

RCW 10.77.020 Rights of person under this chapter. (1) At any and all stages of the proceedings pursuant to this chapter, any person subject to the provisions of this chapter shall be entitled to the assistance of counsel, and if the person is indigent the court shall appoint counsel to assist him or her. Prior to acquittal by reason of insanity under this chapter, the court shall appoint counsel administered by the county where the criminal charges are filed.

At the time an indigent individual is acquitted by reason of insanity and is committed to state psychiatric care, the court shall immediately notify the Washington state office of public defense of the need for representation during the term of commitment. The office of public defense shall provide counsel to represent the person throughout the term of commitment, including during any period of conditional release, until legal termination of commitment and final unconditional release, as provided in chapter 2.70 RCW.

(2) A person may waive his or her right to counsel; but such waiver shall only be effective if a court makes a specific finding that he or she is or was competent to so waive. In making such findings, the court shall be guided but not limited by the following standards: Whether the person attempting to waive the assistance of counsel, does so understanding:

- (a) The nature of the charges;
- (b) The statutory offense included within them;
- (c) The range of allowable punishments thereunder;
- (d) Possible defenses to the charges and circumstances in mitigation thereof; and
- (e) All other facts essential to a broad understanding of the whole matter.

(3) Whenever any person is subjected to an examination pursuant to any provision of this chapter, he or she may retain an expert or professional person to perform an examination in his or her behalf. In the case of a person who is indigent, the court shall upon his or her request assist the person in obtaining an expert or professional person to perform an examination or participate in the hearing on his or her behalf. An expert or professional person obtained by an indigent person pursuant to the provisions of this chapter shall be compensated for his or her services out of funds of the department, in an amount determined by the secretary to be fair and reasonable, except that an expert or professional person obtained by a person who is committed following acquittal by reason of insanity and committed to state psychiatric care shall be compensated out of funds of the office of public defense as provided in policies and procedures under chapter 2.70 RCW, in a manner consistent with the rules of professional conduct and the standards for indigent defense.

(4) Any time the defendant is being examined by court appointed experts or professional persons pursuant to the provisions of this chapter, the defendant shall be entitled to have his or her attorney present.

(5) In a competency evaluation conducted under this chapter, the defendant may refuse to answer any question if he or she believes his or her answers may tend to incriminate him or her or form links leading to evidence of an incriminating nature.

(6) In a sanity evaluation conducted under this chapter, if a defendant refuses to answer questions or to participate in an examination conducted in response to the defendant's assertion of an insanity defense, the court shall exclude from evidence at trial any testimony or evidence from any expert or professional person obtained

or retained by the defendant. [2023 c 120 s 6; 2006 c 109 s 1; 1998 c 297 s 30; 1993 c 31 s 5; 1974 ex.s. c 198 s 2; 1973 1st ex.s. c 117 s 2.]

Intent—Effective date—2023 c 120: See notes following RCW 2.70.027.

Application—2006 c 109: "This act applies to all examinations performed on or after June 7, 2006." [2006 c 109 s 2.]

Severability—2006 c 109: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 109 s 3.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.