
SECOND SUBSTITUTE SENATE BILL 6274

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 The legislature also finds that in some instances defendants who
22 have been restored to competency subject to a valid court order and
23 returned to a local correctional facility to await trial decompensate
24 to the point of incompetency between the time of their return to
25 incarceration and their trial date. The legislature also finds that
26 repeated mental decompensation is detrimental to the health and welfare
27 of all persons and often causes overall degeneration in the person's
28 mental condition. The legislature further finds that the court's
29 authority to order a defendant held at a state hospital or in an
30 appropriate less restrictive treatment setting to maintain the
31 defendant's competency to stand trial has been brought into question.
32 The legislature therefore finds that this combination of circumstances
33 impairs the state's ability to adequately protect the public because
34 it: (1) Prevents the state from determining the guilt or innocence of
35 defendants in a court of law; (2) results in a situation in which
36 guilty defendants cannot be held accountable for their actions; and (3)
37 may result in a situation in which persons whose competency was
38 restored and lost present a larger risk to public safety. The

1 legislature, therefore, intends to remedy this situation by clarifying
2 that the court has the authority to order felony defendants held at the
3 state hospital or in an appropriate less restrictive treatment setting
4 and establishing standards for a court to make this order.

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

7 As used in this chapter:

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

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

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

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

17 (5) A "criminally insane" person means any person who has been
18 acquitted of a crime charged by reason of insanity, and thereupon found
19 to be a substantial danger to other persons or to present a substantial
20 likelihood of committing criminal acts jeopardizing public safety or
21 security unless kept under further control by the court or other
22 persons or institutions.

23 (6) "Department" means the state department of social and health
24 services.

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

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

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

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

1 (11) "Furlough" means an authorized leave of absence for a resident
2 of a state institution operated by the department designated for the
3 custody, care, and treatment of the criminally insane, consistent with
4 an order of conditional release from the court under this chapter,
5 without any requirement that the resident be accompanied by, or be in
6 the custody of, any law enforcement or institutional staff, while on
7 such unescorted leave.

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

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

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

24 (15) "Indigent" means any person who is financially unable to
25 obtain counsel or other necessary expert or professional services
26 without causing substantial hardship to the person or his or her
27 family.

28 (16) "Individualized service plan" means a plan prepared by a
29 developmental disabilities professional with other professionals as a
30 team, for an individual with developmental disabilities, which shall
31 state:

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

34 (b) The conditions and strategies necessary to achieve the purposes
35 of habilitation;

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

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

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

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

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

10 (17) "Professional person" means:

11 (a) A psychiatrist licensed as a physician and surgeon in this
12 state who has, in addition, completed three years of graduate training
13 in psychiatry in a program approved by the American medical association
14 or the American osteopathic association and is certified or eligible to
15 be certified by the American board of psychiatry and neurology or the
16 American osteopathic board of neurology and psychiatry;

17 (b) A psychologist licensed as a psychologist pursuant to chapter
18 18.83 RCW; or

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

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

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

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

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

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 10.77 RCW
2 to read as follows:

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

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

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

12 (c) Any offense contained in chapter 9.41 RCW (firearms and
13 dangerous weapons);

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

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

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

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

20 (2)(a) In a particular case, a court may determine that a pending
21 charge not otherwise defined as serious by state or federal law or by
22 a city or county ordinance is, nevertheless, a serious offense within
23 the context of competency restoration treatment when the conduct in the
24 charged offense falls within the standards established in (b) of this
25 subsection.

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

30 (i) The charge includes an allegation that the defendant actually
31 inflicted bodily or emotional harm on another person or that the
32 defendant created a reasonable apprehension of bodily or emotional harm
33 to another;

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

36 (iii) The number and nature of related charges pending against the
37 defendant;

1 (iv) The length of potential confinement if the defendant is
2 convicted; and

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

5 (3)(a) Any city or county may, by ordinance, determine that
6 nonfelony offenses not otherwise defined as serious by state or federal
7 law are nonetheless "serious offenses" within the context of competency
8 restoration treatment when the offense falls within the standards
9 established in (b) of this subsection.

10 (b) The city or county must consider the following factors and
11 determine that one or more of the following factors creates a situation
12 in which the offense is serious:

13 (i) The offense includes an element that the defendant actually
14 inflicted bodily or emotional harm on another person or that the
15 defendant created a reasonable apprehension of bodily or emotional harm
16 to another person;

17 (ii) The extent of the impact of the offense on the basic human
18 need for security of the citizens within the jurisdiction;

19 (iii) The length of potential confinement applicable to the
20 offense; and

21 (iv) The number of potential and actual victims or persons impacted
22 by the defendant's alleged acts.

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

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

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

34 Except as provided in this section, the fact of admission and all
35 information and records compiled, obtained, or maintained in the course

1 of providing services to either voluntary or involuntary recipients of
2 services at public or private agencies shall be confidential.

3 Information and records may be disclosed only:

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

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

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

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

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

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

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

3 /s/ "

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

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

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

14 (7) To law enforcement officers, public health officers, or
15 personnel of the department of corrections or the indeterminate
16 sentence review board for persons who are the subject of the records
17 and who are committed to the custody of the department of corrections
18 or indeterminate sentence review board which information or records are
19 necessary to carry out the responsibilities of their office. Except
20 for dissemination of information released pursuant to RCW 71.05.425 and
21 4.24.550, regarding persons committed under this chapter under RCW
22 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
23 defined in RCW 9.94A.030, the extent of information that may be
24 released is limited as follows:

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

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

32 (c) Additional information shall be disclosed only after giving
33 notice to said person and his or her counsel and upon a showing of
34 clear, cogent, and convincing evidence that such information is
35 necessary and that appropriate safeguards for strict confidentiality
36 are and will be maintained. However, in the event the said person has

1 escaped from custody, said notice prior to disclosure is not necessary
2 and that the facility from which the person escaped shall include an
3 evaluation as to whether the person is of danger to persons or property
4 and has a propensity toward violence.

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

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

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

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

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

36 (13) Civil liability and immunity for the release of information
37 about a particular person who is committed to the department under RCW

1 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
2 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

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

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

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

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

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

1 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately.

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