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SENATE BILL 6410

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State of Washington                      52nd Legislature                      1992 Regular Session

By Senators Madsen and Sutherland

Read first time 01/29/92. Referred to Committee on Law & Justice.

1            AN ACT Relating to the right to refuse treatment after pleading not  
2 guilty due to insanity and being found incompetent; and amending RCW  
3 10.77.090.

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

5            **Sec. 1.** RCW 10.77.090 and 1989 c 420 s 5 are each amended to read  
6 as follows:

7            (1) If at any time during the pendency of an action and prior to  
8 judgment, the court finds following a report as provided in RCW  
9 10.77.060, as now or hereafter amended, that the defendant is  
10 incompetent, the court shall order the proceedings against the  
11 defendant be stayed, except as provided in subsection (5) of this  
12 section, and, if the defendant is charged with a felony, may commit the  
13 defendant to the custody of the secretary, who shall place such  
14 defendant in an appropriate facility of the department for evaluation

1 and treatment, or the court may alternatively order the defendant to  
2 undergo evaluation and treatment at some other facility, or under the  
3 guidance and control of some other person, until he or she has regained  
4 the competency necessary to understand the proceedings against him or  
5 her and assist in his or her own defense, but in any event, for no  
6 longer than a period of ninety days. A defendant found incompetent  
7 shall be evaluated at the direction of the secretary and a  
8 determination made whether the defendant is developmentally disabled.  
9 Such evaluation and determination shall be accomplished as soon as  
10 possible following the court's placement of the defendant in the  
11 custody of the secretary. When appropriate, and subject to available  
12 funds, if the defendant is determined to be developmentally disabled,  
13 he or she may be placed in a program specifically reserved for the  
14 treatment and training of persons with developmental disabilities where  
15 the defendant shall have the right to habilitation according to an  
16 individualized service plan specifically developed for the particular  
17 needs of the defendant. The program shall be separate from programs  
18 serving persons involved in any other treatment or habilitation  
19 program. The program shall be appropriately secure under the  
20 circumstances and shall be administered by developmental disabilities  
21 professionals who shall direct the habilitation efforts. The program  
22 shall provide an environment affording security appropriate with the  
23 charged criminal behavior and necessary to protect the public safety.  
24 The department may limit admissions of such persons to this specialized  
25 program in order to ensure that expenditures for services do not exceed  
26 amounts appropriated by the legislature and allocated by the department  
27 for such services. The department may establish admission priorities  
28 in the event that the number of eligible persons exceeds the limits set  
29 by the department. A copy of the report shall be sent to the facility.  
30 On or before expiration of the initial ninety day period of commitment

1 the court shall conduct a hearing, at which it shall determine whether  
2 or not the defendant is incompetent. If the defendant is charged with  
3 a crime which is not a felony, the court may stay or dismiss  
4 proceedings and detain the defendant for sufficient time to allow the  
5 county mental health professional to evaluate the defendant and  
6 commence proceedings under chapter 71.05 RCW if appropriate; and  
7 subsections (2) and (3) of this section shall not be applicable:  
8 PROVIDED, That, upon order of the court, the prosecutor may directly  
9 petition for fourteen days of involuntary treatment under chapter 71.05  
10 RCW.

11 (2) If the court finds by a preponderance of the evidence that the  
12 defendant is incompetent, the court shall have the option of extending  
13 the order of commitment or alternative treatment for an additional  
14 ninety day period, but it must at the time of extension set a date for  
15 a prompt hearing to determine the defendant's competency before the  
16 expiration of the second ninety day period. The defendant shall not  
17 have the right to refuse treatment that is deemed necessary by the  
18 physician responsible for treating the person after a finding of  
19 incompetency is made an order of commitment is in effect under this  
20 chapter. The defendant, the defendant's attorney, the prosecutor, or  
21 the judge shall have the right to demand that the hearing on or before  
22 the expiration of the second ninety day period be before a jury. No  
23 extension shall be ordered for a second ninety-day period, nor for any  
24 subsequent period as provided in subsection (3) of this section if the  
25 defendant's incompetence has been determined by the secretary to be  
26 solely the result of a developmental disability which is such that  
27 competence is not reasonably likely to be regained during an extension.  
28 If no demand is made, the hearing shall be before the court. The court  
29 or jury shall determine whether or not the defendant has become  
30 competent.

1 (3) At the hearing upon the expiration of the second ninety day  
2 period or at the end of the first ninety-day period, in the case of a  
3 developmentally disabled defendant, if the jury or court, as the case  
4 may be, finds that the defendant is incompetent, the charges shall be  
5 dismissed without prejudice, and either civil commitment proceedings  
6 shall be instituted, if appropriate, or the court shall order the  
7 release of the defendant: PROVIDED, That the criminal charges shall  
8 not be dismissed if at the end of the second ninety-day period, or at  
9 the end of the first ninety-day period, in the case of a  
10 developmentally disabled defendant, the court or jury finds that the  
11 defendant is a substantial danger to other persons, or presents a  
12 substantial likelihood of committing felonious acts jeopardizing public  
13 safety or security, and that there is a substantial probability that  
14 the defendant will regain competency within a reasonable period of  
15 time. In the event that the court or jury makes such a finding, the  
16 court may extend the period of commitment for an additional six months.  
17 At the end of said six month period, if the defendant remains  
18 incompetent, the charges shall be dismissed without prejudice and  
19 either civil commitment proceedings shall be instituted, if  
20 appropriate, or the court shall order release of the defendant.

21 (4) The fact that the defendant is unfit to proceed does not  
22 preclude any pretrial proceedings which do not require the personal  
23 participation of the defendant.

24 (5) A defendant receiving medication for either physical or mental  
25 problems shall not be prohibited from standing trial, if the medication  
26 either enables the defendant to understand the proceedings against him  
27 or her and to assist in his or her own defense, or does not disable him  
28 or her from so understanding and assisting in his or her own defense.

29 (6) At or before the conclusion of any commitment period provided  
30 for by this section, the facility providing evaluation and treatment

1 shall provide to the court a written report of examination which meets  
2 the requirements of RCW 10.77.060(3).