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ENGROSSED SUBSTITUTE SENATE BILL 5690

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State of Washington

68th Legislature

2023 Regular Session

By Senate Human Services (originally sponsored by Senators Dhingra, Nobles, Saldaña, and C. Wilson; by request of Department of Corrections)

READ FIRST TIME 02/15/23.

1 AN ACT Relating to conditional release transition teams; amending  
2 RCW 10.77.110, 10.77.150, 10.77.175, and 10.77.160; and reenacting  
3 and amending RCW 10.77.010.

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

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

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

20 (2) If the defendant has been found not guilty by reason of  
21 insanity and a substantial danger, or presents a substantial

1 likelihood of committing criminal acts jeopardizing public safety or  
2 security, so as to require treatment then the secretary shall  
3 immediately cause the defendant to be evaluated to ascertain if the  
4 defendant (~~is developmentally disabled~~) has a developmental  
5 disability. When appropriate, and subject to available funds, the  
6 defendant may be committed to a program specifically reserved for the  
7 treatment and training of (~~developmentally disabled~~) persons with  
8 developmental disabilities. A person so committed shall receive  
9 habilitation services according to an individualized service plan  
10 specifically developed to treat the behavior which was the subject of  
11 the criminal proceedings. The treatment program shall be administered  
12 by developmental disabilities professionals and others trained  
13 specifically in the needs of (~~developmentally disabled~~) persons  
14 with developmental disabilities. The treatment program shall provide  
15 physical security to a degree consistent with the finding that the  
16 defendant is dangerous and may incorporate varying conditions of  
17 security and alternative sites when the dangerousness of any  
18 particular defendant makes this necessary. The department may limit  
19 admissions to this specialized program in order to ensure that  
20 expenditures for services do not exceed amounts appropriated by the  
21 legislature and allocated by the department for such services. The  
22 department may establish admission priorities in the event that the  
23 number of eligible persons exceeds the limits set by the department.

24 (3) If it is found that such defendant is not a substantial  
25 danger to other persons, and does not present a substantial  
26 likelihood of committing criminal acts jeopardizing public safety or  
27 security, but that he or she is in need of control by the court or  
28 other persons or institutions, the court shall direct the defendant's  
29 conditional release to a less restrictive alternative under  
30 conditions that satisfy the minimum requirements of RCW 10.77.150 and  
31 10.77.175.

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

34 As used in this chapter:

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

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

38 (3) "Clinical intervention specialist" means a licensed  
39 professional with prescribing authority who is employed by or

1 contracted with the department to provide direct services, enhanced  
2 oversight and monitoring of the behavioral health status of in-  
3 custody defendants who have been referred for evaluation or  
4 restoration services related to competency to stand trial and who  
5 coordinate treatment options with forensic navigators, the  
6 department, and jail health services.

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

10 (5) "Community behavioral health agency" has the same meaning as  
11 "licensed or certified behavioral health agency" defined in RCW  
12 71.24.025.

13 (6) "Conditional release" means modification of a court-ordered  
14 commitment, which may be revoked upon violation of any of its terms.  
15 A conditional release includes partial conditional release where a  
16 person continues inpatient at a state hospital under RCW 10.77.150,  
17 or conditional release to a less restrictive setting that meets the  
18 minimum requirements of RCW 10.77.175 where the person resides in the  
19 community.

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

26 (8) "Department" means the state department of social and health  
27 services.

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

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

32 (11) "Developmental disabilities professional" means a person who  
33 has specialized training and experience in directly treating or  
34 working with persons with developmental disabilities and is a  
35 psychiatrist or psychologist, or a social worker, and such other  
36 developmental disabilities professionals as may be defined by rules  
37 adopted by the secretary.

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

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

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

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

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

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

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

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

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

38 (21) "Individualized service plan" means a plan prepared by a  
39 developmental disabilities professional with other professionals as a

1 team, for an individual with developmental disabilities, which shall  
2 state:

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

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

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

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

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

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

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

18 (22) "Professional person" means:

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

26 (b) A psychologist licensed as a psychologist pursuant to chapter  
27 18.83 RCW;

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

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

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

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

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

39 (26) "Treatment records" include registration and all other  
40 records concerning persons who are receiving or who at any time have

1 received services for mental illness, which are maintained by the  
2 department, by behavioral health administrative services  
3 organizations and their staffs, by managed care organizations and  
4 their staffs, and by treatment facilities. Treatment records do not  
5 include notes or records maintained for personal use by a person  
6 providing treatment services for the department, behavioral health  
7 administrative services organizations, managed care organizations, or  
8 a treatment facility if the notes or records are not available to  
9 others.

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

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

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

33 (2) In instances in which persons examined pursuant to RCW  
34 10.77.140 have not made application to the secretary for conditional  
35 release, but the secretary, after considering the reports of experts  
36 or professional persons conducting the examination pursuant to RCW  
37 10.77.140, reasonably believes the person may be conditionally  
38 released, the secretary may submit a recommendation for conditional  
39 release to the court of the county that ordered the person's

1 commitment. The secretary's recommendation must include any proposed  
2 terms and conditions upon which the secretary reasonably believes the  
3 person may be conditionally released. (~~Conditional release may also~~  
4 ~~include partial release for work, training, or educational~~  
5 ~~purposes.~~) Notice of the secretary's recommendation under this  
6 subsection must be provided to the person for whom the secretary has  
7 made the recommendation for conditional release and to his or her  
8 attorney.

9 (3) (a) The court of the county which ordered the person's  
10 commitment, upon receipt of an application or recommendation for  
11 conditional release with the secretary's recommendation for  
12 (~~conditional release~~) terms and conditions upon which the secretary  
13 reasonably believes the person can be conditionally released for  
14 partial conditional release or that meet the minimum statutory  
15 requirements in RCW 10.77.160 and 10.77.175 for conditional release  
16 to a less restrictive alternative, shall within 30 days schedule a  
17 hearing. The court may schedule a hearing on applications recommended  
18 for disapproval by the secretary.

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

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

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

9 (4) If the order of conditional release provides for partial  
10 conditional release, the person shall be under the continued  
11 supervision of the secretary. The facility recommendation to the  
12 secretary for review of partial conditional release that allows  
13 unsupervised community access off the grounds of the state hospital  
14 will be informed by advisement of a community corrections officer.

15 (5)(a) If the order of conditional release provides for the  
16 conditional release of the person to a less restrictive alternative,  
17 (~~including residential treatment or treatment in the community,~~)  
18 the conditional release order (~~must also~~) shall include:

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

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

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

33 (~~(b)~~) (ii) A requirement for the person to comply with  
34 conditions of supervision established by the court which shall  
35 include at a minimum reporting as directed to a designated member of  
36 the transition team, remaining within prescribed geographical  
37 boundaries, and notifying the transition team prior to making any  
38 change in the person's address or employment. If the person is not in  
39 compliance with the court-ordered conditions of release, the



1 community corrections officer or another designated transition team  
2 member shall notify the secretary or the secretary's designee; and

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

14 ~~((5))~~ (b) Before ordering conditional release to a proposed  
15 less restrictive alternative, the court must consider the report of  
16 the community corrections officer with any additional recommended  
17 conditions, and the recommendation of the independent public safety  
18 review panel under RCW 10.77.270. The court may not order conditional  
19 release to a proposed less restrictive alternative unless conditions  
20 ensure the conditional release will satisfy the minimum requirements  
21 set forth in this section and RCW 10.77.175.

22 (6) The role of the transition team appointed under subsection  
23 ~~((4))~~ (5) of this section shall be to facilitate the success of the  
24 person on the conditional release order by monitoring the person's  
25 progress in treatment, compliance with court-ordered conditions, and  
26 to problem solve around extra support the person may need or  
27 circumstances that may arise that threaten the safety of the person  
28 or the community. The transition team may develop a monitoring plan  
29 that may be carried out by any member of the team. The transition  
30 team shall meet according to a schedule developed by the team, and  
31 shall communicate as needed if issues arise that require the  
32 immediate attention of the team.

33 ~~((6))~~ (7) The department of corrections shall collaborate with  
34 the department to develop specialized training for community  
35 corrections officers under this section. The lack of a trained  
36 community corrections officer must not be the cause of delay to entry  
37 of a conditional release order. Another community corrections officer  
38 may be appointed if no specially trained officer is available.

1       (~~(7)~~) (8) Any person, whose application for conditional release  
2 has been denied, may reapply after a period of six months from the  
3 date of denial, or sooner with the support of the department.

4       (~~(8)~~) (9) A person examined under RCW 10.77.140 or the  
5 department may make a motion for (~~(limited)~~) partial conditional  
6 release under this section, on the grounds that there is insufficient  
7 evidence that the person may be released conditionally to less  
8 restrictive alternative treatment under subsection (3)(c) of this  
9 section, but the person would benefit from the opportunity to  
10 exercise increased privileges while remaining under the custody and  
11 supervision of the department and with the supervision of the  
12 department these increased privileges can be exercised without  
13 substantial danger to other persons or substantial likelihood of  
14 committing criminal acts jeopardizing public safety or security. The  
15 department may respond to a person's application for conditional  
16 release by instead supporting (~~(limited)~~) partial conditional  
17 release.

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

20       (1) Conditional release planning should start at admission and  
21 proceed in coordination between the department and the person's  
22 managed care organization, or behavioral health administrative  
23 services organization if the person is not eligible for medical  
24 assistance under chapter 74.09 RCW. If needed, the department shall  
25 assist the person to enroll in medical assistance in suspense status  
26 under RCW 74.09.670. The state hospital liaison for the managed care  
27 organization or behavioral health administrative services  
28 organization shall facilitate conditional release planning in  
29 collaboration with the department.

30       (2) Less restrictive alternative treatment pursuant to a  
31 conditional release order, at a minimum, includes the following  
32 services:

33       (a) Assignment of a care coordinator;

34       (b) An intake evaluation with the provider of the conditional  
35 treatment;

36       (c) A psychiatric evaluation or a substance use disorder  
37 evaluation, or both;

1 (d) A schedule of regular contacts with the provider of the less  
2 restrictive alternative treatment services for the duration of the  
3 order;

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

6 (f) An individual crisis plan;

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

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

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

14 (3) Less restrictive alternative treatment pursuant to a  
15 conditional release order may additionally include requirements to  
16 participate in the following services:

17 (a) Medication management;

18 (b) Psychotherapy;

19 (c) Nursing;

20 (d) Substance use disorder counseling;

21 (e) Residential treatment;

22 (f) Partial hospitalization;

23 (g) Intensive outpatient treatment;

24 (h) Support for housing, benefits, education, and employment; and

25 (i) Periodic court review.

26 (4) Nothing in this section prohibits items in subsection (2) of  
27 this section from beginning before the conditional release of the  
28 individual.

29 (5) If the person was provided with involuntary medication under  
30 RCW 10.77.094 or pursuant to a judicial order during the involuntary  
31 commitment period, the less restrictive alternative treatment  
32 pursuant to the conditional release order may authorize the less  
33 restrictive alternative treatment provider or its designee to  
34 administer involuntary antipsychotic medication to the person if the  
35 provider has attempted and failed to obtain the informed consent of  
36 the person and there is a concurring medical opinion approving the  
37 medication by a psychiatrist, physician assistant working with a  
38 supervising psychiatrist, psychiatric advanced registered nurse  
39 practitioner, or physician or physician assistant in consultation

1 with an independent mental health professional with prescribing  
2 authority.

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

8 (7) The care coordinator assigned to a person ordered to less  
9 restrictive alternative treatment pursuant to a conditional release  
10 order must, in collaboration with and on behalf of the transition  
11 team, submit an individualized plan for the person's treatment  
12 services to the court that entered the order. An initial plan must be  
13 submitted as soon as possible following the intake evaluation and a  
14 revised plan must be submitted upon any subsequent modification in  
15 which a type of service is removed from or added to the treatment  
16 plan.

17 (8) A care coordinator may disclose information and records  
18 related to mental health treatment under RCW 70.02.230(2)(k) for  
19 purposes of implementing less restrictive alternative treatment  
20 pursuant to a conditional release order.

21 (9) For the purpose of this section, "care coordinator" means a  
22 representative from the department of social and health services who  
23 coordinates the activities of less restrictive alternative treatment  
24 pursuant to a conditional release order. The care coordinator  
25 coordinates activities with the person's transition team that are  
26 necessary for enforcement and continuation of the conditional release  
27 order and is responsible for coordinating service activities with  
28 other agencies (~~(and establishing and maintaining)~~). The transition  
29 teams establish and maintain a therapeutic relationship with the  
30 individual on a continuing basis.

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

33 When a conditionally released person is required by the terms of  
34 his or her conditional release to report to a physician, department  
35 of corrections community corrections officer, or medical or mental  
36 health practitioner on a regular or periodic basis, the physician,  
37 department of corrections community corrections officer, medical or  
38 mental health practitioner, or other such person shall monthly, for  
39 the first six months after release and semiannually thereafter, or as

1 otherwise directed by the court, submit to the court, the secretary,  
2 the institution from which released, and to the prosecuting attorney  
3 of the county in which the person was committed, a report stating  
4 whether the person is adhering to the terms and conditions of his or  
5 her conditional release, and detailing any arrests or criminal  
6 charges filed and any significant change in the person's mental  
7 health condition or other circumstances. Such reports may be combined  
8 for members of a transition team under RCW 10.77.150 and submitted by  
9 a designated member unless otherwise directed by the court.

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