
SENATE BILL 5690

State of Washington

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2023 Regular Session

By Senators Dhingra, Nobles, Saldaña, and C. Wilson; by request of Department of Corrections

Read first time 02/03/23. Referred to Committee on Human Services.

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, or conditional
11 release to a less restrictive setting that meets the minimum
12 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 that meet the minimum
2 statutory requirements in RCW 10.77.175 for partial conditional
3 release, or RCW 10.77.160 and 10.77.175 for conditional release to a
4 less restrictive alternative, shall within thirty days schedule a
5 hearing. The court may schedule a hearing on applications recommended
6 for disapproval by the secretary.

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

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

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

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

37 (5)(a) If the order of conditional release provides for the
38 conditional release of the person to a less restrictive alternative,
39 (~~including residential treatment or treatment in the community,~~)
40 the conditional release order (~~must also~~) shall include:

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

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

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

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

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

35 (b) Before ordering conditional release to a proposed less
36 restrictive alternative, the court must consider the report of the
37 community corrections officer with any additional recommended
38 conditions, and the recommendation of the independent public safety
39 review panel under RCW 10.77.270. The court may not order conditional
40 release to a proposed less restrictive alternative unless it

1 satisfies the minimum conditions set forth in this section and RCW
2 10.77.175.

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

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

20 ((+7)) (8) Any person, whose application for conditional release
21 has been denied, may reapply after a period of six months from the
22 date of denial, or sooner with the support of the department.

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

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

38 (1) Conditional release planning should start at admission and
39 proceed in coordination between the department and the person's

1 managed care organization, or behavioral health administrative
2 services organization if the person is not eligible for medical
3 assistance under chapter 74.09 RCW. If needed, the department shall
4 assist the person to enroll in medical assistance in suspense status
5 under RCW 74.09.670. The state hospital liaison for the managed care
6 organization or behavioral health administrative services
7 organization shall facilitate conditional release planning in
8 collaboration with the department.

9 (2) Less restrictive alternative treatment pursuant to a
10 conditional release order, at a minimum, includes the following
11 services:

12 (a) Assignment of a care coordinator;

13 (b) An intake evaluation with the provider of the conditional
14 treatment;

15 (c) A psychiatric evaluation or a substance use disorder
16 evaluation, or both;

17 (d) A schedule of regular contacts with the provider of the less
18 restrictive alternative treatment services for the duration of the
19 order;

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

22 (f) An individual crisis plan;

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

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

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

30 (3) Less restrictive alternative treatment pursuant to a
31 conditional release order may additionally include requirements to
32 participate in the following services:

33 (a) Medication management;

34 (b) Psychotherapy;

35 (c) Nursing;

36 (d) Substance use disorder counseling;

37 (e) Residential treatment;

38 (f) Partial hospitalization;

39 (g) Intensive outpatient treatment;

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

1 (i) Periodic court review.

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

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

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

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

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

36 (9) For the purpose of this section, "care coordinator" means a
37 representative from the department of social and health services who
38 coordinates the activities of less restrictive alternative treatment
39 pursuant to a conditional release order. The care coordinator
40 coordinates activities with the person's transition team that are

1 necessary for enforcement and continuation of the conditional release
2 order and is responsible for coordinating service activities with
3 other agencies (~~and establishing and maintaining~~). The transition
4 teams establish and maintain a therapeutic relationship with the
5 individual on a continuing basis.

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

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

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