

SSB 5690 - S AMD 478
By Senator Dhingra

ADOPTED 01/24/2024

1 Beginning on page 2, line 32, strike all of sections 2 and 3 and
2 insert the following:

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

5 As used in this chapter:

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

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

9 (3) "Clinical intervention specialist" means a licensed
10 professional with prescribing authority who is employed by or
11 contracted with the department to provide direct services, enhanced
12 oversight and monitoring of the behavioral health status of in-
13 custody defendants who have been referred for evaluation or
14 restoration services related to competency to stand trial and who
15 coordinate treatment options with forensic navigators, the
16 department, and jail health services.

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

20 (5) "Community behavioral health agency" has the same meaning as
21 "licensed or certified behavioral health agency" defined in RCW
22 71.24.025.

23 (6) "Conditional release" means modification of a court-ordered
24 commitment, which may be revoked upon violation of any of its terms.
25 A conditional release includes partial conditional release where a
26 person continues inpatient at a state hospital under RCW 10.77.150,
27 or conditional release to a less restrictive setting that meets the
28 minimum requirements of RCW 10.77.175 where the person resides in the
29 community.

30 (7) A "criminally insane" person means any person who has been
31 acquitted of a crime charged by reason of insanity, and thereupon
32 found to be a substantial danger to other persons or to present a

1 substantial likelihood of committing criminal acts jeopardizing
2 public safety or security unless kept under further control by the
3 court or other persons or institutions.

4 (8) "Department" means the state department of social and health
5 services.

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

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

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

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

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

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

28 (15) "Genuine doubt as to competency" means that there is
29 reasonable cause to believe, based upon actual interactions with or
30 observations of the defendant or information provided by counsel,
31 that a defendant is incompetent to stand trial.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (22) "Professional person" means:

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

1 neurology or the American osteopathic board of neurology and
2 psychiatry;

3 (b) A psychologist licensed as a psychologist pursuant to chapter
4 18.83 RCW;

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

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

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

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

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

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

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

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

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

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

27 (3) (a) The court of the county which ordered the person's
28 commitment, upon receipt of an application or recommendation for
29 conditional release with the secretary's recommendation for
30 (~~conditional release~~) terms and conditions upon which the secretary
31 reasonably believes the person can be conditionally released for
32 partial conditional release or that meet the minimum statutory
33 requirements in RCW 10.77.160 and 10.77.175 for conditional release
34 to a less restrictive alternative, shall within 30 days schedule a
35 hearing. The court may schedule a hearing on applications recommended
36 for disapproval by the secretary.

37 (b) The prosecuting attorney shall represent the state at such
38 hearings and shall have the right to have the person examined by an
39 expert or professional person of the prosecuting attorney's choice.
40 If the committed person is indigent((~~r~~)) and ((~~he or she~~)) so

1 requests, the court shall assist the person in obtaining a qualified
2 expert or professional person to examine the person on (~~his or her~~)
3 the person's behalf. An expert or professional person obtained by an
4 indigent person who is committed to state psychiatric care following
5 acquittal by reason of insanity shall be compensated out of funds of
6 the office of public defense as provided in policies and procedures
7 under chapter 2.70 RCW, in a manner consistent with the rules of
8 professional conduct and the standards for indigent defense.

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

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

27 (4) If the order of conditional release provides for partial
28 conditional release, the person shall be under the continued
29 supervision of the secretary. The facility recommendation to the
30 secretary for review of partial conditional release that allows
31 unsupervised community access off the grounds of the state hospital
32 will be informed by advisement of a community corrections officer.

33 (5)(a) If the order of conditional release provides for the
34 conditional release of the person to a less restrictive alternative,
35 (~~including residential treatment or treatment in the community,~~)
36 the conditional release order (~~must also~~) shall include:

37 (~~(a)~~) (i) A requirement for the committed person to be
38 supervised by a multidisciplinary transition team, including a
39 specially trained community corrections officer, a representative of
40 the department of social and health services, and a representative of

1 the community behavioral health agency providing treatment to the
2 person under RCW 10.77.175.

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

6 ~~((ii))~~ (B) The court may omit the appointment of a community
7 corrections officer if it makes a special finding that the
8 appointment of a community corrections officer would not facilitate
9 the success of the person, ~~((e))~~ and the safety of the person and
10 the community;

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

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

31 ~~((5))~~ (b) Before ordering conditional release to a proposed
32 less restrictive alternative, the court must consider the report of
33 the community corrections officer with any additional recommended
34 conditions, and the recommendation of the independent public safety
35 review panel under RCW 10.77.270. The court may not order conditional
36 release to a proposed less restrictive alternative unless conditions
37 ensure the conditional release will satisfy the minimum requirements
38 set forth in this section and RCW 10.77.175.

39 (6) The role of the transition team appointed under subsection
40 ~~((4))~~ (5) of this section shall be to facilitate the success of the

1 person on the conditional release order by monitoring the person's
2 progress in treatment, compliance with court-ordered conditions, and
3 to problem solve around extra support the person may need or
4 circumstances that may arise that threaten the safety of the person
5 or the community. The transition team may develop a monitoring plan
6 that may be carried out by any member of the team. The transition
7 team shall meet according to a schedule developed by the team, and
8 shall communicate as needed if issues arise that require the
9 immediate attention of the team.

10 ~~((+6))~~ (7) The department of corrections shall collaborate with
11 the department to develop specialized training for community
12 corrections officers under this section. The lack of a trained
13 community corrections officer must not be the cause of delay to entry
14 of a conditional release order. Another community corrections officer
15 may be appointed if no specially trained officer is available.

16 ~~((+7))~~ (8) Any person, whose application for conditional release
17 has been denied, may reapply after a period of six months from the
18 date of denial, or sooner with the support of the department.

19 ~~((+8))~~ (9) A person examined under RCW 10.77.140 or the
20 department may make a motion for ~~((limited))~~ partial conditional
21 release under this section, on the grounds that there is insufficient
22 evidence that the person may be released conditionally to less
23 restrictive alternative treatment under subsection (3)(c) of this
24 section, but the person would benefit from the opportunity to
25 exercise increased privileges while remaining under the custody and
26 supervision of the department and with the supervision of the
27 department these increased privileges can be exercised without
28 substantial danger to other persons or substantial likelihood of
29 committing criminal acts jeopardizing public safety or security. The
30 department may respond to a person's application for conditional
31 release by instead supporting ~~((limited))~~ partial conditional
32 release."

EFFECT: Makes technical changes to update underlying statutes to reflect changes made during the 2023 legislative session.

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