
SUBSTITUTE SENATE BILL 5176

State of Washington 63rd Legislature 2013 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Hargrove, Carrell, and Hewitt)

READ FIRST TIME 02/21/13.

1 AN ACT Relating to criminal incompetency and civil commitment;
2 amending RCW 10.77.086, 10.77.088, 10.77.270, 71.05.235, 71.05.280,
3 71.05.290, 71.05.320, 71.05.425, 10.77.200, and 10.77.065; and creating
4 a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that persons with a
7 mental illness or developmental disability are more likely to be
8 victimized by crime than to be perpetrators of crime. The legislature
9 finds that it is appropriate to lengthen the term of civil commitment
10 available for the small number of persons who receive commitment on the
11 basis of the commission of an offense classified as violent under RCW
12 9.94A.030 who, based on a mental disorder, present a substantial
13 likelihood of committing similar acts after criminal charges that
14 include a violent offense under RCW 9.94A.030 have been dismissed based
15 on incompetence to stand trial that cannot be restored within the
16 treatment periods authorized by RCW 10.77.086.

17 **Sec. 2.** RCW 10.77.086 and 2012 c 256 s 6 are each amended to read
18 as follows:

1 (1)(a) If the defendant is charged with a felony and determined to
2 be incompetent, until he or she has regained the competency necessary
3 to understand the proceedings against him or her and assist in his or
4 her own defense, or has been determined unlikely to regain competency
5 pursuant to RCW 10.77.084(1)(b), but in any event for a period of no
6 longer than ninety days, the court:

7 (i) Shall commit the defendant to the custody of the secretary who
8 shall place such defendant in an appropriate facility of the department
9 for evaluation and treatment; or

10 (ii) May alternatively order the defendant to undergo evaluation
11 and treatment at some other facility as determined by the department,
12 or under the guidance and control of a professional person.

13 (b) For a defendant whose highest charge is a class C felony, or a
14 class B felony that is not classified as violent under RCW 9.94A.030,
15 the maximum time allowed for the initial period of commitment for
16 competency restoration is forty-five days.

17 (2) On or before expiration of the initial period of commitment
18 under subsection (1) of this section the court shall conduct a hearing,
19 at which it shall determine whether or not the defendant is
20 incompetent.

21 (3) If the court finds by a preponderance of the evidence that a
22 defendant charged with a felony is incompetent, the court shall have
23 the option of extending the order of commitment or alternative
24 treatment for an additional period of ninety days, but the court must
25 at the time of extension set a date for a prompt hearing to determine
26 the defendant's competency before the expiration of the second
27 restoration period. The defendant, the defendant's attorney, or the
28 prosecutor has the right to demand that the hearing be before a jury.
29 No extension shall be ordered for a second or third restoration period
30 as provided in subsection (4) of this section if the defendant's
31 incompetence has been determined by the secretary to be solely the
32 result of a developmental disability which is such that competence is
33 not reasonably likely to be regained during an extension.

34 (4) For persons charged with a felony, at the hearing upon the
35 expiration of the second restoration period or at the end of the first
36 restoration period, in the case of a defendant with a developmental
37 disability, if the jury or court finds that the defendant is
38 incompetent, the charges shall be dismissed without prejudice, and the

1 court shall (~~either order the release of the defendant or~~) order the
2 defendant be committed to a state hospital (~~or secure mental health~~
3 ~~facility~~) as defined in RCW 72.23.010 for up to seventy-two hours
4 starting from admission to the facility, excluding Saturdays, Sundays,
5 and holidays, for evaluation for the purpose of filing a civil
6 commitment petition. The criminal charges shall not be dismissed if
7 the court or jury finds that: (a) The defendant (i) is a substantial
8 danger to other persons; or (ii) presents a substantial likelihood of
9 committing criminal acts jeopardizing public safety or security; and
10 (b) there is a substantial probability that the defendant will regain
11 competency within a reasonable period of time. In the event that the
12 court or jury makes such a finding, the court may extend the period of
13 commitment for up to an additional six months.

14 **Sec. 3.** RCW 10.77.088 and 2007 c 375 s 5 are each amended to read
15 as follows:

16 (1)(a) If the defendant is charged with a nonfelony crime which is
17 a serious offense (~~as identified in~~) under RCW 10.77.092 and found by
18 the court to be not competent, (~~then~~) the court shall order the
19 secretary to place the defendant:

20 (i) At a secure mental health facility in the custody of the
21 department or an agency designated by the department for mental health
22 treatment and restoration of competency. The placement shall not
23 exceed fourteen days in addition to any unused time of the evaluation
24 under RCW 10.77.060. The court shall compute this total period and
25 include its computation in the order. The fourteen-day period plus any
26 unused time of the evaluation under RCW 10.77.060 shall be considered
27 to include only the time the defendant is actually at the facility and
28 shall be in addition to reasonable time for transport to or from the
29 facility;

30 (ii) On conditional release for up to ninety days for mental health
31 treatment and restoration of competency; or

32 (iii) Any combination of this subsection.

33 (b)(i) If the proceedings are dismissed under RCW 10.77.084 and the
34 defendant was on conditional release at the time of dismissal, the
35 court shall order the designated mental health professional within that
36 county to evaluate the defendant pursuant to chapter 71.05 RCW. The
37 evaluation may be conducted in any location chosen by the professional.

1 (ii) If the defendant was in custody and not on conditional release
2 at the time of dismissal, the defendant shall be detained and sent to
3 an evaluation and treatment facility (~~((for up to))~~) within seventy-two
4 hours, excluding Saturdays, Sundays, and holidays, for evaluation for
5 purposes of filing a petition under chapter 71.05 RCW. A designated
6 mental health professional or other professional person agreed upon by
7 the department and regional support network must be permitted to screen
8 the defendant prior to transport and release the defendant if civil
9 commitment criteria are not met, provided that notification is provided
10 under RCW 10.77.065(4). The seventy-two-hour period shall commence
11 upon the next nonholiday weekday following the court order and shall
12 run to the end of the last nonholiday weekday within the seventy-two-
13 hour period.

14 (2) If the defendant is charged with a nonfelony crime that is not
15 a serious offense as defined in RCW 10.77.092(~~(+)~~), the court (~~((may~~
16 ~~stay or))~~) shall dismiss (~~((proceedings))~~) the charges and detain the
17 defendant for sufficient time to allow the designated mental health
18 professional to evaluate the defendant (~~((and consider initial detention~~
19 ~~proceedings))~~) for commitment under chapter 71.05 RCW. (~~((The court must~~
20 ~~give notice to all parties at least twenty four hours before the~~
21 ~~dismissal of any proceeding under this subsection, and provide an~~
22 ~~opportunity for a hearing on whether to dismiss the proceedings.))~~)

23 **Sec. 4.** RCW 10.77.270 and 2010 c 263 s 1 are each amended to read
24 as follows:

25 (1) The secretary shall establish an independent public safety
26 review panel for the purpose of advising the secretary and the courts
27 with respect to persons who have been found not guilty by reason of
28 insanity, or persons committed for an indefinite period under RCW
29 71.05.290(3). The panel shall provide advice regarding all
30 recommendations by the secretary: (a) For a change in commitment
31 status; (b) to allow furloughs or temporary leaves accompanied by
32 staff; or (c) to permit movement about the grounds of the treatment
33 facility, with or without the accompaniment of staff.

34 (2) The members of the public safety review panel shall be
35 appointed by the governor for a renewable term of three years and shall
36 include the following:

- 37 (a) A psychiatrist;

- 1 (b) A licensed clinical psychologist;
2 (c) A representative of the department of corrections;
3 (d) A prosecutor or a representative of a prosecutor's association;
4 (e) A representative of law enforcement or a law enforcement
5 association;
6 (f) A consumer and family advocate representative; and
7 (g) A public defender or a representative of a defender's
8 association.

9 (3) Thirty days prior to issuing a recommendation for conditional
10 release under RCW 10.77.150 or forty-five days prior to issuing a
11 recommendation for release under RCW 10.77.200, the secretary shall
12 submit its recommendation with the committed person's application and
13 the department's risk assessment to the public safety review panel.
14 The public safety review panel shall complete an independent assessment
15 of the public safety risk entailed by the secretary's proposed
16 conditional release recommendation or release recommendation and
17 provide this assessment in writing to the secretary. The public safety
18 review panel may, within funds appropriated for this purpose, request
19 additional evaluations of the committed person. The public safety
20 review panel may indicate whether it is in agreement with the
21 secretary's recommendation, or whether it would issue a different
22 recommendation. The secretary shall provide the panel's assessment
23 when it is received along with any supporting documentation, including
24 all previous reports of evaluations of the committed person in the
25 person's hospital record, to the court, prosecutor in the county that
26 ordered the person's commitment, and counsel for the committed person.

27 (4) The secretary shall notify the public safety review panel at
28 appropriate intervals concerning any changes in the commitment or
29 custody status of persons found not guilty by reason of insanity. The
30 panel shall have access, upon request, to a committed person's complete
31 hospital record.

32 (5) The secretary shall notify the public safety review panel at
33 least thirty days prior to the planned termination of a commitment for
34 a person committed for an indefinite period under RCW 71.05.290(3).

35 (6) The department shall provide administrative and financial
36 support to the public safety review panel. The department, in
37 consultation with the public safety review panel, may adopt rules to
38 implement this section.

1 ~~((6))~~ (7) By December 1, 2014, the public safety review panel
2 shall report to the appropriate legislative committees the following:

3 (a) Whether the public safety review panel has observed a change in
4 statewide consistency of evaluations and decisions concerning changes
5 in the commitment status of persons found not guilty by reason of
6 insanity;

7 (b) Whether the public safety review panel should be given the
8 authority to make release decisions and monitor release conditions;

9 (c) Whether changes in the law are appropriate concerning persons
10 committed for an indefinite period under RCW 71.05.290(3); and

11 (d) Any other issues the public safety review panel deems relevant.

12 **Sec. 5.** RCW 71.05.235 and 2008 c 213 s 5 are each amended to read
13 as follows:

14 (1) ~~((If an individual is referred to a designated mental health~~
15 ~~professional under RCW 10.77.088(1)(b)(i),)) The designated mental~~
16 ~~health professional shall ((examine the individual)) evaluate~~
17 ~~individuals referred under RCW 10.77.088(1)(b)(i) within forty-eight~~
18 ~~hours. ((If the designated mental health professional determines it is~~
19 ~~not appropriate to detain the individual or petition for a ninety day~~
20 ~~less restrictive alternative under RCW 71.05.230(4), that decision~~
21 ~~shall be immediately presented to the superior court for hearing. The~~
22 ~~court shall hold a hearing to consider the decision of the designated~~
23 ~~mental health professional not later than the next judicial day. At~~
24 ~~the hearing the superior court shall review the determination of the~~
25 ~~designated mental health professional and determine whether an order~~
26 ~~should be entered requiring the person to be evaluated at an evaluation~~
27 ~~and treatment facility. No person referred to an evaluation and~~
28 ~~treatment facility may be held at the facility longer than seventy two~~
29 ~~hours.))~~

30 (2) If an individual is ~~((placed in))~~ sent to an evaluation and
31 treatment facility under RCW 10.77.088(1)(b)(ii), a professional person
32 shall evaluate the individual within seventy-two hours from admission
33 to the facility, excluding Saturdays, Sundays, and holidays, for
34 purposes of ~~((determining whether to file a ninety day inpatient or~~
35 ~~outpatient petition under chapter 71.05 RCW. Before expiration of the~~
36 ~~seventy two hour evaluation period authorized under RCW~~
37 ~~10.77.088(1)(b)(ii), the professional person shall file a petition or,~~

1 if the recommendation of the professional person is to release the
2 individual, present his or her recommendation to the superior court of
3 the county in which the criminal charge was dismissed. The superior
4 court shall review the recommendation not later than forty-eight hours,
5 excluding Saturdays, Sundays, and holidays, after the recommendation is
6 presented. If the court rejects the recommendation to unconditionally
7 release the individual, the court may order the individual detained at
8 a designated evaluation and treatment facility for not more than a
9 seventy-two hour evaluation and treatment period and direct the
10 individual to appear at a surety hearing before that court within
11 seventy-two hours, or the court may release the individual but direct
12 the individual to appear at a surety hearing set before that court
13 within eleven days, at which time the prosecutor may file a petition
14 under this chapter for ninety-day inpatient or outpatient treatment.
15 If a petition is filed by the prosecutor, the court may order that the
16 person named in the petition be detained at the evaluation and
17 treatment facility that performed the evaluation under this subsection
18 or order the respondent to be in outpatient treatment. If a petition
19 is filed but the individual fails to appear in court for the surety
20 hearing, the court shall order that a mental health professional or
21 peace officer shall take such person or cause such person to be taken
22 into custody and placed in an evaluation and treatment facility to be
23 brought before the court the next judicial day after detention. Upon
24 the individual's first appearance in court after a petition has been
25 filed, proceedings under RCW 71.05.310 and 71.05.320 shall commence.
26 For an individual subject to this subsection,)) filing a petition under
27 this chapter. The ((prosecutor or)) professional person may directly
28 file a petition for ((ninety-day inpatient or outpatient treatment and
29 no)) ninety days of treatment under RCW 71.05.280 without filing a
30 petition for initial detention or fourteen-day detention ((is required
31 before such a petition may be filed)).

32 ((The court shall conduct the hearing on the petition filed under
33 this subsection within five judicial days of the date the petition is
34 filed. The court may continue the hearing upon the written request of
35 the person named in the petition or the person's attorney, for good
36 cause shown, which continuance shall not exceed five additional
37 judicial days. If the person named in the petition requests a jury
38 trial, the trial shall commence within ten judicial days of the date of

1 ~~the filing of the petition. The burden of proof shall be by clear,~~
2 ~~cogent, and convincing evidence and shall be upon the petitioner. The~~
3 ~~person shall be present at such proceeding, which shall in all respects~~
4 ~~accord with the constitutional guarantees of due process of law and the~~
5 ~~rules of evidence pursuant to RCW 71.05.360 (8) and (9).~~

6 ~~During the proceeding the person named in the petition shall~~
7 ~~continue to be detained and treated until released by order of the~~
8 ~~court. If no order has been made within thirty days after the filing~~
9 ~~of the petition, not including any extensions of time requested by the~~
10 ~~detained person or his or her attorney, the detained person shall be~~
11 ~~released.~~

12 ~~(3) If a designated mental health professional or the professional~~
13 ~~person and prosecuting attorney for the county in which the criminal~~
14 ~~charge was dismissed or attorney general, as appropriate, stipulate~~
15 ~~that the individual does not present a likelihood of serious harm or is~~
16 ~~not gravely disabled, the hearing under this section is not required~~
17 ~~and the individual, if in custody, shall be released.~~

18 ~~(4) The individual shall have the rights specified in RCW 71.05.360~~
19 ~~(8) and (9).)~~

20 **Sec. 6.** RCW 71.05.280 and 2008 c 213 s 6 are each amended to read
21 as follows:

22 At the expiration of the fourteen-day period of intensive
23 treatment, a person may be confined for further treatment pursuant to
24 RCW 71.05.320 if:

25 (1) Such person after having been taken into custody for evaluation
26 and treatment has threatened, attempted, or inflicted: (a) Physical
27 harm upon the person of another or himself or herself, or substantial
28 damage upon the property of another, and (b) as a result of mental
29 disorder presents a likelihood of serious harm; or

30 (2) Such person was taken into custody as a result of conduct in
31 which he or she attempted or inflicted physical harm upon the person of
32 another or himself or herself, or substantial damage upon the property
33 of others, and continues to present, as a result of mental disorder, a
34 likelihood of serious harm; or

35 (3) Such person has been determined to be incompetent and criminal
36 charges have been dismissed pursuant to RCW 10.77.086(4), and has
37 committed acts constituting a felony, and as a result of a mental

1 disorder, presents a substantial likelihood of repeating similar acts.
2 In any proceeding pursuant to this subsection it shall not be necessary
3 to show intent, willfulness, or state of mind as an element of the
4 crime, and the court shall further determine whether the dismissed
5 criminal charges include a violent offense under RCW 9.94A.030, and
6 also determine whether the person has committed acts that would
7 constitute a violent offense under RCW 9.94A.030; or

8 (4) Such person is gravely disabled.

9 **Sec. 7.** RCW 71.05.290 and 2009 c 217 s 3 are each amended to read
10 as follows:

11 (1) At any time during a person's fourteen day intensive treatment
12 period, the professional person in charge of a treatment facility or
13 his or her professional designee or the designated mental health
14 professional may petition the superior court for an order requiring
15 such person to undergo an additional period of treatment. Such
16 petition must be based on one or more of the grounds set forth in RCW
17 71.05.280.

18 (2) The petition shall summarize the facts which support the need
19 for further confinement and shall be supported by affidavits signed by:

20 (a) Two examining physicians;

21 (b) One examining physician and examining mental health
22 professional;

23 (c) Two psychiatric advanced registered nurse practitioners;

24 (d) One psychiatric advanced registered nurse practitioner and a
25 mental health professional; or

26 (e) An examining physician and an examining psychiatric advanced
27 registered nurse practitioner. The affidavits shall describe in detail
28 the behavior of the detained person which supports the petition and
29 shall explain what, if any, less restrictive treatments which are
30 alternatives to detention are available to such person, and shall state
31 the willingness of the affiant to testify to such facts in subsequent
32 judicial proceedings under this chapter.

33 (3) If a person has been determined to be incompetent pursuant to
34 RCW 10.77.086(4), then the professional person in charge of the
35 treatment facility or his or her professional designee or the
36 designated mental health professional may directly file a petition
37 (~~for one hundred eighty day treatment~~) under RCW 71.05.280(3). The

1 length of commitment shall be for one hundred eighty days, or if the
2 court determines that the dismissed charges include a violent offense
3 under RCW 9.94A.030 and determines the person committed acts
4 constituting a violent offense under RCW 9.94A.030, the commitment
5 shall last until such time as the person no longer meets grounds for
6 involuntary commitment, or until such a time as the commitment period
7 ends as provided in subsection (4) of this section. No petition for
8 initial detention or fourteen day detention is required before such a
9 petition may be filed.

10 (4) For a person committed for an indefinite period under RCW
11 71.05.280(3) based on dismissal of a violent offense under RCW
12 9.94A.030 and a determination that the person committed acts
13 constituting a violent offense under RCW 9.94A.030, at the time of
14 commitment the court shall set a review date in one hundred eighty
15 days. The commitment shall end on the review date unless the
16 superintendent or professional person in charge of the facility or
17 designated mental health professional files a petition for review
18 alleging that the person continues to meet one or more of the grounds
19 for involuntary commitment specified in RCW 71.05.320(3). The petition
20 for review shall be submitted in the form specified in subsection (2)
21 of this section. The court shall approve the petition for review and
22 set a new review date in one hundred eighty days if the review petition
23 presents prima facie evidence that the person continues to meet one or
24 more grounds for commitment specified in RCW 71.05.320(3), except that
25 the court shall schedule a hearing as provided in RCW 71.05.310 if the
26 person presents proof that the person's condition has so changed that
27 the person no longer meets one or more of the grounds for involuntary
28 commitment. The person shall be entitled to counsel upon filing of a
29 petition for review under this subsection.

30 **Sec. 8.** RCW 71.05.320 and 2009 c 323 s 2 are each amended to read
31 as follows:

32 (1) If the court or jury finds that grounds set forth in RCW
33 71.05.280 have been proven and that the best interests of the person or
34 others will not be served by a less restrictive treatment which is an
35 alternative to detention, the court shall remand him or her to the
36 custody of the department or to a facility certified for ninety day
37 treatment by the department for a further period of intensive treatment

1 not to exceed ninety days from the date of judgment. If the grounds
2 set forth in RCW 71.05.280(3) are the basis of commitment, then the
3 period of treatment (~~((may be up to but not exceed one hundred eighty
4 days from the date of judgment))~~) shall be for the time period specified
5 in RCW 71.05.290(3) in a facility certified for one hundred eighty day
6 treatment by the department.

7 (2) If the court or jury finds that grounds set forth in RCW
8 71.05.280 have been proven, but finds that treatment less restrictive
9 than detention will be in the best interest of the person or others,
10 then the court shall remand him or her to the custody of the department
11 or to a facility certified for ninety day treatment by the department
12 or to a less restrictive alternative for a further period of less
13 restrictive treatment not to exceed ninety days from the date of
14 judgment. If the grounds set forth in RCW 71.05.280(3) are the basis
15 of commitment, then the period of treatment (~~((may be up to but not
16 exceed one hundred eighty days from the date of judgment))~~) shall be for
17 the time period specified in RCW 71.05.290(3).

18 (3) The person shall be released from involuntary treatment at the
19 expiration of the period of commitment imposed under subsection (1) or
20 (2) of this section unless the superintendent or professional person in
21 charge of the facility in which he or she is confined, or in the event
22 of a less restrictive alternative, the designated mental health
23 professional, files a new petition for involuntary treatment on the
24 grounds that the committed person:

25 (a) During the current period of court ordered treatment: (i) Has
26 threatened, attempted, or inflicted physical harm upon the person of
27 another, or substantial damage upon the property of another, and (ii)
28 as a result of mental disorder or developmental disability presents a
29 likelihood of serious harm; or

30 (b) Was taken into custody as a result of conduct in which he or
31 she attempted or inflicted serious physical harm upon the person of
32 another, and continues to present, as a result of mental disorder or
33 developmental disability a likelihood of serious harm; or

34 (c) Is in custody pursuant to RCW 71.05.280(3) and as a result of
35 mental disorder (~~((or developmental disability))~~) presents a substantial
36 likelihood of repeating similar acts considering the charged criminal
37 behavior, life history, progress in treatment, and the public safety;
38 or

1 (d) Continues to be gravely disabled.

2 If the conduct required to be proven in (b) and (c) of this
3 subsection was found by a judge or jury in a prior trial under this
4 chapter, it shall not be necessary to prove such conduct again.

5 (4) For a person committed under subsection (2) of this section who
6 has been remanded to a period of less restrictive treatment, in
7 addition to the grounds specified in subsection (3) of this section,
8 the designated mental health professional may file a new petition for
9 continued less restrictive treatment if:

10 (a) The person was previously committed by a court to detention for
11 involuntary mental health treatment during the thirty-six months that
12 preceded the person's initial detention date during the current
13 involuntary commitment cycle, excluding any time spent in a mental
14 health facility or in confinement as a result of a criminal conviction;

15 (b) In view of the person's treatment history or current behavior,
16 the person is unlikely to voluntarily participate in outpatient
17 treatment without an order for less restrictive treatment; and

18 (c) Outpatient treatment that would be provided under a less
19 restrictive treatment order is necessary to prevent a relapse,
20 decompensation, or deterioration that is likely to result in the person
21 presenting a likelihood of serious harm or the person becoming gravely
22 disabled within a reasonably short period of time.

23 (5) A new petition for involuntary treatment filed under subsection
24 (3) or (4) of this section shall be filed and heard in the superior
25 court of the county of the facility which is filing the new petition
26 for involuntary treatment unless good cause is shown for a change of
27 venue. The cost of the proceedings shall be borne by the state.

28 (6) The hearing shall be held as provided in RCW 71.05.310, and if
29 the court or jury finds that the grounds for additional confinement as
30 set forth in this section are present, the court may order the
31 committed person returned for an additional period of treatment not to
32 exceed one hundred eighty days from the date of judgment. At the end
33 of the one hundred eighty day period of commitment, the committed
34 person shall be released unless a petition for another one hundred
35 eighty day period of continued treatment is filed and heard in the same
36 manner as provided in this section. Successive one hundred eighty day
37 commitments are permissible on the same grounds and pursuant to the
38 same procedures as the original one hundred eighty day commitment.

1 However, a commitment is not permissible under subsection (4) of this
2 section if thirty-six months have passed since the last date of
3 discharge from detention for inpatient treatment that preceded the
4 current less restrictive alternative order, nor shall a commitment
5 under subsection (4) of this section be permissible if the likelihood
6 of serious harm in subsection (4)(c) of this section is based solely on
7 harm to the property of others.

8 (7) No person committed as provided in this section may be detained
9 unless a valid order of commitment is in effect. No order of
10 commitment can exceed one hundred eighty days in length, except as
11 provided in RCW 71.05.290(3).

12 **Sec. 9.** RCW 71.05.425 and 2011 c 305 s 5 are each amended to read
13 as follows:

14 (1)(a) Except as provided in subsection (2) of this section, at the
15 earliest possible date, and in no event later than thirty days before
16 conditional release, final release, authorized leave under RCW
17 71.05.325(2), or transfer to a facility other than a state mental
18 hospital, the superintendent shall send written notice of conditional
19 release, release, authorized leave, or transfer of a person committed
20 under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex,
21 violent, or felony harassment offense pursuant to RCW 10.77.086(4) to
22 the following:

23 (i) The chief of police of the city, if any, in which the person
24 will reside; (~~and~~)

25 (ii) The sheriff of the county in which the person will reside; and

26 (iii) The prosecuting attorney of the county in which the criminal
27 charges against the committed person were dismissed.

28 (b) The same notice as required by (a) of this subsection shall be
29 sent to the following, if such notice has been requested in writing
30 about a specific person committed under RCW 71.05.280(3) or
31 71.05.320(3)(c) following dismissal of a sex, violent, or felony
32 harassment offense pursuant to RCW 10.77.086(4):

33 (i) The victim of the sex, violent, or felony harassment offense
34 that was dismissed pursuant to RCW 10.77.086(4) preceding commitment
35 under RCW 71.05.280(3) or 71.05.320(3)(c) or the victim's next of kin
36 if the crime was a homicide;

1 (ii) Any witnesses who testified against the person in any court
2 proceedings;

3 (iii) Any person specified in writing by the prosecuting attorney.
4 Information regarding victims, next of kin, or witnesses requesting the
5 notice, information regarding any other person specified in writing by
6 the prosecuting attorney to receive the notice, and the notice are
7 confidential and shall not be available to the person committed under
8 this chapter; and

9 (iv) The chief of police of the city, if any, and the sheriff of
10 the county, if any, which had jurisdiction of the person on the date of
11 the applicable offense.

12 (c) The thirty-day notice requirements contained in this subsection
13 shall not apply to emergency medical transfers.

14 (d) The existence of the notice requirements in this subsection
15 will not require any extension of the release date in the event the
16 release plan changes after notification.

17 (2) If a person committed under RCW 71.05.280(3) or 71.05.320(3)(c)
18 following dismissal of a sex, violent, or felony harassment offense
19 pursuant to RCW 10.77.086(4) escapes, the superintendent shall
20 immediately notify, by the most reasonable and expedient means
21 available, the chief of police of the city and the sheriff of the
22 county in which the person escaped and in which the person resided
23 immediately before the person's arrest and the prosecuting attorney of
24 the county in which the criminal charges against the committed person
25 were dismissed. If previously requested, the superintendent shall also
26 notify the witnesses and the victim of the sex, violent, or felony
27 harassment offense that was dismissed pursuant to RCW 10.77.086(4)
28 preceding commitment under RCW 71.05.280(3) or 71.05.320(3) or the
29 victim's next of kin if the crime was a homicide. In addition, the
30 secretary shall also notify appropriate parties pursuant to RCW
31 71.05.390(18). If the person is recaptured, the superintendent shall
32 send notice to the persons designated in this subsection as soon as
33 possible but in no event later than two working days after the
34 department learns of such recapture.

35 (3) If the victim, the victim's next of kin, or any witness is
36 under the age of sixteen, the notice required by this section shall be
37 sent to the parent or legal guardian of the child.

1 (4) The superintendent shall send the notices required by this
2 chapter to the last address provided to the department by the
3 requesting party. The requesting party shall furnish the department
4 with a current address.

5 (5) For purposes of this section the following terms have the
6 following meanings:

7 (a) "Violent offense" means a violent offense under RCW 9.94A.030;

8 (b) "Sex offense" means a sex offense under RCW 9.94A.030;

9 (c) "Next of kin" means a person's spouse, state registered
10 domestic partner, parents, siblings, and children;

11 (d) "Felony harassment offense" means a crime of harassment as
12 defined in RCW 9A.46.060 that is a felony.

13 **Sec. 10.** RCW 10.77.200 and 2010 c 263 s 8 are each amended to read
14 as follows:

15 (1) Upon application by the committed or conditionally released
16 person, the secretary shall determine whether or not reasonable grounds
17 exist for release. In making this determination, the secretary may
18 consider the reports filed under RCW 10.77.060, 10.77.110, 10.77.140,
19 and 10.77.160, and other reports and evaluations provided by
20 professionals familiar with the case. If the secretary approves the
21 release he or she then shall authorize the person to petition the
22 court.

23 (2) In instances in which persons have not made application for
24 release, but the secretary believes, after consideration of the reports
25 filed under RCW 10.77.060, 10.77.110, 10.77.140, and 10.77.160, and
26 other reports and evaluations provided by professionals familiar with
27 the case, that reasonable grounds exist for release, the secretary may
28 petition the court. If the secretary petitions the court for release
29 under this subsection, notice of the petition must be provided to the
30 person who is the subject of the petition and to his or her attorney.

31 (3) The petition shall be served upon the court and the prosecuting
32 attorney. The court, upon receipt of the petition for release, shall
33 within forty-five days order a hearing. Continuance of the hearing
34 date shall only be allowed for good cause shown. The prosecuting
35 attorney shall represent the state, and shall have the right to have
36 the petitioner examined by an expert or professional person of the
37 prosecuting attorney's choice. If the petitioner is indigent, and the

1 person so requests, the court shall appoint a qualified expert or
2 professional person to examine him or her. If the petitioner has a
3 developmental disability, the examination shall be performed by a
4 developmental disabilities professional. The hearing shall be before
5 a jury if demanded by either the petitioner or the prosecuting
6 attorney. The burden of proof shall be upon the petitioner to show by
7 a preponderance of the evidence that the petitioner no longer presents,
8 as a result of a mental disease or defect, a substantial danger to
9 other persons, or a substantial likelihood of committing criminal acts
10 jeopardizing public safety or security, unless kept under further
11 control by the court or other persons or institutions.

12 (4) For purposes of this section, a person affected by a mental
13 disease or defect in a state of remission is considered to have a
14 mental disease or defect requiring supervision when the disease may,
15 with reasonable medical probability, occasionally become active and,
16 when active, render the person a danger to others. Upon a finding that
17 the petitioner has a mental disease or defect in a state of remission
18 under this subsection, the court may deny release, or place or continue
19 such a person on conditional release.

20 (5) Nothing contained in this chapter shall prohibit the patient
21 from petitioning the court for release or conditional release from the
22 institution in which he or she is committed. The petition shall be
23 served upon the court, the prosecuting attorney, and the secretary.
24 Upon receipt of such petition, the secretary shall develop a
25 recommendation as provided in subsection (1) of this section and
26 provide the secretary's recommendation to all parties and the court.
27 The issue to be determined on such proceeding is whether the
28 petitioner, as a result of a mental disease or defect, is a substantial
29 danger to other persons, or presents a substantial likelihood of
30 committing criminal acts jeopardizing public safety or security, unless
31 kept under further control by the court or other persons or
32 institutions.

33 (6) Nothing contained in this chapter shall prohibit the committed
34 person from petitioning for release by writ of habeas corpus.

35 **Sec. 11.** RCW 10.77.065 and 2012 c 256 s 4 are each amended to read
36 as follows:

37 (1)(a)(i) The expert conducting the evaluation shall provide his or

1 her report and recommendation to the court in which the criminal
2 proceeding is pending. For a competency evaluation of a defendant who
3 is released from custody, if the evaluation cannot be completed within
4 twenty-one days due to a lack of cooperation by the defendant, the
5 evaluator shall notify the court that he or she is unable to complete
6 the evaluation because of such lack of cooperation.

7 (ii) A copy of the report and recommendation shall be provided to
8 the designated mental health professional, the prosecuting attorney,
9 the defense attorney, and the professional person at the local
10 correctional facility where the defendant is being held, or if there is
11 no professional person, to the person designated under (a)(iv) of this
12 subsection. Upon request, the evaluator shall also provide copies of
13 any source documents relevant to the evaluation to the designated
14 mental health professional.

15 (iii) Any facility providing inpatient services related to
16 competency shall discharge the defendant as soon as the facility
17 determines that the defendant is competent to stand trial. Discharge
18 shall not be postponed during the writing and distribution of the
19 evaluation report. Distribution of an evaluation report by a facility
20 providing inpatient services shall ordinarily be accomplished within
21 two working days or less following the final evaluation of the
22 defendant. If the defendant is discharged to the custody of a local
23 correctional facility, the local correctional facility must continue
24 the medication regimen prescribed by the facility, when clinically
25 appropriate, unless the defendant refuses to cooperate with medication.

26 (iv) If there is no professional person at the local correctional
27 facility, the local correctional facility shall designate a
28 professional person as defined in RCW 71.05.020 or, in cooperation with
29 the regional support network, a professional person at the regional
30 support network to receive the report and recommendation.

31 (v) Upon commencement of a defendant's evaluation in the local
32 correctional facility, the local correctional facility must notify the
33 evaluator of the name of the professional person, or person designated
34 under (a)(iv) of this subsection, to receive the report and
35 recommendation.

36 (b) If the evaluator concludes, under RCW 10.77.060(3)(f), the
37 person should be evaluated by a designated mental health professional
38 under chapter 71.05 RCW, the court shall order such evaluation be

1 conducted prior to release from confinement when the person is
2 acquitted or convicted and sentenced to confinement for twenty-four
3 months or less, or when charges are dismissed pursuant to a finding of
4 incompetent to stand trial.

5 (2) The designated mental health professional shall provide written
6 notification within twenty-four hours of the results of the
7 determination whether to commence proceedings under chapter 71.05 RCW.
8 The notification shall be provided to the persons identified in
9 subsection (1)(a) of this section.

10 (3) The prosecuting attorney shall provide a copy of the results of
11 any proceedings commenced by the designated mental health professional
12 under subsection (2) of this section to the secretary.

13 (4) A facility, designated mental health professional, or
14 professional person conducting a civil commitment evaluation under RCW
15 10.77.086(4) or 10.77.088(1)(b)(ii) that makes a determination to
16 release the person instead of filing a civil commitment petition must
17 provide written notification to the prosecuting attorney and defense
18 attorney within twenty-four hours of the determination.

19 (5) The fact of admission and all information and records compiled,
20 obtained, or maintained in the course of providing services under this
21 chapter may also be disclosed to the courts solely to prevent the entry
22 of any evaluation or treatment order that is inconsistent with any
23 order entered under chapter 71.05 RCW.

24 NEW SECTION. **Sec. 12.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

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