

**ESSB 5690** - H COMM AMD

By Committee on Civil Rights & Judiciary

**ADOPTED AND ENGROSSED 02/27/2024**

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

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

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

18 (2) If the defendant has been found not guilty by reason of  
19 insanity and a substantial danger, or presents a substantial  
20 likelihood of committing criminal acts jeopardizing public safety or  
21 security, so as to require treatment then the secretary shall  
22 immediately cause the defendant to be evaluated to ascertain if the  
23 defendant (~~(is developmentally disabled)~~) has a developmental  
24 disability. When appropriate, and subject to available funds, the  
25 defendant may be committed to a program specifically reserved for the  
26 treatment and training of (~~(developmentally disabled)~~) persons with  
27 developmental disabilities. A person so committed shall receive  
28 habilitation services according to an individualized service plan  
29 specifically developed to treat the behavior which was the subject of  
30 the criminal proceedings. The treatment program shall be administered  
31 by developmental disabilities professionals and others trained  
32 specifically in the needs of (~~(developmentally disabled)~~) persons

1 with developmental disabilities. The treatment program shall provide  
2 physical security to a degree consistent with the finding that the  
3 defendant is dangerous and may incorporate varying conditions of  
4 security and alternative sites when the dangerousness of any  
5 particular defendant makes this necessary. The department may limit  
6 admissions to this specialized program in order to ensure that  
7 expenditures for services do not exceed amounts appropriated by the  
8 legislature and allocated by the department for such services. The  
9 department may establish admission priorities in the event that the  
10 number of eligible persons exceeds the limits set by the department.

11 (3) If it is found that such defendant is not a substantial  
12 danger to other persons, and does not present a substantial  
13 likelihood of committing criminal acts jeopardizing public safety or  
14 security, but that he or she is in need of control by the court or  
15 other persons or institutions, the court shall direct the defendant's  
16 conditional release to a less restrictive alternative under  
17 conditions that satisfy the minimum requirements of RCW 10.77.150 and  
18 10.77.175.

19 **Sec. 2.** RCW 10.77.010 and 2023 c 453 s 2 and 2023 c 120 s 5 are  
20 each reenacted and amended to read as follows:

21 As used in this chapter:

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

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

25 (3) "Clinical intervention specialist" means a licensed  
26 professional with prescribing authority who is employed by or  
27 contracted with the department to provide direct services, enhanced  
28 oversight and monitoring of the behavioral health status of in-  
29 custody defendants who have been referred for evaluation or  
30 restoration services related to competency to stand trial and who  
31 coordinate treatment options with forensic navigators, the  
32 department, and jail health services.

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

36 (5) "Community behavioral health agency" has the same meaning as  
37 "licensed or certified behavioral health agency" defined in RCW  
38 71.24.025.

1 (6) "Conditional release" means modification of a court-ordered  
2 commitment, which may be revoked upon violation of any of its terms.  
3 A conditional release includes partial conditional release where a  
4 person continues inpatient at a department institution or facility  
5 designated to provide treatment for persons acquitted as not guilty  
6 by reason of insanity under RCW 10.77.150, or conditional release to  
7 a less restrictive setting that meets the minimum requirements of RCW  
8 10.77.150 and 10.77.175 where the person resides in the community.

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

15 (8) "Department" means the state department of social and health  
16 services.

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

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

21 (11) "Developmental disabilities professional" means a person who  
22 has specialized training and experience in directly treating or  
23 working with persons with developmental disabilities and is a  
24 psychiatrist or psychologist, or a social worker, and such other  
25 developmental disabilities professionals as may be defined by rules  
26 adopted by the secretary.

27 (12) "Developmental disability" means the condition as defined in  
28 RCW 71A.10.020.

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

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

39 (15) "Genuine doubt as to competency" means that there is  
40 reasonable cause to believe, based upon actual interactions with or

1 observations of the defendant or information provided by counsel,  
2 that a defendant is incompetent to stand trial.

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

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

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

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

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

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

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

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

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

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

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

39 (f) Where relevant in light of past criminal behavior and due  
40 consideration for public safety, the criteria for proposed movement

1 to less-restrictive settings, criteria for proposed eventual release,  
2 and a projected possible date for release; and

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

5 (22) "Professional person" means:

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

13 (b) A psychologist licensed as a psychologist pursuant to chapter  
14 18.83 RCW;

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

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

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

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

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

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

37 (27) "Violent act" means behavior that: (a) (i) Resulted in; (ii)  
38 if completed as intended would have resulted in; or (iii) was  
39 threatened to be carried out by a person who had the intent and  
40 opportunity to carry out the threat and would have resulted in,

1 homicide, nonfatal injuries, or substantial damage to property; or  
2 (b) recklessly creates an immediate risk of serious physical injury  
3 to another person. As used in this subsection, "nonfatal injuries"  
4 means physical pain or injury, illness, or an impairment of physical  
5 condition. "Nonfatal injuries" shall be construed to be consistent  
6 with the definition of "bodily injury," as defined in RCW 9A.04.110.

7 **Sec. 3.** RCW 10.77.150 and 2023 c 120 s 8 are each amended to  
8 read as follows:

9 (1) Persons examined pursuant to RCW 10.77.140 may make  
10 application to the secretary for conditional release. The secretary  
11 shall, after considering the reports of experts or professional  
12 persons conducting the examination pursuant to RCW 10.77.140, forward  
13 to the court of the county which ordered the person's commitment the  
14 person's application for conditional release as well as the  
15 secretary's recommendations concerning the application (~~and~~). The  
16 secretary's recommendation must include any proposed terms and  
17 conditions upon which the secretary reasonably believes the person  
18 can be conditionally released. (~~Conditional release may also~~  
19 ~~contemplate partial release for work, training, or educational~~  
20 ~~purposes.)) Recommendations for terms and conditions for conditional  
21 release to a less restrictive alternative must ensure that the  
22 conditional release will satisfy the minimum requirements of this  
23 section and RCW 10.77.175. The department of corrections may provide  
24 information to the secretary as to the proposed terms and conditions  
25 for cases considered for partial conditional release or conditional  
26 release to a less restrictive alternative for which they have court-  
27 ordered supervision.~~

28 (2) In instances in which persons examined pursuant to RCW  
29 10.77.140 have not made application to the secretary for conditional  
30 release, but the secretary, after considering the reports of experts  
31 or professional persons conducting the examination pursuant to RCW  
32 10.77.140, reasonably believes the person may be conditionally  
33 released, the secretary may submit a recommendation for conditional  
34 release to the court of the county that ordered the person's  
35 commitment. The secretary's recommendation must include any proposed  
36 terms and conditions upon which the secretary reasonably believes the  
37 person may be conditionally released. (~~Conditional release may also~~  
38 ~~include partial release for work, training, or educational~~  
39 ~~purposes.)) Recommendations for terms and conditions for conditional~~

1 release to a less restrictive alternative must ensure that the  
2 conditional release will satisfy the minimum requirements of this  
3 section and RCW 10.77.175. The department of corrections may provide  
4 information to the secretary as to the proposed terms and conditions  
5 for cases considered for partial conditional release or conditional  
6 release to a less restrictive alternative for which they have court-  
7 ordered supervision. Notice of the secretary's recommendation under  
8 this subsection must be provided to the person for whom the secretary  
9 has made the recommendation for conditional release and to his or her  
10 attorney.

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

17 (b) The prosecuting attorney shall represent the state at such  
18 hearings and shall have the right to have the person examined by an  
19 expert or professional person of the prosecuting attorney's choice.  
20 If the committed person is indigent(~~(7)~~) and (~~he or she~~) so  
21 requests, the court shall assist the person in obtaining a qualified  
22 expert or professional person to examine the person on (~~his or her~~)  
23 the person's behalf. An expert or professional person obtained by an  
24 indigent person who is committed to state psychiatric care following  
25 acquittal by reason of insanity shall be compensated out of funds of  
26 the office of public defense as provided in policies and procedures  
27 under chapter 2.70 RCW, in a manner consistent with the rules of  
28 professional conduct and the standards for indigent defense.

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

39 (d) In cases that come before the court under subsection (1) or  
40 (2) of this section, the court may deny conditional release (~~to a~~

1 ~~less restrictive alternative~~) only on the basis of substantial  
2 evidence. The court may modify the suggested terms and conditions on  
3 which the person is to be conditionally released. Pursuant to the  
4 determination of the court after hearing, the committed person shall  
5 thereupon be released on such conditions as the court determines to  
6 be necessary, or shall be remitted to the custody of the secretary.

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

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

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

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

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

34 (~~(e)~~) (iii) If the court requires participation in behavioral  
35 health treatment, the name of the licensed or certified behavioral  
36 health agency responsible for identifying the services the person  
37 will receive under RCW 10.77.175, and a requirement that the person  
38 cooperate with the services planned by the licensed or certified  
39 behavioral health agency. The licensed or certified behavioral health  
40 agency must comply with the reporting requirements of RCW 10.77.160,



1 and must immediately report to the court, prosecutor, and defense  
2 counsel any substantial withdrawal or disengagement from medication  
3 or treatment, or any change in the person's mental health condition  
4 that renders him or her a potential risk to the public.

5 ~~((5))~~ (b) The court may not order conditional release to a  
6 proposed less restrictive alternative unless conditions ensure the  
7 conditional release will satisfy the minimum requirements set forth  
8 in this section and RCW 10.77.175.

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

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

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

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

1 application for conditional release by instead supporting (~~limited~~)  
2 partial conditional release.

3 **Sec. 4.** RCW 10.77.175 and 2022 c 210 s 22 are each amended to  
4 read as follows:

5 (1) Conditional release planning should start at admission and  
6 proceed in coordination between the department and the person's  
7 managed care organization, or behavioral health administrative  
8 services organization if the person is not eligible for medical  
9 assistance under chapter 74.09 RCW. If needed, the department shall  
10 assist the person to enroll in medical assistance in suspense status  
11 under RCW 74.09.670. The state hospital liaison for the managed care  
12 organization or behavioral health administrative services  
13 organization shall facilitate conditional release planning in  
14 collaboration with the department.

15 (2) Less restrictive alternative treatment pursuant to a  
16 conditional release order, at a minimum, (~~includes~~) addresses the  
17 following services:

18 (a) Assignment of a care coordinator;

19 (b) An intake evaluation with the provider of the conditional  
20 treatment;

21 (c) A psychiatric evaluation or a substance use disorder  
22 evaluation, or both;

23 (d) A schedule of regular contacts with the provider of the less  
24 restrictive alternative treatment services for the duration of the  
25 order;

26 (e) A transition plan addressing access to continued services at  
27 the expiration of the order;

28 (f) An individual crisis plan;

29 (g) Consultation about the formation of a mental health advance  
30 directive under chapter 71.32 RCW;

31 (h) Appointment of a transition team under RCW 10.77.150; and

32 (i) Notification to the care coordinator assigned in (a) of this  
33 subsection and to the transition team as provided in RCW 10.77.150 if  
34 reasonable efforts to engage the client fail to produce substantial  
35 compliance with court-ordered treatment conditions.

36 (3) Less restrictive alternative treatment pursuant to a  
37 conditional release order may additionally include requirements to  
38 participate in the following services:

39 (a) Medication management;

- 1 (b) Psychotherapy;
- 2 (c) Nursing;
- 3 (d) Substance use disorder counseling;
- 4 (e) Residential treatment;
- 5 (f) Partial hospitalization;
- 6 (g) Intensive outpatient treatment;
- 7 (h) Support for housing, benefits, education, and employment; and
- 8 (i) Periodic court review.

9 (4) Nothing in this section prohibits items in subsection (2) of  
10 this section from beginning before the conditional release of the  
11 individual.

12 (5) If the person was provided with involuntary medication under  
13 RCW 10.77.094 or pursuant to a judicial order during the involuntary  
14 commitment period, the less restrictive alternative treatment  
15 pursuant to the conditional release order may authorize the less  
16 restrictive alternative treatment provider or its designee to  
17 administer involuntary antipsychotic medication to the person if the  
18 provider has attempted and failed to obtain the informed consent of  
19 the person and there is a concurring medical opinion approving the  
20 medication by a psychiatrist, physician assistant working with a  
21 supervising psychiatrist, psychiatric advanced registered nurse  
22 practitioner, or physician or physician assistant in consultation  
23 with an independent mental health professional with prescribing  
24 authority.

25 (6) Less restrictive alternative treatment pursuant to a  
26 conditional release order must be administered by a provider that is  
27 certified or licensed to provide or coordinate the full scope of  
28 services required under the less restrictive alternative order and  
29 that has agreed to assume this responsibility.

30 (7) The care coordinator assigned to a person ordered to less  
31 restrictive alternative treatment pursuant to a conditional release  
32 order must, in collaboration with and on behalf of the transition  
33 team, submit an individualized plan for the person's treatment  
34 services to the court that entered the order. An initial plan must be  
35 submitted as soon as possible following the intake evaluation and a  
36 revised plan must be submitted upon any subsequent modification in  
37 which a type of service is removed from or added to the treatment  
38 plan.

39 (8) A care coordinator may disclose information and records  
40 related to mental health treatment under RCW 70.02.230(2)(k) for

1 purposes of implementing less restrictive alternative treatment  
2 pursuant to a conditional release order.

3 (9) For the purpose of this section, "care coordinator" means a  
4 representative from the department of social and health services who  
5 coordinates the activities of less restrictive alternative treatment  
6 pursuant to a conditional release order. The care coordinator  
7 coordinates activities with the person's transition team that are  
8 necessary for enforcement and continuation of the conditional release  
9 order and is responsible for coordinating service activities with  
10 other agencies (~~and establishing and maintaining~~). The transition  
11 teams establish and maintain a therapeutic relationship with the  
12 individual on a continuing basis.

13 **Sec. 5.** RCW 10.77.160 and 2010 c 263 s 6 are each amended to  
14 read as follows:

15 When a person conditionally released (~~person~~) to a less  
16 restrictive alternative is required by the terms of his or her  
17 conditional release to report to a physician, department of  
18 corrections community corrections officer, or medical or mental  
19 health practitioner on a regular or periodic basis, the physician,  
20 department of corrections community corrections officer, medical or  
21 mental health practitioner, or other such person shall monthly, for  
22 the first six months after release and semiannually thereafter, or as  
23 otherwise directed by the court, submit to the court, the secretary,  
24 the institution from which released, and to the prosecuting attorney  
25 of the county in which the person was committed, a report stating  
26 whether the person is adhering to the terms and conditions of his or  
27 her conditional release, and detailing any arrests or criminal  
28 charges filed and any significant change in the person's mental  
29 health condition or other circumstances. Such reports may be combined  
30 for members of a transition team under RCW 10.77.150 and submitted by  
31 a designated member unless otherwise directed by the court."

32 Correct the title.

--- END ---