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**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 2022 c 288 s 1 are each reenacted and  
33 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.

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

4 (4) "Community behavioral health agency" has the same meaning as  
5 "licensed or certified behavioral health agency" defined in RCW  
6 71.24.025.

7 (5) "Conditional release" means modification of a court-ordered  
8 commitment, which may be revoked upon violation of any of its terms.  
9 A conditional release includes partial conditional release where a  
10 person continues inpatient at a state hospital under RCW 10.77.150,  
11 or conditional release to a less restrictive setting that meets the  
12 minimum requirements of RCW 10.77.175 where the person resides in the  
13 community.

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

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

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

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

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

32 (11) "Developmental disability" means the condition as defined in  
33 RCW 71A.10.020(~~(+5)~~) (6).

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

37 (13) "Furlough" means an authorized leave of absence for a  
38 resident of a state institution operated by the department designated  
39 for the custody, care, and treatment of the criminally insane,  
40 consistent with an order of conditional release from the court under

1 this chapter, without any requirement that the resident be  
2 accompanied by, or be in the custody of, any law enforcement or  
3 institutional staff, while on such unescorted leave.

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

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

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

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

23 (18) "Indigent" means any person who is financially unable to  
24 obtain counsel or other necessary expert or professional services  
25 without causing substantial hardship to the person or his or her  
26 family.

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

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

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

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

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

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

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

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

7 (20) "Professional person" means:

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

15 (b) A psychologist licensed as a psychologist pursuant to chapter  
16 18.83 RCW;

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

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

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

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

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

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

39 (25) "Violent act" means behavior that: (a) (i) Resulted in; (ii)  
40 if completed as intended would have resulted in; or (iii) was

1 threatened to be carried out by a person who had the intent and  
2 opportunity to carry out the threat and would have resulted in,  
3 homicide, nonfatal injuries, or substantial damage to property; or  
4 (b) recklessly creates an immediate risk of serious physical injury  
5 to another person. As used in this subsection, "nonfatal injuries"  
6 means physical pain or injury, illness, or an impairment of physical  
7 condition. "Nonfatal injuries" shall be construed to be consistent  
8 with the definition of "bodily injury," as defined in RCW 9A.04.110.

9       **Sec. 3.** RCW 10.77.150 and 2021 c 263 s 1 are each amended to  
10 read as follows:

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

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

37       (3) (a) The court of the county which ordered the person's  
38 commitment, upon receipt of an application or recommendation for  
39 conditional release with the secretary's recommendation for

1 ~~((conditional release))~~ terms and conditions upon which the secretary  
2 reasonably believes the person can be conditionally released for  
3 partial conditional release or that meet the minimum statutory  
4 requirements in RCW 10.77.160 and 10.77.175 for conditional release  
5 to a less restrictive alternative, shall within thirty days schedule  
6 a hearing. The court may schedule a hearing on applications  
7 recommended for disapproval by the secretary.

8 (b) The prosecuting attorney shall represent the state at such  
9 hearings and shall have the right to have the person examined by an  
10 expert or professional person of the prosecuting attorney's choice.  
11 If the committed person is indigent(~~(7)~~) and ~~((he or she))~~ so  
12 requests, the court shall appoint a qualified expert or professional  
13 person to examine the person on ~~((his or her))~~ the person's behalf.

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

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

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

38 (5)(a) If the order of conditional release provides for the  
39 conditional release of the person to a less restrictive alternative,

1 (~~(including residential treatment or treatment in the community,)~~)  
2 the conditional release order (~~(must also)~~) shall include:

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

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

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

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

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

37 (b) Before ordering conditional release to a proposed less  
38 restrictive alternative, the court must consider the report of the  
39 community corrections officer with any additional recommended  
40 conditions, and the recommendation of the independent public safety



1 review panel under RCW 10.77.270. The court may not order conditional  
2 release to a proposed less restrictive alternative unless conditions  
3 ensure the conditional release will satisfy the minimum requirements  
4 set forth in this section and RCW 10.77.175.

5 ((+5)) (6) The role of the transition team appointed under  
6 subsection ((+4)) (5) of this section shall be to facilitate the  
7 success of the person on the conditional release order by monitoring  
8 the person's progress in treatment, compliance with court-ordered  
9 conditions, and to problem solve around extra support the person may  
10 need or circumstances that may arise that threaten the safety of the  
11 person or the community. The transition team may develop a monitoring  
12 plan that may be carried out by any member of the team. The  
13 transition team shall meet according to a schedule developed by the  
14 team, and shall communicate as needed if issues arise that require  
15 the immediate attention of the team.

16 ((+6)) (7) The department of corrections shall collaborate with  
17 the department to develop specialized training for community  
18 corrections officers under this section. The lack of a trained  
19 community corrections officer must not be the cause of delay to entry  
20 of a conditional release order. Another community corrections officer  
21 may be appointed if no specially trained officer is available.

22 ((+7)) (8) Any person, whose application for conditional release  
23 has been denied, may reapply after a period of six months from the  
24 date of denial, or sooner with the support of the department.

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

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

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

13       (2) Less restrictive alternative treatment pursuant to a  
14 conditional release order, at a minimum, includes the following  
15 services:

16       (a) Assignment of a care coordinator;

17       (b) An intake evaluation with the provider of the conditional  
18 treatment;

19       (c) A psychiatric evaluation or a substance use disorder  
20 evaluation, or both;

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

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

26       (f) An individual crisis plan;

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

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

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

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

37       (a) Medication management;

38       (b) Psychotherapy;

39       (c) Nursing;

40       (d) Substance use disorder counseling;

- 1 (e) Residential treatment;
- 2 (f) Partial hospitalization;
- 3 (g) Intensive outpatient treatment;
- 4 (h) Support for housing, benefits, education, and employment; and
- 5 (i) Periodic court review.

6 (4) Nothing in this section prohibits items in subsection (2) of  
7 this section from beginning before the conditional release of the  
8 individual.

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

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

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

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

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

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

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

--- END ---