 RCW, in a manner consistent with the rules of professional conduct and the standards for indigent defense.

((~~(3)~~)) (4) Any time the defendant is being examined by court appointed experts or professional persons pursuant to the provisions of this chapter, the defendant shall be entitled to have his or her attorney present.

((~~(4)~~)) (5) In a competency evaluation conducted under this chapter, the defendant may refuse to answer any question if he or she believes his or her answers may tend to incriminate him or her or form links leading to evidence of an incriminating nature.

((~~(5)~~)) (6) In a sanity evaluation conducted under this chapter, if a defendant refuses to answer questions or to participate in an examination conducted in response to the defendant's assertion of an insanity defense, the court shall exclude from evidence at trial any testimony or evidence from any expert or professional person obtained or retained by the defendant.

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

(1) Each person committed to a hospital or other facility or conditionally released pursuant to this chapter shall have a current examination of his or her mental condition made by one or more experts or professional persons at least once every six months. The person may retain, or if the person is indigent and so requests, the court ((~~may appoint~~)) shall assist the person in obtaining a qualified expert or professional person to examine him or her, and such expert or professional person shall have access to all hospital records concerning the person. An expert or professional person obtained by an indigent person who is committed to state psychiatric care following acquittal by reason of insanity shall be compensated out of funds of the office of public defense as provided in policies and procedures under chapter 2.70 RCW, in a manner consistent with the rules of professional conduct and the standards for indigent defense.

(2) In the case of a committed or conditionally released person who ((~~is developmentally disabled~~)) has a developmental disability, the expert shall be a developmental disabilities professional. The secretary, upon receipt of the periodic report, shall provide written notice to the court of commitment of compliance with the requirements of this section.

**Sec.**  RCW 10.77.150 and 2021 c 263 s 1 are each amended to read as follows:

(1) Persons examined pursuant to RCW 10.77.140 may make application to the secretary for conditional release. The secretary shall, after considering the reports of experts or professional persons conducting the examination pursuant to RCW 10.77.140, forward to the court of the county which ordered the person's commitment the person's application for conditional release as well as the secretary's recommendations concerning the application and any proposed terms and conditions upon which the secretary reasonably believes the person can be conditionally released. Conditional release may also contemplate partial release for work, training, or educational purposes.

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

(3)(a) The court of the county which ordered the person's commitment, upon receipt of an application or recommendation for conditional release with the secretary's recommendation for conditional release terms and conditions, shall within ((~~thirty~~)) 30 days schedule a hearing. The court may schedule a hearing on applications recommended for disapproval by the secretary.

(b) The prosecuting attorney shall represent the state at such hearings and shall have the right to have the person examined by an expert or professional person of the prosecuting attorney's choice. If the committed person is indigent, and he or she so requests, the court shall ((~~appoint~~)) assist the person in obtaining a qualified expert or professional person to examine the person on his or her behalf. An expert or professional person obtained by an indigent person who is committed to state psychiatric care following acquittal by reason of insanity shall be compensated out of funds of the office of public defense as provided in policies and procedures under chapter 2.70 RCW, in a manner consistent with the rules of professional conduct and the standards for indigent defense.

(c) The issue to be determined at such a hearing is whether or not the person may be released conditionally to less restrictive alternative treatment under the supervision of a multidisciplinary transition team under conditions imposed by the court, including access to services under RCW 10.77.175 without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security.

(d) In cases that come before the court under subsection (1) or (2) of this section, the court may deny conditional release to a less restrictive alternative only on the basis of substantial evidence. The court may modify the suggested terms and conditions on which the person is to be conditionally released. Pursuant to the determination of the court after hearing, the committed person shall thereupon be released on such conditions as the court determines to be necessary, or shall be remitted to the custody of the secretary.

(4) If the order of conditional release provides for the conditional release of the person to a less restrictive alternative, including residential treatment or treatment in the community, the conditional release order must also include:

(a) A requirement for the committed person to be supervised by a multidisciplinary transition team, including a specially trained community corrections officer, a representative of the department of social and health services, and a representative of the community behavioral health agency providing treatment to the person under RCW 10.77.175.

(i) The court may omit appointment of the representative of the community behavioral health agency if the conditional release order does not require participation in behavioral health treatment;

(ii) The court may omit the appointment of a community corrections officer if it makes a special finding that the appointment of a community corrections officer would not facilitate the success of the person, or the safety of the person and the community;

(b) A requirement for the person to comply with conditions of supervision established by the court which shall include at a minimum reporting as directed to a designated member of the transition team, remaining within prescribed geographical boundaries, and notifying the transition team prior to making any change in the person's address or employment. If the person is not in compliance with the court-ordered conditions of release, the community corrections officer or another designated transition team member shall notify the secretary or the secretary's designee; and

(c) If the court requires participation in behavioral health treatment, the name of the licensed or certified behavioral health agency responsible for identifying the services the person will receive under RCW 10.77.175, and a requirement that the person cooperate with the services planned by the licensed or certified behavioral health agency. The licensed or certified behavioral health agency must comply with the reporting requirements of RCW 10.77.160, and must immediately report to the court, prosecutor, and defense counsel any substantial withdrawal or disengagement from medication or treatment, or any change in the person's mental health condition that renders him or her a potential risk to the public.

(5) The role of the transition team appointed under subsection (4) of this section shall be to facilitate the success of the person on the conditional release order by monitoring the person's progress in treatment, compliance with court-ordered conditions, and to problem solve around extra support the person may need or circumstances that may arise that threaten the safety of the person or the community. The transition team may develop a monitoring plan that may be carried out by any member of the team. The transition team shall meet according to a schedule developed by the team, and shall communicate as needed if issues arise that require the immediate attention of the team.

(6) The department of corrections shall collaborate with the department to develop specialized training for community corrections officers under this section. The lack of a trained community corrections officer must not be the cause of delay to entry of a conditional release order. Another community corrections officer may be appointed if no specially trained officer is available.

(7) Any person, whose application for conditional release has been denied, may reapply after a period of six months from the date of denial, or sooner with the support of the department.

(8) A person examined under RCW 10.77.140 or the department may make a motion for limited conditional release under this section, on the grounds that there is insufficient evidence that the person may be released conditionally to less restrictive alternative treatment under subsection (3)(c) of this section, but the person would benefit from the opportunity to exercise increased privileges while remaining under the custody and supervision of the department and with the supervision of the department these increased privileges can be exercised without substantial danger to other persons or substantial likelihood of committing criminal acts jeopardizing public safety or security. The department may respond to a person's application for conditional release by instead supporting limited conditional release.

**Sec.**  RCW 10.77.165 and 2011 c 305 s 6 are each amended to read as follows:

(1) In the event of an escape by a person committed under this chapter from a state facility or the disappearance of such a person on conditional release or other authorized absence, the superintendent shall provide notification of the person's escape or disappearance for the public's safety or to assist in the apprehension of the person.

(a) The superintendent shall notify:

(i) State and local law enforcement officers located in the city and county where the person escaped and in the city and county which had jurisdiction of the person on the date of the applicable offense;

(ii) Other appropriate governmental agencies; ((~~and~~))

(iii) The person's attorney of record; and

(iv) The person's relatives.

(b) The superintendent shall provide the same notification as required by (a) of this subsection to the following, if such notice has been requested in writing about a specific person committed under this chapter:

(i) The victim of the crime for which the person was convicted or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings if the person was charged with a violent offense; and

(iii) Any other appropriate persons.

(2) Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

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

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

Each person conditionally released pursuant to RCW 10.77.150 shall have his or her case reviewed by the court which conditionally released him or her no later than one year after such release and no later than every two years thereafter, such time to be scheduled by the court. Review may occur in a shorter time or more frequently, if the court, in its discretion, on its own motion, or on motion of the person, the secretary of social and health services, the secretary of corrections, medical or mental health practitioner, or the prosecuting attorney, so determines. The sole question to be determined by the court is whether the person shall continue to be conditionally released. The court in making its determination shall be aided by the periodic reports filed pursuant to RCW 10.77.140 and 10.77.160, and the opinions of the secretary and other experts or professional persons. If the conditionally released person is indigent, and so requests, the court shall assist the person in obtaining a qualified expert or professional person to examine the person on his or her behalf. An expert or professional person obtained by a conditionally released indigent person who was committed to state psychiatric care following acquittal by reason of insanity shall be compensated out of funds of the office of public defense as provided in policies and procedures under chapter 2.70 RCW, in a manner consistent with the rules of professional conduct and the standards for indigent defense.

**Sec.**  RCW 10.77.190 and 2010 c 263 s 7 are each amended to read as follows:

(1) Any person submitting reports pursuant to RCW 10.77.160, the secretary, or the prosecuting attorney may petition the court to, or the court on its own motion may schedule an immediate hearing for the purpose of modifying the terms of conditional release if the petitioner or the court believes the released person is failing to adhere to the terms and conditions of his or her conditional release or is in need of additional care and treatment.

(2) If the prosecuting attorney, the secretary of social and health services, the secretary of corrections, or the court, after examining the report filed with them pursuant to RCW 10.77.160, or based on other information received by them, reasonably believes that a conditionally released person is failing to adhere to the terms and conditions of his or her conditional release the court or secretary of social and health services or the secretary of corrections may order that the conditionally released person be apprehended and taken into custody. The court and the person's attorney of record shall be notified of the apprehension before the close of the next judicial day. The court shall schedule a hearing within ((~~thirty~~)) 30 days to determine whether or not the person's conditional release should be modified or revoked. Both the prosecuting attorney and the conditionally released person shall have the right to request an immediate mental examination of the conditionally released person. If the conditionally released person is indigent, and so requests, the court ((~~or secretary of social and health services or the secretary of corrections or their designees shall, upon request, assist him or her in obtaining a qualified expert or professional person to conduct the examination~~)) shall assist the person in obtaining a qualified expert or professional person to examine the person on his or her own behalf. An expert or professional person obtained by a conditionally released indigent person who was committed into state psychiatric care following acquittal by reason of insanity shall be compensated out of funds of the office of public defense as provided in policies and procedures under chapter 2.70 RCW, in a manner consistent with the rules of professional conduct and the standards for indigent defense.

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

(4) The court, upon receiving notification of the apprehension, shall promptly schedule a hearing. The issue to be determined is whether the conditionally released person did or did not adhere to the terms and conditions of his or her release, or whether the person presents a threat to public safety. Pursuant to the determination of the court upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or his or her conditional release shall be revoked and he or she shall be committed subject to release only in accordance with provisions of this chapter.

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

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

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

(3) The petition shall be served upon the court and the prosecuting attorney. The court, upon receipt of the petition for release, shall within ((~~forty-five~~)) 45 days order a hearing. Continuance of the hearing date shall only be allowed for good cause shown. The prosecuting attorney shall represent the state, and shall have the right to have the person who is the subject of the petition examined by an expert or professional person of the prosecuting attorney's choice. If the secretary is the petitioner, the attorney general shall represent the secretary. If the person who is the subject of the petition is indigent, and the person so requests, the court shall ((~~appoint~~)) assist the person in obtaining a qualified expert or professional person to examine him or her. An expert or professional person obtained by an indigent person who was committed to state psychiatric care following acquittal by reason of insanity shall be compensated out of funds of the office of public defense as provided in policies and procedures under chapter 2.70 RCW, in a manner consistent with the rules of professional conduct and the standards for indigent defense. If the person who is the subject of the petition has a developmental disability, the examination shall be performed by a developmental disabilities professional. The hearing shall be before a jury if demanded by either the petitioner or the prosecuting attorney. The burden of proof shall be upon the petitioner to show by a preponderance of the evidence that the person who is the subject of the petition no longer presents, as a result of a mental disease or defect, a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions. If the person who is the subject of the petition will be transferred to a state correctional institution or facility upon release to serve a sentence for any class A felony, the petitioner must show that the person's mental disease or defect is manageable within a state correctional institution or facility, but must not be required to prove that the person does not present either a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security, if released.

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

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

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

**Sec.**  RCW 10.77.205 and 2009 c 521 s 27 are each amended to read as follows:

(1)(a) At the earliest possible date, and in no event later than ((~~thirty~~)) 30 days before conditional release, release, authorized furlough pursuant to RCW 10.77.163, or transfer to a less-restrictive facility than a state mental hospital, the superintendent shall send written notice of the conditional release, release, authorized furlough, or transfer of a person who has been found not guilty of a sex, violent, or felony harassment offense by reason of insanity and who is now in the custody of the department pursuant to this chapter, to the following:

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

(ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under this chapter:

(i) The victim of the crime for which the person was committed or the victim's next of kin if the crime was a homicide;

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

(iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(c) In addition to the notice requirements of (a) and (b) of this subsection, the superintendent shall comply with RCW 10.77.163.

(d) The ((~~thirty-day~~)) 30-day notice requirement contained in (a) and (b) of this subsection shall not apply to emergency medical furloughs.

(e) The existence of the notice requirements in (a) and (b) of this subsection shall not require any extension of the release date in the event the release plan changes after notification.

(2) If a person who has been found not guilty of a sex, violent, or felony harassment offense by reason of insanity and who is committed under this chapter escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person resided immediately before the person's arrest, and the person's attorney of record. If previously requested, the superintendent shall also notify the witnesses and the victim, if any, of the crime for which the person was committed or the victim's next of kin if the crime was a homicide. The superintendent shall also notify appropriate persons pursuant to RCW 10.77.165. If the person is recaptured, the secretary shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

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

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

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

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

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

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

(d) "Authorized furlough" means a furlough granted after compliance with RCW 10.77.163;

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

**Sec.**  RCW 10.77.250 and 2022 c 288 s 6 are each amended to read as follows:

(1) Within amounts appropriated, the department shall be responsible for all costs relating to the evaluation and inpatient treatment of persons committed to it pursuant to any provisions of this chapter, and the logistical and supportive services pertaining thereto except as otherwise provided by law. Reimbursement may be obtained by the department pursuant to RCW 43.20B.330.

(2) Within amounts appropriated, the authority shall be responsible for all costs relating to outpatient competency restoration programs.

(3) The office of public defense shall be responsible for costs of public defense services, including defense expert and professional services, for indigent persons acquitted by reason of insanity throughout the term of their commitment to state psychiatric care, including during any period of conditional release, until legal termination of commitment and final unconditional release.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**

Passed by the Senate March 6, 2023.

Passed by the House April 7, 2023.

Approved by the Governor April 20, 2023.

Filed in Office of Secretary of State April 21, 2023.