
SENATE BILL 6311

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 reform of competency evaluation and competency
2 restoration procedures; amending RCW 10.77.060, 10.77.065, 10.77.084,
3 10.77.086, 10.77.088, 10.77.010, 10.77.092, 10.77.097, 10.77.163,
4 71.05.235, 71.05.280, 71.05.290, 71.05.300, 71.05.320, 71.05.425,
5 71.09.025, 71.09.030, and 71.09.060; adding new sections to chapter
6 10.77 RCW; creating a new section; and repealing RCW 10.77.260 and
7 10.77.800.

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

9 PART I

10 COMPETENCY EVALUATION AND RESTORATION

11 **Sec. 101.** RCW 10.77.060 and 2004 c 9 s 1 are each amended to read
12 as follows:

13 (1)(a) Whenever (~~a defendant has pleaded not guilty by reason of~~
14 ~~insanity, or~~) there is reason to doubt (~~(his or her)~~) a defendant's
15 competency, the court on its own motion or on the motion of any party
16 shall (~~either appoint or~~) request the secretary to designate at least
17 (~~(two)~~) one qualified expert(~~(s)~~) or professional person(~~(s, one of~~
18 ~~whom shall be approved by the prosecuting attorney,)~~) to examine and

1 report upon the mental condition of the defendant. The signed order of
2 the court shall serve as authority for the expert((s)) to be given
3 access to all records held by any mental health, medical, educational,
4 or correctional facility that relate to the present or past mental,
5 emotional, or physical condition of the defendant. ~~((At least one of
6 the experts or professional persons appointed shall be a developmental
7 disabilities professional if the court is advised by any party that the
8 defendant may be developmentally disabled. Upon agreement of the
9 parties, the court may designate one expert or professional person to
10 conduct the examination and report on the mental condition of the
11 defendant. For purposes of the examination, the court may order the
12 defendant committed to))~~

13 (b) If at any point the expert or professional person becomes aware
14 that the defendant may be developmentally disabled, or if it appears
15 that the characteristics of developmental disability may be a
16 significant factor in the defendant's ability to participate in the
17 criminal proceeding, the evaluation shall be performed by or in
18 conjunction with a developmental disabilities professional.

19 (c) If the defendant is being held in jail or other detention
20 facility, the examination shall be held in the jail or other detention
21 facility unless, upon motion, a party establishes good cause for the
22 examination to take place in a hospital or other suitably secure public
23 or private mental health facility ((for a period of time necessary to
24 complete the examination, but not to)). If the court orders the
25 evaluation to take place in a hospital or mental health facility, the
26 commitment for the evaluation shall not exceed fifteen days from the
27 time of admission to the facility. ((If the defendant is being held in
28 jail or other detention facility, upon agreement of the parties, the
29 court may direct that the examination be conducted at the jail or other
30 detention facility.

31 ~~(b) When a defendant is ordered to be committed for inpatient~~
32 ~~examination under this subsection (1), the court may delay granting~~
33 ~~bail until the defendant has been evaluated for competency or sanity~~
34 ~~and appears before the court. Following the evaluation, in determining~~
35 ~~bail the court shall consider: (i) Recommendations of the expert or~~
36 ~~professional persons regarding the defendant's competency, sanity, or~~
37 ~~diminished capacity; (ii) whether the defendant has a recent history of~~
38 ~~one or more violent acts; (iii) whether the defendant has previously~~

1 ~~been acquitted by reason of insanity or found incompetent; (iv) whether~~
2 ~~it is reasonably likely the defendant will fail to appear for a future~~
3 ~~court hearing; and (v) whether the defendant is a threat to public~~
4 ~~safety.)~~)

5 (d) The order shall be served upon the secretary or his or her
6 designee along with a copy of the charging document, certification of
7 probable cause, police report, and a summary of the defendant's
8 criminal history as soon as possible, and no later than three business
9 days after it is signed. From the time of service of these documents,
10 the evaluation report shall be completed within twenty-one days if the
11 examination is to be held in a jail or other detention facility or
12 within thirty days if the examination is to be held in a hospital or
13 mental health facility. If during an examination held in a jail or
14 other detention facility the secretary determines that it is necessary
15 to admit the defendant into a hospital or secure mental health facility
16 to complete the examination, the secretary shall immediately notify all
17 parties and arrange for the defendant to be committed to such facility
18 for a period not to exceed fifteen days, and the evaluation report
19 shall be completed within thirty days of such notification. The time
20 limits in this section shall not include any time during which the
21 secretary is unable to admit the defendant into a hospital or secure
22 mental health facility because it has not received medical screening
23 information from the jail. Should the secretary fail to meet these
24 time periods, a party may seek an order to compel as the sole remedy.
25 Upon a showing of good cause, the court may extend the time period for
26 completion of the examination.

27 (e) In addition to the information required to be provided to the
28 secretary pursuant to (d) of this subsection, the court or any party
29 may provide any additional information which it reasonably deems may be
30 of assistance to the examination, unless such action would infringe on
31 the ethical duties of defense counsel.

32 (f) Upon agreement by all parties, the court may appoint a
33 qualified expert or professional person to fulfill the duties of this
34 section instead of requesting the secretary to designate a qualified
35 expert or professional person.

36 (2) The court may direct that a qualified expert or professional
37 person retained by or appointed for the defendant be permitted to
38 witness the examination authorized by subsection (1) of this section,

1 and that the defendant shall have access to all information obtained by
2 the (~~court appointed experts or professional persons~~) examiner. The
3 defendant's expert or professional person shall have the right to file
4 his or her own report following the guidelines of subsection (3) of
5 this section. If the defendant is indigent, the court shall upon the
6 request of the defendant assist him or her in obtaining an expert or
7 professional person.

8 (3) The report of the examination shall include the following:

9 (a) A description of the nature of the examination;

10 (b) A diagnosis of the mental condition of the defendant;

11 (c) If the defendant suffers from a mental disease or defect, or is
12 developmentally disabled, an opinion as to competency;

13 (d) (~~If the defendant has indicated his or her intention to rely
14 on the defense of insanity pursuant to RCW 10.77.030, an opinion as to
15 the defendant's sanity at the time of the act;~~

16 ~~(e) When directed by the court, an opinion as to the capacity of
17 the defendant to have a particular state of mind which is an element of
18 the offense charged;~~

19 ~~(f)) An opinion as to whether the defendant should be evaluated by
20 a (~~county~~) designated mental health professional under chapter 71.05
21 RCW(~~, and an opinion as to whether the defendant is a substantial
22 danger to other persons, or presents a substantial likelihood of
23 committing criminal acts jeopardizing public safety or security, unless
24 kept under further control by the court or other persons or
25 institutions~~)).~~

26 (4) The secretary may execute such agreements as appropriate and
27 necessary to implement this section.

28 **Sec. 102.** RCW 10.77.065 and 2000 c 74 s 2 are each amended to read
29 as follows:

30 (1)(a)(i) The (~~facility conducting the evaluation~~) qualified
31 expert or professional person shall provide (~~its~~) his or her report
32 and recommendation to the court in which the criminal proceeding is
33 pending. A copy of the report and recommendation shall be provided to
34 the (~~county designated mental health professional, the~~) prosecuting
35 attorney, the defense attorney, and the professional person at the
36 local correctional facility where the defendant is being held, or if
37 there is no professional person, to the person designated under (a)(ii)

1 of this subsection. Upon request, the ((facility)) secretary shall
2 ((also)) provide copies of the report and recommendation and copies of
3 any source documents relevant to the evaluation to the ((county))
4 designated mental health professional. The report and recommendation
5 shall be provided not less than twenty-four hours preceding the
6 transfer of the defendant to the correctional facility in the county in
7 which the criminal proceeding is pending.

8 (ii) If there is no professional person at the local correctional
9 facility, the local correctional facility shall designate a
10 professional person as defined in RCW 71.05.020 or, in cooperation with
11 the regional support network, a professional person at the regional
12 support network to receive the report and recommendation.

13 (iii) When a defendant is transferred to ((the facility
14 conducting)) a hospital or other mental health facility for the
15 evaluation, or upon commencement of a defendant's evaluation in the
16 local correctional facility, the local correctional facility must
17 notify the evaluator or the facility conducting the evaluation of the
18 name of the professional person, or person designated under (a)(ii) of
19 this subsection to receive the report and recommendation.

20 (b) If the ((facility concludes, under RCW 10.77.060(3)(f), the
21 person should be kept under further control, an evaluation shall be
22 conducted of such person)) evaluation report recommends that the
23 defendant should be referred for evaluation by a designated mental
24 health professional under chapter 71.05 RCW((-)), the court shall order
25 an evaluation be conducted by the ((appropriate county)) designated
26 mental health professional((:-(-i))) prior to the defendant's release
27 from confinement ((for such person who is convicted, if sentenced to
28 confinement for twenty four months or less; (ii) for any person who is
29 acquitted; or (iii) for any person: (A) Whose charges are dismissed
30 pursuant to RCW 10.77.090(4); or (B) whose nonfelony charges are
31 dismissed)) following any conviction, dismissal, or acquittal, unless
32 the defendant is sentenced to confinement for more than twenty-four
33 months. A defendant may not be detained in jail longer than twenty-
34 four hours following entry of an order of dismissal for this
35 evaluation.

36 (2) The ((county)) designated mental health professional shall
37 provide written notification within twenty-four hours of the results of

1 the determination whether to commence proceedings under chapter 71.05
2 RCW. The notification shall be provided to the persons identified in
3 subsection (1)(a) of this section.

4 (3) The (~~prosecuting attorney~~) petitioner in a proceeding under
5 subsection (2) of this section shall provide a copy of the results of
6 any proceedings commenced by the (~~county~~) designated mental health
7 professional under subsection (2) of this section to the (~~facility~~
8 ~~conducting the evaluation under this chapter~~) secretary.

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

14 **Sec. 103.** RCW 10.77.084 and 2007 c 375 s 3 are each amended to
15 read as follows:

16 (1)(a) If at any time during the pendency of an action and prior to
17 judgment the court finds, following a report as provided in RCW
18 10.77.060, a defendant is incompetent, the court shall order the
19 proceedings against the defendant be stayed except as provided in
20 subsection (4) of this section. The court shall then order the
21 defendant to undergo a period of treatment for restoration of
22 competency, if permitted, within the time limits established by RCW
23 10.77.086 and 10.77.088 and the requirements of this section.

24 (b) (~~A defendant found incompetent shall be evaluated at the~~
25 ~~direction of the secretary and a determination made whether the~~
26 ~~defendant is an individual with a developmental disability. Such~~
27 ~~evaluation and determination shall be accomplished as soon as possible~~
28 ~~following the court's placement of the defendant in the custody of the~~
29 ~~secretary.~~

30 (i) ~~When appropriate, and subject to available funds, if the~~
31 ~~defendant is determined to be an individual with a developmental~~
32 ~~disability, he or she may be placed in a program specifically reserved~~
33 ~~for the treatment and training of persons with developmental~~
34 ~~disabilities where the defendant shall have the right to habilitation~~
35 ~~according to an individualized service plan specifically developed for~~
36 ~~the particular needs of the defendant. A copy of the evaluation shall~~
37 ~~be sent to the program.~~

1 ~~(A) The program shall be separate from programs serving persons~~
2 ~~involved in any other treatment or habilitation program.~~

3 ~~(B) The program shall be appropriately secure under the~~
4 ~~circumstances and shall be administered by developmental disabilities~~
5 ~~professionals who shall direct the habilitation efforts.~~

6 ~~(C) The program shall provide an environment affording security~~
7 ~~appropriate with the charged criminal behavior and necessary to protect~~
8 ~~the public safety.~~

9 ~~(ii) The department may limit admissions of such persons to this~~
10 ~~specialized program in order to ensure that expenditures for services~~
11 ~~do not exceed amounts appropriated by the legislature and allocated by~~
12 ~~the department for such services.~~

13 ~~(iii) The department may establish admission priorities in the~~
14 ~~event that the number of eligible persons exceeds the limits set by the~~
15 ~~department.~~

16 ~~(e))~~ At the end of the ~~((mental health treatment and))~~ competency
17 restoration period ordered under (a) of this subsection, or at any time
18 a professional person determines competency has been, or is unlikely to
19 be, restored, the defendant shall be returned to court for a hearing.
20 If, after notice and hearing, the court finds that competency has been
21 restored, the stay entered under (a) of this subsection shall be
22 lifted. ~~((If competency has not been restored, the proceedings shall~~
23 ~~be dismissed.))~~ If the court ~~((concludes))~~ finds that competency has
24 not been restored, but that further treatment within the time limits
25 established by RCW 10.77.086 or 10.77.088 is likely to restore
26 competency, the court may order ~~((that))~~ the defendant to undergo an
27 additional period of treatment for purposes of competency restoration
28 ~~((be continued. Such treatment may not extend beyond the combination~~
29 ~~of time provided for in RCW 10.77.086 or 10.77.088)).~~

30 ~~((d))~~ (c) If at any time during the proceeding the court finds,
31 following notice and hearing, ~~((a))~~ the defendant is not likely to
32 regain competency, or that the defendant is not competent and not
33 eligible for further competency restoration, or is not competent and
34 has not been ordered to receive competency restoration treatment, the
35 ~~((proceedings))~~ charges shall be dismissed without prejudice and ~~((the~~
36 ~~defendant shall be evaluated for civil commitment proceedings.))~~:

37 (i) If the charge was a felony, the defendant shall be detained and
38 transported to a state hospital or other suitably secure mental health

1 facility for purposes of filing a petition under chapter 71.05 RCW.
2 The defendant may not be detained in jail for more than seven days
3 prior to transport under this subsection (1)(c)(i); if transport has
4 not occurred within seven days the defendant shall be released.

5 (ii) If the charge was a nonfelony, and was a serious offense as
6 defined by RCW 10.77.092 and the defendant was in custody and not on
7 conditional release at the time of dismissal, the defendant shall be
8 detained and transported to an evaluation and treatment facility for
9 purposes of filing a petition under chapter 71.05 RCW. The defendant
10 may not be detained in jail for more than three days, excluding
11 holidays, prior to transport under this subsection (1)(c)(ii); if
12 transport has not occurred within three days the defendant shall be
13 released. The defendant may be detained at the evaluation and
14 treatment facility for up to seventy-two hours, excluding Saturdays,
15 Sundays, and holidays, for evaluation prior to the filing of a petition
16 under chapter 71.05 RCW.

17 (iii) If the charge was a nonfelony, and the charge was not a
18 serious offense as defined by RCW 10.77.092 or the defendant was on
19 conditional release at the time of dismissal, the court may order the
20 defendant to be evaluated by a designated mental health professional,
21 and shall do so if required by RCW 10.77.065(1)(b). The defendant may
22 not be detained in jail longer than twenty-four hours following entry
23 of the order of dismissal for evaluation under this subsection
24 (1)(c)(iii).

25 (d) Notwithstanding the provisions of (a) and (b) of this
26 subsection, if the defendant has multiple pending criminal charges, the
27 length of competency restoration treatment available for all charges
28 shall be the longest treatment period ordered for any of the charges.

29 (2) If the defendant is referred to the designated mental health
30 professional for consideration of initial detention proceedings under
31 chapter 71.05 RCW pursuant to this chapter, the designated mental
32 health professional shall provide prompt written notification of the
33 results of the determination whether to commence initial detention
34 proceedings under chapter 71.05 RCW and whether the ~~((person))~~
35 defendant was detained. The notification shall be provided to the
36 court in which the criminal action was pending, the prosecutor in the
37 criminal action, the defense attorney in the criminal action, and the
38 ~~((facility that evaluated the defendant for competency))~~ secretary.

1 (3) (~~The fact~~) A finding that the defendant is (~~unfit to~~
2 ~~proceed~~) not competent does not preclude any pretrial proceedings
3 which do not require the personal participation of the defendant.

4 (4) A defendant receiving medication for either physical or mental
5 problems shall not be prohibited from standing trial, if the medication
6 either enables the defendant to understand the proceedings against him
7 or her and to assist in his or her own defense, or does not disable him
8 or her from so understanding and assisting in his or her own defense.

9 (5) At or before the conclusion of any (~~commitment~~) competency
10 restoration period provided for by (~~this section~~) RCW 10.77.086 or
11 RCW 10.77.088, the facility providing evaluation and treatment shall
12 provide to the court a written report of examination which meets the
13 requirements of RCW 10.77.060(3).

14 **Sec. 104.** RCW 10.77.086 and 2007 c 375 s 4 are each amended to
15 read as follows:

16 (~~(1)~~) If (~~the~~) a defendant is charged with a felony and
17 determined to be incompetent(~~(7)~~):

18 (1) Until he or she has regained the competency necessary to
19 understand the proceedings against him or her and assist in his or her
20 own defense, or has been determined to be unlikely to regain competency
21 (~~pursuant to RCW 10.77.084(1)(c)~~), but in any event for a period of
22 no longer than ninety days, the court(~~(3)(a)~~) shall commit the
23 defendant to the custody of the secretary who shall place such
24 defendant in an appropriate facility of the department for evaluation
25 and treatment(~~(7)~~) or (~~(b)~~) may alternatively order the defendant to
26 undergo evaluation and treatment at some other facility as determined
27 by the department, or under the guidance and control of a professional
28 person.

29 (2) On or before expiration of the initial ninety-day period of
30 commitment under subsection (1) of this section the secretary shall
31 provide the court and the parties with a report in accordance with RCW
32 10.77.060(3). The secretary shall return the defendant to court
33 (~~shall conduct~~) for a hearing as provided by RCW 10.77.084(1)(b), at
34 which (~~it~~) the court shall determine by a preponderance of the
35 evidence whether or not the defendant is incompetent.

36 (3) If the court finds (~~by a preponderance of the evidence~~) that
37 (~~(a)~~) the defendant (~~charged with a felony is~~) remains incompetent,

1 the court (~~(shall have the option of extending the)~~) may order (~~(of~~
2 ~~commitment or alternative)~~) a second period of competency restoration
3 treatment for an additional (~~(ninety-day)~~) period of up to ninety days.
4 In determining whether a second ninety-day period of competency
5 restoration is appropriate, the court shall consider the nature of the
6 allegations, the defendant's criminal history, and the public interest
7 to be served by further competency restoration treatment. If treatment
8 is extended, (~~(but)~~) the court must at the time of extension set a date
9 for a prompt hearing to determine the defendant's competency before the
10 expiration of the second ninety-day period. The defendant, the
11 defendant's attorney, or the prosecutor has the right to demand that
12 the hearing be before a jury. No extension shall be ordered for a
13 second ninety-day period, nor for any subsequent period as provided in
14 subsection (4) of this section, if the defendant's incompetence has
15 been determined by the secretary to be solely the result of a
16 developmental disability which is such that competence is not
17 reasonably likely to be regained during an extension.

18 (4) (~~(For persons charged with a felony, at the hearing upon the~~
19 ~~expiration of the second ninety-day period or at the end of the first~~
20 ~~ninety-day period, in the case of a defendant with a developmental~~
21 ~~disability, if the jury or court finds that the defendant is~~
22 ~~incompetent, the charges shall be dismissed without prejudice, and~~
23 ~~either civil commitment proceedings shall be instituted or the court~~
24 ~~shall order the release of the defendant. The criminal charges shall~~
25 ~~not be dismissed)~~) If, following the second ninety-day period, the
26 court finds that the defendant remains incompetent, the court may order
27 a third and final period of competency restoration treatment for the
28 defendant only if the court or jury finds that: (a) The defendant (i)
29 is a substantial danger to other persons; or (ii) presents a
30 substantial likelihood of committing criminal acts jeopardizing public
31 safety or security; and (b) there is a substantial probability that the
32 defendant will regain competency within a reasonable period of time.
33 In the event that the court or jury makes such a finding, the court may
34 extend the period of commitment for up to an additional six months. A
35 third period of competency restoration shall not be ordered for any
36 offense which does not fit one of the categories of offenses identified
37 in RCW 10.77.092.

1 **Sec. 105.** RCW 10.77.088 and 2007 c 375 s 5 are each amended to
2 read as follows:

3 (1)~~((a))~~ If the defendant is charged with a nonfelony crime which
4 is a serious offense as ~~((identified in))~~ defined by RCW 10.77.092 and
5 is found by the court to be not competent, then the court shall order
6 the secretary to place the defendant:

7 ~~((i))~~ (a) At a secure mental health facility in the custody of
8 the department or an agency designated by the department for mental
9 health treatment and restoration of competency. The placement shall
10 not exceed ~~((fourteen))~~ twenty days ~~((in addition to any unused time of~~
11 ~~the evaluation under RCW 10.77.060. The court shall compute this total~~
12 ~~period and include its computation in the order))~~. The ~~((fourteen-~~
13 ~~day))~~ twenty-day period ~~((plus any unused time of the evaluation under~~
14 ~~RCW 10.77.060))~~ shall be considered to include only the time the
15 defendant is actually at the facility and shall be in addition to
16 reasonable time for transport to or from the facility; or

17 ~~((ii))~~ (b) On conditional release for up to ninety days for
18 mental health treatment and restoration of competency~~((or~~

19 ~~iii) Any combination of this subsection.~~

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

25 ~~(ii) If the defendant was in custody and not on conditional release~~
26 ~~at the time of dismissal, the defendant shall be detained and sent to~~
27 ~~an evaluation and treatment facility for up to seventy two hours,~~
28 ~~excluding Saturdays, Sundays, and holidays, for evaluation for purposes~~
29 ~~of filing a petition under chapter 71.05 RCW. The seventy two hour~~
30 ~~period shall commence upon the next nonholiday weekday following the~~
31 ~~court order and shall run to the end of the last nonholiday weekday~~
32 ~~within the seventy two hour period)).~~

33 (2) If the defendant is charged with a nonfelony crime that is not
34 a serious offense as defined in RCW 10.77.092(~~(or~~

35 ~~The court may stay or dismiss proceedings and detain the defendant~~
36 ~~for sufficient time to allow the designated mental health professional~~
37 ~~to evaluate the defendant and consider initial detention proceedings~~
38 ~~under chapter 71.05 RCW. The court must give notice to all parties at~~

1 ~~least twenty four hours before the dismissal of any proceeding under~~
2 ~~this subsection, and provide an opportunity for a hearing on whether to~~
3 ~~dismiss the proceedings)), the defendant is not eligible for competency~~
4 ~~restoration treatment.~~

5 NEW SECTION. **Sec. 106.** A new section is added to chapter 10.77
6 RCW to read as follows:

7 (1)(a) Whenever a defendant has pleaded not guilty by reason of
8 insanity or has advised the court that he or she intends to rely upon
9 a defense of diminished capacity, the court, on motion of the
10 prosecuting attorney, shall either appoint or request the secretary to
11 designate at least one qualified expert or professional person to
12 examine and report upon the mental condition of the defendant. The
13 signed order of the court shall serve as authority for the expert to be
14 given access to all records held by any mental health, medical,
15 educational, or correctional facility that relate to the present or
16 past mental, emotional, or physical condition of the defendant.

17 (b) The department shall not be obliged to examine and report upon
18 a defense of diminished capacity unless provided with an evaluation and
19 report by a qualified expert or professional person which concludes
20 that the defendant did lack the capacity at the time of the offense to
21 form the mental state necessary to commit the crime charged. The
22 department shall not be obliged to examine and report upon a defense of
23 diminished capacity for any charged offense that lacks a mental state
24 element.

25 (c) The order shall be served upon the secretary or his or her
26 designee along with a copy of the charging document, certification of
27 probable cause, police report, and a summary of the defendant's
28 criminal history. In addition, the court or any party may provide any
29 additional information which it reasonably deems may be of assistance
30 to the examination, unless such action would infringe on the ethical
31 duties of defense counsel.

32 (2) The report of the examination shall include the following:

33 (a) A description of the nature of the examination;

34 (b) A diagnosis of the mental condition of the defendant;

35 (c) If the defendant suffers from a mental disease or defect, or is
36 developmentally disabled, an opinion as to competency;

1 (d) If the defendant has indicated his or her intention to rely on
2 the defense of insanity pursuant to RCW 10.77.030, an opinion as to the
3 defendant's sanity at the time of the act, and an opinion as to whether
4 the defendant is a substantial danger to other persons, or presents a
5 substantial likelihood of committing criminal acts jeopardizing public
6 safety or security, unless kept under further control by the court or
7 other persons or institutions;

8 (e) When directed by the court, subject to the restrictions of (b)
9 of this subsection, an opinion as to the capacity of the defendant to
10 have a particular state of mind which is an element of the offense
11 charged;

12 (f) An opinion as to whether the defendant should be evaluated by
13 a designated mental health professional under chapter 71.05 RCW.

14 (3) The court may direct that a qualified expert or professional
15 person retained by or appointed for the defendant be permitted to
16 witness the examination authorized by subsection (1) of this section,
17 and that the defendant has access to all information obtained by the
18 examiner. The defendant's expert or professional person has the right
19 to file his or her own report following the guidelines of subsection
20 (2) of this section. If the defendant is indigent, the court shall
21 upon the request of the defendant assist him or her in obtaining an
22 expert or professional person.

23 NEW SECTION. **Sec. 107.** A new section is added to chapter 10.77
24 RCW to read as follows:

25 Statements made by a defendant during a competency evaluation,
26 competency hearing, or competency restoration treatment are not
27 admissible for the purpose of proving that the defendant is guilty of
28 the charges which gave rise to the evaluation; provided that such
29 statements may be admitted to impeach testimony by the defendant or to
30 rebut evidence offered by the defendant at trial.

31 NEW SECTION. **Sec. 108.** A new section is added to chapter 10.77
32 RCW to read as follows:

33 Any defendant placed in the custody of the secretary for competency
34 restoration treatment shall be evaluated at the direction of the
35 secretary as soon as possible and a determination made whether the
36 defendant is an individual with a developmental disability.

1 (1) When appropriate, and subject to available funds, if the
2 defendant is determined to be an individual with a developmental
3 disability, he or she may be placed in a program specifically reserved
4 for the treatment and training of persons with developmental
5 disabilities where the defendant has the right to habilitation
6 according to an individualized service plan specifically developed for
7 the particular needs of the defendant. A copy of the evaluation shall
8 be sent to the program.

9 (a) The program shall be separate from programs serving persons
10 involved in any other treatment or habilitation program.

11 (b) The program shall be appropriately secure under the
12 circumstances and shall be administered by developmental disabilities
13 professionals who shall direct the habilitation efforts.

14 (c) The program shall provide an environment affording security
15 appropriate with the charged criminal behavior and necessary to protect
16 the public safety.

17 (2) The department may limit admissions of such persons to this
18 specialized program in order to ensure that expenditures for services
19 do not exceed amounts appropriated by the legislature and allocated by
20 the department for such services.

21 (3) The department may establish admission priorities in the event
22 that the number of eligible persons exceeds the limits set by the
23 department.

24 NEW SECTION. **Sec. 109.** A new section is added to chapter 10.77
25 RCW to read as follows:

26 Whenever a jail receives notice of an order requiring transport of
27 a defendant to a state hospital or other medical facility pursuant to
28 RCW 10.77.060(1) (c) or (d) or 10.77.084(1)(c) (i) or (ii), the jail
29 shall transmit all medical screening information necessary to the
30 transfer to the secretary within three days.

31 **PART II**
32 **TECHNICAL CHANGES**

33 **Sec. 201.** RCW 10.77.010 and 2005 c 504 s 106 are each amended to
34 read as follows:

35 As used in this chapter:

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

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

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

8 (4) A "criminally insane" person means any person who has been
9 acquitted of a crime charged by reason of insanity, and thereupon found
10 to be a substantial danger to other persons or to present a substantial
11 likelihood of committing criminal acts jeopardizing public safety or
12 security unless kept under further control by the court or other
13 persons or institutions.

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

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

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

20 (8) "Developmental disabilities professional" means a person who
21 has specialized training and three years of experience in directly
22 treating or working with persons with developmental disabilities and is
23 a psychiatrist or psychologist, or a social worker, and such other
24 developmental disabilities professionals as may be defined by rules
25 adopted by the secretary.

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

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

31 (11) "Furlough" means an authorized leave of absence for a resident
32 of a state institution operated by the department designated for the
33 custody, care, and treatment of the criminally insane, consistent with
34 an order of conditional release from the court under this chapter,
35 without any requirement that the resident be accompanied by, or be in
36 the custody of, any law enforcement or institutional staff, while on
37 such unescorted leave.

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

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

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

18 ~~((15))~~ (14) "Indigent" means any person who is financially unable
19 to obtain counsel or other necessary expert or professional services
20 without causing substantial hardship to the person or his or her
21 family.

22 ~~((16))~~ (15) "Individualized service plan" means a plan prepared
23 by a developmental disabilities professional with other professionals
24 as a team, for an individual with developmental disabilities, which
25 shall state:

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

28 (b) The conditions and strategies necessary to achieve the purposes
29 of habilitation;

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

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

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

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

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

3 ~~((+17))~~ (16) "Professional person" means:

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

10 (b) A psychologist licensed as a psychologist pursuant to chapter
11 18.83 RCW; or

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

15 ~~((+18))~~ (17) "Registration records" include all the records of the
16 department, regional support networks, treatment facilities, and other
17 persons providing services to the department, county departments, or
18 facilities which identify persons who are receiving or who at any time
19 have received services for mental illness.

20 ~~((+19))~~ (18) "Release" means legal termination of the court-
21 ordered commitment under the provisions of this chapter.

22 ~~((+20))~~ (19) "Secretary" means the secretary of the department of
23 social and health services or his or her designee.

24 ~~((+21))~~ (20) "Treatment" means any currently standardized medical
25 or mental health procedure including medication.

26 ~~((+22))~~ (21) "Treatment records" include registration and all
27 other records concerning persons who are receiving or who at any time
28 have received services for mental illness, which are maintained by the
29 department, by regional support networks and their staffs, and by
30 treatment facilities. Treatment records do not include notes or
31 records maintained for personal use by a person providing treatment
32 services for the department, regional support networks, or a treatment
33 facility if the notes or records are not available to others.

34 ~~((+23))~~ "Violent act" means behavior that: ~~(a)(i) Resulted in; (ii)~~
35 ~~if completed as intended would have resulted in; or (iii) was~~
36 ~~threatened to be carried out by a person who had the intent and~~
37 ~~opportunity to carry out the threat and would have resulted in,~~
38 ~~homicide, nonfatal injuries, or substantial damage to property; or (b)~~

1 ~~recklessly creates an immediate risk of serious physical injury to~~
2 ~~another person. As used in this subsection, "nonfatal injuries" means~~
3 ~~physical pain or injury, illness, or an impairment of physical~~
4 ~~condition. "Nonfatal injuries" shall be construed to be consistent~~
5 ~~with the definition of "bodily injury," as defined in RCW 9A.04.110.)~~

6 **Sec. 202.** RCW 10.77.092 and 2004 c 157 s 3 are each amended to
7 read as follows:

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

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

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

17 (c) Any offense contained in chapter 9.41 RCW (firearms and
18 dangerous weapons);

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

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

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

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

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

31 (b) To determine that the particular case is a serious offense
32 within the context of competency restoration, the court must consider
33 the following factors and determine that one or more of the following
34 factors creates a situation in which the offense is serious:

35 (i) The charge includes an allegation that the defendant actually
36 inflicted bodily or emotional harm on another person or that the

1 defendant created a reasonable apprehension of bodily or emotional harm
2 to another;

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

5 (iii) The number and nature of related charges pending against the
6 defendant;

7 (iv) The length of potential confinement if the defendant is
8 convicted; and

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

11 **Sec. 203.** RCW 10.77.097 and 2000 c 74 s 4 are each amended to read
12 as follows:

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

19 **Sec. 204.** RCW 10.77.163 and 1994 c 129 s 4 are each amended to
20 read as follows:

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

32 (2) In addition to the notice required by subsection (1) of this
33 section, the superintendent of each state institution designated for
34 the custody, care, and treatment of persons committed under this
35 chapter shall notify appropriate law enforcement agencies through the
36 state patrol communications network of the furloughs of persons

1 committed under RCW (~~10.77.090~~) 10.77.084 or 10.77.110. Notification
2 shall be made at least thirty days before the furlough, and shall
3 include the name of the person, the place to which the person has
4 permission to go, and the dates and times during which the person will
5 be on furlough.

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

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

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

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

18 **Sec. 205.** RCW 71.05.235 and 2005 c 504 s 708 are each amended to
19 read as follows:

20 (1) If an individual is referred to a designated mental health
21 professional under RCW (~~10.77.090(1)(d)(iii)(A)~~)
22 10.77.084(1)(c)(iii), the designated mental health professional shall
23 examine the individual within forty-eight hours. If the designated
24 mental health professional determines it is not appropriate to detain
25 the individual or petition for a ninety-day less restrictive
26 alternative under RCW 71.05.230(4), that decision shall be immediately
27 presented to the superior court for hearing. The court shall hold a
28 hearing to consider the decision of the designated mental health
29 professional not later than the next judicial day. At the hearing the
30 superior court shall review the determination of the designated mental
31 health professional and determine whether an order should be entered
32 requiring the person to be evaluated at an evaluation and treatment
33 facility. No person referred to an evaluation and treatment facility
34 may be held at the facility longer than seventy-two hours.

35 (2) If an individual is placed in an evaluation and treatment
36 facility under RCW (~~10.77.090(1)(d)(iii)(B)~~) 10.77.084(1)(c)(ii), a
37 professional person shall evaluate the individual for purposes of

1 determining whether to file a ninety-day inpatient or outpatient
2 petition under chapter 71.05 RCW. Before expiration of the seventy-two
3 hour evaluation period authorized under RCW (~~(10.77.090(1)(d)(iii)(B))~~)
4 10.77.084(1)(c)(ii), the professional person shall file a petition or,
5 if the recommendation of the professional person is to release the
6 individual, present his or her recommendation to the superior court of
7 the county in which the criminal charge was dismissed. The superior
8 court shall review the recommendation not later than forty-eight hours,
9 excluding Saturdays, Sundays, and holidays, after the recommendation is
10 presented. If the court rejects the recommendation to unconditionally
11 release the individual, the court may order the individual detained at
12 a designated evaluation and treatment facility for not more than a
13 seventy-two hour evaluation and treatment period and direct the
14 individual to appear at a surety hearing before that court within
15 seventy-two hours, or the court may release the individual but direct
16 the individual to appear at a surety hearing set before that court
17 within eleven days, at which time the prosecutor may file a petition
18 under this chapter for ninety-day inpatient or outpatient treatment.
19 If a petition is filed by the prosecutor, the court may order that the
20 person named in the petition be detained at the evaluation and
21 treatment facility that performed the evaluation under this subsection
22 or order the respondent to be in outpatient treatment. If a petition
23 is filed but the individual fails to appear in court for the surety
24 hearing, the court shall order that a mental health professional or
25 peace officer shall take such person or cause such person to be taken
26 into custody and placed in an evaluation and treatment facility to be
27 brought before the court the next judicial day after detention. Upon
28 the individual's first appearance in court after a petition has been
29 filed, proceedings under RCW 71.05.310 and 71.05.320 shall commence.
30 For an individual subject to this subsection, the prosecutor or
31 professional person may directly file a petition for ninety-day
32 inpatient or outpatient treatment and no petition for initial detention
33 or fourteen-day detention is required before such a petition may be
34 filed.

35 The court shall conduct the hearing on the petition filed under
36 this subsection within five judicial days of the date the petition is
37 filed. The court may continue the hearing upon the written request of
38 the person named in the petition or the person's attorney, for good

1 cause shown, which continuance shall not exceed five additional
2 judicial days. If the person named in the petition requests a jury
3 trial, the trial shall commence within ten judicial days of the date of
4 the filing of the petition. The burden of proof shall be by clear,
5 cogent, and convincing evidence and shall be upon the petitioner. The
6 person shall be present at such proceeding, which shall in all respects
7 accord with the constitutional guarantees of due process of law and the
8 rules of evidence pursuant to RCW 71.05.360 (8) and (9).

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

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

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

23 **Sec. 206.** RCW 71.05.280 and 1998 c 297 s 15 are each amended to
24 read as follows:

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

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

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

1 (3) Such person has been determined to be incompetent and criminal
2 charges have been dismissed pursuant to RCW (~~(10.77.090(4))~~)
3 10.77.084(1)(c), and has committed acts constituting a felony, and as
4 a result of a mental disorder, presents a substantial likelihood of
5 repeating similar acts. In any proceeding pursuant to this subsection
6 it shall not be necessary to show intent, willfulness, or state of mind
7 as an element of the crime; or

8 (4) Such person is gravely disabled.

9 **Sec. 207.** RCW 71.05.290 and 1998 c 297 s 16 are each amended to
10 read 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 (~~county~~) designated mental
14 health professional may petition the superior court for an order
15 requiring such person to undergo an additional period of treatment.
16 Such petition must be based on one or more of the grounds set forth in
17 RCW 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 two examining physicians, or by one examining physician and examining
21 mental health professional. The affidavits shall describe in detail
22 the behavior of the detained person which supports the petition and
23 shall explain what, if any, less restrictive treatments which are
24 alternatives to detention are available to such person, and shall state
25 the willingness of the affiant to testify to such facts in subsequent
26 judicial proceedings under this chapter.

27 (3) If a person has been determined to be incompetent pursuant to
28 RCW (~~(10.77.090(4))~~) 10.77.084(1)(c), then the professional person in
29 charge of the treatment facility or his or her professional designee or
30 the (~~county~~) designated mental health professional may directly file
31 a petition for one hundred eighty day treatment under RCW 71.05.280(3).
32 No petition for initial detention or fourteen day detention is required
33 before such a petition may be filed.

34 **Sec. 208.** RCW 71.05.300 and 2006 c 333 s 303 are each amended to
35 read as follows:

36 (1) The petition for ninety day treatment shall be filed with the

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

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

24 (3) The court may, if requested, also appoint a professional person
25 as defined in RCW 71.05.020 to seek less restrictive alternative
26 courses of treatment and to testify on behalf of the detained person.
27 In the case of a (~~developmentally disabled~~) person with a
28 developmental disability who has been determined to be incompetent
29 pursuant to RCW (~~10.77.090(4)~~) 10.77.084(1)(c), then the appointed
30 professional person under this section shall be a developmental
31 disabilities professional.

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

34 **Sec. 209.** RCW 71.05.320 and 2006 c 333 s 304 are each amended to
35 read as follows:

36 (1) If the court or jury finds that grounds set forth in RCW
37 71.05.280 have been proven and that the best interests of the person or

1 others will not be served by a less restrictive treatment which is an
2 alternative to detention, the court shall remand him or her to the
3 custody of the department or to a facility certified for ninety day
4 treatment by the department for a further period of intensive treatment
5 not to exceed ninety days from the date of judgment: PROVIDED, That

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

10 (b) If the committed person (~~((is developmentally disabled))~~) has a
11 developmental disability and has been determined incompetent pursuant
12 to RCW (~~((10.77.090(4)))~~) 10.77.084(1)(c), and the best interests of the
13 person or others will not be served by a less-restrictive treatment
14 which is an alternative to detention, the court shall remand him or her
15 to the custody of the department or to a facility certified for one
16 hundred eighty-day treatment by the department. When appropriate and
17 subject to available funds, treatment and training of such persons must
18 be provided in a program specifically reserved for the treatment and
19 training of (~~((developmentally disabled))~~) persons with developmental
20 disabilities. A person so committed shall receive habilitation
21 services pursuant to an individualized service plan specifically
22 developed to treat the behavior which was the subject of the criminal
23 proceedings. The treatment program shall be administered by
24 developmental disabilities professionals and others trained
25 specifically in the needs of (~~((developmentally disabled))~~) persons with
26 developmental disabilities. The department may limit admissions to
27 this specialized program in order to ensure that expenditures for
28 services do not exceed amounts appropriated by the legislature and
29 allocated by the department for such services. The department may
30 establish admission priorities in the event that the number of eligible
31 persons exceeds the limits set by the department. An order for
32 treatment less restrictive than involuntary detention may include
33 conditions, and if such conditions are not adhered to, the designated
34 mental health professional or developmental disabilities professional
35 may order the person apprehended under the terms and conditions of RCW
36 71.05.340.

37 (2) If the court or jury finds that grounds set forth in RCW
38 71.05.280 have been proven, but finds that treatment less restrictive

1 than detention will be in the best interest of the person or others,
2 then the court shall remand him or her to the custody of the department
3 or to a facility certified for ninety day treatment by the department
4 or to a less restrictive alternative for a further period of less
5 restrictive treatment not to exceed ninety days from the date of
6 judgment: PROVIDED, That if the grounds set forth in RCW 71.05.280(3)
7 are the basis of commitment, then the period of treatment may be up to
8 but not exceed one hundred eighty days from the date of judgment.

9 (3) The person shall be released from involuntary treatment at the
10 expiration of the period of commitment imposed under subsection (1) or
11 (2) of this section unless the superintendent or professional person in
12 charge of the facility in which he or she is confined, or in the event
13 of a less restrictive alternative, the designated mental health
14 professional or developmental disabilities professional, files a new
15 petition for involuntary treatment on the grounds that the committed
16 person;

17 (a) During the current period of court ordered treatment: (i) Has
18 threatened, attempted, or inflicted physical harm upon the person of
19 another, or substantial damage upon the property of another, and (ii)
20 as a result of mental disorder or developmental disability presents a
21 likelihood of serious harm; or

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

26 (c) Is in custody pursuant to RCW 71.05.280(3) and as a result of
27 mental disorder or developmental disability presents a substantial
28 likelihood of repeating similar acts considering the charged criminal
29 behavior, life history, progress in treatment, and the public safety;
30 or

31 (d) Continues to be gravely disabled.

32 If the conduct required to be proven in (b) and (c) of this
33 subsection was found by a judge or jury in a prior trial under this
34 chapter, it shall not be necessary to reprove that element. Such new
35 petition for involuntary treatment shall be filed and heard in the
36 superior court of the county of the facility which is filing the new
37 petition for involuntary treatment unless good cause is shown for a

1 change of venue. The cost of the proceedings shall be borne by the
2 state.

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

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

17 **Sec. 210.** RCW 71.05.425 and 2005 c 504 s 710 are each amended to
18 read as follows:

19 (1)(a) Except as provided in subsection (2) of this section, at the
20 earliest possible date, and in no event later than thirty days before
21 conditional release, final release, authorized leave under RCW
22 71.05.325(2), or transfer to a facility other than a state mental
23 hospital, the superintendent shall send written notice of conditional
24 release, release, authorized leave, or transfer of a person committed
25 under RCW 71.05.280(3) or 71.05.320(~~((+2))~~) (3)(c) following dismissal
26 of a sex, violent, or felony harassment offense pursuant to RCW
27 (~~((10.77.090(4))~~) 10.77.084(1)(c) to the following:

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

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

31 (b) The same notice as required by (a) of this subsection shall be
32 sent to the following, if such notice has been requested in writing
33 about a specific person committed under RCW 71.05.280(3) or
34 71.05.320(~~((+2))~~) (3)(c) following dismissal of a sex, violent, or
35 felony harassment offense pursuant to RCW (~~((10.77.090(4))~~)
36 10.77.084(1)(c):

1 (i) The victim of the sex, violent, or felony harassment offense
2 that was dismissed pursuant to RCW (~~(10.77.090(4))~~) 10.77.084(1)(c)
3 preceding commitment under RCW 71.05.280(3) or 71.05.320(~~(+2)~~) (3)(c)
4 or the victim's next of kin if the crime was a homicide;

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

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

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

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

18 (2) If a person committed under RCW 71.05.280(3) or
19 71.05.320(~~(+2)~~) (3)(c) following dismissal of a sex, violent, or
20 felony harassment offense pursuant to RCW (~~(10.77.090(4))~~)
21 10.77.084(1)(c) escapes, the superintendent shall immediately notify,
22 by the most reasonable and expedient means available, the chief of
23 police of the city and the sheriff of the county in which the person
24 resided immediately before the person's arrest. If previously
25 requested, the superintendent shall also notify the witnesses and the
26 victim of the sex, violent, or felony harassment offense that was
27 dismissed pursuant to RCW (~~(10.77.090(4))~~) 10.77.084(1)(c) preceding
28 commitment under RCW 71.05.280(3) or 71.05.320(~~(+2)~~) (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, parents, siblings, and
10 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. 211.** RCW 71.09.025 and 2001 c 286 s 5 are each amended to
14 read as follows:

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

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

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

24 (iii) Release of a person who has been charged with a sexually
25 violent offense and who has been determined to be incompetent to stand
26 trial pursuant to RCW (~~(10.77.090(4))~~) 10.77.084(1)(c); or

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

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

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

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

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

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

3 (v) A current mental health evaluation or mental health records
4 review.

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

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

9 (4) As used in this section, "agency with jurisdiction" means that
10 agency with the authority to direct the release of a person serving a
11 sentence or term of confinement and includes the department of
12 corrections, the indeterminate sentence review board, and the
13 department of social and health services.

14 **Sec. 212.** RCW 71.09.030 and 1995 c 216 s 3 are each amended to
15 read as follows:

16 When it appears that: (1) A person who at any time previously has
17 been convicted of a sexually violent offense is about to be released
18 from total confinement on, before, or after July 1, 1990; (2) a person
19 found to have committed a sexually violent offense as a juvenile is
20 about to be released from total confinement on, before, or after July
21 1, 1990; (3) a person who has been charged with a sexually violent
22 offense and who has been determined to be incompetent to stand trial is
23 about to be released, or has been released on, before, or after July 1,
24 1990, pursuant to RCW (~~(10.77.090(3))~~) 10.77.084(1)(c); (4) a person
25 who has been found not guilty by reason of insanity of a sexually
26 violent offense is about to be released, or has been released on,
27 before, or after July 1, 1990, pursuant to RCW 10.77.020(3), 10.77.110
28 (1) or (3), or 10.77.150; or (5) a person who at any time previously
29 has been convicted of a sexually violent offense and has since been
30 released from total confinement and has committed a recent overt act;
31 and it appears that the person may be a sexually violent predator, the
32 prosecuting attorney of the county where the person was convicted or
33 charged or the attorney general if requested by the prosecuting
34 attorney may file a petition alleging that the person is a "sexually
35 violent predator" and stating sufficient facts to support such
36 allegation.

1 **Sec. 213.** RCW 71.09.060 and 2006 c 303 s 11 are each amended to
2 read as follows:

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

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

23 If the court or jury determines that the person is a sexually
24 violent predator, the person shall be committed to the custody of the
25 department of social and health services for placement in a secure
26 facility operated by the department of social and health services for
27 control, care, and treatment until such time as: (a) The person's
28 condition has so changed that the person no longer meets the definition
29 of a sexually violent predator; or (b) conditional release to a less
30 restrictive alternative as set forth in RCW 71.09.092 is in the best
31 interest of the person and conditions can be imposed that would
32 adequately protect the community.

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

36 If the jury is unable to reach a unanimous verdict, the court shall
37 declare a mistrial and set a retrial within forty-five days of the date
38 of the mistrial unless the prosecuting agency earlier moves to dismiss

1 the petition. The retrial may be continued upon the request of either
2 party accompanied by a showing of good cause, or by the court on its
3 own motion in the due administration of justice provided that the
4 respondent will not be substantially prejudiced. In no event may the
5 person be released from confinement prior to retrial or dismissal of
6 the case.

7 (2) If the person charged with a sexually violent offense has been
8 found incompetent to stand trial, and is about to (~~(be)~~) be or has
9 been released pursuant to RCW (~~(10.77.090(4))~~) 10.77.084(1)(c), and his
10 or her commitment is sought pursuant to subsection (1) of this section,
11 the court shall first hear evidence and determine whether the person
12 did commit the act or acts charged if the court did not enter a finding
13 prior to dismissal under RCW (~~(10.77.090(4))~~) 10.77.084(1)(c) that the
14 person committed the act or acts charged. The hearing on this issue
15 must comply with all the procedures specified in this section. In
16 addition, the rules of evidence applicable in criminal cases shall
17 apply, and all constitutional rights available to defendants at
18 criminal trials, other than the right not to be tried while
19 incompetent, shall apply. After hearing evidence on this issue, the
20 court shall make specific findings on whether the person did commit the
21 act or acts charged, the extent to which the person's incompetence or
22 developmental disability affected the outcome of the hearing, including
23 its effect on the person's ability to consult with and assist counsel
24 and to testify on his or her own behalf, the extent to which the
25 evidence could be reconstructed without the assistance of the person,
26 and the strength of the prosecution's case. If, after the conclusion
27 of the hearing on this issue, the court finds, beyond a reasonable
28 doubt, that the person did commit the act or acts charged, it shall
29 enter a final order, appealable by the person, on that issue, and may
30 proceed to consider whether the person should be committed pursuant to
31 this section.

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

1 (4) A court has jurisdiction to order a less restrictive
2 alternative placement only after a hearing ordered pursuant to RCW
3 71.09.090 following initial commitment under this section and in accord
4 with the provisions of this chapter.

5 NEW SECTION. **Sec. 214.** The following acts or parts of acts are
6 each repealed:

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

9 (2) RCW 10.77.800 (Evaluation of chapter 297, Laws of 1998--
10 Recidivism, competency restoration, information sharing) and 1998 c 297
11 s 54.

12 **PART III**
13 **MISCELLANEOUS**

14 NEW SECTION. **Sec. 301.** Part headings used in this act are not any
15 part of the law.

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