
SENATE BILL 6310

State of Washington

60th Legislature

2008 Regular Session

By Senator Hargrove

Read first time 01/15/08. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to correcting obsolete references concerning
2 chapter 10.77 RCW; amending RCW 10.77.010, 10.77.065, 10.77.092,
3 10.77.097, 10.77.163, 71.05.235, 71.05.280, 71.05.290, 71.05.300,
4 71.05.320, 71.05.425, 71.09.025, 71.09.030, and 71.09.060; repealing
5 RCW 10.77.260 and 10.77.800; and declaring an emergency.

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

7 **Sec. 1.** RCW 10.77.010 and 2005 c 504 s 106 are each amended to
8 read as follows:

9 As used in this chapter:

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

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

15 (3) "Conditional release" means modification of a court-ordered
16 commitment, which may be revoked upon violation of any of its terms.

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

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

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

6 (6) "Designated mental health professional" has the same meaning as
7 provided in RCW 71.05.020.

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

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

16 (9) "Developmental disability" means the condition as defined in
17 RCW 71A.10.020(3).

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

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

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

36 (13) (~~"History of one or more violent acts" means violent acts~~
37 ~~committed during: (a) The ten year period of time prior to the filing~~

1 ~~of criminal charges; plus (b) the amount of time equal to time spent~~
2 ~~during the ten year period in a mental health facility or in~~
3 ~~confinement as a result of a criminal conviction.~~

4 ~~(14))~~ "Incompetency" means a person lacks the capacity to
5 understand the nature of the proceedings against him or her or to
6 assist in his or her own defense as a result of mental disease or
7 defect.

8 ~~((15))~~ (14) "Indigent" means any person who is financially unable
9 to obtain counsel or other necessary expert or professional services
10 without causing substantial hardship to the person or his or her
11 family.

12 ~~((16))~~ (15) "Individualized service plan" means a plan prepared
13 by a developmental disabilities professional with other professionals
14 as a team, for an individual with developmental disabilities, which
15 shall state:

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

18 (b) The conditions and strategies necessary to achieve the purposes
19 of habilitation;

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

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

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

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

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

31 ~~((17))~~ (16) "Professional person" means:

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

1 (b) A psychologist licensed as a psychologist pursuant to chapter
2 18.83 RCW; or

3 (c) A social worker with a master's or further advanced degree from
4 an accredited school of social work or a degree deemed equivalent under
5 rules adopted by the secretary.

6 ~~((18))~~ (17) "Registration records" include all the records of the
7 department, regional support networks, treatment facilities, and other
8 persons providing services to the department, county departments, or
9 facilities which identify persons who are receiving or who at any time
10 have received services for mental illness.

11 ~~((19))~~ (18) "Release" means legal termination of the court-
12 ordered commitment under the provisions of this chapter.

13 ~~((20))~~ (19) "Secretary" means the secretary of the department of
14 social and health services or his or her designee.

15 ~~((21))~~ (20) "Treatment" means any currently standardized medical
16 or mental health procedure including medication.

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

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

35 **Sec. 2.** RCW 10.77.065 and 2000 c 74 s 2 are each amended to read
36 as follows:

37 (1)(a)(i) The facility conducting the evaluation shall provide its

1 report and recommendation to the court in which the criminal proceeding
2 is pending. A copy of the report and recommendation shall be provided
3 to the ((county)) designated mental health professional, the
4 prosecuting attorney, the defense attorney, and the professional person
5 at the local correctional facility where the defendant is being held,
6 or if there is no professional person, to the person designated under
7 (a)(ii) of this subsection. Upon request, the facility shall also
8 provide copies of any source documents relevant to the evaluation to
9 the ((county)) designated mental health professional. The report and
10 recommendation shall be provided not less than twenty-four hours
11 preceding the transfer of the defendant to the correctional facility in
12 the county in which the criminal proceeding is pending.

13 (ii) If there is no professional person at the local correctional
14 facility, the local correctional facility shall designate a
15 professional person as defined in RCW 71.05.020 or, in cooperation with
16 the regional support network, a professional person at the regional
17 support network to receive the report and recommendation.

18 (iii) When a defendant is transferred to the facility conducting
19 the evaluation, or upon commencement of a defendant's evaluation in the
20 local correctional facility, the local correctional facility must
21 notify the evaluator or the facility conducting the evaluation of the
22 name of the professional person, or person designated under (a)(ii) of
23 this subsection to receive the report and recommendation.

24 (b) If the facility concludes, under RCW 10.77.060(3)(f), the
25 person should be kept under further control, an evaluation shall be
26 conducted of such person under chapter 71.05 RCW. The court shall
27 order an evaluation be conducted by the appropriate ((county))
28 designated mental health professional: (i) Prior to release from
29 confinement for such person who is convicted, if sentenced to
30 confinement for twenty-four months or less; (ii) for any person who is
31 acquitted; or (iii) for any person: (A) Whose charges are dismissed
32 pursuant to RCW ((~~10.77.090(4)~~)) 10.77.086(4); or (B) whose nonfelony
33 charges are dismissed.

34 (2) The ((county)) designated mental health professional shall
35 provide written notification within twenty-four hours of the results of
36 the determination whether to commence proceedings under chapter 71.05
37 RCW. The notification shall be provided to the persons identified in
38 subsection (1)(a) of this section.

1 (3) The prosecuting attorney shall provide a copy of the results of
2 any proceedings commenced by the ((county)) designated mental health
3 professional under subsection (2) of this section to the facility
4 conducting the evaluation under this chapter.

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

10 **Sec. 3.** RCW 10.77.092 and 2004 c 157 s 3 are each amended to read
11 as follows:

12 (1) For purposes of determining whether a court may authorize
13 involuntary medication for the purpose of competency restoration
14 pursuant to RCW ((10.77.090)) 10.77.084, a pending charge involving any
15 one or more of the following crimes is a serious offense per se in the
16 context of competency restoration:

17 (a) Any violent offense, sex offense, serious traffic offense, and
18 most serious offense, as those terms are defined in RCW 9.94A.030;

19 (b) Any offense, except nonfelony counterfeiting offenses, included
20 in crimes against persons in RCW 9.94A.411;

21 (c) Any offense contained in chapter 9.41 RCW (firearms and
22 dangerous weapons);

23 (d) Any offense listed as domestic violence in RCW 10.99.020;

24 (e) Any offense listed as a harassment offense in chapter 9A.46
25 RCW;

26 (f) Any violation of chapter 69.50 RCW that is a class B felony; or

27 (g) Any city or county ordinance or statute that is equivalent to
28 an offense referenced in this subsection.

29 (2)(a) In a particular case, a court may determine that a pending
30 charge not otherwise defined as serious by state or federal law or by
31 a city or county ordinance is, nevertheless, a serious offense within
32 the context of competency restoration treatment when the conduct in the
33 charged offense falls within the standards established in (b) of this
34 subsection.

35 (b) To determine that the particular case is a serious offense
36 within the context of competency restoration, the court must consider

1 the following factors and determine that one or more of the following
2 factors creates a situation in which the offense is serious:

3 (i) The charge includes an allegation that the defendant actually
4 inflicted bodily or emotional harm on another person or that the
5 defendant created a reasonable apprehension of bodily or emotional harm
6 to another;

7 (ii) The extent of the impact of the alleged offense on the basic
8 human need for security of the citizens within the jurisdiction;

9 (iii) The number and nature of related charges pending against the
10 defendant;

11 (iv) The length of potential confinement if the defendant is
12 convicted; and

13 (v) The number of potential and actual victims or persons impacted
14 by the defendant's alleged acts.

15 **Sec. 4.** RCW 10.77.097 and 2000 c 74 s 4 are each amended to read
16 as follows:

17 A copy of relevant records and reports as defined by the
18 department, in consultation with the department of corrections, made
19 pursuant to this chapter, and including relevant information necessary
20 to meet the requirements of RCW 10.77.065(1) and (~~10.77.090~~)
21 10.77.084, shall accompany the defendant upon transfer to a mental
22 health facility or a correctional institution or facility.

23 **Sec. 5.** RCW 10.77.163 and 1994 c 129 s 4 are each amended to read
24 as follows:

25 (1) Before a person committed under this chapter is permitted
26 temporarily to leave a treatment facility for any period of time
27 without constant accompaniment by facility staff, the superintendent,
28 professional person in charge of a treatment facility, or his or her
29 professional designee shall in writing notify the prosecuting attorney
30 of any county to which the person is released and the prosecuting
31 attorney of the county in which the criminal charges against the
32 committed person were dismissed, of the decision conditionally to
33 release the person. The notice shall be provided at least forty-five
34 days before the anticipated release and shall describe the conditions
35 under which the release is to occur.

1 (2) In addition to the notice required by subsection (1) of this
2 section, the superintendent of each state institution designated for
3 the custody, care, and treatment of persons committed under this
4 chapter shall notify appropriate law enforcement agencies through the
5 state patrol communications network of the furloughs of persons
6 committed under RCW (~~(10.77.090)~~) 10.77.086 or 10.77.110. Notification
7 shall be made at least thirty days before the furlough, and shall
8 include the name of the person, the place to which the person has
9 permission to go, and the dates and times during which the person will
10 be on furlough.

11 (3) Upon receiving notice that a person committed under this
12 chapter is being temporarily released under subsection (1) of this
13 section, the prosecuting attorney may seek a temporary restraining
14 order to prevent the release of the person on the grounds that the
15 person is dangerous to self or others.

16 (4) The notice requirements contained in this section shall not
17 apply to emergency medical furloughs.

18 (5) The existence of the notice requirements contained in this
19 section shall not require any extension of the release date in the
20 event the release plan changes after notification.

21 (6) The notice provisions of this section are in addition to those
22 provided in RCW 10.77.205.

23 **Sec. 6.** RCW 71.05.235 and 2005 c 504 s 708 are each amended to
24 read as follows:

25 (1) If an individual is referred to a designated mental health
26 professional under RCW (~~(10.77.090(1)(d)(iii)(A))~~) 10.77.088(1)(b)(i),
27 the designated mental health professional shall examine the individual
28 within forty-eight hours. If the designated mental health professional
29 determines it is not appropriate to detain the individual or petition
30 for a ninety-day less restrictive alternative under RCW 71.05.230(4),
31 that decision shall be immediately presented to the superior court for
32 hearing. The court shall hold a hearing to consider the decision of
33 the designated mental health professional not later than the next
34 judicial day. At the hearing the superior court shall review the
35 determination of the designated mental health professional and
36 determine whether an order should be entered requiring the person to be

1 evaluated at an evaluation and treatment facility. No person referred
2 to an evaluation and treatment facility may be held at the facility
3 longer than seventy-two hours.

4 (2) If an individual is placed in an evaluation and treatment
5 facility under RCW (~~(10.77.090(1)(d)(iii)(B))~~) 10.77.088(1)(b)(ii), a
6 professional person shall evaluate the individual for purposes of
7 determining whether to file a ninety-day inpatient or outpatient
8 petition under chapter 71.05 RCW. Before expiration of the seventy-two
9 hour evaluation period authorized under RCW (~~(10.77.090(1)(d)(iii)(B))~~)
10 10.77.088(1)(b)(ii), the professional person shall file a petition or,
11 if the recommendation of the professional person is to release the
12 individual, present his or her recommendation to the superior court of
13 the county in which the criminal charge was dismissed. The superior
14 court shall review the recommendation not later than forty-eight hours,
15 excluding Saturdays, Sundays, and holidays, after the recommendation is
16 presented. If the court rejects the recommendation to unconditionally
17 release the individual, the court may order the individual detained at
18 a designated evaluation and treatment facility for not more than a
19 seventy-two hour evaluation and treatment period and direct the
20 individual to appear at a surety hearing before that court within
21 seventy-two hours, or the court may release the individual but direct
22 the individual to appear at a surety hearing set before that court
23 within eleven days, at which time the prosecutor may file a petition
24 under this chapter for ninety-day inpatient or outpatient treatment.
25 If a petition is filed by the prosecutor, the court may order that the
26 person named in the petition be detained at the evaluation and
27 treatment facility that performed the evaluation under this subsection
28 or order the respondent to be in outpatient treatment. If a petition
29 is filed but the individual fails to appear in court for the surety
30 hearing, the court shall order that a mental health professional or
31 peace officer shall take such person or cause such person to be taken
32 into custody and placed in an evaluation and treatment facility to be
33 brought before the court the next judicial day after detention. Upon
34 the individual's first appearance in court after a petition has been
35 filed, proceedings under RCW 71.05.310 and 71.05.320 shall commence.
36 For an individual subject to this subsection, the prosecutor or
37 professional person may directly file a petition for ninety-day

1 inpatient or outpatient treatment and no petition for initial detention
2 or fourteen-day detention is required before such a petition may be
3 filed.

4 The court shall conduct the hearing on the petition filed under
5 this subsection within five judicial days of the date the petition is
6 filed. The court may continue the hearing upon the written request of
7 the person named in the petition or the person's attorney, for good
8 cause shown, which continuance shall not exceed five additional
9 judicial days. If the person named in the petition requests a jury
10 trial, the trial shall commence within ten judicial days of the date of
11 the filing of the petition. The burden of proof shall be by clear,
12 cogent, and convincing evidence and shall be upon the petitioner. The
13 person shall be present at such proceeding, which shall in all respects
14 accord with the constitutional guarantees of due process of law and the
15 rules of evidence pursuant to RCW 71.05.360 (8) and (9).

16 During the proceeding the person named in the petition shall
17 continue to be detained and treated until released by order of the
18 court. If no order has been made within thirty days after the filing
19 of the petition, not including any extensions of time requested by the
20 detained person or his or her attorney, the detained person shall be
21 released.

22 (3) If a designated mental health professional or the professional
23 person and prosecuting attorney for the county in which the criminal
24 charge was dismissed or attorney general, as appropriate, stipulate
25 that the individual does not present a likelihood of serious harm or is
26 not gravely disabled, the hearing under this section is not required
27 and the individual, if in custody, shall be released.

28 (4) The individual shall have the rights specified in RCW 71.05.360
29 (8) and (9).

30 **Sec. 7.** RCW 71.05.280 and 1998 c 297 s 15 are each amended to read
31 as follows:

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

35 (1) Such person after having been taken into custody for evaluation
36 and treatment has threatened, attempted, or inflicted: (a) Physical

1 harm upon the person of another or himself or herself, or substantial
2 damage upon the property of another, and (b) as a result of mental
3 disorder presents a likelihood of serious harm; or

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

9 (3) Such person has been determined to be incompetent and criminal
10 charges have been dismissed pursuant to RCW (~~(10.77.090(4))~~)
11 10.77.086(4), and has committed acts constituting a felony, and as a
12 result of a mental disorder, presents a substantial likelihood of
13 repeating similar acts. In any proceeding pursuant to this subsection
14 it shall not be necessary to show intent, willfulness, or state of mind
15 as an element of the crime; or

16 (4) Such person is gravely disabled.

17 **Sec. 8.** RCW 71.05.290 and 1998 c 297 s 16 are each amended to read
18 as follows:

19 (1) At any time during a person's fourteen day intensive treatment
20 period, the professional person in charge of a treatment facility or
21 his or her professional designee or the (~~county~~) designated mental
22 health professional may petition the superior court for an order
23 requiring such person to undergo an additional period of treatment.
24 Such petition must be based on one or more of the grounds set forth in
25 RCW 71.05.280.

26 (2) The petition shall summarize the facts which support the need
27 for further confinement and shall be supported by affidavits signed by
28 two examining physicians, or by one examining physician and examining
29 mental health professional. The affidavits shall describe in detail
30 the behavior of the detained person which supports the petition and
31 shall explain what, if any, less restrictive treatments which are
32 alternatives to detention are available to such person, and shall state
33 the willingness of the affiant to testify to such facts in subsequent
34 judicial proceedings under this chapter.

35 (3) If a person has been determined to be incompetent pursuant to
36 RCW (~~(10.77.090(4))~~) 10.77.086(4), then the professional person in
37 charge of the treatment facility or his or her professional designee or

1 the ((~~county~~)) designated mental health professional may directly file
2 a petition for one hundred eighty day treatment under RCW 71.05.280(3).
3 No petition for initial detention or fourteen day detention is required
4 before such a petition may be filed.

5 **Sec. 9.** RCW 71.05.300 and 2006 c 333 s 303 are each amended to
6 read as follows:

7 (1) The petition for ninety day treatment shall be filed with the
8 clerk of the superior court at least three days before expiration of
9 the fourteen-day period of intensive treatment. At the time of filing
10 such petition, the clerk shall set a time for the person to come before
11 the court on the next judicial day after the day of filing unless such
12 appearance is waived by the person's attorney, and the clerk shall
13 notify the designated mental health professional. The designated
14 mental health professional shall immediately notify the person
15 detained, his or her attorney, if any, and his or her guardian or
16 conservator, if any, the prosecuting attorney, and the regional support
17 network administrator, and provide a copy of the petition to such
18 persons as soon as possible. The regional support network
19 administrator or designee may review the petition and may appear and
20 testify at the full hearing on the petition.

21 (2) At the time set for appearance the detained person shall be
22 brought before the court, unless such appearance has been waived and
23 the court shall advise him or her of his or her right to be represented
24 by an attorney and of his or her right to a jury trial. If the
25 detained person is not represented by an attorney, or is indigent or is
26 unwilling to retain an attorney, the court shall immediately appoint an
27 attorney to represent him or her. The court shall, if requested,
28 appoint a reasonably available licensed physician, psychologist, or
29 psychiatrist, designated by the detained person to examine and testify
30 on behalf of the detained person.

31 (3) The court may, if requested, also appoint a professional person
32 as defined in RCW 71.05.020 to seek less restrictive alternative
33 courses of treatment and to testify on behalf of the detained person.
34 In the case of a ((~~developmentally disabled~~)) person with a
35 developmental disability who has been determined to be incompetent
36 pursuant to RCW ((~~10.77.090(4)~~)) 10.77.086(4), then the appointed

1 professional person under this section shall be a developmental
2 disabilities professional.

3 (4) The court shall also set a date for a full hearing on the
4 petition as provided in RCW 71.05.310.

5 **Sec. 10.** RCW 71.05.320 and 2006 c 333 s 304 are each amended to
6 read as follows:

7 (1) If the court or jury finds that grounds set forth in RCW
8 71.05.280 have been proven and that the best interests of the person or
9 others will not be served by a less restrictive treatment which is an
10 alternative to detention, the court shall remand him or her to the
11 custody of the department or to a facility certified for ninety day
12 treatment by the department for a further period of intensive treatment
13 not to exceed ninety days from the date of judgment: PROVIDED, That

14 (a) If the grounds set forth in RCW 71.05.280(3) are the basis of
15 commitment, then the period of treatment may be up to but not exceed
16 one hundred eighty days from the date of judgment in a facility
17 certified for one hundred eighty day treatment by the department.

18 (b) If the committed person (~~((is developmentally disabled))~~) has a
19 developmental disability and has been determined incompetent pursuant
20 to RCW (~~((10.77.090(4)))~~) 10.77.086(4), and the best interests of the
21 person or others will not be served by a less-restrictive treatment
22 which is an alternative to detention, the court shall remand him or her
23 to the custody of the department or to a facility certified for one
24 hundred eighty-day treatment by the department. When appropriate and
25 subject to available funds, treatment and training of such persons must
26 be provided in a program specifically reserved for the treatment and
27 training of (~~((developmentally disabled))~~) persons with developmental
28 disabilities. A person so committed shall receive habilitation
29 services pursuant to an individualized service plan specifically
30 developed to treat the behavior which was the subject of the criminal
31 proceedings. The treatment program shall be administered by
32 developmental disabilities professionals and others trained
33 specifically in the needs of (~~((developmentally disabled))~~) persons with
34 developmental disabilities. The department may limit admissions to
35 this specialized program in order to ensure that expenditures for
36 services do not exceed amounts appropriated by the legislature and
37 allocated by the department for such services. The department may

1 establish admission priorities in the event that the number of eligible
2 persons exceeds the limits set by the department. An order for
3 treatment less restrictive than involuntary detention may include
4 conditions, and if such conditions are not adhered to, the designated
5 mental health professional or developmental disabilities professional
6 may order the person apprehended under the terms and conditions of RCW
7 71.05.340.

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

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 or developmental disabilities professional, files a new
24 petition for involuntary treatment on the grounds that the committed
25 person;

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

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

35 (c) Is in custody pursuant to RCW 71.05.280(3) and as a result of
36 mental disorder or developmental disability presents a substantial
37 likelihood of repeating similar acts considering the charged criminal

1 behavior, life history, progress in treatment, and the public safety;
2 or

3 (d) Continues to be gravely disabled.

4 If the conduct required to be proven in (b) and (c) of this
5 subsection was found by a judge or jury in a prior trial under this
6 chapter, it shall not be necessary to reprove that element. Such new
7 petition for involuntary treatment shall be filed and heard in the
8 superior court of the county of the facility which is filing the new
9 petition for involuntary treatment unless good cause is shown for a
10 change of venue. The cost of the proceedings shall be borne by the
11 state.

12 The hearing shall be held as provided in RCW 71.05.310, and if the
13 court or jury finds that the grounds for additional confinement as set
14 forth in this subsection are present, the court may order the committed
15 person returned for an additional period of treatment not to exceed one
16 hundred eighty days from the date of judgment. At the end of the one
17 hundred eighty day period of commitment, the committed person shall be
18 released unless a petition for another one hundred eighty day period of
19 continued treatment is filed and heard in the same manner as provided
20 in this subsection. Successive one hundred eighty day commitments are
21 permissible on the same grounds and pursuant to the same procedures as
22 the original one hundred eighty day commitment.

23 (4) No person committed as provided in this section may be detained
24 unless a valid order of commitment is in effect. No order of
25 commitment can exceed one hundred eighty days in length.

26 **Sec. 11.** RCW 71.05.425 and 2005 c 504 s 710 are each amended to
27 read as follows:

28 (1)(a) Except as provided in subsection (2) of this section, at the
29 earliest possible date, and in no event later than thirty days before
30 conditional release, final release, authorized leave under RCW
31 71.05.325(2), or transfer to a facility other than a state mental
32 hospital, the superintendent shall send written notice of conditional
33 release, release, authorized leave, or transfer of a person committed
34 under RCW 71.05.280(3) or 71.05.320(~~(+2)~~)(3)(c) following dismissal of
35 a sex, violent, or felony harassment offense pursuant to RCW
36 (~~(10.77.090(4))~~) 10.77.086(4) to the following:

1 (i) The chief of police of the city, if any, in which the person
2 will reside; and

3 (ii) The sheriff of the county in which the person will reside.

4 (b) The same notice as required by (a) of this subsection shall be
5 sent to the following, if such notice has been requested in writing
6 about a specific person committed under RCW 71.05.280(3) or
7 71.05.320(~~((+2))~~)(3)(c) following dismissal of a sex, violent, or felony
8 harassment offense pursuant to RCW (~~((10.77.090(4))~~) 10.77.086(4):

9 (i) The victim of the sex, violent, or felony harassment offense
10 that was dismissed pursuant to RCW (~~((10.77.090(4))~~) 10.77.086(4)
11 preceding commitment under RCW 71.05.280(3) or 71.05.320(~~((+2))~~)(3)(c)
12 or the victim's next of kin if the crime was a homicide;

13 (ii) Any witnesses who testified against the person in any court
14 proceedings; and

15 (iii) Any person specified in writing by the prosecuting attorney.
16 Information regarding victims, next of kin, or witnesses requesting the
17 notice, information regarding any other person specified in writing by
18 the prosecuting attorney to receive the notice, and the notice are
19 confidential and shall not be available to the person committed under
20 this chapter.

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

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

26 (2) If a person committed under RCW 71.05.280(3) or
27 71.05.320(~~((+2))~~)(3)(c) following dismissal of a sex, violent, or felony
28 harassment offense pursuant to RCW (~~((10.77.090(4))~~) 10.77.086(4)
29 escapes, the superintendent shall immediately notify, by the most
30 reasonable and expedient means available, the chief of police of the
31 city and the sheriff of the county in which the person resided
32 immediately before the person's arrest. If previously requested, the
33 superintendent shall also notify the witnesses and the victim of the
34 sex, violent, or felony harassment offense that was dismissed pursuant
35 to RCW (~~((10.77.090(4))~~) 10.77.086(4) preceding commitment under RCW
36 71.05.280(3) or 71.05.320(~~((+2))~~)(3) or the victim's next of kin if the
37 crime was a homicide. In addition, the secretary shall also notify
38 appropriate parties pursuant to RCW 71.05.390(18). If the person is

1 recaptured, the superintendent shall send notice to the persons
2 designated in this subsection as soon as possible but in no event later
3 than two working days after the department learns of such recapture.

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

7 (4) The superintendent shall send the notices required by this
8 chapter to the last address provided to the department by the
9 requesting party. The requesting party shall furnish the department
10 with a current address.

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

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

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

15 (c) "Next of kin" means a person's spouse, parents, siblings, and
16 children;

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

19 **Sec. 12.** RCW 71.09.025 and 2001 c 286 s 5 are each amended to read
20 as follows:

21 (1)(a) When it appears that a person may meet the criteria of a
22 sexually violent predator as defined in RCW 71.09.020(~~((+1))~~)(16), the
23 agency with jurisdiction shall refer the person in writing to the
24 prosecuting attorney of the county where that person was charged, three
25 months prior to:

26 (i) The anticipated release from total confinement of a person who
27 has been convicted of a sexually violent offense;

28 (ii) The anticipated release from total confinement of a person
29 found to have committed a sexually violent offense as a juvenile;

30 (iii) Release of a person who has been charged with a sexually
31 violent offense and who has been determined to be incompetent to stand
32 trial pursuant to RCW (~~((10.77.090(4))~~) 10.77.086(4); or

33 (iv) Release of a person who has been found not guilty by reason of
34 insanity of a sexually violent offense pursuant to RCW 10.77.020(3).

35 (b) The agency shall provide the prosecutor with all relevant
36 information including but not limited to the following information:

1 (i) A complete copy of the institutional records compiled by the
2 department of corrections relating to the person, and any such out-of-
3 state department of corrections' records, if available;

4 (ii) A complete copy, if applicable, of any file compiled by the
5 indeterminate sentence review board relating to the person;

6 (iii) All records relating to the psychological or psychiatric
7 evaluation and/or treatment of the person;

8 (iv) A current record of all prior arrests and convictions, and
9 full police case reports relating to those arrests and convictions; and

10 (v) A current mental health evaluation or mental health records
11 review.

12 (2) This section applies to acts committed before, on, or after
13 March 26, 1992.

14 (3) The agency, its employees, and officials shall be immune from
15 liability for any good-faith conduct under this section.

16 (4) As used in this section, "agency with jurisdiction" means that
17 agency with the authority to direct the release of a person serving a
18 sentence or term of confinement and includes the department of
19 corrections, the indeterminate sentence review board, and the
20 department of social and health services.

21 **Sec. 13.** RCW 71.09.030 and 1995 c 216 s 3 are each amended to read
22 as follows:

23 When it appears that: (1) A person who at any time previously has
24 been convicted of a sexually violent offense is about to be released
25 from total confinement on, before, or after July 1, 1990; (2) a person
26 found to have committed a sexually violent offense as a juvenile is
27 about to be released from total confinement on, before, or after July
28 1, 1990; (3) a person who has been charged with a sexually violent
29 offense and who has been determined to be incompetent to stand trial is
30 about to be released, or has been released on, before, or after July 1,
31 1990, pursuant to RCW (~~(10.77.090(3))~~) 10.77.086(4); (4) a person who
32 has been found not guilty by reason of insanity of a sexually violent
33 offense is about to be released, or has been released on, before, or
34 after July 1, 1990, pursuant to RCW 10.77.020(3), 10.77.110 (1) or (3),
35 or 10.77.150; or (5) a person who at any time previously has been
36 convicted of a sexually violent offense and has since been released
37 from total confinement and has committed a recent overt act; and it

1 appears that the person may be a sexually violent predator, the
2 prosecuting attorney of the county where the person was convicted or
3 charged or the attorney general if requested by the prosecuting
4 attorney may file a petition alleging that the person is a "sexually
5 violent predator" and stating sufficient facts to support such
6 allegation.

7 **Sec. 14.** RCW 71.09.060 and 2006 c 303 s 11 are each amended to
8 read as follows:

9 (1) The court or jury shall determine whether, beyond a reasonable
10 doubt, the person is a sexually violent predator. In determining
11 whether or not the person would be likely to engage in predatory acts
12 of sexual violence if not confined in a secure facility, the fact
13 finder may consider only placement conditions and voluntary treatment
14 options that would exist for the person if unconditionally released
15 from detention on the sexually violent predator petition. The
16 community protection program under RCW 71A.12.230 may not be considered
17 as a placement condition or treatment option available to the person if
18 unconditionally released from detention on a sexually violent predator
19 petition. When the determination is made by a jury, the verdict must
20 be unanimous.

21 If, on the date that the petition is filed, the person was living
22 in the community after release from custody, the state must also prove
23 beyond a reasonable doubt that the person had committed a recent overt
24 act. If the state alleges that the prior sexually violent offense that
25 forms the basis for the petition for commitment was an act that was
26 sexually motivated as provided in RCW 71.09.020(15)(c), the state must
27 prove beyond a reasonable doubt that the alleged sexually violent act
28 was sexually motivated as defined in RCW 9.94A.030.

29 If the court or jury determines that the person is a sexually
30 violent predator, the person shall be committed to the custody of the
31 department of social and health services for placement in a secure
32 facility operated by the department of social and health services for
33 control, care, and treatment until such time as: (a) The person's
34 condition has so changed that the person no longer meets the definition
35 of a sexually violent predator; or (b) conditional release to a less
36 restrictive alternative as set forth in RCW 71.09.092 is in the best

1 interest of the person and conditions can be imposed that would
2 adequately protect the community.

3 If the court or unanimous jury decides that the state has not met
4 its burden of proving that the person is a sexually violent predator,
5 the court shall direct the person's release.

6 If the jury is unable to reach a unanimous verdict, the court shall
7 declare a mistrial and set a retrial within forty-five days of the date
8 of the mistrial unless the prosecuting agency earlier moves to dismiss
9 the petition. The retrial may be continued upon the request of either
10 party accompanied by a showing of good cause, or by the court on its
11 own motion in the due administration of justice provided that the
12 respondent will not be substantially prejudiced. In no event may the
13 person be released from confinement prior to retrial or dismissal of
14 the case.

15 (2) If the person charged with a sexually violent offense has been
16 found incompetent to stand trial, and is about to [be] or has been
17 released pursuant to RCW (~~(10.77.090(4))~~) 10.77.086(4), and his or her
18 commitment is sought pursuant to subsection (1) of this section, the
19 court shall first hear evidence and determine whether the person did
20 commit the act or acts charged if the court did not enter a finding
21 prior to dismissal under RCW (~~(10.77.090(4))~~) 10.77.086(4) that the
22 person committed the act or acts charged. The hearing on this issue
23 must comply with all the procedures specified in this section. In
24 addition, the rules of evidence applicable in criminal cases shall
25 apply, and all constitutional rights available to defendants at
26 criminal trials, other than the right not to be tried while
27 incompetent, shall apply. After hearing evidence on this issue, the
28 court shall make specific findings on whether the person did commit the
29 act or acts charged, the extent to which the person's incompetence or
30 developmental disability affected the outcome of the hearing, including
31 its effect on the person's ability to consult with and assist counsel
32 and to testify on his or her own behalf, the extent to which the
33 evidence could be reconstructed without the assistance of the person,
34 and the strength of the prosecution's case. If, after the conclusion
35 of the hearing on this issue, the court finds, beyond a reasonable
36 doubt, that the person did commit the act or acts charged, it shall
37 enter a final order, appealable by the person, on that issue, and may

1 proceed to consider whether the person should be committed pursuant to
2 this section.

3 (3) The state shall comply with RCW 10.77.220 while confining the
4 person pursuant to this chapter, except that during all court
5 proceedings the person shall be detained in a secure facility. The
6 department shall not place the person, even temporarily, in a facility
7 on the grounds of any state mental facility or regional habilitation
8 center because these institutions are insufficiently secure for this
9 population.

10 (4) A court has jurisdiction to order a less restrictive
11 alternative placement only after a hearing ordered pursuant to RCW
12 71.09.090 following initial commitment under this section and in accord
13 with the provisions of this chapter.

14 NEW SECTION. **Sec. 15.** The following acts or parts of acts are
15 each repealed:

16 (1) RCW 10.77.260 (Violent act--Presumptions) and 2000 c 74 s 5;
17 and

18 (2) RCW 10.77.800 (Evaluation of chapter 297, Laws of 1998--
19 Recidivism, competency restoration, information sharing) and 1998 c 297
20 s 54.

21 NEW SECTION. **Sec. 16.** This act is necessary for the immediate
22 preservation of the public peace, health, or safety, or support of the
23 state government and its existing public institutions, and takes effect
24 immediately.

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