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HOUSE BILL 2265

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By Representatives H. Myers, Riley, Leonard, Hargrove, Winsley, Ludwig, Bowman and Van Luven; by request of Department of Corrections

Prefiled 1/3/92. Read first time 01/13/92. Referred to Committee on Human Services.

1 AN ACT Relating to the references to responsibilities of  
2 departments and corrections officers dealing with criminal procedure  
3 for the criminally insane; and amending RCW 10.77.010, 10.77.020,  
4 10.77.150, 10.77.160, 10.77.165, 10.77.180, 10.77.190, 10.77.200, and  
5 10.77.210.

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

7 **Sec. 1.** RCW 10.77.010 and 1989 c 420 s 3 are each amended to read  
8 as follows:

9 As used in this chapter:

10 (1) A "criminally insane" person means any person who has been  
11 acquitted of a crime charged by reason of insanity, and thereupon found  
12 to be a substantial danger to other persons or to present a substantial  
13 likelihood of committing felonious acts jeopardizing public safety or

1 security unless kept under further control by the court or other  
2 persons or institutions.

3 (2) "Indigent" means any person who is financially unable to obtain  
4 counsel or other necessary expert or professional services without  
5 causing substantial hardship to the person or his or her family.

6 (3) "Secretary" means the secretary of the department of social and  
7 health services or his or her designee.

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

10 (5) "Treatment" means any currently standardized medical or mental  
11 health procedure including medication.

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

15 (7) No condition of mind proximately induced by the voluntary act  
16 of a person charged with a crime shall constitute "insanity".

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

24 (9) "Developmental disability" means the condition defined in RCW  
25 71A.10.020(2).

26 (10) "Developmental disabilities professional" means a person who  
27 has specialized training and three years of experience in directly  
28 treating or working with persons with developmental disabilities and is  
29 a psychiatrist or psychologist, or a social worker, and such other

1 developmental disabilities professionals as may be defined by rules  
2 adopted by the secretary.

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

11 (12) "Psychiatrist" means a person having a license as a physician  
12 and surgeon in this state who has, in addition, completed three years  
13 of graduate training in psychiatry in a program approved by the  
14 American medical association or the American osteopathic association  
15 and is certified or eligible to be certified by the American board of  
16 psychiatry and neurology.

17 (13) "Psychologist" means a person who has been licensed as a  
18 psychologist pursuant to chapter 18.83 RCW.

19 (14) "Social worker" means a person with a master's or further  
20 advanced degree from an accredited school of social work or a degree  
21 deemed equivalent under rules adopted by the secretary.

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

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

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

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

6 (f) Where relevant in light of past criminal behavior and due  
7 consideration for public safety, the criteria for proposed movement to  
8 less-restrictive settings, criteria for proposed eventual discharge  
9 from involuntary confinement, and a projected possible date for  
10 discharge from involuntary confinement; and

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

13 **Sec. 2.** RCW 10.77.020 and 1974 ex.s. c 198 s 2 are each amended to  
14 read as follows:

15 (1) At any and all stages of the proceedings pursuant to this  
16 chapter, any person subject to the provisions of this chapter shall be  
17 entitled to the assistance of counsel, and if the person is indigent  
18 the court shall appoint counsel to assist him or her. A person may  
19 waive his or her right to counsel; but such waiver shall only be  
20 effective if a court makes a specific finding that he or she is or was  
21 competent to so waive. In making such findings, the court shall be  
22 guided but not limited by the following standards: Whether the person  
23 attempting to waive the assistance of counsel, does so understanding:

24 (a) The nature of the charges;

25 (b) The statutory offense included within them;

26 (c) The range of allowable punishments thereunder;

27 (d) Possible defenses to the charges and circumstances in  
28 mitigation thereof; and

1 (e) All other facts essential to a broad understanding of the whole  
2 matter.

3 (2) Whenever any person is subjected to an examination pursuant to  
4 any provision of this chapter, he or she may retain an expert or  
5 professional person to perform an examination in his or her behalf. In  
6 the case of a person who is indigent, the court shall upon his or her  
7 request assist the person in obtaining an expert or professional person  
8 to perform an examination or participate in the hearing on his or her  
9 behalf. An expert or professional person obtained by an indigent  
10 person pursuant to the provisions of this chapter shall be compensated  
11 for his or her services out of funds of the department, in an amount  
12 determined by it to be fair and reasonable.

13 (3) Whenever any person has been committed under any provision of  
14 this chapter, or ordered to undergo alternative treatment following his  
15 or her acquittal of a crime charged by reason of insanity, such  
16 commitment or treatment cannot exceed the maximum possible penal  
17 sentence for any offense charged for which ((he)) the person was  
18 acquitted by reason of insanity. If at the end of that period the  
19 person has not been finally discharged and is still in need of  
20 commitment or treatment, civil commitment proceedings may be  
21 instituted, if appropriate.

22 (4) Any time the defendant is being examined by court appointed  
23 experts or professional persons pursuant to the provisions of this  
24 chapter, ((he)) the defendant shall be entitled to have his or her  
25 attorney present. The defendant may refuse to answer any question if  
26 he or she believes his or her answers may tend to incriminate him or  
27 her or form links leading to evidence of an incriminating nature.

28 **Sec. 3.** RCW 10.77.150 and 1982 c 112 s 1 are each amended to read  
29 as follows:

1 (1) Persons examined pursuant to RCW 10.77.140, as now or hereafter  
2 amended, may make application to the secretary for conditional release.  
3 The secretary shall, after considering the reports of experts or  
4 professional persons conducting the examination pursuant to RCW  
5 10.77.140, forward to the court of the county which ordered (~~his~~) the  
6 person's commitment the person's application for conditional release as  
7 well as (~~his~~) the secretary's recommendations concerning the  
8 application and any proposed terms and conditions upon which (~~he~~) the  
9 secretary reasonably believes the person can be conditionally released.  
10 Conditional release may also contemplate partial release for work,  
11 training, or educational purposes.

12 (2) The court of the county which ordered (~~his~~) the person's  
13 commitment, upon receipt of an application for conditional release with  
14 the secretary's recommendation for conditional release, shall within  
15 thirty days schedule a hearing. The court may schedule a hearing on  
16 applications recommended for disapproval by the secretary. The  
17 prosecuting attorney shall represent the state at such hearings and  
18 shall have the right to have the patient examined by an expert or  
19 professional person of (~~his~~) the prosecuting attorney's choice. If  
20 the committed person is indigent, and he or she so requests, the court  
21 shall appoint a qualified expert or professional person to examine  
22 (~~him~~) the person on his or her behalf. The issue to be determined at  
23 such a hearing is whether or not the person may be released  
24 conditionally without substantial danger to other persons, or  
25 substantial likelihood of committing felonious acts jeopardizing public  
26 safety or security. The court, after the hearing, shall rule on the  
27 secretary's recommendations, and if it disapproves of conditional  
28 release, may do so only on the basis of substantial evidence. The  
29 court may modify the suggested terms and conditions on which the person  
30 is to be conditionally released. Pursuant to the determination of the

1 court after hearing, the committed person shall thereupon be released  
2 on such conditions as the court determines to be necessary, or shall be  
3 remitted to the custody of the secretary. If the order of conditional  
4 release includes a requirement for the committed person to report to a  
5 community corrections officer, the order shall also specify that the  
6 conditionally released person shall be under the supervision of the  
7 secretary of corrections or such person as the secretary of corrections  
8 may designate and shall follow explicitly the instructions of the  
9 secretary of corrections including reporting as directed to a community  
10 corrections officer, remaining within prescribed geographical  
11 boundaries, and notifying the community corrections officer prior to  
12 making any change in the offender's address or employment.

13 (3) If the court determines that receiving regular or periodic  
14 medication or other medical treatment shall be a condition of the  
15 committed person's release, then the court shall require him or her to  
16 report to a physician or other ((~~person~~)) medical or mental health  
17 practitioner for the medication or treatment. In addition to  
18 submitting any report required by RCW 10.77.160, the physician or other  
19 ((~~person~~)) medical or mental health practitioner shall immediately upon  
20 the released person's failure to appear for the medication or treatment  
21 report the failure to the court ((~~and~~)), to the prosecuting attorney of  
22 the county in which the released person was committed, and to the  
23 supervising community corrections officer.

24 (4) Any person, whose application for conditional release has been  
25 denied, may reapply after a period of six months from the date of  
26 denial.

27 **Sec. 4.** RCW 10.77.160 and 1973 1st ex.s. c 117 s 16 are each  
28 amended to read as follows:

1       When a conditionally released person is required by the terms of  
2 his or her conditional release to report to a physician, (~~(probation~~  
3 ~~officer, or other such person)~~) department of corrections community  
4 corrections officer, or medical or mental health practitioner on a  
5 regular or periodic basis, the (~~(doctor, probation)~~) physician,  
6 department of corrections community corrections officer, medical or  
7 mental health practitioner, or other such person shall monthly, for the  
8 first six months after release and semiannually thereafter, or as  
9 otherwise directed by the court, submit to the court, the secretary,  
10 the institution from which released, and to the prosecuting attorney of  
11 the county in which the person was committed, a report stating whether  
12 the person is adhering to the terms and conditions of his or her  
13 conditional release.

14       **Sec. 5.** RCW 10.77.165 and 1990 c 3 s 107 are each amended to read  
15 as follows:

16       In the event of an escape by a person committed under this chapter  
17 from a state institution or the disappearance of such a person on  
18 conditional release to the department of social and health services,  
19 the superintendent, or in the event of a disappearance of such a person  
20 on conditional release to the department of corrections, the community  
21 corrections officer shall (~~(notify)~~), as appropriate, notify local law  
22 enforcement officers, other governmental agencies, the person's  
23 relatives, and any other appropriate persons about information  
24 necessary for the public safety or to assist in the apprehension of the  
25 person. The notice provisions of this section are in addition to those  
26 provided in RCW 10.77.205.

27       **Sec. 6.** RCW 10.77.180 and 1974 ex.s. c 198 s 14 are each amended  
28 to read as follows:

1        Each person conditionally released pursuant to RCW 10.77.150, as  
2 now or hereafter amended, shall have his or her case reviewed by the  
3 court which conditionally released him or her no later than one year  
4 after such release and no later than every two years thereafter, such  
5 time to be scheduled by the court. Review may occur in a shorter time  
6 or more frequently, if the court, in its discretion, on its own motion,  
7 or on motion of the person, the secretary of social and health  
8 services, the secretary of corrections, medical or mental health  
9 practitioner, or the prosecuting attorney, so determines. The sole  
10 question to be determined by the court is whether the person shall  
11 continue to be conditionally released. The court in making its  
12 determination shall be aided by the periodic reports filed pursuant to  
13 RCW 10.77.140, as now or hereafter amended, and RCW 10.77.160, and the  
14 opinions of the secretary of social and health services and other  
15 experts or professional persons.

16        **Sec. 7.** RCW 10.77.190 and 1982 c 112 s 2 are each amended to read  
17 as follows:

18        (1) Any person submitting reports pursuant to RCW 10.77.160, the  
19 secretary, or the prosecuting attorney may petition the court to, or  
20 the court on its own motion may schedule an immediate hearing for the  
21 purpose of modifying the terms of conditional release if the petitioner  
22 or the court believes the released person is failing to adhere to the  
23 terms and conditions of his or her conditional release or is in need of  
24 additional care and treatment.

25        (2) If the prosecuting attorney, the secretary of social and health  
26 services, the secretary of corrections, or the court, after examining  
27 the report filed with them pursuant to RCW 10.77.160, or based on other  
28 information received by them, reasonably believes that a conditionally  
29 released person is failing to adhere to the terms and conditions of his

1 or her conditional release the court or secretary of social and health  
2 services or the secretary of corrections may order that the  
3 conditionally released person be apprehended and taken into custody  
4 until such time as a hearing can be scheduled to determine the facts  
5 and whether or not the person's conditional release should be revoked  
6 or modified. The court shall be notified before the close of the next  
7 judicial day of the apprehension. Both the prosecuting attorney and  
8 the conditionally released person shall have the right to request an  
9 immediate mental examination of the conditionally released person. If  
10 the conditionally released person is indigent, the court or secretary  
11 of social and health services shall, upon request, assist him or her in  
12 obtaining a qualified expert or professional person to conduct the  
13 examination.

14 (3) The court, upon receiving notification of the apprehension,  
15 shall promptly schedule a hearing. The issue to be determined is  
16 whether the conditionally released person did or did not adhere to the  
17 terms and conditions of his or her release. Pursuant to the  
18 determination of the court upon such hearing, the conditionally  
19 released person shall either continue to be conditionally released on  
20 the same or modified conditions or his or her conditional release shall  
21 be revoked and he or she shall be committed subject to release only in  
22 accordance with provisions of this chapter.

23 **Sec. 8.** RCW 10.77.200 and 1989 c 420 s 11 are each amended to read  
24 as follows:

25 (1) Upon application by the committed or conditionally released  
26 person, the secretary shall determine whether or not reasonable grounds  
27 exist for final discharge. In making this determination, the secretary  
28 may consider the reports filed under RCW 10.77.060, 10.77.110,  
29 10.77.140, and 10.77.160, and other reports and evaluations provided by

1 professionals familiar with the case. If the secretary approves the  
2 final discharge he or she then shall authorize said person to petition  
3 the court.

4 (2) The petition shall be served upon the court and the prosecuting  
5 attorney. The court, upon receipt of the petition for final discharge,  
6 shall within forty-five days order a hearing. Continuance of the  
7 hearing date shall only be allowed for good cause shown. The  
8 prosecuting attorney shall represent the state, and shall have the  
9 right to have the petitioner examined by an expert or professional  
10 person of ((his)) the prosecuting attorney's choice. If the petitioner  
11 is indigent, and the person so requests, the court shall appoint a  
12 qualified expert or professional person to examine him or her. If the  
13 petitioner is developmentally disabled, the examination shall be  
14 performed by a developmental disabilities professional. The hearing  
15 shall be before a jury if demanded by either the petitioner or the  
16 prosecuting attorney. The burden of proof shall be upon the petitioner  
17 to show by a preponderance of the evidence that the petitioner may be  
18 finally discharged without substantial danger to other persons, and  
19 without presenting a substantial likelihood of committing felonious  
20 acts jeopardizing public safety or security, unless kept under further  
21 control by the court or other persons or institutions.

22 (3) Nothing contained in this chapter shall prohibit the patient  
23 from petitioning the court for final discharge or conditional release  
24 from the institution in which he or she is committed. The issue to be  
25 determined on such proceeding is whether the petitioner is a  
26 substantial danger to other persons, or presents a substantial  
27 likelihood of committing felonious acts jeopardizing public safety or  
28 security, unless kept under further control by the court or other  
29 persons or institutions.

1        Nothing contained in this chapter shall prohibit the committed  
2 person from petitioning for release by writ of habeas corpus.

3        **Sec. 9.** RCW 10.77.210 and 1990 c 3 s 108 are each amended to read  
4 as follows:

5        Any person involuntarily detained, hospitalized, or committed  
6 pursuant to the provisions of this chapter shall have the right to  
7 adequate care and individualized treatment. The person who has custody  
8 of the patient or is in charge of treatment shall keep records  
9 detailing all medical, expert, and professional care and treatment  
10 received by a committed person, and shall keep copies of all reports of  
11 periodic examinations of the patient that have been filed with the  
12 secretary pursuant to this chapter. Except as provided in RCW  
13 10.77.205 and 4.24.550 regarding the release of information concerning  
14 insane offenders who are acquitted of sex offenses and subsequently  
15 committed pursuant to this chapter, all records and reports made  
16 pursuant to this chapter, shall be made available only upon request, to  
17 the committed person, to his or her attorney, to his or her personal  
18 physician, to the supervising community corrections officer, to the  
19 prosecuting attorney, to the court, to the protection and advocacy  
20 agency, or other expert or professional persons who, upon proper  
21 showing, demonstrates a need for access to such records. All records  
22 and reports made pursuant to this chapter shall also be made available,  
23 upon request, to the department of corrections or the indeterminate  
24 sentence review board if the person was on parole (~~(or)~~), probation, or  
25 community supervision at the time of detention, hospitalization, or  
26 commitment or the person is subsequently convicted for the crime for  
27 which he or she was detained, hospitalized, or committed pursuant to  
28 this chapter.