S-0357.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5278**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Padden, Pedersen, and Kuderer

AN ACT Relating to the authority of the public safety review panel; amending RCW 10.77.020, 10.77.110, 10.77.120, 10.77.140, 10.77.145, 10.77.150, 10.77.155, 10.77.160, 10.77.163, 10.77.180, 10.77.190, 10.77.195, 10.77.200, 10.77.230, and 10.77.270; and creating new sections.

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

NEW SECTION. **Sec.**  The legislature finds that persons subject to commitment following a determination of not guilty by reason of insanity present unique diagnostic, treatment, supervisory, and public safety challenges that differ substantially from other groups subject to civil commitment. In accord with the practices of some other states, the legislature finds that a centralized, quasi-judicial administrative review board with specialized expertise in the unique nature of this population and their public safety challenges will enhance both patient care and public safety.

**Sec.**  RCW 10.77.020 and 2006 c 109 s 1 are each amended to read as follows:

(1) At any and all stages of the proceedings pursuant to this chapter, any person subject to the provisions of this chapter shall be entitled to the assistance of counsel, and if the person is indigent the court or the public safety review panel shall appoint counsel to assist him or her. A person may waive his or her right to counsel; but such waiver shall only be effective if a court or the panel makes a specific finding that he or she is or was competent to so waive. In making such findings, the court or the panel shall be guided but not limited by the following standards: Whether the person attempting to waive the assistance of counsel, does so understanding:

(a) The nature of the charges;

(b) The statutory offense included within them;

(c) The range of allowable punishments thereunder;

(d) Possible defenses to the charges and circumstances in mitigation thereof; and

(e) All other facts essential to a broad understanding of the whole matter.

(2) Whenever any person is subjected to an examination pursuant to any provision of this chapter, he or she may retain an expert or professional person to perform an examination in his or her behalf. In the case of a person who is indigent, the court or the panel shall upon his or her request assist the person in obtaining an expert or professional person to perform an examination or participate in the hearing on his or her behalf. An expert or professional person obtained by an indigent person pursuant to the provisions of this chapter shall be compensated for his or her services out of funds of the department, in an amount determined by the secretary to be fair and reasonable.

(3) Any time the defendant is being examined by court appointed experts or professional persons pursuant to the provisions of this chapter, the defendant shall be entitled to have his or her attorney present.

(4) In a competency evaluation conducted under this chapter, the defendant may refuse to answer any question if he or she believes his or her answers may tend to incriminate him or her or form links leading to evidence of an incriminating nature.

(5) In a sanity evaluation conducted under this chapter, if a defendant refuses to answer questions or to participate in an examination conducted in response to the defendant's assertion of an insanity defense, the court shall exclude from evidence at trial any testimony or evidence from any expert or professional person obtained or retained by the defendant.

**Sec.**  RCW 10.77.110 and 2000 c 94 s 14 are each amended to read as follows:

(1) If a defendant is acquitted of a crime by reason of insanity, and it is found that he or she is not a substantial danger to other persons, and does not present a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall direct the defendant's release. If it is found that such defendant is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall order his or her hospitalization, or any appropriate alternative treatment less restrictive than detention in a state mental hospital, pursuant to the terms of this chapter.

(2) If the defendant has been found not guilty by reason of insanity and a substantial danger, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, so as to require treatment then the secretary shall immediately cause the defendant to be evaluated to ascertain if the defendant is ((~~developmentally disabled~~)) an individual with a developmental disability. When appropriate, and subject to available funds, the defendant may be committed to a program specifically reserved for the treatment and training of ((~~developmentally disabled persons~~)) individuals with developmental disabilities. A person so committed shall receive habilitation services according to an individualized service plan specifically developed to treat the behavior which was the subject of the criminal proceedings. The treatment program shall be administered by developmental disabilities professionals and others trained specifically in the needs of ((~~developmentally disabled persons~~)) individuals with developmental disabilities. The treatment program shall provide physical security to a degree consistent with the finding that the defendant is dangerous and may incorporate varying conditions of security and alternative sites when the dangerousness of any particular defendant makes this necessary. The department may limit admissions to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department.

(3) If it is found that such defendant is not a substantial danger to other persons, and does not present a substantial likelihood of committing criminal acts jeopardizing public safety or security, but that he or she is in need of control by the court or other persons or institutions, the court shall direct the defendant's conditional release. Within five judicial days of recommending conditional release, the court shall provide a copy of its conditional release order to the public safety review panel. When appropriate for public safety or the best interests of the defendant, the panel may modify the release conditions or add additional conditions. If the panel finds that no reasonable release conditions exist that would prevent the defendant's release from presenting a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security, the panel shall state its reasons and refer the case back to the court for further consideration. The court may then order the defendant hospitalized in a state mental hospital, or conditionally released pursuant to conditions identified by the court and the panel. Upon conditional release, the panel shall assume all further jurisdiction over the matter consistent with this chapter.

**Sec.**  RCW 10.77.120 and 2010 c 263 s 4 are each amended to read as follows:

(1) The secretary shall provide adequate care and individualized treatment to persons found criminally insane at one or several of the state institutions or facilities under the direction and control of the secretary. In order that the secretary may adequately determine the nature of the mental illness or developmental disability of the person committed as criminally insane, all persons who are committed to the secretary as criminally insane shall be promptly examined by qualified personnel in order to provide a proper evaluation and diagnosis of such individual. The examinations of all persons with developmental disabilities committed under this chapter shall be performed by developmental disabilities professionals. Any person so committed shall not be released from the control of the secretary except by order of a court of competent jurisdiction or the public safety review panel, made after a hearing and judgment of release in accordance with the provisions of this chapter.

(2) Whenever there is a hearing which the committed person is entitled to attend, the secretary shall send the person in the custody of one or more department employees to the county in which the hearing is to be held at the time the case is called for trial, or to a hearing of the panel, unless the court or panel authorizes the appearance of the person by video or telephonic means. During the time the person is absent from the facility, the person may be confined in a facility designated by and arranged for by the department, but shall at all times be deemed to be in the custody of the department employee and provided necessary treatment. If the decision of the hearing remits the person to custody, the department employee shall return the person to such institution or facility designated by the secretary. If the state appeals an order of release, such appeal shall operate as a stay, and the person shall remain in custody and be returned to the institution or facility designated by the secretary until a final decision has been rendered in the cause.

**Sec.**  RCW 10.77.140 and 1998 c 297 s 40 are each amended to read as follows:

(1) Each person committed to a hospital or other facility or conditionally released pursuant to this chapter shall have a current examination of his or her mental condition made by one or more experts or professional persons at least once every six months. The person may retain, or if the person is indigent and so requests, the ((~~court~~)) public safety review panel may appoint a qualified expert or professional person to examine him or her, and such expert or professional person shall have access to all hospital records concerning the person. In the case of a committed or conditionally released person who is ((~~developmentally disabled~~)) a person with a developmental disability, the expert shall be a developmental disabilities professional. The secretary, upon receipt of the periodic report, shall provide ((~~written notice to the court of commitment of compliance with the requirements of this section~~)) copies to the panel, the prosecuting attorney, and counsel for the committed person.

(2) The panel shall review the progress of each person committed to a hospital or other facility or conditionally released pursuant to this chapter immediately following receipt of the initial six-month report. Thereafter, the panel shall review each case at least once every two years.

**Sec.**  RCW 10.77.145 and 2010 c 262 s 1 are each amended to read as follows:

(1) No person committed to the custody of the department for the determination of competency to stand trial under RCW 10.77.060, the restoration of competency for trial under RCW 10.77.084, 10.77.086, or 10.77.088, or following an acquittal by reason of insanity shall be authorized to leave the facility where the person is confined, except in the following circumstances:

(a) In accordance with conditional release or furlough authorized by the public safety review panel if the person was committed following acquittal by reason of insanity, or by a court in other cases;

(b) For necessary medical or legal proceedings not available in the facility where the person is confined;

(c) For visits to the bedside of a member of the person's immediate family who is seriously ill; or

(d) For attendance at the funeral of a member of the person's immediate family.

(2) Unless ordered otherwise by the panel if the person was committed following acquittal by reason of insanity, or by a court in other cases, no leave under subsection (1) of this section shall be authorized unless the person who is the subject of the authorization is escorted by a person approved by the secretary. During the authorized leave, the person approved by the secretary must be in visual or auditory contact at all times with the person on authorized leave.

(3) Prior to the authorization of any leave under subsection (1) of this section, the secretary must give notification to any county or city law enforcement agency having jurisdiction in the location of the leave destination.

**Sec.**  RCW 10.77.150 and 2010 c 263 s 5 are each amended to read as follows:

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

(2) In instances in which persons examined pursuant to RCW 10.77.140 have not made application to the secretary for conditional release, but the secretary, after considering the reports of experts or professional persons conducting the examination pursuant to RCW 10.77.140, reasonably believes the person may be conditionally released, the secretary may submit a recommendation for release to the ((~~court of the county that ordered the person's commitment~~)) panel. The secretary's recommendation must include any proposed terms and conditions upon which the secretary reasonably believes the person may be conditionally released. Conditional release may also include partial release for work, training, or educational purposes. Notice of the secretary's recommendation under this subsection must be provided to the person for whom the secretary has made the recommendation for release and to his or her attorney.

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

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

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

(d) The ((~~court~~)) panel, after the hearing, shall rule on the secretary's recommendations, and if it disapproves of conditional release, may do so only on the basis of substantial evidence. The ((~~court~~)) panel may modify the suggested terms and conditions on which the person is to be conditionally released. Pursuant to the determination of the ((~~court~~)) panel after hearing, the committed person shall thereupon be released on such conditions as the ((~~court~~)) panel determines to be necessary, or shall be remitted to the custody of the secretary. If the order of conditional release includes a requirement for the committed person to report to a community corrections officer, the order shall also specify that the conditionally released person shall be under the supervision of the secretary of corrections or such person as the secretary of corrections may designate and shall follow explicitly the instructions of the secretary of corrections including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, and notifying the community corrections officer prior to making any change in the offender's address or employment. If the order of conditional release includes a requirement for the committed person to report to a community corrections officer, the community corrections officer shall notify the secretary or the secretary's designee, if the person is not in compliance with the court-ordered conditions of release.

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

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

**Sec.**  RCW 10.77.155 and 1994 c 150 s 1 are each amended to read as follows:

((~~No court may,~~)) The public safety review panel or a court may not, without a hearing, enter an order conditionally releasing or authorizing the furlough of a person committed under this chapter, unless the secretary has recommended the release or furlough. If the secretary has not recommended the release or furlough, a hearing shall be held under RCW 10.77.150.

**Sec.**  RCW 10.77.160 and 2010 c 263 s 6 are each amended to read as follows:

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

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

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

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

(3) Upon receiving notice that a person committed under this chapter is being temporarily released under subsection (1) of this section, the prosecuting attorney may seek a temporary restraining order from the public safety review panel if the person was committed following acquittal by reason of insanity, or from the court in other cases, to prevent the release of the person on the grounds that the person is dangerous to self or others.

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

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

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

**Sec.**  RCW 10.77.180 and 1998 c 297 s 42 are each amended to read as follows:

Each person conditionally released pursuant to RCW 10.77.150 shall have his or her case reviewed by the ((~~court which conditionally released him or her~~)) public safety review panel no later than one year after such release and no later than every two years thereafter, such time to be scheduled by the ((~~court~~)) panel. Review may occur in a shorter time or more frequently, if the ((~~court~~)) panel, in its discretion, on its own motion, or on motion of the person, the secretary of social and health services, the secretary of corrections, medical or mental health practitioner, or the prosecuting attorney, so determines. The sole question to be determined by the ((~~court~~)) panel is whether the person shall continue to be conditionally released. The ((~~court~~)) panel in making its determination shall be aided by the periodic reports filed pursuant to RCW 10.77.140 and 10.77.160, and the opinions of the secretary and other experts or professional persons.

**Sec.**  RCW 10.77.190 and 2010 c 263 s 7 are each amended to read as follows:

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

(2) If the prosecuting attorney, the secretary of social and health services, the secretary of corrections, or the ((~~court~~)) panel, after examining the report filed with them pursuant to RCW 10.77.160, or based on other information received by them, reasonably believes that a conditionally released person is failing to adhere to the terms and conditions of his or her conditional release the ((~~court~~)) panel or secretary of social and health services or the secretary of corrections may order that the conditionally released person be apprehended and taken into custody. The ((~~court~~)) panel shall be notified of the apprehension before the close of the next judicial day. The ((~~court~~)) panel shall schedule a hearing within thirty days to determine whether or not the person's conditional release should be modified or revoked. Both the prosecuting attorney and the conditionally released person shall have the right to request an immediate mental examination of the conditionally released person. If the conditionally released person is indigent, the ((~~court~~)) panel or secretary of social and health services or the secretary of corrections or their designees shall, upon request, assist him or her in obtaining a qualified expert or professional person to conduct the examination.

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

(4) The ((~~court~~)) panel, upon receiving notification of the apprehension, shall promptly schedule a hearing. The issue to be determined is whether the conditionally released person did or did not adhere to the terms and conditions of his or her release, or whether the person presents a threat to public safety. Pursuant to the determination of the ((~~court~~)) panel upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or his or her conditional release shall be revoked and he or she shall be committed subject to release only in accordance with provisions of this chapter.

**Sec.**  RCW 10.77.195 and 2010 c 263 s 9 are each amended to read as follows:

For persons who have received ((~~court~~)) approval from the public safety review panel for conditional release, the secretary or the secretary's designee shall supervise the person's compliance with the ((~~court-ordered~~)) panel-ordered conditions of release. The level of supervision provided by the secretary shall correspond to the level of the person's public safety risk. In undertaking supervision of persons under this section, the secretary shall coordinate with any treatment providers designated pursuant to RCW 10.77.150(3), any department of corrections staff designated pursuant to RCW 10.77.150(2), and local law enforcement, if appropriate. The secretary shall adopt rules to implement this section.

**Sec.**  RCW 10.77.200 and 2013 c 289 s 7 are each amended to read as follows:

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

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

(3) The petition shall be served upon the court and the prosecuting attorney. The court, upon receipt of the petition for release, shall within forty-five days order a hearing. Continuance of the hearing date shall only be allowed for good cause shown. The prosecuting attorney shall represent the state, and shall have the right to have the person who is the subject of the petition examined by an expert or professional person of the prosecuting attorney's choice. If the secretary is the petitioner, the attorney general shall represent the secretary. If the person who is the subject of the petition is indigent, and the person so requests, the court shall appoint a qualified expert or professional person to examine him or her. If the person who is the subject of the petition has a developmental disability, the examination shall be performed by a developmental disabilities professional. The hearing shall be before a jury if demanded by either the petitioner or the prosecuting attorney. The burden of proof shall be upon the petitioner to show by a preponderance of the evidence that the person who is the subject of the petition no longer presents, as a result of a mental disease or defect, a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions. If the person who is the subject of the petition will be transferred to a state correctional institution or facility upon release to serve a sentence for any class A felony, the petitioner must show that the person's mental disease or defect is manageable within a state correctional institution or facility, but must not be required to prove that the person does not present either a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security, if released.

(4) For purposes of this section, a person affected by a mental disease or defect in a state of remission is considered to have a mental disease or defect requiring supervision when the disease may, with reasonable medical probability, occasionally become active and, when active, render the person a danger to others. Upon a finding that the person who is the subject of the petition has a mental disease or defect in a state of remission under this subsection, the court may deny release, or place or continue such a person on conditional release.

(5) Nothing contained in this chapter shall prohibit the patient from petitioning the court for release, or petitioning the public safety review panel for conditional release, from the institution in which he or she is committed. The petition shall be ((~~served upon~~)) filed with the court((~~,~~)) or the panel, and served upon the prosecuting attorney((~~,~~)) and the secretary. Upon receipt of such petition, the secretary shall develop a recommendation as provided in subsection (1) of this section and provide the secretary's recommendation to all parties and the court or the panel. The issue to be determined on such proceeding is whether the patient, as a result of a mental disease or defect, is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

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

**Sec.**  RCW 10.77.230 and 1988 c 202 s 16 are each amended to read as follows:

Either party may seek appellate review of the judgment of any hearing held pursuant to the provisions of this chapter. Any appeal from a ruling of the public safety review panel shall be considered by the Washington state court of appeals in the division with authority over the county of the person's commitment under this chapter.

**Sec.**  RCW 10.77.270 and 2013 c 289 s 3 are each amended to read as follows:

(1) The secretary shall establish an independent public safety review panel ((~~for the purpose of advising~~)) to determine conditional release, revocation, and other matters specified in this chapter. In addition, the panel shall advise the secretary and the courts with respect to persons who have been found not guilty by reason of insanity, or persons committed under the involuntary treatment act where the court has made a special finding under RCW 71.05.280(3)(b). The panel shall provide advice regarding all recommendations to the secretary, decisions by the secretary, or actions pending in court: (a) For a change in commitment status; (b) to allow furloughs or temporary leaves accompanied by staff; (c) not to seek further commitment terms under RCW 71.05.320; or (d) to permit movement about the grounds of the treatment facility, with or without the accompaniment of staff.

(2) The members of the public safety review panel shall be appointed by the governor for ((~~a~~)) renewable, staggered terms of ((~~three~~)) four years and shall include the following:

(a) A psychiatrist;

(b) A licensed clinical psychologist;

(c) A representative of the department of corrections;

(d) A prosecutor or a representative of a prosecutor's association;

(e) A representative of law enforcement or a law enforcement association;

(f) A consumer and family advocate representative; and

(g) A public defender or a representative of a defender's association.

(3) Thirty days prior to issuing a recommendation for conditional release ((~~under RCW 10.77.150 or~~)) of a person committed with a special finding under RCW 71.05.280(3), forty-five days prior to issuing a recommendation for release under RCW 10.77.200, or forty-five days prior to issuing a recommendation for a less restrictive alternative of a person committed with a special finding under RCW 71.05.280(3), the secretary shall submit its recommendation with the committed person's application and the department's risk assessment to the public safety review panel. The public safety review panel shall complete an independent assessment of the public safety risk entailed by the secretary's proposed conditional release recommendation or release recommendation and provide this assessment in writing to the secretary. The public safety review panel may, within funds appropriated for this purpose, request additional evaluations of the committed person. The public safety review panel may indicate whether it is in agreement with the secretary's recommendation, or whether it would issue a different recommendation. The secretary shall provide the panel's assessment when it is received along with any supporting documentation, including all previous reports of evaluations of the committed person in the person's hospital record, to the court, prosecutor in the county that ordered the person's commitment, and counsel for the committed person.

(4) The secretary shall notify the public safety review panel at appropriate intervals concerning any changes in the commitment or custody status of persons found not guilty by reason of insanity, or persons committed under the involuntary treatment act where the court has made a special finding under RCW 71.05.280(3)(b). The panel shall have access, upon request, to a committed person's complete hospital record, and any other records deemed necessary by the public safety review panel.

(5) The department shall provide administrative and financial support to the public safety review panel and provide an appropriate venue for panel hearings. The department, in consultation with the public safety review panel, may adopt rules to implement this section.

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

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

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

~~(c) Whether further changes in the law are necessary to enhance public safety when incompetency prevents operation of the criminal justice system and long~~‑~~term commitment of the criminally insane; and~~

~~(d) Any other issues the public safety review panel deems relevant.~~)) The panel may adopt procedural and other rules necessary to perform its functions. Hearings of the panel may be conducted in groups of four members designated by the panel chair. When conducting adjudicative functions, the panel shall have the authority to issue subpoenas and to compel compliance with its orders. Panel members are not removable during their term except for cause as determined by the Thurston county superior court.

(7) All panel decisions and recommendations must be made available to the public. All panel proceedings, except deliberations, must be open to the public. When practical and convenient, all panel adjudicative hearings must be held at western state hospital or eastern state hospital. If a person committed under this chapter is not a resident at the facility where the hearing is held, the panel may allow the defendant to appear by telephone or video in lieu of a personal appearance. The panel may allow attorneys to appear by telephone or video and present witnesses in this manner. The panel shall follow all constitutional requirements applicable to civil commitment proceedings in conducting its hearings.

(8) Each member of the panel shall receive a per diem for attending to panel business that is based on a salary fixed by the governor in accordance with the provisions of RCW 43.03.040. The per diem shall reflect the professional qualifications and experience necessary for each panel position. In addition to a per diem, each member of the panel shall receive travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060.

NEW SECTION. **Sec.**  The provisions of this act apply to all commitments under RCW 10.77.110, and all commitments made with a special finding under RCW 71.05.280(3), that exist before, on, or after the effective date of this section.

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

**--- END ---**