

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6610

61st Legislature
2010 Regular Session

Passed by the Senate March 11, 2010
YEAS 48 NAYS 0

President of the Senate

Passed by the House March 10, 2010
YEAS 92 NAYS 5

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 6610** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 6610

AS AMENDED BY THE HOUSE

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By Senators Hargrove and McAuliffe; by request of Governor Gregoire

Read first time 01/19/10. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to improving procedures relating to the commitment
2 of persons found not guilty by reason of insanity; amending RCW
3 10.77.120, 10.77.150, 10.77.160, 10.77.190, and 10.77.200; adding new
4 sections to chapter 10.77 RCW; creating a new section; and providing
5 expiration dates.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 10.77 RCW
8 to read as follows:

9 (1) The secretary shall establish an independent public safety
10 review panel for the purpose of advising the secretary and the courts
11 with respect to persons who have been found not guilty by reason of
12 insanity. The panel shall provide advice regarding all
13 recommendations: (a) For a change in commitment status; (b) to allow
14 furloughs or temporary leaves accompanied by staff; or (c) to permit
15 movement about the grounds of the treatment facility, with or without
16 the accompaniment of staff.

17 (2) The members of the public safety review panel shall be
18 appointed by the governor for a renewable term of three years and shall
19 include the following:

- 1 (a) A psychiatrist;
- 2 (b) A licensed clinical psychologist;
- 3 (c) A representative of the department of corrections;
- 4 (d) A prosecutor or a representative of a prosecutor's association;
- 5 (e) A representative of law enforcement or a law enforcement
- 6 association;
- 7 (f) A consumer and family advocate representative; and
- 8 (g) A public defender or a representative of a defender's
- 9 association.

10 (3) Thirty days prior to issuing a recommendation for conditional
11 release under RCW 10.77.150 or forty-five days prior to issuing a
12 recommendation for release under RCW 10.77.200, the secretary shall
13 submit its recommendation with the committed person's application and
14 the department's risk assessment to the public safety review panel.
15 The public safety review panel shall complete an independent assessment
16 of the public safety risk entailed by the secretary's proposed
17 conditional release recommendation or release recommendation and
18 provide this assessment in writing to the secretary. The public safety
19 review panel may, within funds appropriated for this purpose, request
20 additional evaluations of the committed person. The public safety
21 review panel may indicate whether it is in agreement with the
22 secretary's recommendation, or whether it would issue a different
23 recommendation. The secretary shall provide the panel's assessment
24 when it is received along with any supporting documentation, including
25 all previous reports of evaluations of the committed person in the
26 person's hospital record, to the court, prosecutor in the county that
27 ordered the person's commitment, and counsel for the committed person.

28 (4) The secretary shall notify the public safety review panel at
29 appropriate intervals concerning any changes in the commitment or
30 custody status of persons found not guilty by reason of insanity. The
31 panel shall have access, upon request, to a committed person's complete
32 hospital record.

33 (5) The department shall provide administrative and financial
34 support to the public safety review panel. The department, in
35 consultation with the public safety review panel, may adopt rules to
36 implement this section.

37 (6) By December 1, 2014, the public safety review panel shall
38 report to the appropriate legislative committees the following:

1 (a) Whether the public safety review panel has observed a change in
2 statewide consistency of evaluations and decisions concerning changes
3 in the commitment status of persons found not guilty by reason of
4 insanity;

5 (b) Whether the public safety review panel should be given the
6 authority to make release decisions and monitor release conditions;

7 (c) Any other issues the public safety review panel deems relevant.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 10.77 RCW
9 to read as follows:

10 (1) If the secretary determines in writing that a person committed
11 to the custody of the secretary for treatment as criminally insane
12 presents an unreasonable safety risk which, based on behavior, clinical
13 history, and facility security is not manageable in a state hospital
14 setting, the secretary may place the person in any secure facility
15 operated by the secretary or the secretary of the department of
16 corrections. Any person affected by this provision shall receive
17 appropriate mental health treatment governed by a formalized treatment
18 plan targeted at mental health rehabilitation needs and shall be
19 afforded his or her rights under RCW 10.77.140, 10.77.150, and
20 10.77.200. The secretary of the department of social and health
21 services shall retain legal custody of any person placed under this
22 section and review any placement outside of a department mental health
23 hospital every three months, or sooner if warranted by the person's
24 mental health status, to determine if the placement remains
25 appropriate.

26 (2) Beginning December 1, 2010, and every six months thereafter,
27 the secretary shall report to the governor and the appropriate
28 committees of the legislature regarding the use of the authority under
29 this section to transfer persons to a secure facility. The report
30 shall include information related to the number of persons who have
31 been placed in a secure facility operated by the secretary or the
32 secretary of the department of corrections, and the length of time that
33 each such person has been in the secure facility.

34 (3) This section expires June 30, 2015.

35 NEW SECTION. **Sec. 3.** (1) The Washington state institute for
36 public policy shall, in collaboration with the department of social and

1 health services and other applicable entities, undertake a search for
2 validated mental health assessment tools in each of the following
3 areas:

4 (a) An assessment tool or combination of tools to be used by
5 individuals performing court-ordered competency assessments and level
6 of risk assessments of defendants pursuant to chapter 10.77 RCW; and

7 (b) An assessment tool or combination of tools to be used by
8 individuals developing recommendations to courts as to the
9 appropriateness of conditional release from inpatient treatment of
10 criminally insane patients pursuant to chapter 10.77 RCW.

11 (2) This section expires June 30, 2011.

12 **Sec. 4.** RCW 10.77.120 and 2000 c 94 s 15 are each amended to read
13 as follows:

14 (1) The secretary shall ~~((forthwith))~~ provide adequate care and
15 individualized treatment to persons found criminally insane at one or
16 several of the state institutions or facilities under ~~((his or her))~~
17 the direction and control ~~((wherein persons committed as criminally
18 insane may be confined. Such persons shall be under the custody and
19 control of the secretary to the same extent as are other persons who
20 are committed to the secretary's custody, but such provision shall be
21 made for their control, care, and treatment as is proper in view of
22 their condition))~~ of the secretary. In order that the secretary may
23 adequately determine the nature of the mental illness or developmental
24 disability of the person committed ~~((to him or her))~~ as criminally
25 insane, ~~((and in order for the secretary to place such individuals in
26 a proper facility,))~~ all persons who are committed to the secretary as
27 criminally insane shall be promptly examined by qualified personnel in
28 ~~((such a manner as))~~ order to provide a proper evaluation and diagnosis
29 of such individual. The examinations of all ~~((developmentally
30 disabled))~~ persons with developmental disabilities committed under this
31 chapter shall be performed by developmental disabilities professionals.
32 Any person so committed shall not be released from the control of the
33 secretary ~~((save upon the))~~ except by order of a court of competent
34 jurisdiction made after a hearing and judgment of release.

35 (2) Whenever there is a hearing which the committed person is
36 entitled to attend, the secretary shall send ~~((him or her))~~ the person
37 in the custody of one or more department employees to the county

1 (~~where~~) in which the hearing is to be held at the time the case is
2 called for trial. During the time the person is absent from the
3 facility, (~~he or she shall~~) the person may be confined in a facility
4 designated by and arranged for by the department, (~~and~~) but shall at
5 all times be deemed to be in the custody of the department employee and
6 provided necessary treatment. If the decision of the hearing remits
7 the person to custody, the department employee shall (~~forthwith~~)
8 return the person to such institution or facility designated by the
9 secretary. If the state appeals an order of release, such appeal shall
10 operate as a stay, and the person shall remain in custody (~~shall so~~
11 ~~remain~~) and be (~~forthwith~~) returned to the institution or facility
12 designated by the secretary until a final decision has been rendered in
13 the cause.

14 **Sec. 5.** RCW 10.77.150 and 1998 c 297 s 41 are each amended to read
15 as follows:

16 (1) Persons examined pursuant to RCW 10.77.140 may make application
17 to the secretary for conditional release. The secretary shall, after
18 considering the reports of experts or professional persons conducting
19 the examination pursuant to RCW 10.77.140, forward to the court of the
20 county which ordered the person's commitment the person's application
21 for conditional release as well as the secretary's recommendations
22 concerning the application and any proposed terms and conditions upon
23 which the secretary reasonably believes the person can be conditionally
24 released. Conditional release may also contemplate partial release for
25 work, training, or educational purposes.

26 (2) In instances in which persons examined pursuant to RCW
27 10.77.140 have not made application to the secretary for conditional
28 release, but the secretary, after considering the reports of experts or
29 professional persons conducting the examination pursuant to RCW
30 10.77.140, reasonably believes the person may be conditionally
31 released, the secretary may submit a recommendation for release to the
32 court of the county that ordered the person's commitment. The
33 secretary's recommendation must include any proposed terms and
34 conditions upon which the secretary reasonably believes the person may
35 be conditionally released. Conditional release may also include
36 partial release for work, training, or educational purposes. Notice of

1 the secretary's recommendation under this subsection must be provided
2 to the person for whom the secretary has made the recommendation for
3 release and to his or her attorney.

4 (3)(a) The court of the county which ordered the person's
5 commitment, upon receipt of an application or recommendation for
6 conditional release with the secretary's recommendation for conditional
7 release terms and conditions, shall within thirty days schedule a
8 hearing. The court may schedule a hearing on applications recommended
9 for disapproval by the secretary.

10 (b) The prosecuting attorney shall represent the state at such
11 hearings and shall have the right to have the patient examined by an
12 expert or professional person of the prosecuting attorney's choice. If
13 the committed person is indigent, and he or she so requests, the court
14 shall appoint a qualified expert or professional person to examine the
15 person on his or her behalf.

16 (c) The issue to be determined at such a hearing is whether or not
17 the person may be released conditionally without substantial danger to
18 other persons, or substantial likelihood of committing criminal acts
19 jeopardizing public safety or security.

20 (d) The court, after the hearing, shall rule on the secretary's
21 recommendations, and if it disapproves of conditional release, may do
22 so only on the basis of substantial evidence. The court may modify the
23 suggested terms and conditions on which the person is to be
24 conditionally released. Pursuant to the determination of the court
25 after hearing, the committed person shall thereupon be released on such
26 conditions as the court determines to be necessary, or shall be
27 remitted to the custody of the secretary. If the order of conditional
28 release includes a requirement for the committed person to report to a
29 community corrections officer, the order shall also specify that the
30 conditionally released person shall be under the supervision of the
31 secretary of corrections or such person as the secretary of corrections
32 may designate and shall follow explicitly the instructions of the
33 secretary of corrections including reporting as directed to a community
34 corrections officer, remaining within prescribed geographical
35 boundaries, and notifying the community corrections officer prior to
36 making any change in the offender's address or employment. If the
37 order of conditional release includes a requirement for the committed
38 person to report to a community corrections officer, the community

1 corrections officer shall notify the secretary or the secretary's
2 designee, if the person is not in compliance with the court-ordered
3 conditions of release.

4 ((+3)) (4) If the court determines that receiving regular or
5 periodic medication or other medical treatment shall be a condition of
6 the committed person's release, then the court shall require him or her
7 to report to a physician or other medical or mental health practitioner
8 for the medication or treatment. In addition to submitting any report
9 required by RCW 10.77.160, the physician or other medical or mental
10 health practitioner shall immediately upon the released person's
11 failure to appear for the medication or treatment or upon a change in
12 mental health condition that renders the patient a potential risk to
13 the public report ((the failure)) to the court, to the prosecuting
14 attorney of the county in which the released person was committed, to
15 the secretary, and to the supervising community corrections officer.

16 ((+4)) (5) Any person, whose application for conditional release
17 has been denied, may reapply after a period of six months from the date
18 of denial.

19 **Sec. 6.** RCW 10.77.160 and 1993 c 31 s 7 are each amended to read
20 as follows:

21 When a conditionally released person is required by the terms of
22 his or her conditional release to report to a physician, department of
23 corrections community corrections officer, or medical or mental health
24 practitioner on a regular or periodic basis, the physician, department
25 of corrections community corrections officer, medical or mental health
26 practitioner, or other such person shall monthly, for the first six
27 months after release and semiannually thereafter, or as otherwise
28 directed by the court, submit to the court, the secretary, the
29 institution from which released, and to the prosecuting attorney of the
30 county in which the person was committed, a report stating whether the
31 person is adhering to the terms and conditions of his or her
32 conditional release, and detailing any arrests or criminal charges
33 filed and any significant change in the person's mental health
34 condition or other circumstances.

35 **Sec. 7.** RCW 10.77.190 and 1998 c 297 s 43 are each amended to read
36 as follows:

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

8 (2) If the prosecuting attorney, the secretary of social and health
9 services, the secretary of corrections, or the court, after examining
10 the report filed with them pursuant to RCW 10.77.160, or based on other
11 information received by them, reasonably believes that a conditionally
12 released person is failing to adhere to the terms and conditions of his
13 or her conditional release the court or secretary of social and health
14 services or the secretary of corrections may order that the
15 conditionally released person be apprehended and taken into custody
16 (~~((until such time as a hearing can be scheduled to determine the facts
17 and whether or not the person's conditional release should be revoked
18 or modified))~~). The court shall be notified of the apprehension before
19 the close of the next judicial day (~~((of the apprehension))~~). The court
20 shall schedule a hearing within thirty days to determine whether or not
21 the person's conditional release should be modified or revoked. Both
22 the prosecuting attorney and the conditionally released person shall
23 have the right to request an immediate mental examination of the
24 conditionally released person. If the conditionally released person is
25 indigent, the court or secretary of social and health services or the
26 secretary of corrections or their designees shall, upon request, assist
27 him or her in obtaining a qualified expert or professional person to
28 conduct the examination.

29 (3) If the hospital or facility designated to provide outpatient
30 care determines that a conditionally released person presents a threat
31 to public safety, the hospital or facility shall immediately notify the
32 secretary of social and health services or the secretary of corrections
33 or their designees. The secretary shall order that the conditionally
34 released person be apprehended and taken into custody.

35 (4) The court, upon receiving notification of the apprehension,
36 shall promptly schedule a hearing. The issue to be determined is
37 whether the conditionally released person did or did not adhere to the
38 terms and conditions of his or her release, or whether the person

1 presents a threat to public safety. Pursuant to the determination of
2 the court upon such hearing, the conditionally released person shall
3 either continue to be conditionally released on the same or modified
4 conditions or his or her conditional release shall be revoked and he or
5 she shall be committed subject to release only in accordance with
6 provisions of this chapter.

7 **Sec. 8.** RCW 10.77.200 and 2000 c 94 s 16 are each amended to read
8 as follows:

9 (1) Upon application by the committed or conditionally released
10 person, the secretary shall determine whether or not reasonable grounds
11 exist for release. In making this determination, the secretary may
12 consider the reports filed under RCW 10.77.060, 10.77.110, 10.77.140,
13 and 10.77.160, and other reports and evaluations provided by
14 professionals familiar with the case. If the secretary approves the
15 release he or she then shall authorize the person to petition the
16 court.

17 (2) In instances in which persons have not made application for
18 release, but the secretary believes, after consideration of the reports
19 filed under RCW 10.77.060, 10.77.110, 10.77.140, and 10.77.160, and
20 other reports and evaluations provided by professionals familiar with
21 the case, that reasonable grounds exist for release, the secretary may
22 petition the court. If the secretary petitions the court for release
23 under this subsection, notice of the petition must be provided to the
24 person who is the subject of the petition and to his or her attorney.

25 (3) The petition shall be served upon the court and the prosecuting
26 attorney. The court, upon receipt of the petition for release, shall
27 within forty-five days order a hearing. Continuance of the hearing
28 date shall only be allowed for good cause shown. The prosecuting
29 attorney shall represent the state, and shall have the right to have
30 the petitioner examined by an expert or professional person of the
31 prosecuting attorney's choice. If the petitioner is indigent, and the
32 person so requests, the court shall appoint a qualified expert or
33 professional person to examine him or her. If the petitioner (~~is~~
34 ~~developmentally disabled~~) has a developmental disability, the
35 examination shall be performed by a developmental disabilities
36 professional. The hearing shall be before a jury if demanded by either
37 the petitioner or the prosecuting attorney. The burden of proof shall

1 be upon the petitioner to show by a preponderance of the evidence that
2 the petitioner no longer presents, as a result of a mental disease or
3 defect, a substantial danger to other persons, or a substantial
4 likelihood of committing criminal acts jeopardizing public safety or
5 security, unless kept under further control by the court or other
6 persons or institutions.

7 ~~((3))~~ (4) For purposes of this section, a person affected by a
8 mental disease or defect in a state of remission is considered to have
9 a mental disease or defect requiring supervision when the disease may,
10 with reasonable medical probability, occasionally become active and,
11 when active, render the person a danger to others. Upon a finding that
12 the petitioner has a mental disease or defect in a state of remission
13 under this subsection, the court may deny release, or place or continue
14 such a person on conditional release.

15 (5) Nothing contained in this chapter shall prohibit the patient
16 from petitioning the court for release or conditional release from the
17 institution in which he or she is committed. The issue to be
18 determined on such proceeding is whether the petitioner, as a result of
19 a mental disease or defect, is a substantial danger to other persons,
20 or presents a substantial likelihood of committing criminal acts
21 jeopardizing public safety or security, unless kept under further
22 control by the court or other persons or institutions.

23 (6) Nothing contained in this chapter shall prohibit the committed
24 person from petitioning for release by writ of habeas corpus.

25 NEW SECTION. Sec. 9. A new section is added to chapter 10.77 RCW
26 to read as follows:

27 For persons who have received court approval for conditional
28 release, the secretary or the secretary's designee shall supervise the
29 person's compliance with the court-ordered conditions of release. The
30 level of supervision provided by the secretary shall correspond to the
31 level of the person's public safety risk. In undertaking supervision
32 of persons under this section, the secretary shall coordinate with any
33 treatment providers designated pursuant to RCW 10.77.150(3), any
34 department of corrections staff designated pursuant to RCW
35 10.77.150(2), and local law enforcement, if appropriate. The secretary

1 shall adopt rules to implement this section.

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