

CERTIFICATION OF ENROLLMENT

**ENGROSSED SECOND SUBSTITUTE SENATE BILL 6274**

Chapter 157, Laws of 2004

(partial veto)

58th Legislature  
2004 Regular Session

COMPETENCY RESTORATION

EFFECTIVE DATE: 3/26/04

Passed by the Senate March 8, 2004  
YEAS 47 NAYS 0

BRAD OWEN

**President of the Senate**

Passed by the House March 3, 2004  
YEAS 96 NAYS 0

FRANK CHOPP

**Speaker of the House of Representatives**

Approved March 26, 2004, with the  
exception of section 6, which is vetoed.

GARY F. LOCKE

**Governor of the State of Washington**

CERTIFICATE

I, Milton H. Doumit, Jr.,  
Secretary of the Senate of the  
State of Washington, do hereby  
certify that the attached is  
**ENGROSSED SECOND SUBSTITUTE SENATE  
BILL 6274** as passed by the Senate  
and the House of Representatives  
on the dates hereon set forth.

MILTON H. DOUMIT JR.

**Secretary**

FILED

March 26, 2004 - 3:28 p.m.

**Secretary of State  
State of Washington**

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ENGROSSED SECOND SUBSTITUTE SENATE BILL 6274

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AS AMENDED BY THE HOUSE

Passed Legislature - 2004 Regular Session

State of Washington                      58th Legislature                      2004 Regular Session

By Senate Committee on Ways & Means (originally sponsored by  
Senators Regala, Stevens, Hargrove and Kline)

READ FIRST TIME 02/10/04.

1            AN ACT Relating to competency restoration; amending RCW 10.77.010;  
2 reenacting and amending RCW 71.05.390; adding new sections to chapter  
3 10.77 RCW; creating new sections; and declaring an emergency.

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

5            NEW SECTION.    **Sec. 1.** The legislature finds that recent state and  
6 federal case law requires clarification of state statutes with regard  
7 to competency evaluations and involuntary medication ordered in the  
8 context of competency restoration.

9            The legislature finds that the court in *Born v. Thompson*, 117 Wn.  
10 App. 57 (2003) interpreted the term "nonfatal injuries" in a manner  
11 that conflicts with the stated intent of the legislature to: "(1)  
12 Clarify that it is the nature of a person's current conduct, current  
13 mental condition, history, and likelihood of committing future acts  
14 that pose a threat to public safety or himself or herself, rather than  
15 simple categorization of offenses, that should determine treatment  
16 procedures and level; ... and (3) provide additional opportunities for  
17 mental health treatment for persons whose conduct threatens himself or  
18 herself or threatens public safety and has led to contact with the  
19 criminal justice system" as stated in section 1, chapter 297, Laws of

1 1998. Consequently, the legislature intends to clarify that it  
2 intended "nonfatal injuries" to be interpreted in a manner consistent  
3 with the purposes of the competency restoration statutes.

4 The legislature also finds that the decision in *Sell v. United*  
5 *States*, \_\_\_U.S. \_\_\_ (2003), requires a determination whether a  
6 particular criminal offense is "serious" in the context of competency  
7 restoration and the state's duty to protect the public. The  
8 legislature further finds that, in order to adequately protect the  
9 public and in order to provide additional opportunities for mental  
10 health treatment for persons whose conduct threatens themselves or  
11 threatens public safety and has led to contact with the criminal  
12 justice system in the state, the determination of those criminal  
13 offenses that are "serious" offenses must be made consistently  
14 throughout the state. In order to facilitate this consistency, the  
15 legislature intends to determine those offenses that are serious in  
16 every case as well as the standards by which other offenses may be  
17 determined to be serious. The legislature also intends to clarify that  
18 a court may, to the extent permitted by federal law and required by the  
19 *Sell* decision, inquire into the civil commitment status of a defendant  
20 and may be told, if known.

21 **Sec. 2.** RCW 10.77.010 and 2000 c 94 s 12 are each amended to read  
22 as follows:

23 As used in this chapter:

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

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

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

31 (4) "County designated mental health professional" has the same  
32 meaning as provided in RCW 71.05.020.

33 (5) A "criminally insane" person means any person who has been  
34 acquitted of a crime charged by reason of insanity, and thereupon found  
35 to be a substantial danger to other persons or to present a substantial  
36 likelihood of committing criminal acts jeopardizing public safety or

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

3 (6) "Department" means the state department of social and health  
4 services.

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

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

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

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

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

25 (12) "Habilitative services" means those services provided by  
26 program personnel to assist persons in acquiring and maintaining life  
27 skills and in raising their levels of physical, mental, social, and  
28 vocational functioning. Habilitative services include education,  
29 training for employment, and therapy. The habilitative process shall  
30 be undertaken with recognition of the risk to the public safety  
31 presented by the individual being assisted as manifested by prior  
32 charged criminal conduct.

33 (13) "History of one or more violent acts" means violent acts  
34 committed during: (a) The ten-year period of time prior to the filing  
35 of criminal charges; plus (b) the amount of time equal to time spent  
36 during the ten-year period in a mental health facility or in  
37 confinement as a result of a criminal conviction.

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

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

8 (16) "Individualized service plan" means a plan prepared by a  
9 developmental disabilities professional with other professionals as a  
10 team, for an individual with developmental disabilities, which shall  
11 state:

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

14 (b) The conditions and strategies necessary to achieve the purposes  
15 of habilitation;

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

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

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

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

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

27 (17) "Professional person" means:

28 (a) A psychiatrist licensed as a physician and surgeon in this  
29 state who has, in addition, completed three years of graduate training  
30 in psychiatry in a program approved by the American medical association  
31 or the American osteopathic association and is certified or eligible to  
32 be certified by the American board of psychiatry and neurology or the  
33 American osteopathic board of neurology and psychiatry;

34 (b) A psychologist licensed as a psychologist pursuant to chapter  
35 18.83 RCW; or

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

1 (18) "Release" means legal termination of the court-ordered  
2 commitment under the provisions of this chapter.

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

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

7 (21) "Violent act" means behavior that: (a)(i) Resulted in; (ii)  
8 if completed as intended would have resulted in; or (iii) was  
9 threatened to be carried out by a person who had the intent and  
10 opportunity to carry out the threat and would have resulted in,  
11 homicide, nonfatal injuries, or substantial damage to property; or (b)  
12 recklessly creates an immediate risk of serious physical injury to  
13 another person. As used in this subsection, "nonfatal injuries" means  
14 physical pain or injury, illness, or an impairment of physical  
15 condition. "Nonfatal injuries" shall be construed to be consistent  
16 with the definition of "bodily injury," as defined in RCW 9A.04.110.

17 NEW SECTION. Sec. 3. A new section is added to chapter 10.77 RCW  
18 to read as follows:

19 (1) For purposes of determining whether a court may authorize  
20 involuntary medication for the purpose of competency restoration  
21 pursuant to RCW 10.77.090, a pending charge involving any one or more  
22 of the following crimes is a serious offense per se in the context of  
23 competency restoration:

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

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

28 (c) Any offense contained in chapter 9.41 RCW (firearms and  
29 dangerous weapons);

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

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

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

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

36 (2)(a) In a particular case, a court may determine that a pending  
37 charge not otherwise defined as serious by state or federal law or by

1 a city or county ordinance is, nevertheless, a serious offense within  
2 the context of competency restoration treatment when the conduct in the  
3 charged offense falls within the standards established in (b) of this  
4 subsection.

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

9 (i) The charge includes an allegation that the defendant actually  
10 inflicted bodily or emotional harm on another person or that the  
11 defendant created a reasonable apprehension of bodily or emotional harm  
12 to another;

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

15 (iii) The number and nature of related charges pending against the  
16 defendant;

17 (iv) The length of potential confinement if the defendant is  
18 convicted; and

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

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

23 When the court must make a determination whether to order  
24 involuntary medications for the purpose of competency restoration or  
25 for maintenance of competency, the court shall inquire, and shall be  
26 told, and to the extent that the prosecutor or defense attorney is  
27 aware, whether the defendant is the subject of a pending civil  
28 commitment proceeding or has been ordered into involuntary treatment  
29 pursuant to a civil commitment proceeding.

30 **Sec. 5.** RCW 71.05.390 and 2000 c 94 s 9, 2000 c 75 s 6, and 2000  
31 c 74 s 7 are each reenacted and amended to read as follows:

32 Except as provided in this section, the fact of admission and all  
33 information and records compiled, obtained, or maintained in the course  
34 of providing services to either voluntary or involuntary recipients of  
35 services at public or private agencies shall be confidential.

36 Information and records may be disclosed only:

1 (1) In communications between qualified professional persons to  
2 meet the requirements of this chapter, in the provision of services or  
3 appropriate referrals, or in the course of guardianship proceedings.  
4 The consent of the patient, or his or her guardian, shall be obtained  
5 before information or records may be disclosed by a professional person  
6 employed by a facility unless provided to a professional person: (a)  
7 Employed by the facility; (b) who has medical responsibility for the  
8 patient's care; (c) who is a county designated mental health  
9 professional; (d) who is providing services under chapter 71.24 RCW;  
10 (e) who is employed by a state or local correctional facility where the  
11 person is confined; or (f) who is providing evaluation, treatment, or  
12 follow-up services under chapter 10.77 RCW.

13 (2) When the communications regard the special needs of a patient  
14 and the necessary circumstances giving rise to such needs and the  
15 disclosure is made by a facility providing outpatient services to the  
16 operator of a care facility in which the patient resides.

17 (3) When the person receiving services, or his or her guardian,  
18 designates persons to whom information or records may be released, or  
19 if the person is a minor, when his or her parents make such  
20 designation.

21 (4) To the extent necessary for a recipient to make a claim, or for  
22 a claim to be made on behalf of a recipient for aid, insurance, or  
23 medical assistance to which he or she may be entitled.

24 (5) For either program evaluation or research, or both: PROVIDED,  
25 That the secretary adopts rules for the conduct of the evaluation or  
26 research, or both. Such rules shall include, but need not be limited  
27 to, the requirement that all evaluators and researchers must sign an  
28 oath of confidentiality substantially as follows:

29 "As a condition of conducting evaluation or research concerning  
30 persons who have received services from (fill in the facility, agency,  
31 or person) I, . . . . ., agree not to divulge, publish, or  
32 otherwise make known to unauthorized persons or the public any  
33 information obtained in the course of such evaluation or research  
34 regarding persons who have received services such that the person who  
35 received such services is identifiable.

36 I recognize that unauthorized release of confidential information  
37 may subject me to civil liability under the provisions of state law.

(6)(a) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under this chapter.

(b) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(c) Disclosure under this subsection is mandatory for the purpose of the health insurance portability and accountability act.

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, the fact and date of discharge or release, and the last known address shall be disclosed upon request; and

(b) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter; and

(c) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent, and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the said person has escaped from custody, said notice prior to disclosure is not necessary

1 and that the facility from which the person escaped shall include an  
2 evaluation as to whether the person is of danger to persons or property  
3 and has a propensity toward violence.

4 (8) To the attorney of the detained person.

5 (9) To the prosecuting attorney as necessary to carry out the  
6 responsibilities of the office under RCW 71.05.330(2) and  
7 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access  
8 to records regarding the committed person's treatment and prognosis,  
9 medication, behavior problems, and other records relevant to the issue  
10 of whether treatment less restrictive than inpatient treatment is in  
11 the best interest of the committed person or others. Information shall  
12 be disclosed only after giving notice to the committed person and the  
13 person's counsel.

14 (10) To appropriate law enforcement agencies and to a person, when  
15 the identity of the person is known to the public or private agency,  
16 whose health and safety has been threatened, or who is known to have  
17 been repeatedly harassed, by the patient. The person may designate a  
18 representative to receive the disclosure. The disclosure shall be made  
19 by the professional person in charge of the public or private agency or  
20 his or her designee and shall include the dates of commitment,  
21 admission, discharge, or release, authorized or unauthorized absence  
22 from the agency's facility, and only such other information that is  
23 pertinent to the threat or harassment. The decision to disclose or not  
24 shall not result in civil liability for the agency or its employees so  
25 long as the decision was reached in good faith and without gross  
26 negligence.

27 (11) To appropriate law enforcement agencies, upon request, all  
28 necessary and relevant information in the event of a crisis or emergent  
29 situation that poses a significant and imminent risk to the public.  
30 The decision to disclose or not shall not result in civil liability for  
31 the mental health service provider or its employees so long as the  
32 decision was reached in good faith and without gross negligence.

33 (12) To the persons designated in RCW 71.05.425 for the purposes  
34 described in that section.

35 (13) Civil liability and immunity for the release of information  
36 about a particular person who is committed to the department under RCW  
37 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as  
38 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

1 (14) To a patient's next of kin, guardian, or conservator, if any,  
2 in the event of death, as provided in RCW 71.05.400.

3 (15) To the department of health for the purposes of determining  
4 compliance with state or federal licensure, certification, or  
5 registration rules or laws. However, the information and records  
6 obtained under this subsection are exempt from public inspection and  
7 copying pursuant to chapter 42.17 RCW.

8 The fact of admission, as well as all records, files, evidence,  
9 findings, or orders made, prepared, collected, or maintained pursuant  
10 to this chapter shall not be admissible as evidence in any legal  
11 proceeding outside this chapter without the written consent of the  
12 person who was the subject of the proceeding except in a subsequent  
13 criminal prosecution of a person committed pursuant to RCW 71.05.280(3)  
14 or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter  
15 10.77 RCW due to incompetency to stand trial or in a civil commitment  
16 proceeding pursuant to chapter 71.09 RCW. The records and files  
17 maintained in any court proceeding pursuant to this chapter shall be  
18 confidential and available subsequent to such proceedings only to the  
19 person who was the subject of the proceeding or his or her attorney.  
20 In addition, the court may order the subsequent release or use of such  
21 records or files only upon good cause shown if the court finds that  
22 appropriate safeguards for strict confidentiality are and will be  
23 maintained.

24 **\*NEW SECTION. Sec. 6. The department of social and health services**  
25 **shall study and identify in its budget request to the office of**  
26 **financial management the need, options, and plans to address the**  
27 **increasing need for capacity in the forensic units of the state**  
28 **hospitals.**

*\*Sec. 6 was vetoed. See message at end of chapter.*

29 **NEW SECTION. Sec. 7.** If any provision of this act or its  
30 application to any person or circumstance is held invalid, the  
31 remainder of the act or the application of the provision to other  
32 persons or circumstances is not affected.

33 **NEW SECTION. Sec. 8.** This act is necessary for the immediate  
34 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect  
2 immediately.

Passed by the Senate March 8, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 26, 2004, with the exception of  
certain items that were vetoed.

Filed in Office of Secretary of State March 26, 2004.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 6,  
Engrossed Second Substitute Senate Bill No. 6274 entitled:

"AN ACT Relating to competency restoration;"

This bill defines "nonfatal injuries" and "serious offense" for  
purposes of competency restoration for criminal defendants found  
incompetent to stand trial, including involuntary administration of  
medication.

Section 6 would have directed the Department of Social and Health  
Services to study and identify, in its budget request to the Office  
of Financial Management, "the need, options, and plans to address the  
increasing need for capacity in the forensic units of the state  
hospitals." Though intended to address an important issue, this  
language would have intruded on the budget development process of the  
executive branch. Ultimately, the Legislature will determine what is  
funded, but it should not attempt to direct development of the  
proposed budget within the executive branch. Further, Section 6 does  
not specify the fiscal period to which it applies. Although the  
section is not codified, it could be interpreted to require such an  
analysis every year into the future.

For these reasons, I have vetoed section 6 of Engrossed Second  
Substitute Senate Bill No. 6274.

With the exception of section 6, Engrossed Second Substitute Senate  
Bill No. 6274 is approved."