

ESB 5519 - H AMD 683

By Representative Dickerson

NOT CONSIDERED 04/26/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "PART I

4 COMPETENCY EVALUATION AND RESTORATION

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

7 (1)(a) ~~Whenever ((a defendant has pleaded not guilty by reason of~~
8 ~~insanity, or)) there is reason to doubt ((his or her)) a defendant's~~
9 ~~competency, the court on its own motion or on the motion of any party~~
10 ~~shall ((either appoint or)) request the secretary to designate ((at~~
11 ~~least two)) a qualified expert((s)) or professional ((persons, one of~~
12 ~~whom shall be approved by the prosecuting attorney, to examine and~~
13 ~~report upon the mental condition)) person to evaluate the competency of~~
14 ~~the defendant. The signed order of the court shall serve as authority~~
15 ~~for the ((experts)) evaluator to be given access to all records held by~~
16 ~~any mental health, medical, educational, or correctional facility that~~
17 ~~relate to the present or past mental, emotional, or physical condition~~
18 ~~of the defendant. ((At least one of the experts or professional~~
19 ~~persons appointed shall be a developmental disabilities professional if~~
20 ~~the court is advised by any party that the defendant may be~~
21 ~~developmentally disabled. Upon agreement of the parties, the court may~~
22 ~~designate one expert or professional person to conduct the examination~~
23 ~~and report on the mental condition of the defendant.~~

24 ~~For purposes of the examination,)) (b) The court may order the~~
25 ~~evaluation to be conducted in a jail, detention facility, or the~~
26 ~~community, or may order the defendant to be committed to a state~~
27 ~~hospital or other suitably secure ((public or private)) mental health~~
28 ~~facility for a period of time necessary to complete the ((examination))~~
29 ~~evaluation, but not to exceed fifteen days from the time of admission~~

1 to the facility. (~~If the defendant is being held in jail or other~~
2 ~~detention facility, upon agreement of the parties, the court may direct~~
3 ~~that the examination be conducted at the jail or other detention~~
4 ~~facility.~~

5 ~~(b) When a defendant is ordered to be committed for inpatient~~
6 ~~examination under this subsection (1), the court may delay granting~~
7 ~~bail until the defendant has been evaluated for competency or sanity~~
8 ~~and appears before the court. Following the evaluation, in determining~~
9 ~~bail the court shall consider:— (i) Recommendations of the expert or~~
10 ~~professional persons regarding the defendant's competency, sanity, or~~
11 ~~diminished capacity; (ii) whether the defendant has a recent history of~~
12 ~~one or more violent acts; (iii) whether the defendant has previously~~
13 ~~been acquitted by reason of insanity or found incompetent; (iv) whether~~
14 ~~it is reasonably likely the defendant will fail to appear for a future~~
15 ~~court hearing; and (v) whether the defendant is a threat to public~~
16 ~~safety.)~~ (c) The prosecutor shall send a copy of the order for

17 evaluation to the secretary along with a copy of the charging document,
18 certification of probable cause, police report, and a summary of the
19 defendant's criminal history. These documents shall be provided as
20 soon as possible, and no later than three judicial days after the order
21 is signed. The court or either party may provide additional
22 information to the secretary which it reasonably deems to be of
23 assistance to the evaluation, unless such action would conflict with
24 ethical duties.

25 (d) The report of an evaluation of a defendant who is being held in
26 custody at a jail or detention facility shall be completed as soon as
27 possible but in any event not later than nineteen days from the time of
28 receipt by the secretary of the documents specified in (c) of this
29 subsection.

30 (e) If at any point the evaluator becomes aware that the defendant
31 may have a developmental disability, or if it appears that the
32 characteristics of developmental disability may be a significant factor
33 in the defendant's ability to participate in the criminal proceeding,
34 the evaluation shall be performed by or in consultation with a
35 developmental disabilities professional.

36 (f) For good cause, the court may extend the time period for
37 completion of an evaluation.

1 (g) Upon agreement by the parties, the court may appoint a
2 qualified expert or professional person to evaluate the competency of
3 the defendant instead of requesting the secretary to designate an
4 evaluator.

5 (2) The court may direct that a qualified expert or professional
6 person retained by or appointed for the defendant be permitted to
7 witness the ~~((examination))~~ evaluation authorized by subsection (1) of
8 this section, and that the defendant shall have access to all
9 information obtained by the ~~((court-appointed experts or professional~~
10 ~~persons))~~ evaluator. The defendant's expert or professional person
11 shall have the right to file his or her own report following the
12 guidelines of subsection (3) of this section. If the defendant is
13 indigent, the court shall upon the request of the defendant assist him
14 or her in obtaining an expert or professional person.

15 (3) The report of the ~~((examination))~~ evaluation shall include the
16 following:

- 17 (a) A description of the nature of the ~~((examination))~~ evaluation;
- 18 (b) A diagnosis of the mental condition of the defendant;
- 19 (c) ~~((If the defendant suffers from a mental disease or defect, or~~
20 ~~is developmentally disabled,))~~ An opinion as to competency;
- 21 (d) ~~((If the defendant has indicated his or her intention to rely~~
22 ~~on the defense of insanity pursuant to RCW 10.77.030, an opinion as to~~
23 ~~the defendant's sanity at the time of the act;~~
- 24 ~~(e) When directed by the court, an opinion as to the capacity of~~
25 ~~the defendant to have a particular state of mind which is an element of~~
26 ~~the offense charged;~~
- 27 ~~(f))~~ An opinion as to whether the defendant should be evaluated by
28 a ~~((county))~~ designated mental health professional under chapter 71.05
29 RCW~~(, and an opinion as to whether the defendant is a substantial~~
30 ~~danger to other persons, or presents a substantial likelihood of~~
31 ~~committing criminal acts jeopardizing public safety or security, unless~~
32 ~~kept under further control by the court or other persons or~~
33 ~~institutions)).~~

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

36 **Sec. 102.** RCW 10.77.060 and 2004 c 9 s 1 are each amended to read
37 as follows:

1 (1)(a) Whenever (~~a defendant has pleaded not guilty by reason of~~
2 ~~insanity, or~~) there is reason to doubt (~~his or her~~) a defendant's
3 competency, the court on its own motion or on the motion of any party
4 shall (~~either appoint or~~) request the secretary to designate (~~at~~
5 ~~least two~~) a qualified expert(~~s~~) or professional (~~persons, one of~~
6 ~~whom shall be approved by the prosecuting attorney, to examine and~~
7 ~~report upon the mental condition~~) person to evaluate the competency of
8 the defendant. The signed order of the court shall serve as authority
9 for the (~~experts~~) evaluator to be given access to all records held by
10 any mental health, medical, educational, or correctional facility that
11 relate to the present or past mental, emotional, or physical condition
12 of the defendant. (~~At least one of the experts or professional~~
13 ~~persons appointed shall be a developmental disabilities professional if~~
14 ~~the court is advised by any party that the defendant may be~~
15 ~~developmentally disabled. Upon agreement of the parties, the court may~~
16 ~~designate one expert or professional person to conduct the examination~~
17 ~~and report on the mental condition of the defendant.~~

18 ~~For purposes of the examination,~~) (b) The court may order the
19 evaluation to be conducted in a jail, detention facility, or the
20 community, or may order the defendant to be committed to a state
21 hospital or other suitably secure (~~public or private~~) mental health
22 facility for a period of time necessary to complete the (~~examination~~)
23 evaluation, but not to exceed fifteen days from the time of admission
24 to the facility. (~~If the defendant is being held in jail or other~~
25 ~~detention facility, upon agreement of the parties, the court may direct~~
26 ~~that the examination be conducted at the jail or other detention~~
27 ~~facility.~~

28 ~~(b) When a defendant is ordered to be committed for inpatient~~
29 ~~examination under this subsection (1), the court may delay granting~~
30 ~~bail until the defendant has been evaluated for competency or sanity~~
31 ~~and appears before the court. Following the evaluation, in determining~~
32 ~~bail the court shall consider: (i) Recommendations of the expert or~~
33 ~~professional persons regarding the defendant's competency, sanity, or~~
34 ~~diminished capacity; (ii) whether the defendant has a recent history of~~
35 ~~one or more violent acts; (iii) whether the defendant has previously~~
36 ~~been acquitted by reason of insanity or found incompetent; (iv) whether~~
37 ~~it is reasonably likely the defendant will fail to appear for a future~~
38 ~~court hearing; and (v) whether the defendant is a threat to public~~

1 ~~safety.~~) (c) The prosecutor shall send a copy of the order for
2 evaluation to the secretary along with a copy of the charging document,
3 certification of probable cause, police report, and a summary of the
4 defendant's criminal history. These documents shall be provided as
5 soon as possible, and no later than three judicial days after the order
6 is signed. The court or either party may provide additional
7 information to the secretary which it reasonably deems to be of
8 assistance to the evaluation, unless such action would conflict with
9 ethical duties.

10 (d) The report of an evaluation of a defendant who is being held in
11 custody at a jail or detention facility shall be completed as soon as
12 possible but in any event not later than sixteen days from the time of
13 receipt by the secretary of the documents specified in (c) of this
14 subsection.

15 (e) If at any point the evaluator becomes aware that the defendant
16 may have a developmental disability, or if it appears that the
17 characteristics of developmental disability may be a significant factor
18 in the defendant's ability to participate in the criminal proceeding,
19 the evaluation shall be performed by or in consultation with a
20 developmental disabilities professional.

21 (f) For good cause, the court may extend the time period for
22 completion of an evaluation.

23 (g) Upon agreement by the parties, the court may appoint a
24 qualified expert or professional person to evaluate the competency of
25 the defendant instead of requesting the secretary to designate an
26 evaluator.

27 (2) The court may direct that a qualified expert or professional
28 person retained by or appointed for the defendant be permitted to
29 witness the (~~examination~~) evaluation authorized by subsection (1) of
30 this section, and that the defendant shall have access to all
31 information obtained by the (~~court appointed experts or professional~~
32 ~~persons~~) evaluator. The defendant's expert or professional person
33 shall have the right to file his or her own report following the
34 guidelines of subsection (3) of this section. If the defendant is
35 indigent, the court shall upon the request of the defendant assist him
36 or her in obtaining an expert or professional person.

37 (3) The report of the (~~examination~~) evaluation shall include the
38 following:

- 1 (a) A description of the nature of the (~~examination~~) evaluation;
- 2 (b) A diagnosis of the mental condition of the defendant;
- 3 (~~(If the defendant suffers from a mental disease or defect, or~~
- 4 ~~is developmentally disabled,)~~) An opinion as to competency;
- 5 (d) (~~(If the defendant has indicated his or her intention to rely~~
- 6 ~~on the defense of insanity pursuant to RCW 10.77.030, an opinion as to~~
- 7 ~~the defendant's sanity at the time of the act;~~
- 8 (~~e) When directed by the court, an opinion as to the capacity of~~
- 9 ~~the defendant to have a particular state of mind which is an element of~~
- 10 ~~the offense charged;~~
- 11 (~~f~~)) An opinion as to whether the defendant should be evaluated by
- 12 a (~~county~~) designated mental health professional under chapter 71.05
- 13 RCW(~~, and an opinion as to whether the defendant is a substantial~~
- 14 ~~danger to other persons, or presents a substantial likelihood of~~
- 15 ~~committing criminal acts jeopardizing public safety or security, unless~~
- 16 ~~kept under further control by the court or other persons or~~
- 17 ~~institutions)).~~
- 18 (4) The secretary may execute such agreements as appropriate and
- 19 necessary to implement this section.

20 **Sec. 103.** RCW 10.77.065 and 2008 c 213 s 1 are each amended to

21 read as follows:

22 (1)(a)(i) (~~The facility conducting the evaluation~~) An evaluator

23 appointed under RCW 10.77.060 or an expert or professional person

24 appointed under section 107 of this act shall provide (~~its~~) a report

25 and recommendation to the court in which the criminal proceeding is

26 pending. A copy of the report and recommendation shall be provided to

27 the designated mental health professional, the prosecuting attorney,

28 the defense attorney, and the professional person at the local

29 correctional facility where the defendant is being held, or if there is

30 no professional person, to the person designated under (a)(ii) of this

31 subsection. Upon request, the (~~facility~~) secretary shall also

32 provide copies of any source documents relevant to the evaluation to

33 the designated mental health professional. The report and

34 recommendation shall be provided not less than twenty-four hours

35 preceding the transfer of the defendant to the correctional facility in

36 the county in which the criminal proceeding is pending.

1 (ii) If there is no professional person at the local correctional
2 facility, the local correctional facility shall designate a
3 professional person as defined in RCW 71.05.020 or, in cooperation with
4 the regional support network, a professional person at the regional
5 support network to receive the report and recommendation.

6 (iii) When a defendant is transferred to (~~the facility conducting~~
7 ~~the~~) a state hospital or other suitably secure mental health facility
8 for an evaluation, or upon commencement of a defendant's evaluation in
9 the local correctional facility, the local correctional facility must
10 notify the evaluator or the facility conducting the evaluation of the
11 name of the professional person, or person designated under (a)(ii) of
12 this subsection to receive the report and recommendation.

13 (b) If the (~~facility concludes, under RCW 10.77.060(3)(f), the~~
14 ~~person should be kept under further control, an evaluation shall be~~
15 ~~conducted of such person~~) report of an evaluation performed under RCW
16 10.77.060, 10.77.084(5), or section 107 of this act recommends that a
17 defendant in custody should be evaluated by a designated mental health
18 professional under chapter 71.05 RCW(~~-~~), the court shall order that
19 an evaluation be conducted (~~by the appropriate designated mental~~
20 ~~health professional:—(i)~~) prior to the individual's release from
21 confinement (~~for such person who is convicted, if sentenced to~~
22 ~~confinement for twenty-four months or less; (ii) for any person who is~~
23 ~~acquitted; or (iii) for any person:—(A) Whose charges are dismissed~~
24 ~~pursuant to RCW 10.77.086(4); or (B) whose nonfelony charges are~~
25 ~~dismissed~~) following any conviction, dismissal, or acquittal, unless
26 the individual is sentenced to confinement for more than twenty-four
27 months.

28 (2) (~~The~~) A designated mental health professional conducting an
29 evaluation under subsection (1)(b) of this section shall (~~provide~~
30 ~~written notification~~) notify the persons identified in subsection
31 (1)(a) of this section within twenty-four hours (~~of the results of the~~
32 ~~determination~~) as to whether (~~to commence proceedings~~) detention was
33 initiated under chapter 71.05 RCW. (~~The notification shall be~~
34 ~~provided to the persons identified in subsection (1)(a) of this~~
35 ~~section.~~)

36 (3) The (~~prosecuting attorney~~) petitioner in a proceeding
37 initiated under subsection (2) of this section shall provide a copy of
38 the results of (~~any proceedings commenced by the designated mental~~

1 ~~health professional under subsection (2) of this section to the~~
2 ~~facility conducting the evaluation under this chapter)) the proceeding~~
3 ~~to the secretary.~~

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

9 **Sec. 104.** RCW 10.77.084 and 2007 c 375 s 3 are each amended to
10 read as follows:

11 (1)(a) If at any time during the pendency of an action and prior to
12 judgment the court finds, following a report ~~((as provided in))~~ under
13 RCW 10.77.060 or section 107 of this act, a defendant is incompetent,
14 the court shall order the proceedings against the defendant be stayed
15 except as provided in subsection (4) of this section. The court shall
16 order the defendant to undergo a period of treatment for restoration of
17 competency within the time limits established by RCW 10.77.086 and
18 10.77.088 and the requirements of this section.

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

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

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

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

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

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

8 ~~(iii) The department may establish admission priorities in the~~
9 ~~event that the number of eligible persons exceeds the limits set by the~~
10 ~~department.~~

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

26 ~~((d))~~ (c) If at any time ~~((during the proceeding))~~ the court
27 finds, following notice and hearing, ~~((a))~~ that the defendant is not
28 competent and is either not likely to regain competency, or no current
29 or further period of competency restoration treatment is allowable
30 under RCW 10.77.086 or 10.77.088, the ~~((proceedings shall be~~
31 ~~dismissed))~~ court shall dismiss the charges without prejudice and ((the
32 defendant shall be evaluated for civil commitment proceedings)) enter
33 one of the following orders:

34 (i) If the charge was a felony, and was a serious offense as
35 defined by RCW 10.77.092, the court shall detain the defendant and
36 order the defendant to be transferred to a state hospital or other
37 suitably secure mental health facility for purpose of evaluation under
38 chapter 71.05 RCW.

1 (ii) If the charge was a nonfelony, and was a serious offense as
2 defined by RCW 10.77.092, and the defendant was in custody and not on
3 conditional release at the time of dismissal, the court may detain the
4 defendant and order the defendant to be transferred to an evaluation
5 and treatment facility, state hospital, or other suitably secure mental
6 health facility for the purpose of evaluation under chapter 71.05 RCW.
7 The defendant may be detained in jail for no longer than three days,
8 excluding holidays, prior to transfer or release, and subsequently may
9 be detained by the evaluation and treatment facility, state hospital,
10 or other suitably secure mental health facility for up to seventy-two
11 hours, excluding Saturdays, Sundays, and holidays, prior to the filing
12 of a petition under chapter 71.05 RCW.

13 (iii) If the charge was not a serious offense as defined by RCW
14 10.77.092, or if the charge was a nonfelony and the defendant was on
15 conditional release at the time of dismissal, the court may order the
16 defendant to undergo an evaluation by a designated mental health
17 professional, and shall do so if required by RCW 10.77.065(1)(b). A
18 defendant who is in custody, or who refuses to cooperate with the
19 evaluation, may be detained in custody for up to forty-eight hours for
20 this evaluation.

21 (d) Notwithstanding any other limitations, a defendant who has
22 multiple criminal charges may undergo competency restoration treatment
23 for all charges for the longest time period allowable for any of the
24 charges.

25 (2) If the defendant is referred to the designated mental health
26 professional for consideration of ~~((initial))~~ detention ~~((proceedings))~~
27 under chapter 71.05 RCW ~~((pursuant to this chapter))~~, the designated
28 mental health professional shall provide ~~((prompt—written))~~
29 notification of ~~((the results of the determination whether to commence~~
30 ~~initial detention proceedings under chapter 71.05 RCW and))~~ whether the
31 ~~((person))~~ defendant was detained according to RCW 10.77.065(2). ~~((The~~
32 ~~notification shall be provided to the court in which the criminal~~
33 ~~action was pending, the prosecutor, the defense attorney in the~~
34 ~~criminal action, and the facility that evaluated the defendant for~~
35 ~~competency.))~~

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

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

6 (5) At or before the conclusion of any ~~((commitment))~~ competency
7 restoration period provided for by ~~((this section))~~ RCW 10.77.086 or
8 10.77.088, the facility providing evaluation and treatment shall
9 provide to the court a written report ~~((of examination))~~ which meets
10 the requirements of RCW 10.77.060(3).

11 **Sec. 105.** RCW 10.77.086 and 2007 c 375 s 4 are each amended to
12 read as follows:

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

15 (1) Until ~~((he or she))~~ the defendant has regained the competency
16 necessary to understand the proceedings against him or her and assist
17 in his or her own defense, or has been determined to be unlikely to
18 regain competency ~~((pursuant to RCW 10.77.084(1)(c))~~, but in any event
19 for a period of no longer than ninety days, the court~~((÷~~

20 ~~(a))~~ shall commit the defendant to the custody of the secretary
21 who shall place such defendant in an appropriate facility of the
22 department for evaluation and treatment~~((÷ or~~

23 ~~(b) May alternatively order the defendant to undergo evaluation and~~
24 ~~treatment at some other facility as determined by the department, or~~
25 ~~under the guidance and control of a professional person)).~~

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

33 (3) If, following a hearing under subsection (2) of this section,
34 the court finds ~~((by a preponderance of the evidence))~~ that ~~((a))~~ the
35 defendant ~~((charged with a felony is))~~ remains incompetent, the court
36 ~~((shall have the option of extending the))~~ may order ~~((of commitment or~~

1 alternative)) a second period of competency restoration treatment for
2 an additional ((ninety-day)) period((, but)) of up to ninety days.

3 (a) If a second period of competency restoration treatment would
4 cause the defendant to be held in custody for a longer period than the
5 defendant would have been likely to spend in custody if the defendant
6 were convicted and sentenced to the top of the defendant's standard
7 sentencing range, the court shall not order a second period of
8 competency restoration treatment unless it finds by a preponderance of
9 the evidence following a hearing that further competency restoration
10 treatment is in the public interest due to particular circumstances
11 related to the nature or impact of the alleged offense, or the criminal
12 or treatment history of the defendant.

13 (b) If treatment is extended, the court must at the time of
14 extension set a date for a prompt hearing to determine the defendant's
15 competency before the expiration of the second ninety-day period. The
16 defendant, the defendant's attorney, or the prosecutor has the right to
17 demand that the hearing be before a jury.

18 (c) No extension shall be ordered for a second ninety-day period,
19 nor for any subsequent period as provided in subsection (4) of this
20 section, if the defendant's incompetence has been determined by the
21 secretary to be solely the result of a developmental disability which
22 is such that competence is not reasonably likely to be regained during
23 an extension.

24 ~~(4) ((For persons charged with a felony, at the hearing upon the~~
25 ~~expiration of the second ninety-day period or at the end of the first~~
26 ~~ninety-day period, in the case of a defendant with a developmental~~
27 ~~disability, if the jury or court finds that the defendant is~~
28 ~~incompetent, the charges shall be dismissed without prejudice, and~~
29 ~~either civil commitment proceedings shall be instituted or the court~~
30 ~~shall order the release of the defendant. The criminal charges shall~~
31 ~~not be dismissed)) If the court or jury finds that the defendant~~
32 remains incompetent following a second period of competency restoration
33 treatment under subsection (3) of this section, the court may order a
34 third and final period of competency restoration treatment only if the
35 court or jury finds that: (a) The defendant (i) is a substantial
36 danger to other persons; or (ii) presents a substantial likelihood of
37 committing criminal acts jeopardizing public safety or security; and
38 (b) there is a substantial probability that the defendant will regain

1 competency within a reasonable period of time. In the event that the
2 court or jury makes such a finding, the court may extend the period of
3 commitment for up to an additional six months. A third period of
4 competency restoration treatment shall not be ordered if the
5 allegations against the defendant do not include one or more charges
6 which are serious offenses as defined by RCW 10.77.092.

7 **Sec. 106.** RCW 10.77.088 and 2007 c 375 s 5 are each amended to
8 read as follows:

9 ~~((1)(a))~~ If ~~((the))~~ a defendant is charged with a nonfelony
10 ~~((crime which))~~ and determined to be incompetent:

11 (1) If at least one of the charges is a serious offense as
12 ~~((identified in))~~ defined by RCW 10.77.092 ~~((and found by the court to~~
13 ~~be not competent))~~, then the court shall order the secretary to place
14 the defendant:

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

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

27 ~~(iii) Any combination of this subsection.~~

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

33 ~~(ii) If the defendant was in custody and not on conditional release~~
34 ~~at the time of dismissal, the defendant shall be detained and sent to~~
35 ~~an evaluation and treatment facility for up to seventy two hours,~~
36 ~~excluding Saturdays, Sundays, and holidays, for evaluation for purposes~~
37 ~~of filing a petition under chapter 71.05 RCW. The seventy two hour~~

1 ~~period shall commence upon the next nonholiday weekday following the~~
2 ~~court order and shall run to the end of the last nonholiday weekday~~
3 ~~within the seventy-two-hour period)).~~

4 (2) If the defendant is charged with a nonfelony ((~~erime~~)) that is
5 not a serious offense as defined in RCW 10.77.092((÷

6 ~~The court may stay or dismiss proceedings and detain the defendant~~
7 ~~for sufficient time to allow the designated mental health professional~~
8 ~~to evaluate the defendant and consider initial detention proceedings~~
9 ~~under chapter 71.05 RCW. The court must give notice to all parties at~~
10 ~~least twenty-four hours before the dismissal of any proceeding under~~
11 ~~this subsection, and provide an opportunity for a hearing on whether to~~
12 ~~dismiss the proceedings)), the court shall not order competency
13 restoration treatment, and shall instead enter an order under RCW
14 10.77.084(1)(c)(iii).~~

15 NEW SECTION. Sec. 107. A new section is added to chapter 10.77
16 RCW to read as follows:

17 (1)(a) Whenever a defendant has pleaded not guilty by reason of
18 insanity, or has advised the court or a party of his or her intention
19 to rely upon a defense of diminished capacity and either endorsed an
20 expert witness who will testify in support of a diminished capacity
21 defense or made a preliminary showing that diminished capacity is
22 likely to be a significant factor at trial, the court, on motion of the
23 prosecuting attorney, shall either appoint or request the secretary to
24 designate a qualified expert or professional person to evaluate and
25 report upon the mental condition of the defendant. The signed order of
26 the court shall serve as authority for the evaluator to be given access
27 to all records held by any mental health, medical, educational, or
28 correctional facility that relate to the present or past mental,
29 emotional, or physical condition of the defendant.

30 (b) The court shall not order the secretary to perform an
31 evaluation under this section for reasons other than those specified in
32 (a) of this subsection.

33 (c) A defendant who is transported to a state hospital or other
34 suitably secure mental health facility for an evaluation under this
35 section may be admitted for only the length of time necessary to
36 complete the evaluation, and for no longer than fifteen days.

1 (d) The prosecutor shall send the order for evaluation to the
2 secretary along with a copy of the charging document, certification of
3 probable cause, police report, and a summary of the defendant's
4 criminal history. The court or either party may provide additional
5 information to the secretary which it reasonably deems to be of
6 assistance to the evaluation, unless such action would infringe upon
7 ethical duties.

8 (2) The report of the evaluation shall include the following:

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

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

11 (c) An opinion as to competency;

12 (d) An opinion as to the defendant's sanity at the time of the act;

13 (e) An opinion as to whether the defendant is a substantial danger
14 to other persons, or presents a substantial likelihood of committing
15 criminal acts jeopardizing public safety or security, unless kept under
16 further control by the court or other persons or institutions;

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

20 (g) An opinion as to whether the defendant should be evaluated by
21 a designated mental health professional for civil commitment under
22 chapter 71.05 RCW prior to release from custody.

23 (3) The court may direct that a qualified expert or professional
24 person retained by or appointed for the defendant be permitted to
25 witness the evaluation authorized by subsection (1) of this section,
26 and that the defendant shall have access to all information obtained by
27 the evaluator. The defendant's expert or professional person has the
28 right to file his or her own report following the guidelines of
29 subsection (2) of this section. If the defendant is indigent, the
30 court shall upon the request of the defendant assist him or her in
31 obtaining an expert or professional person.

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

34 Statements made by a defendant during a competency evaluation,
35 competency hearing, or competency restoration treatment shall not be
36 admissible in the state's case in chief. After the state's case in

1 chief, those statements may be admissible according to the rules of
2 evidence if a mental defense such as insanity or diminished capacity is
3 asserted or to impeach testimony by the defendant.

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

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

10 (1) When appropriate, and subject to available funds, if the
11 defendant is determined to be an individual with a developmental
12 disability, he or she may be placed in a program specifically reserved
13 for the treatment and training of persons with developmental
14 disabilities where the defendant has the right to habilitation
15 according to an individualized service plan specifically developed for
16 the particular needs of the defendant. A copy of the evaluation shall
17 be sent to the program.

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

20 (b) The program shall be appropriately secure under the
21 circumstances and shall be administered by developmental disabilities
22 professionals who shall direct the habilitation efforts.

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

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

30 (3) The department may establish admission priorities in the event
31 that the number of eligible persons exceeds the limits set by the
32 department.

33 NEW SECTION. **Sec. 110.** A new section is added to chapter 10.77
34 RCW to read as follows:

35 (1) Whenever a jail or detention center receives notice of an order
36 requiring transfer of a defendant to a state hospital or other medical

1 facility under RCW 10.77.060 or 10.77.084, the jail or detention center
2 shall provide all medical information in its possession necessary for
3 the admission of the defendant to the secretary within three days. The
4 secretary shall not be responsible under subsection (2) of this section
5 for unreasonable delays in transmission of medical information.

6 (2) If the secretary fails to conduct or complete a competency
7 evaluation within the time limits prescribed by RCW 10.77.060, upon the
8 motion of any party the court shall conduct a show cause hearing to
9 determine why the evaluation was not conducted or completed within the
10 allotted time. An order to show cause shall be set forth in writing
11 and shall be served upon the secretary. If the court finds that time
12 limits were exceeded by the secretary without good cause, it shall set
13 a fixed time for the completion of the evaluation and may order the
14 secretary to reimburse expenses to the jail for any excess days at a
15 rate of up to ninety dollars per day. The hearing shall include review
16 of a corrective action plan entered under section 111(3) of this act.
17 Failure to conduct or complete a competency evaluation within time
18 limitations shall not be cause for dismissal of criminal charges.

19 (3) A jail is not civilly liable for delays by the secretary in
20 providing competency evaluation services under RCW 10.77.060, or for
21 the release of an individual from custody according to the requirements
22 of RCW 10.77.084.

23 (4) Nothing in this section is intended to denigrate other rights
24 retained by operators of jails or other parties.

25 NEW SECTION. **Sec. 111.** A new section is added to chapter 10.77
26 RCW to read as follows:

27 The department shall report annually to the legislature beginning
28 October 1, 2010, concerning the waiting period for competency
29 evaluations and competency restoration treatment during the past state
30 fiscal year.

31 The report shall include:

32 (1) The number of competency evaluation referrals, by county,
33 categorized by evaluations ordered to occur in a jail, evaluations
34 ordered to occur in the community, evaluations ordered to occur in a
35 state hospital, and evaluations originally ordered to occur in the jail
36 or community that are transferred to the state hospital.

1 (a) For evaluations ordered to occur in a jail and evaluations
2 ordered to occur in the community, the department shall state, by
3 county:

4 (i) The average number of days between the signing of the
5 evaluation order and the department's receipt of the order and
6 documents specified in RCW 10.77.060;

7 (ii) The average number of days between the department's receipt of
8 the order and documents specified by RCW 10.77.060 and the distribution
9 of the evaluation report; and

10 (iii) The average total number of days elapsed between the signing
11 of the evaluation order and the distribution of the evaluation report.

12 (b) For evaluations ordered to occur in the state hospital and
13 evaluations originally ordered to occur in the jail or community that
14 are transferred to the state hospital, the department shall state, by
15 county:

16 (i) The average number of days between the signing of the
17 evaluation order and the department's receipt of the order and
18 documents specified in RCW 10.77.060;

19 (ii) The average number of days between the department's receipt of
20 the order and documents specified by RCW 10.77.060 and the distribution
21 of the evaluation report which the defendant spends in the jail;

22 (iii) The average number of days between the department's receipt
23 of the order and documents specified by RCW 10.77.060 and the
24 distribution of the evaluation report which the defendant spends in the
25 hospital; and

26 (iv) The average total number of days elapsed between the signing
27 of the evaluation order and the distribution of the evaluation report.

28 (c) By state hospital catchment, the department shall state:

29 (i) The average total waiting periods on a monthly basis for the
30 categories specified in (a) and (b) of this subsection;

31 (ii) The number and proportion of defendants reported to be
32 competent following each category of evaluation;

33 (iii) The number of insanity and diminished capacity evaluations
34 requested under section 107 of this act, and the number and proportion
35 of defendants who are found by the department to meet the criteria for
36 these defenses;

37 (iv) The number of show cause hearings held pursuant to section

1 110(2) of this act, and the total amount of reimbursement, if any, paid
2 by the department pursuant to show cause hearings.

3 (2) For competency restoration referrals, by state hospital
4 catchment, the department shall state:

5 (a) The number of referrals received for:

6 (i) Nonfelony offenses;

7 (ii) First ninety-day restoration treatment for a felony offense;

8 (iii) Second ninety-day restoration treatment for a felony offense;

9 and

10 (iv) Third one hundred eighty-day restoration treatment for a
11 felony offense.

12 (b) The average length of stay of the defendant in jail and at the
13 state hospital in each of these categories, measured from the date of
14 the department's receipt of the evaluation order to the department's
15 distribution of the restoration report. The department shall state the
16 number and proportion of defendants reported to be competent following
17 each category of restoration treatment.

18 (3) If the data in subsections (1) and (2) of this section
19 indicates a lack of compliance by the department with the time limits
20 prescribed by RCW 10.77.060:

21 (a) An analysis of a representative sample of cases that sets forth
22 the reasons for noncompliance with time limits in those cases; and

23 (b) A description of the department's corrective action plan to
24 bring the department into compliance with RCW 10.77.060.

25 (4)(a) A description of systemic problems and statutory or
26 regulatory barriers, if any, that have caused delays in competency
27 evaluations or competency restoration treatment; and

28 (b) Recommendations for measures that state government or local
29 communities may take in order to increase the speed of competency
30 evaluations and competency restoration.

31 The department may include in the report any additional information
32 that it deems appropriate.

33 **PART II**

34 **TECHNICAL CHANGES**

35 **Sec. 201.** RCW 10.77.163 and 2008 c 213 s 4 are each amended to
36 read as follows:

1 (1) Before a person committed under this chapter is permitted
2 temporarily to leave a treatment facility for any period of time
3 without constant accompaniment by facility staff, the superintendent,
4 professional person in charge of a treatment facility, or his or her
5 professional designee shall in writing notify the prosecuting attorney
6 of any county to which the person is released and the prosecuting
7 attorney of the county in which the criminal charges against the
8 committed person were dismissed, of the decision conditionally to
9 release the person. The notice shall be provided at least forty-five
10 days before the anticipated release and shall describe the conditions
11 under which the release is to occur.

12 (2) In addition to the notice required by subsection (1) of this
13 section, the superintendent of each state institution designated for
14 the custody, care, and treatment of persons committed under this
15 chapter shall notify appropriate law enforcement agencies through the
16 state patrol communications network of the furloughs of persons
17 committed under RCW (~~10.77.086~~) 10.77.084(1)(c) or 10.77.110.
18 Notification shall be made at least thirty days before the furlough,
19 and shall include the name of the person, the place to which the person
20 has permission to go, and the dates and times during which the person
21 will be on furlough.

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

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

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

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

34 **Sec. 202.** RCW 71.05.280 and 2008 c 213 s 6 are each amended to
35 read as follows:

36 At the expiration of the fourteen-day period of intensive

1 treatment, a person may be confined for further treatment pursuant to
2 RCW 71.05.320 if:

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

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

13 (3) Such person has been determined to be incompetent and criminal
14 charges have been dismissed pursuant to RCW (~~(10.77.086(4))~~)
15 10.77.084(1)(c), and has committed acts constituting a felony, and as
16 a result of a mental disorder, presents a substantial likelihood of
17 repeating similar acts. In any proceeding pursuant to this subsection
18 it shall not be necessary to show intent, willfulness, or state of mind
19 as an element of the crime; or

20 (4) Such person is gravely disabled.

21 **Sec. 203.** RCW 71.05.290 and 2008 c 213 s 7 are each amended to
22 read as follows:

23 (1) At any time during a person's fourteen day intensive treatment
24 period, the professional person in charge of a treatment facility or
25 his or her professional designee or the designated mental health
26 professional may petition the superior court for an order requiring
27 such person to undergo an additional period of treatment. Such
28 petition must be based on one or more of the grounds set forth in RCW
29 71.05.280.

30 (2) The petition shall summarize the facts which support the need
31 for further confinement and shall be supported by affidavits signed by
32 two examining physicians, or by one examining physician and examining
33 mental health professional. The affidavits shall describe in detail
34 the behavior of the detained person which supports the petition and
35 shall explain what, if any, less restrictive treatments which are
36 alternatives to detention are available to such person, and shall state

1 the willingness of the affiant to testify to such facts in subsequent
2 judicial proceedings under this chapter.

3 (3) If a person has been determined to be incompetent pursuant to
4 RCW (~~(10.77.086(4))~~) 10.77.084(1)(c), then the professional person in
5 charge of the treatment facility or his or her professional designee or
6 the designated mental health professional may directly file a petition
7 for one hundred eighty day treatment under RCW 71.05.280(3). No
8 petition for initial detention or fourteen day detention is required
9 before such a petition may be filed.

10 **Sec. 204.** RCW 71.05.300 and 2008 c 213 s 8 are each amended to
11 read as follows:

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

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

36 (3) The court may, if requested, also appoint a professional person
37 as defined in RCW 71.05.020 to seek less restrictive alternative

1 courses of treatment and to testify on behalf of the detained person.
2 In the case of a person with a developmental disability who has been
3 determined to be incompetent pursuant to RCW ((~~10.77.086(4)~~))
4 10.77.084(1)(c), then the appointed professional person under this
5 section shall be a developmental disabilities professional.

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

8 **Sec. 205.** RCW 71.05.320 and 2008 c 213 s 9 are each amended to
9 read as follows:

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

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

21 (b) If the committed person has a developmental disability and has
22 been determined incompetent pursuant to RCW ((~~10.77.086(4)~~))
23 10.77.084(1)(c), and the best interests of the person or others will
24 not be served by a less-restrictive treatment which is an alternative
25 to detention, the court shall remand him or her to the custody of the
26 department or to a facility certified for one hundred eighty-day
27 treatment by the department. When appropriate and subject to available
28 funds, treatment and training of such persons must be provided in a
29 program specifically reserved for the treatment and training of persons
30 with developmental disabilities. A person so committed shall receive
31 habilitation services pursuant to an individualized service plan
32 specifically developed to treat the behavior which was the subject of
33 the criminal proceedings. The treatment program shall be administered
34 by developmental disabilities professionals and others trained
35 specifically in the needs of persons with developmental disabilities.
36 The department may limit admissions to this specialized program in
37 order to ensure that expenditures for services do not exceed amounts

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

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

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

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

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

36 (c) Is in custody pursuant to RCW 71.05.280(3) and as a result of
37 mental disorder or developmental disability presents a substantial

1 likelihood of repeating similar acts considering the charged criminal
2 behavior, life history, progress in treatment, and the public safety;
3 or

4 (d) Continues to be gravely disabled.

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

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

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

27 **Sec. 206.** RCW 71.05.425 and 2008 c 213 s 10 are each amended to
28 read as follows:

29 (1)(a) Except as provided in subsection (2) of this section, at the
30 earliest possible date, and in no event later than thirty days before
31 conditional release, final release, authorized leave under RCW
32 71.05.325(2), or transfer to a facility other than a state mental
33 hospital, the superintendent shall send written notice of conditional
34 release, release, authorized leave, or transfer of a person committed
35 under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex,
36 violent, or felony harassment offense pursuant to RCW (~~10.77.086(4)~~)
37 10.77.084(1)(c) to the following:

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

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

4 (b) The same notice as required by (a) of this subsection shall be
5 sent to the following, if such notice has been requested in writing
6 about a specific person committed under RCW 71.05.280(3) or
7 71.05.320(3)(c) following dismissal of a sex, violent, or felony
8 harassment offense pursuant to RCW (~~(10.77.086(4))~~) 10.77.084(1)(c):

9 (i) The victim of the sex, violent, or felony harassment offense
10 that was dismissed pursuant to RCW (~~(10.77.086(4))~~) 10.77.084(1)(c)
11 preceding commitment under RCW 71.05.280(3) or 71.05.320(3)(c) or the
12 victim's next of kin if the crime was a homicide;

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

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

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

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

26 (2) If a person committed under RCW 71.05.280(3) or 71.05.320(3)(c)
27 following dismissal of a sex, violent, or felony harassment offense
28 pursuant to RCW (~~(10.77.086(4))~~) 10.77.084(1)(c) escapes, the
29 superintendent shall immediately notify, by the most reasonable and
30 expedient means available, the chief of police of the city and the
31 sheriff of the county in which the person resided immediately before
32 the person's arrest. If previously requested, the superintendent shall
33 also notify the witnesses and the victim of the sex, violent, or felony
34 harassment offense that was dismissed pursuant to RCW (~~(10.77.086(4))~~)
35 10.77.084(1)(c) preceding commitment under RCW 71.05.280(3) or
36 71.05.320(3) or the victim's next of kin if the crime was a homicide.
37 In addition, the secretary shall also notify appropriate parties
38 pursuant to RCW 71.05.390(18). If the person is recaptured, the

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

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

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

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

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

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

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

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

19 **Sec. 207.** RCW 71.09.025 and 2008 c 213 s 11 are each amended to
20 read as follows:

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

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

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

30 (iii) Release of a person who has been charged with a sexually
31 violent offense and who has been determined to be incompetent to stand
32 trial pursuant to RCW (~~10.77.086(4)~~) 10.77.084(1)(c); or

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

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

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

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

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

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

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

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

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

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

21 **Sec. 208.** RCW 71.09.030 and 2008 c 213 s 12 are each amended to
22 read as follows:

23 When it appears that: (1) A person who at any time previously has
24 been convicted of a sexually violent offense is about to be released
25 from total confinement on, before, or after July 1, 1990; (2) a person
26 found to have committed a sexually violent offense as a juvenile is
27 about to be released from total confinement on, before, or after July
28 1, 1990; (3) a person who has been charged with a sexually violent
29 offense and who has been determined to be incompetent to stand trial is
30 about to be released, or has been released on, before, or after July 1,
31 1990, pursuant to RCW (~~10.77.086(4)~~) 10.77.084(1)(c); (4) a person
32 who has been found not guilty by reason of insanity of a sexually
33 violent offense is about to be released, or has been released on,
34 before, or after July 1, 1990, pursuant to RCW 10.77.020(3), 10.77.110
35 (1) or (3), or 10.77.150; or (5) a person who at any time previously
36 has been convicted of a sexually violent offense and has since been
37 released from total confinement and has committed a recent overt act;

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

7 **Sec. 209.** RCW 71.09.060 and 2008 c 213 s 13 are each amended to
8 read as follows:

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

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

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

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

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

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

15 (2) If the person charged with a sexually violent offense has been
16 found incompetent to stand trial, and is about to (~~(be)~~) be or has
17 been released pursuant to RCW (~~(10.77.086(4))~~) 10.77.084(1)(c), and his
18 or her commitment is sought pursuant to subsection (1) of this section,
19 the court shall first hear evidence and determine whether the person
20 did commit the act or acts charged if the court did not enter a finding
21 prior to dismissal under RCW (~~(10.77.086(4))~~) 10.77.084(1)(c) that the
22 person committed the act or acts charged. The hearing on this issue
23 must comply with all the procedures specified in this section. In
24 addition, the rules of evidence applicable in criminal cases shall
25 apply, and all constitutional rights available to defendants at
26 criminal trials, other than the right not to be tried while
27 incompetent, shall apply. After hearing evidence on this issue, the
28 court shall make specific findings on whether the person did commit the
29 act or acts charged, the extent to which the person's incompetence or
30 developmental disability affected the outcome of the hearing, including
31 its effect on the person's ability to consult with and assist counsel
32 and to testify on his or her own behalf, the extent to which the
33 evidence could be reconstructed without the assistance of the person,
34 and the strength of the prosecution's case. If, after the conclusion
35 of the hearing on this issue, the court finds, beyond a reasonable
36 doubt, that the person did commit the act or acts charged, it shall
37 enter a final order, appealable by the person, on that issue, and may

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

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

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

14 **PART III**
15 **MISCELLANEOUS**

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

18 NEW SECTION. **Sec. 302.** Section 101 of this act expires July 1,
19 2010.

20 NEW SECTION. **Sec. 303.** Section 102 of this act takes effect July
21 1, 2010."

22 Correct the title.

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