

SB 5519 - S AMD 120

By Senators Hargrove, Stevens

ADOPTED 03/12/2009

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 person((s, one of
12 ~~whom shall be approved by the prosecuting attorney, to examine and~~
13 ~~report upon the mental condition))~~ to evaluate the competency of the
14 defendant. The signed order of the court shall serve as authority for
15 the ~~((experts))~~ evaluator to be given access to all records held by any
16 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. For purposes of~~
24 ~~the examination, the court may order the defendant committed to))~~

25 (b) If the defendant is being held in a jail or detention facility,
26 the court shall order the evaluation to take place in the jail or
27 detention facility. The order shall state that the defendant may be
28 transported to a state hospital or other ((suitably)) secure ((public
29 or private)) mental health facility ((for a period of time necessary to

1 complete the examination, but not to exceed fifteen days from the time
2 of admission to the facility. If the defendant is being held in jail
3 or other detention facility, upon agreement of the parties, the court
4 may direct that the examination be conducted at the jail or other
5 detention facility.

6 (b) ~~When a defendant is ordered to be committed for inpatient~~
7 ~~examination under this subsection (1), the court may delay granting~~
8 ~~bail until the defendant has been evaluated for competency or sanity~~
9 ~~and appears before the court. Following the evaluation, in determining~~
10 ~~bail the court shall consider: (i) Recommendations of the expert or~~
11 ~~professional persons regarding the defendant's competency, sanity, or~~
12 ~~diminished capacity; (ii) whether the defendant has a recent history of~~
13 ~~one or more violent acts; (iii) whether the defendant has previously~~
14 ~~been acquitted by reason of insanity or found incompetent; (iv) whether~~
15 ~~it is reasonably likely the defendant will fail to appear for a future~~
16 ~~court hearing; and (v) whether the defendant is a threat to public~~
17 ~~safety)) at the request of the evaluator, if the evaluator determines~~
18 ~~that such action is necessary in order to complete an accurate~~
19 ~~evaluation of the defendant. This request shall be provided in writing~~
20 ~~to the jail or detention facility, court, and representatives of both~~
21 ~~parties, and the reason for the request shall be documented in the~~
22 ~~evaluation report. No further order of the court shall be necessary to~~
23 ~~effectuate transportation of the defendant under this subsection.~~

24 (c) The prosecutor shall send a copy of the order for evaluation to
25 the secretary and a copy of the charging document, certification of
26 probable cause, police report, and a summary of the defendant's
27 criminal history. These documents shall be provided as soon as
28 possible, and no later than three business days after the order is
29 signed. The court or either party may provide additional information
30 to the secretary which it reasonably deems to be of assistance to the
31 evaluation, unless such action would infringe upon ethical duties.

32 (d) The report of an evaluation of a defendant who is being held in
33 custody at a jail or detention facility shall be completed within
34 twenty-one days from the time of receipt by the secretary of the
35 documents specified in (c) of this subsection, unless transportation of
36 the defendant to a hospital or secure mental health facility is
37 necessary under (b) of this subsection, in which case the secretary
38 shall authorize transportation of the defendant as soon as possible,

1 and within seven days of the request. A defendant transported under
2 (b) of this subsection may be admitted to a hospital or secure mental
3 health facility for only the length of time necessary to complete an
4 evaluation, and for no longer than fifteen days.

5 (e) If at any point the evaluator becomes aware that the defendant
6 may have a developmental disability, or if it appears that the
7 characteristics of developmental disability may be a significant factor
8 in the defendant's ability to participate in the criminal proceeding,
9 the evaluation shall be performed by or in consultation with a
10 developmental disabilities professional.

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

13 (g) Upon agreement by the parties, the court may appoint a
14 qualified expert or professional person to evaluate the competency of
15 the defendant instead of requesting the secretary to designate an
16 evaluator. Only an evaluator designated by the secretary may request
17 that the defendant be transported to a state hospital for evaluation
18 under (b) of this subsection.

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

29 (3) The report of the ~~((examination))~~ evaluation shall include the
30 following:

- 31 (a) A description of the nature of the ~~((examination))~~ evaluation;
32 (b) A diagnosis of the mental condition of the defendant;
33 (c) ~~((If the defendant suffers from a mental disease or defect, or~~
34 ~~is developmentally disabled,))~~ An opinion as to competency;
35 (d) ~~((If the defendant has indicated his or her intention to rely~~
36 ~~on the defense of insanity pursuant to RCW 10.77.030, an opinion as to~~
37 ~~the defendant's sanity at the time of the act;~~

1 ~~(e) When directed by the court, an opinion as to the capacity of~~
2 ~~the defendant to have a particular state of mind which is an element of~~
3 ~~the offense charged;~~

4 ~~(f)) An opinion as to whether the defendant should be evaluated by~~
5 ~~a ((county)) designated mental health professional under chapter 71.05~~
6 ~~RCW((, and an opinion as to whether the defendant is a substantial~~
7 ~~danger to other persons, or presents a substantial likelihood of~~
8 ~~committing criminal acts jeopardizing public safety or security, unless~~
9 ~~kept under further control by the court or other persons or~~
10 ~~institutions)).~~

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

13 **Sec. 102.** RCW 10.77.065 and 2008 c 213 s 1 are each amended to
14 read as follows:

15 (1)(a)(i) ~~((The facility conducting the evaluation))~~ An evaluator
16 appointed under RCW 10.77.060 or an expert or professional person
17 appointed under section 106 of this act shall provide ~~((its))~~ a report
18 and recommendation to the court in which the criminal proceeding is
19 pending. A copy of the report and recommendation shall be provided to
20 the designated mental health professional, the prosecuting attorney,
21 the defense attorney, and the professional person at the local
22 correctional facility where the defendant is being held, or if there is
23 no professional person, to the person designated under (a)(ii) of this
24 subsection. Upon request, the ~~((facility))~~ secretary shall also
25 provide copies of any source documents relevant to the evaluation to
26 the designated mental health professional. The report and
27 recommendation shall be provided not less than twenty-four hours
28 preceding the transfer of the defendant to the correctional facility in
29 the county in which the criminal proceeding is pending.

30 (ii) If there is no professional person at the local correctional
31 facility, the local correctional facility shall designate a
32 professional person as defined in RCW 71.05.020 or, in cooperation with
33 the regional support network, a professional person at the regional
34 support network to receive the report and recommendation.

35 (iii) When a defendant is transferred to ~~((the facility conducting~~
36 ~~the))~~ a hospital or other secure facility for an evaluation, or upon
37 commencement of a defendant's evaluation in the local correctional

1 facility, the local correctional facility must notify the evaluator or
2 the facility conducting the evaluation of the name of the professional
3 person, or person designated under (a)(ii) of this subsection to
4 receive the report and recommendation.

5 (b) If the ~~((facility concludes, under RCW 10.77.060(3)(f), the~~
6 ~~person should be kept under further control, an evaluation shall be~~
7 ~~conducted of such person))~~ report of an evaluation performed under RCW
8 10.77.060, 10.77.084(5), or section 106 of this act recommends that a
9 defendant in custody should be evaluated by a designated mental health
10 professional under chapter 71.05 RCW((-)), the court shall order an
11 evaluation be conducted ~~((by the appropriate designated mental health~~
12 ~~professional:-(i))~~) prior to the individual's release from confinement
13 ~~((for such person who is convicted, if sentenced to confinement for~~
14 ~~twenty four months or less; (ii) for any person who is acquitted; or~~
15 ~~(iii) for any person:-(A) Whose charges are dismissed pursuant to RCW~~
16 ~~10.77.086(4); or (B) whose nonfelony charges are dismissed))~~ following
17 any conviction, dismissal, or acquittal, unless the individual is
18 sentenced to confinement for more than twenty-four months.

19 (2) ~~((The))~~ A designated mental health professional conducting an
20 evaluation under subsection (1)(b) of this section shall ((provide
21 written notification)) notify the persons identified in subsection
22 (1)(a) of this section within twenty-four hours ((of the results of the
23 determination)) as to whether ((to commence proceedings)) detention was
24 initiated under chapter 71.05 RCW. ~~((The notification shall be~~
25 ~~provided to the persons identified in subsection (1)(a) of this~~
26 ~~section.))~~

27 (3) The ~~((prosecuting attorney))~~ petitioner in a proceeding
28 initiated under subsection (2) of this section shall provide a copy of
29 the results of ((any proceedings commenced by the designated mental
30 health professional under subsection (2) of this section to the
31 facility conducting the evaluation under this chapter)) the proceeding
32 to the secretary.

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

1 **Sec. 103.** RCW 10.77.084 and 2007 c 375 s 3 are each amended to
2 read as follows:

3 (1)(a) If at any time during the pendency of an action and prior to
4 judgment the court finds, following a report (~~(as provided in)~~) under
5 RCW 10.77.060 or section 106 of this act, a defendant is incompetent,
6 the court shall order the proceedings against the defendant be stayed
7 except as provided in subsection (4) of this section. The court shall
8 order the defendant to undergo a period of treatment for restoration of
9 competency within the time limits established by RCW 10.77.086 and
10 10.77.088 and the requirements of this section.

11 (b) (~~A defendant found incompetent shall be evaluated at the~~
12 ~~direction of the secretary and a determination made whether the~~
13 ~~defendant is an individual with a developmental disability. Such~~
14 ~~evaluation and determination shall be accomplished as soon as possible~~
15 ~~following the court's placement of the defendant in the custody of the~~
16 ~~secretary.~~

17 (i) ~~When appropriate, and subject to available funds, if the~~
18 ~~defendant is determined to be an individual with a developmental~~
19 ~~disability, he or she may be placed in a program specifically reserved~~
20 ~~for the treatment and training of persons with developmental~~
21 ~~disabilities where the defendant shall have the right to habilitation~~
22 ~~according to an individualized service plan specifically developed for~~
23 ~~the particular needs of the defendant. A copy of the evaluation shall~~
24 ~~be sent to the program.~~

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

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

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

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

37 (iii) ~~The department may establish admission priorities in the~~

1 ~~event that the number of eligible persons exceeds the limits set by the~~
2 ~~department.~~

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

18 ~~((d))~~ (c) If at any time ~~((during the proceeding))~~ the court
19 finds, following notice and hearing, ~~((a))~~ that the defendant is not
20 competent and is either not likely to regain competency, or no current
21 or further period of competency restoration treatment is allowable
22 under RCW 10.77.086 or 10.77.088, the ~~((proceedings shall be~~
23 ~~dismissed))~~ court shall dismiss the charges without prejudice and ~~((the~~
24 ~~defendant shall be evaluated for civil commitment proceedings))~~ enter
25 one of the following orders:

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

31 (ii) If the charge was a nonfelony, and was a serious offense as
32 defined by RCW 10.77.092, and the defendant was in custody and not on
33 conditional release at the time of dismissal, the court may detain the
34 defendant and order the defendant to be transferred to an evaluation
35 and treatment facility for the purpose of evaluation under chapter
36 71.05 RCW. The defendant may be detained in jail for no longer than
37 three days, excluding holidays, prior to transfer or release, and
38 subsequently may be detained by the evaluation and treatment facility

1 for up to seventy-two hours, excluding Saturdays, Sundays, and
2 holidays, prior to the filing of a petition under chapter 71.05 RCW.
3 The secretary may consent to receive the defendant at a state hospital
4 in lieu of transfer to an evaluation and treatment facility. The
5 defendant may be screened prior to transfer to determine whether civil
6 commitment criteria are met.

7 (iii) If the charge was not a serious offense as defined by RCW
8 10.77.092, or if the charge was a nonfelony and the defendant was on
9 conditional release at the time of dismissal, the court may order the
10 defendant to undergo an evaluation by a designated mental health
11 professional, and shall do so if required by RCW 10.77.065(1)(b). A
12 defendant who is in custody, or who refuses to cooperate with the
13 evaluation, may be detained in custody for up to twelve hours for this
14 evaluation.

15 (d) Notwithstanding any other limitations, a defendant who has
16 multiple criminal charges may undergo competency restoration treatment
17 for all charges for the longest time period allowable for any of the
18 charges.

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

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

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

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

6 **Sec. 104.** RCW 10.77.086 and 2007 c 375 s 4 are each amended to
7 read as follows:

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

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

15 (a)) shall commit the defendant to the custody of the secretary
16 who shall place such defendant in an appropriate facility of the
17 department for evaluation and treatment(~~(+ or~~

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

21 (2) On or before expiration of the initial (~~ninety day~~) period of
22 commitment under subsection (1) of this section, the secretary shall
23 provide the court and the parties with a report in accordance with RCW
24 10.77.060(3). The secretary shall return the defendant to court
25 (~~shall conduct~~) for a hearing, at which (~~it~~) the court shall
26 determine by a preponderance of the evidence whether or not the
27 defendant is incompetent as provided by RCW 10.77.084(1)(b).

28 (3) If, following a hearing under subsection (2) of this section,
29 the court finds (~~by a preponderance of the evidence~~) that (~~a~~) the
30 defendant (~~charged with a felony is~~) remains incompetent, the court
31 (~~shall have the option of extending the~~) may order (~~of commitment or~~
32 alternative) a second period of competency restoration treatment for
33 an additional (~~ninety day~~) period(~~(, but)~~) of up to ninety days.

34 (a) If a second period of competency restoration treatment would
35 cause the defendant to be held in custody for a longer period than the
36 defendant would have been likely to spend in custody if the defendant
37 were convicted and sentenced to the top of the defendant's standard

1 sentencing range, the court shall not order a second period of
2 competency restoration treatment unless it finds by a preponderance of
3 the evidence following a hearing that further competency restoration
4 treatment is in the public interest due to particular circumstances
5 related to the nature or impact of the alleged offense, or the criminal
6 or treatment history of the defendant.

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

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

18 ~~(4) ((For persons charged with a felony, at the hearing upon the~~
19 ~~expiration of the second ninety day period or at the end of the first~~
20 ~~ninety day period, in the case of a defendant with a developmental~~
21 ~~disability, if the jury or court finds that the defendant is~~
22 ~~incompetent, the charges shall be dismissed without prejudice, and~~
23 ~~either civil commitment proceedings shall be instituted or the court~~
24 ~~shall order the release of the defendant. The criminal charges shall~~
25 ~~not be dismissed))~~ If the court or jury finds that the defendant
26 remains incompetent following a second period of competency restoration
27 treatment under subsection (3) of this section, the court may order a
28 third and final period of competency restoration treatment only if the
29 court or jury finds that: (a) The defendant (i) is a substantial
30 danger to other persons; or (ii) presents a substantial likelihood of
31 committing criminal acts jeopardizing public safety or security; and
32 (b) there is a substantial probability that the defendant will regain
33 competency within a reasonable period of time. In the event that the
34 court or jury makes such a finding, the court may extend the period of
35 commitment for up to an additional six months. A third period of
36 competency restoration treatment shall not be ordered if the
37 allegations against the defendant do not include one or more charges
38 which are serious offenses as defined by RCW 10.77.092.

1 **Sec. 105.** RCW 10.77.088 and 2007 c 375 s 5 are each amended to
2 read as follows:

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

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

9 ~~((i))~~ (a) At a secure mental health facility in the custody of
10 the department or an agency designated by the department for mental
11 health treatment and restoration of competency. The placement shall
12 not exceed fourteen days in addition to any unused time of the
13 evaluation under RCW 10.77.060(1)(d). The court shall compute this
14 total period and include its computation in the order. The fourteen-
15 day period plus any unused time of the evaluation under RCW
16 10.77.060(1)(d) shall be considered to include only the time the
17 defendant is actually at the facility and shall be in addition to
18 reasonable time for transport to or from the facility; or

19 ~~((ii))~~ (b) On conditional release for up to ninety days for
20 mental health treatment and restoration of competency ~~((or~~
21 ~~(iii) Any combination of this subsection.~~

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

27 ~~(ii) If the defendant was in custody and not on conditional release~~
28 ~~at the time of dismissal, the defendant shall be detained and sent to~~
29 ~~an evaluation and treatment facility for up to seventy two hours,~~
30 ~~excluding Saturdays, Sundays, and holidays, for evaluation for purposes~~
31 ~~of filing a petition under chapter 71.05 RCW. The seventy two hour~~
32 ~~period shall commence upon the next nonholiday weekday following the~~
33 ~~court order and shall run to the end of the last nonholiday weekday~~
34 ~~within the seventy two hour period).~~

35 (2) If the defendant is charged with a nonfelony ~~((crime))~~ that is
36 not a serious offense as defined in RCW 10.77.092 ~~((or~~

37 ~~The court may stay or dismiss proceedings and detain the defendant~~
38 ~~for sufficient time to allow the designated mental health professional~~

1 ~~to evaluate the defendant and consider initial detention proceedings~~
2 ~~under chapter 71.05 RCW. The court must give notice to all parties at~~
3 ~~least twenty four hours before the dismissal of any proceeding under~~
4 ~~this subsection, and provide an opportunity for a hearing on whether to~~
5 ~~dismiss the proceedings)), the court shall not order competency~~
6 ~~restoration treatment, and shall instead enter an order under RCW~~
7 ~~10.77.084(1)(c).~~

8 NEW SECTION. Sec. 106. A new section is added to chapter 10.77
9 RCW to read as follows:

10 (1)(a) Whenever a defendant has pleaded not guilty by reason of
11 insanity, or has advised the court or a party of his or her intention
12 to rely upon a defense of diminished capacity and endorsed an expert
13 witness who will testify in support of a diminished capacity defense,
14 the court, on motion of the prosecuting attorney, shall either appoint
15 or request the secretary to designate a qualified expert or
16 professional person to evaluate and report upon the mental condition of
17 the defendant. The signed order of the court shall serve as authority
18 for the evaluator to be given access to all records held by any mental
19 health, medical, educational, or correctional facility that relate to
20 the present or past mental, emotional, or physical condition of the
21 defendant.

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

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

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

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

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

1 (b) A diagnosis of the mental condition of the defendant;
2 (c) An opinion as to competency;
3 (d) An opinion as to the defendant's sanity at the time of the act;
4 (e) An opinion as to whether the defendant is a substantial danger
5 to other persons, or presents a substantial likelihood of committing
6 criminal acts jeopardizing public safety or security, unless kept under
7 further control by the court or other persons or institutions;

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

14 (3) The court may direct that a qualified expert or professional
15 person retained by or appointed for the defendant be permitted to
16 witness the evaluation authorized by subsection (1) of this section,
17 and that the defendant shall have access to all information obtained by
18 the evaluator. The defendant's expert or professional person has the
19 right to file his or her own report following the guidelines of
20 subsection (2) of this section. If the defendant is indigent, the
21 court shall upon the request of the defendant assist him or her in
22 obtaining an expert or professional person.

23 NEW SECTION. **Sec. 107.** A new section is added to chapter 10.77
24 RCW to read as follows:

25 Statements made by a defendant during a competency evaluation,
26 competency hearing, or competency restoration treatment shall not be
27 admissible in the state's case in chief. After the state's case in
28 chief, those statements may be admissible according to the rules of
29 evidence if a mental defense such as insanity or diminished capacity is
30 asserted or to impeach testimony by the defendant.

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

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

1 (1) When appropriate, and subject to available funds, if the
2 defendant is determined to be an individual with a developmental
3 disability, he or she may be placed in a program specifically reserved
4 for the treatment and training of persons with developmental
5 disabilities where the defendant has the right to habilitation
6 according to an individualized service plan specifically developed for
7 the particular needs of the defendant. A copy of the evaluation shall
8 be sent to the program.

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

11 (b) The program shall be appropriately secure under the
12 circumstances and shall be administered by developmental disabilities
13 professionals who shall direct the habilitation efforts.

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

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

21 (3) The department may establish admission priorities in the event
22 that the number of eligible persons exceeds the limits set by the
23 department.

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

26 (1) Whenever a jail or detention center receives notice of a
27 request or order requiring transfer of a defendant to a state hospital
28 or other medical facility under RCW 10.77.060 or 10.77.084, the jail or
29 detention center shall provide all medical information in its
30 possession necessary for the admission of the defendant to the
31 secretary within three days. The secretary shall not be responsible
32 under subsection (2) of this section for unreasonable delays in
33 transmission of medical information.

34 (2) If the secretary fails to conduct or complete a competency
35 evaluation within the time limits prescribed by RCW 10.77.060(1)(d),
36 the court may conduct a show cause hearing upon the motion of any party
37 to determine why the evaluation was not conducted or completed within

1 the allotted time. An order to show cause shall be set forth in
2 writing and shall be served upon the secretary. If the court finds
3 that time limits were exceeded by the secretary without good cause, it
4 may set a fixed time for the completion of the evaluation and may order
5 the secretary to reimburse expenses to the jail for any excess days at
6 a rate of ninety dollars per day. The hearing may include review of a
7 corrective action plan entered under section 110(7) of this act.
8 Failure to conduct or complete a competency evaluation within time
9 limitations shall not be cause for dismissal of criminal charges.

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

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

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

18 The department shall report annually to the legislature beginning
19 October 1, 2010, concerning the waiting period for competency
20 evaluations and competency restoration treatment during the past state
21 fiscal year.

22 The report shall include:

23 (1) The number of competency evaluation referrals received, grouped
24 by state hospital catchment;

25 (2) The average waiting period for competency evaluations,
26 presented on a monthly basis, and grouped by state hospital catchment.
27 The department shall separate competency evaluations which occur
28 entirely in a jail or detention center from other competency
29 evaluations. The waiting period measured shall be from the time the
30 secretary receives the order for evaluation and other documents
31 identified in RCW 10.77.060(1)(c) to the time of distribution of the
32 evaluation report;

33 (3) The average waiting period for competency evaluations,
34 presented on an annual basis, and itemized by county. The evaluations
35 shall be separated and measured as in subsection (2) of this section;

36 (4) The average waiting period for inpatient competency
37 restoration, presented on a monthly basis, and grouped by state

1 hospital catchment. The waiting period measured shall be from the time
2 the secretary receives the restoration referral to the time the
3 defendant is transported to the state hospital, but shall not include
4 any delay solely attributable to a failure by a jail or detention
5 center to provide information required by section 109(1) of this act;

6 (5) The number of competency restoration treatment referrals
7 received on an annual basis, grouped by state hospital catchment. This
8 information shall be separated into nonfelony referrals, first ninety-
9 day felony referrals, second ninety-day felony referrals, and final one
10 hundred eighty-day felony referrals. The report shall include average
11 length of stay information and the percentage of successful outcomes at
12 each stage;

13 (6) The number of hearings held pursuant to section 109(2) of this
14 act during the reporting period, grouped by state hospital catchment;
15 and

16 (7) If the data indicates that the department has failed to comply
17 with the time limits prescribed by RCW 10.77.060(1)(d) and 10.77.220,
18 a description of a corrective action plan entered by the department to
19 bring the department into compliance with these sections.

20 The department may include any additional information or
21 subgroupings in the report that it determines to be appropriate.

22 **PART II**
23 **TECHNICAL CHANGES**

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

26 (1) Before a person committed under this chapter is permitted
27 temporarily to leave a treatment facility for any period of time
28 without constant accompaniment by facility staff, the superintendent,
29 professional person in charge of a treatment facility, or his or her
30 professional designee shall in writing notify the prosecuting attorney
31 of any county to which the person is released and the prosecuting
32 attorney of the county in which the criminal charges against the
33 committed person were dismissed, of the decision conditionally to
34 release the person. The notice shall be provided at least forty-five
35 days before the anticipated release and shall describe the conditions
36 under which the release is to occur.

1 (2) In addition to the notice required by subsection (1) of this
2 section, the superintendent of each state institution designated for
3 the custody, care, and treatment of persons committed under this
4 chapter shall notify appropriate law enforcement agencies through the
5 state patrol communications network of the furloughs of persons
6 committed under RCW (~~10.77.086~~) 10.77.084(1)(c) or 10.77.110.
7 Notification shall be made at least thirty days before the furlough,
8 and shall include the name of the person, the place to which the person
9 has permission to go, and the dates and times during which the person
10 will be on furlough.

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

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

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

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

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

25 At the expiration of the fourteen-day period of intensive
26 treatment, a person may be confined for further treatment pursuant to
27 RCW 71.05.320 if:

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

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

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

8 (4) Such person is gravely disabled.

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

11 (1) At any time during a person's fourteen day intensive treatment
12 period, the professional person in charge of a treatment facility or
13 his or her professional designee or the designated mental health
14 professional may petition the superior court for an order requiring
15 such person to undergo an additional period of treatment. Such
16 petition must be based on one or more of the grounds set forth in RCW
17 71.05.280.

18 (2) The petition shall summarize the facts which support the need
19 for further confinement and shall be supported by affidavits signed by
20 two examining physicians, or by one examining physician and examining
21 mental health professional. The affidavits shall describe in detail
22 the behavior of the detained person which supports the petition and
23 shall explain what, if any, less restrictive treatments which are
24 alternatives to detention are available to such person, and shall state
25 the willingness of the affiant to testify to such facts in subsequent
26 judicial proceedings under this chapter.

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

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

36 (1) The petition for ninety day treatment shall be filed with the

1 clerk of the superior court at least three days before expiration of
2 the fourteen-day period of intensive treatment. At the time of filing
3 such petition, the clerk shall set a time for the person to come before
4 the court on the next judicial day after the day of filing unless such
5 appearance is waived by the person's attorney, and the clerk shall
6 notify the designated mental health professional. The designated
7 mental health professional shall immediately notify the person
8 detained, his or her attorney, if any, and his or her guardian or
9 conservator, if any, the prosecuting attorney, and the regional support
10 network administrator, and provide a copy of the petition to such
11 persons as soon as possible. The regional support network
12 administrator or designee may review the petition and may appear and
13 testify at the full hearing on the petition.

14 (2) At the time set for appearance the detained person shall be
15 brought before the court, unless such appearance has been waived and
16 the court shall advise him or her of his or her right to be represented
17 by an attorney and of his or her right to a jury trial. If the
18 detained person is not represented by an attorney, or is indigent or is
19 unwilling to retain an attorney, the court shall immediately appoint an
20 attorney to represent him or her. The court shall, if requested,
21 appoint a reasonably available licensed physician, psychologist, or
22 psychiatrist, designated by the detained person to examine and testify
23 on behalf of the detained person.

24 (3) The court may, if requested, also appoint a professional person
25 as defined in RCW 71.05.020 to seek less restrictive alternative
26 courses of treatment and to testify on behalf of the detained person.
27 In the case of a person with a developmental disability who has been
28 determined to be incompetent pursuant to RCW ((10.77.086(4)))
29 10.77.084(1)(c), then the appointed professional person under this
30 section shall be a developmental disabilities professional.

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

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

35 (1) If the court or jury finds that grounds set forth in RCW
36 71.05.280 have been proven and that the best interests of the person or
37 others will not be served by a less restrictive treatment which is an

1 alternative to detention, the court shall remand him or her to the
2 custody of the department or to a facility certified for ninety day
3 treatment by the department for a further period of intensive treatment
4 not to exceed ninety days from the date of judgment: PROVIDED, That

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

9 (b) If the committed person has a developmental disability and has
10 been determined incompetent pursuant to RCW (~~(10.77.086(4))~~)
11 10.77.084(1)(c), and the best interests of the person or others will
12 not be served by a less-restrictive treatment which is an alternative
13 to detention, the court shall remand him or her to the custody of the
14 department or to a facility certified for one hundred eighty-day
15 treatment by the department. When appropriate and subject to available
16 funds, treatment and training of such persons must be provided in a
17 program specifically reserved for the treatment and training of persons
18 with developmental disabilities. A person so committed shall receive
19 habilitation services pursuant to an individualized service plan
20 specifically developed to treat the behavior which was the subject of
21 the criminal proceedings. The treatment program shall be administered
22 by developmental disabilities professionals and others trained
23 specifically in the needs of persons with developmental disabilities.
24 The department may limit admissions to this specialized program in
25 order to ensure that expenditures for services do not exceed amounts
26 appropriated by the legislature and allocated by the department for
27 such services. The department may establish admission priorities in
28 the event that the number of eligible persons exceeds the limits set by
29 the department. An order for treatment less restrictive than
30 involuntary detention may include conditions, and if such conditions
31 are not adhered to, the designated mental health professional or
32 developmental disabilities professional may order the person
33 apprehended under the terms and conditions of RCW 71.05.340.

34 (2) If the court or jury finds that grounds set forth in RCW
35 71.05.280 have been proven, but finds that treatment less restrictive
36 than detention will be in the best interest of the person or others,
37 then the court shall remand him or her to the custody of the department
38 or to a facility certified for ninety day treatment by the department

1 or to a less restrictive alternative for a further period of less
2 restrictive treatment not to exceed ninety days from the date of
3 judgment: PROVIDED, That if the grounds set forth in RCW 71.05.280(3)
4 are the basis of commitment, then the period of treatment may be up to
5 but not exceed one hundred eighty days from the date of judgment.

6 (3) The person shall be released from involuntary treatment at the
7 expiration of the period of commitment imposed under subsection (1) or
8 (2) of this section unless the superintendent or professional person in
9 charge of the facility in which he or she is confined, or in the event
10 of a less restrictive alternative, the designated mental health
11 professional or developmental disabilities professional, files a new
12 petition for involuntary treatment on the grounds that the committed
13 person;

14 (a) During the current period of court ordered treatment: (i) Has
15 threatened, attempted, or inflicted physical harm upon the person of
16 another, or substantial damage upon the property of another, and (ii)
17 as a result of mental disorder or developmental disability presents a
18 likelihood of serious harm; or

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

23 (c) Is in custody pursuant to RCW 71.05.280(3) and as a result of
24 mental disorder or developmental disability presents a substantial
25 likelihood of repeating similar acts considering the charged criminal
26 behavior, life history, progress in treatment, and the public safety;
27 or

28 (d) Continues to be gravely disabled.

29 If the conduct required to be proven in (b) and (c) of this
30 subsection was found by a judge or jury in a prior trial under this
31 chapter, it shall not be necessary to reprove that element. Such new
32 petition for involuntary treatment shall be filed and heard in the
33 superior court of the county of the facility which is filing the new
34 petition for involuntary treatment unless good cause is shown for a
35 change of venue. The cost of the proceedings shall be borne by the
36 state.

37 The hearing shall be held as provided in RCW 71.05.310, and if the
38 court or jury finds that the grounds for additional confinement as set

1 forth in this subsection are present, the court may order the committed
2 person returned for an additional period of treatment not to exceed one
3 hundred eighty days from the date of judgment. At the end of the one
4 hundred eighty day period of commitment, the committed person shall be
5 released unless a petition for another one hundred eighty day period of
6 continued treatment is filed and heard in the same manner as provided
7 in this subsection. Successive one hundred eighty day commitments are
8 permissible on the same grounds and pursuant to the same procedures as
9 the original one hundred eighty day commitment.

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

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

15 (1)(a) Except as provided in subsection (2) of this section, at the
16 earliest possible date, and in no event later than thirty days before
17 conditional release, final release, authorized leave under RCW
18 71.05.325(2), or transfer to a facility other than a state mental
19 hospital, the superintendent shall send written notice of conditional
20 release, release, authorized leave, or transfer of a person committed
21 under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex,
22 violent, or felony harassment offense pursuant to RCW ((~~10.77.086(4)~~))
23 10.77.084(1)(c) to the following:

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

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

27 (b) The same notice as required by (a) of this subsection shall be
28 sent to the following, if such notice has been requested in writing
29 about a specific person committed under RCW 71.05.280(3) or
30 71.05.320(3)(c) following dismissal of a sex, violent, or felony
31 harassment offense pursuant to RCW ((~~10.77.086(4)~~)) 10.77.084(1)(c):

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

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

1 (iii) Any person specified in writing by the prosecuting attorney.
2 Information regarding victims, next of kin, or witnesses requesting the
3 notice, information regarding any other person specified in writing by
4 the prosecuting attorney to receive the notice, and the notice are
5 confidential and shall not be available to the person committed under
6 this chapter.

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

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

12 (2) If a person committed under RCW 71.05.280(3) or 71.05.320(3)(c)
13 following dismissal of a sex, violent, or felony harassment offense
14 pursuant to RCW (~~(10.77.086(4))~~) 10.77.084(1)(c) escapes, the
15 superintendent shall immediately notify, by the most reasonable and
16 expedient means available, the chief of police of the city and the
17 sheriff of the county in which the person resided immediately before
18 the person's arrest. If previously requested, the superintendent shall
19 also notify the witnesses and the victim of the sex, violent, or felony
20 harassment offense that was dismissed pursuant to RCW (~~(10.77.086(4))~~)
21 10.77.084(1)(c) preceding commitment under RCW 71.05.280(3) or
22 71.05.320(3) or the victim's next of kin if the crime was a homicide.
23 In addition, the secretary shall also notify appropriate parties
24 pursuant to RCW 71.05.390(18). If the person is recaptured, the
25 superintendent shall send notice to the persons designated in this
26 subsection as soon as possible but in no event later than two working
27 days after the department learns of such recapture.

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

31 (4) The superintendent shall send the notices required by this
32 chapter to the last address provided to the department by the
33 requesting party. The requesting party shall furnish the department
34 with a current address.

35 (5) For purposes of this section the following terms have the
36 following meanings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (v) A current mental health evaluation or mental health records
33 review.

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

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

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

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

8 When it appears that: (1) A person who at any time previously has
9 been convicted of a sexually violent offense is about to be released
10 from total confinement on, before, or after July 1, 1990; (2) a person
11 found to have committed a sexually violent offense as a juvenile is
12 about to be released from total confinement on, before, or after July
13 1, 1990; (3) a person who has been charged with a sexually violent
14 offense and who has been determined to be incompetent to stand trial is
15 about to be released, or has been released on, before, or after July 1,
16 1990, pursuant to RCW (~~(10.77.086(4))~~) 10.77.084(1)(c); (4) a person
17 who has been found not guilty by reason of insanity of a sexually
18 violent offense is about to be released, or has been released on,
19 before, or after July 1, 1990, pursuant to RCW 10.77.020(3), 10.77.110
20 (1) or (3), or 10.77.150; or (5) a person who at any time previously
21 has been convicted of a sexually violent offense and has since been
22 released from total confinement and has committed a recent overt act;
23 and it appears that the person may be a sexually violent predator, the
24 prosecuting attorney of the county where the person was convicted or
25 charged or the attorney general if requested by the prosecuting
26 attorney may file a petition alleging that the person is a "sexually
27 violent predator" and stating sufficient facts to support such
28 allegation.

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

31 (1) The court or jury shall determine whether, beyond a reasonable
32 doubt, the person is a sexually violent predator. In determining
33 whether or not the person would be likely to engage in predatory acts
34 of sexual violence if not confined in a secure facility, the fact
35 finder may consider only placement conditions and voluntary treatment
36 options that would exist for the person if unconditionally released

1 from detention on the sexually violent predator petition. The
2 community protection program under RCW 71A.12.230 may not be considered
3 as a placement condition or treatment option available to the person if
4 unconditionally released from detention on a sexually violent predator
5 petition. When the determination is made by a jury, the verdict must
6 be unanimous.

7 If, on the date that the petition is filed, the person was living
8 in the community after release from custody, the state must also prove
9 beyond a reasonable doubt that the person had committed a recent overt
10 act. If the state alleges that the prior sexually violent offense that
11 forms the basis for the petition for commitment was an act that was
12 sexually motivated as provided in RCW 71.09.020(15)(c), the state must
13 prove beyond a reasonable doubt that the alleged sexually violent act
14 was sexually motivated as defined in RCW 9.94A.030.

15 If the court or jury determines that the person is a sexually
16 violent predator, the person shall be committed to the custody of the
17 department of social and health services for placement in a secure
18 facility operated by the department of social and health services for
19 control, care, and treatment until such time as: (a) The person's
20 condition has so changed that the person no longer meets the definition
21 of a sexually violent predator; or (b) conditional release to a less
22 restrictive alternative as set forth in RCW 71.09.092 is in the best
23 interest of the person and conditions can be imposed that would
24 adequately protect the community.

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

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

37 (2) If the person charged with a sexually violent offense has been
38 found incompetent to stand trial, and is about to ~~((be))~~ be or has

1 been released pursuant to RCW (~~(10.77.086(4))~~) 10.77.084(1)(c), and his
2 or her commitment is sought pursuant to subsection (1) of this section,
3 the court shall first hear evidence and determine whether the person
4 did commit the act or acts charged if the court did not enter a finding
5 prior to dismissal under RCW (~~(10.77.086(4))~~) 10.77.084(1)(c) that the
6 person committed the act or acts charged. The hearing on this issue
7 must comply with all the procedures specified in this section. In
8 addition, the rules of evidence applicable in criminal cases shall
9 apply, and all constitutional rights available to defendants at
10 criminal trials, other than the right not to be tried while
11 incompetent, shall apply. After hearing evidence on this issue, the
12 court shall make specific findings on whether the person did commit the
13 act or acts charged, the extent to which the person's incompetence or
14 developmental disability affected the outcome of the hearing, including
15 its effect on the person's ability to consult with and assist counsel
16 and to testify on his or her own behalf, the extent to which the
17 evidence could be reconstructed without the assistance of the person,
18 and the strength of the prosecution's case. If, after the conclusion
19 of the hearing on this issue, the court finds, beyond a reasonable
20 doubt, that the person did commit the act or acts charged, it shall
21 enter a final order, appealable by the person, on that issue, and may
22 proceed to consider whether the person should be committed pursuant to
23 this section.

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

31 (4) A court has jurisdiction to order a less restrictive
32 alternative placement only after a hearing ordered pursuant to RCW
33 71.09.090 following initial commitment under this section and in accord
34 with the provisions of this chapter.

35 **PART III**
36 **MISCELLANEOUS**

1 NEW SECTION. **Sec. 301.** Part headings used in this act are not any
2 part of the law."

SB 5519 - S AMD

By Senators Hargrove, Stevens

ADOPTED 03/12/2009

3 On page 1, line 2 of the title, after "procedures;" strike the
4 remainder of the title and insert "amending RCW 10.77.060, 10.77.065,
5 10.77.084, 10.77.086, 10.77.088, 10.77.163, 71.05.280, 71.05.290,
6 71.05.300, 71.05.320, 71.05.425, 71.09.025, 71.09.030, and 71.09.060;
7 adding new sections to chapter 10.77 RCW; and creating a new section."

--- END ---