

CERTIFICATION OF ENROLLMENT

SENATE BILL 6310

Chapter 213, Laws of 2008

(partial veto)

60th Legislature
2008 Regular Session

CRIMINAL PROCEDURE--OBSOLETE REFERENCES

EFFECTIVE DATE: 06/12/08

Passed by the Senate March 10, 2008
YEAS 43 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 5, 2008
YEAS 96 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved March 27, 2008, 4:38 p.m.,
with the exception of section 15 which
is vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of
the Senate of the State of
Washington, do hereby certify that
the attached is **SENATE BILL 6310**
as passed by the Senate and the
House of Representatives on the
dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

March 28, 2008

**Secretary of State
State of Washington**

SENATE BILL 6310

AS AMENDED BY THE HOUSE

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By Senator Hargrove

Read first time 01/15/08. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to correcting obsolete references concerning
2 chapter 10.77 RCW; amending RCW 10.77.065, 10.77.092, 10.77.097,
3 10.77.163, 71.05.235, 71.05.280, 71.05.290, 71.05.300, 71.05.320,
4 71.05.425, 71.09.025, 71.09.030, and 71.09.060; repealing RCW
5 10.77.800; and declaring an emergency.

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

7 **Sec. 1.** RCW 10.77.065 and 2000 c 74 s 2 are each amended to read
8 as follows:

9 (1)(a)(i) The facility conducting the evaluation shall provide its
10 report and recommendation to the court in which the criminal proceeding
11 is pending. A copy of the report and recommendation shall be provided
12 to the ((county)) designated mental health professional, the
13 prosecuting attorney, the defense attorney, and the professional person
14 at the local correctional facility where the defendant is being held,
15 or if there is no professional person, to the person designated under
16 (a)(ii) of this subsection. Upon request, the facility shall also
17 provide copies of any source documents relevant to the evaluation to
18 the ((county)) designated mental health professional. The report and

1 recommendation shall be provided not less than twenty-four hours
2 preceding the transfer of the defendant to the correctional facility in
3 the county in which the criminal proceeding is pending.

4 (ii) If there is no professional person at the local correctional
5 facility, the local correctional facility shall designate a
6 professional person as defined in RCW 71.05.020 or, in cooperation with
7 the regional support network, a professional person at the regional
8 support network to receive the report and recommendation.

9 (iii) When a defendant is transferred to the facility conducting
10 the evaluation, or upon commencement of a defendant's evaluation in the
11 local correctional facility, the local correctional facility must
12 notify the evaluator or the facility conducting the evaluation of the
13 name of the professional person, or person designated under (a)(ii) of
14 this subsection to receive the report and recommendation.

15 (b) If the facility concludes, under RCW 10.77.060(3)(f), the
16 person should be kept under further control, an evaluation shall be
17 conducted of such person under chapter 71.05 RCW. The court shall
18 order an evaluation be conducted by the appropriate ((county))
19 designated mental health professional: (i) Prior to release from
20 confinement for such person who is convicted, if sentenced to
21 confinement for twenty-four months or less; (ii) for any person who is
22 acquitted; or (iii) for any person: (A) Whose charges are dismissed
23 pursuant to RCW ((~~10.77.090(4)~~)) 10.77.086(4); or (B) whose nonfelony
24 charges are dismissed.

25 (2) The ((county)) designated mental health professional shall
26 provide written notification within twenty-four hours of the results of
27 the determination whether to commence proceedings under chapter 71.05
28 RCW. The notification shall be provided to the persons identified in
29 subsection (1)(a) of this section.

30 (3) The prosecuting attorney shall provide a copy of the results of
31 any proceedings commenced by the ((county)) designated mental health
32 professional under subsection (2) of this section to the facility
33 conducting the evaluation under this chapter.

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

1 **Sec. 2.** RCW 10.77.092 and 2004 c 157 s 3 are each amended to read
2 as follows:

3 (1) For purposes of determining whether a court may authorize
4 involuntary medication for the purpose of competency restoration
5 pursuant to RCW ((~~10.77.090~~)) 10.77.084, a pending charge involving any
6 one or more of the following crimes is a serious offense per se in the
7 context of competency restoration:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **Sec. 3.** RCW 10.77.097 and 2000 c 74 s 4 are each amended to read
6 as follows:

7 A copy of relevant records and reports as defined by the
8 department, in consultation with the department of corrections, made
9 pursuant to this chapter, and including relevant information necessary
10 to meet the requirements of RCW 10.77.065(1) and (~~10.77.090~~)
11 10.77.084, shall accompany the defendant upon transfer to a mental
12 health facility or a correctional institution or facility.

13 **Sec. 4.** RCW 10.77.163 and 1994 c 129 s 4 are each amended to read
14 as follows:

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

26 (2) In addition to the notice required by subsection (1) of this
27 section, the superintendent of each state institution designated for
28 the custody, care, and treatment of persons committed under this
29 chapter shall notify appropriate law enforcement agencies through the
30 state patrol communications network of the furloughs of persons
31 committed under RCW (~~10.77.090~~) 10.77.086 or 10.77.110. Notification
32 shall be made at least thirty days before the furlough, and shall
33 include the name of the person, the place to which the person has
34 permission to go, and the dates and times during which the person will
35 be on furlough.

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

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

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

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

13 **Sec. 5.** RCW 71.05.235 and 2005 c 504 s 708 are each amended to
14 read as follows:

15 (1) If an individual is referred to a designated mental health
16 professional under RCW ((~~10.77.090(1)(d)(iii)(A)~~) 10.77.088(1)(b)(i)),
17 the designated mental health professional shall examine the individual
18 within forty-eight hours. If the designated mental health professional
19 determines it is not appropriate to detain the individual or petition
20 for a ninety-day less restrictive alternative under RCW 71.05.230(4),
21 that decision shall be immediately presented to the superior court for
22 hearing. The court shall hold a hearing to consider the decision of
23 the designated mental health professional not later than the next
24 judicial day. At the hearing the superior court shall review the
25 determination of the designated mental health professional and
26 determine whether an order should be entered requiring the person to be
27 evaluated at an evaluation and treatment facility. No person referred
28 to an evaluation and treatment facility may be held at the facility
29 longer than seventy-two hours.

30 (2) If an individual is placed in an evaluation and treatment
31 facility under RCW ((~~10.77.090(1)(d)(iii)(B)~~) 10.77.088(1)(b)(ii)), a
32 professional person shall evaluate the individual for purposes of
33 determining whether to file a ninety-day inpatient or outpatient
34 petition under chapter 71.05 RCW. Before expiration of the seventy-two
35 hour evaluation period authorized under RCW ((~~10.77.090(1)(d)(iii)(B)~~)
36 10.77.088(1)(b)(ii)), the professional person shall file a petition or,
37 if the recommendation of the professional person is to release the

1 individual, present his or her recommendation to the superior court of
2 the county in which the criminal charge was dismissed. The superior
3 court shall review the recommendation not later than forty-eight hours,
4 excluding Saturdays, Sundays, and holidays, after the recommendation is
5 presented. If the court rejects the recommendation to unconditionally
6 release the individual, the court may order the individual detained at
7 a designated evaluation and treatment facility for not more than a
8 seventy-two hour evaluation and treatment period and direct the
9 individual to appear at a surety hearing before that court within
10 seventy-two hours, or the court may release the individual but direct
11 the individual to appear at a surety hearing set before that court
12 within eleven days, at which time the prosecutor may file a petition
13 under this chapter for ninety-day inpatient or outpatient treatment.
14 If a petition is filed by the prosecutor, the court may order that the
15 person named in the petition be detained at the evaluation and
16 treatment facility that performed the evaluation under this subsection
17 or order the respondent to be in outpatient treatment. If a petition
18 is filed but the individual fails to appear in court for the surety
19 hearing, the court shall order that a mental health professional or
20 peace officer shall take such person or cause such person to be taken
21 into custody and placed in an evaluation and treatment facility to be
22 brought before the court the next judicial day after detention. Upon
23 the individual's first appearance in court after a petition has been
24 filed, proceedings under RCW 71.05.310 and 71.05.320 shall commence.
25 For an individual subject to this subsection, the prosecutor or
26 professional person may directly file a petition for ninety-day
27 inpatient or outpatient treatment and no petition for initial detention
28 or fourteen-day detention is required before such a petition may be
29 filed.

30 The court shall conduct the hearing on the petition filed under
31 this subsection within five judicial days of the date the petition is
32 filed. The court may continue the hearing upon the written request of
33 the person named in the petition or the person's attorney, for good
34 cause shown, which continuance shall not exceed five additional
35 judicial days. If the person named in the petition requests a jury
36 trial, the trial shall commence within ten judicial days of the date of
37 the filing of the petition. The burden of proof shall be by clear,
38 cogent, and convincing evidence and shall be upon the petitioner. The

1 person shall be present at such proceeding, which shall in all respects
2 accord with the constitutional guarantees of due process of law and the
3 rules of evidence pursuant to RCW 71.05.360 (8) and (9).

4 During the proceeding the person named in the petition shall
5 continue to be detained and treated until released by order of the
6 court. If no order has been made within thirty days after the filing
7 of the petition, not including any extensions of time requested by the
8 detained person or his or her attorney, the detained person shall be
9 released.

10 (3) If a designated mental health professional or the professional
11 person and prosecuting attorney for the county in which the criminal
12 charge was dismissed or attorney general, as appropriate, stipulate
13 that the individual does not present a likelihood of serious harm or is
14 not gravely disabled, the hearing under this section is not required
15 and the individual, if in custody, shall be released.

16 (4) The individual shall have the rights specified in RCW 71.05.360
17 (8) and (9).

18 **Sec. 6.** RCW 71.05.280 and 1998 c 297 s 15 are each amended to read
19 as follows:

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

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

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

33 (3) Such person has been determined to be incompetent and criminal
34 charges have been dismissed pursuant to RCW (~~10.77.090(4)~~)
35 10.77.086(4), and has committed acts constituting a felony, and as a
36 result of a mental disorder, presents a substantial likelihood of

1 repeating similar acts. In any proceeding pursuant to this subsection
2 it shall not be necessary to show intent, willfulness, or state of mind
3 as an element of the crime; or

4 (4) Such person is gravely disabled.

5 **Sec. 7.** RCW 71.05.290 and 1998 c 297 s 16 are each amended to read
6 as follows:

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

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

23 (3) If a person has been determined to be incompetent pursuant to
24 RCW ((~~10.77.090(4)~~)) 10.77.086(4), then the professional person in
25 charge of the treatment facility or his or her professional designee or
26 the ((~~county~~)) designated mental health professional may directly file
27 a petition for one hundred eighty day treatment under RCW 71.05.280(3).
28 No petition for initial detention or fourteen day detention is required
29 before such a petition may be filed.

30 **Sec. 8.** RCW 71.05.300 and 2006 c 333 s 303 are each amended to
31 read as follows:

32 (1) The petition for ninety day treatment shall be filed with the
33 clerk of the superior court at least three days before expiration of
34 the fourteen-day period of intensive treatment. At the time of filing
35 such petition, the clerk shall set a time for the person to come before
36 the court on the next judicial day after the day of filing unless such

1 appearance is waived by the person's attorney, and the clerk shall
2 notify the designated mental health professional. The designated
3 mental health professional shall immediately notify the person
4 detained, his or her attorney, if any, and his or her guardian or
5 conservator, if any, the prosecuting attorney, and the regional support
6 network administrator, and provide a copy of the petition to such
7 persons as soon as possible. The regional support network
8 administrator or designee may review the petition and may appear and
9 testify at the full hearing on the petition.

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

20 (3) The court may, if requested, also appoint a professional person
21 as defined in RCW 71.05.020 to seek less restrictive alternative
22 courses of treatment and to testify on behalf of the detained person.
23 In the case of a ~~((developmentally disabled))~~ person with a
24 developmental disability who has been determined to be incompetent
25 pursuant to RCW ~~((10.77.090(4)))~~ 10.77.086(4), then the appointed
26 professional person under this section shall be a developmental
27 disabilities professional.

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

30 **Sec. 9.** RCW 71.05.320 and 2006 c 333 s 304 are each amended to
31 read as follows:

32 (1) If the court or jury finds that grounds set forth in RCW
33 71.05.280 have been proven and that the best interests of the person or
34 others will not be served by a less restrictive treatment which is an
35 alternative to detention, the court shall remand him or her to the
36 custody of the department or to a facility certified for ninety day

1 treatment by the department for a further period of intensive treatment
2 not to exceed ninety days from the date of judgment: PROVIDED, That

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

7 (b) If the committed person (~~((is developmentally disabled))~~) has a
8 developmental disability and has been determined incompetent pursuant
9 to RCW (~~((10.77.090(4)))~~) 10.77.086(4), and the best interests of the
10 person or others will not be served by a less-restrictive treatment
11 which is an alternative to detention, the court shall remand him or her
12 to the custody of the department or to a facility certified for one
13 hundred eighty-day treatment by the department. When appropriate and
14 subject to available funds, treatment and training of such persons must
15 be provided in a program specifically reserved for the treatment and
16 training of (~~((developmentally disabled))~~) persons with developmental
17 disabilities. A person so committed shall receive habilitation
18 services pursuant to an individualized service plan specifically
19 developed to treat the behavior which was the subject of the criminal
20 proceedings. The treatment program shall be administered by
21 developmental disabilities professionals and others trained
22 specifically in the needs of (~~((developmentally disabled))~~) persons with
23 developmental disabilities. The department may limit admissions to
24 this specialized program in order to ensure that expenditures for
25 services do not exceed amounts appropriated by the legislature and
26 allocated by the department for such services. The department may
27 establish admission priorities in the event that the number of eligible
28 persons exceeds the limits set by the department. An order for
29 treatment less restrictive than involuntary detention may include
30 conditions, and if such conditions are not adhered to, the designated
31 mental health professional or developmental disabilities professional
32 may order the person apprehended under the terms and conditions of RCW
33 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. 10.** RCW 71.05.425 and 2005 c 504 s 710 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(~~(+2)~~)(3)(c) following dismissal of
22 a sex, violent, or felony harassment offense pursuant to RCW
23 (~~(10.77.090(4))~~) 10.77.086(4) 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(~~(+2)~~)(3)(c) following dismissal of a sex, violent, or felony
31 harassment offense pursuant to RCW (~~(10.77.090(4))~~) 10.77.086(4):

32 (i) The victim of the sex, violent, or felony harassment offense
33 that was dismissed pursuant to RCW (~~(10.77.090(4))~~) 10.77.086(4)
34 preceding commitment under RCW 71.05.280(3) or 71.05.320(~~(+2)~~)(3)(c)
35 or the 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
13 71.05.320(~~((+2))~~)(3)(c) following dismissal of a sex, violent, or felony
14 harassment offense pursuant to RCW (~~((10.77.090(4))~~) 10.77.086(4)
15 escapes, the superintendent shall immediately notify, by the most
16 reasonable and expedient means available, the chief of police of the
17 city and the sheriff of the county in which the person resided
18 immediately before the person's arrest. If previously requested, the
19 superintendent shall also notify the witnesses and the victim of the
20 sex, violent, or felony harassment offense that was dismissed pursuant
21 to RCW (~~((10.77.090(4))~~) 10.77.086(4) preceding commitment under RCW
22 71.05.280(3) or 71.05.320(~~((+2))~~)(3) or the victim's next of kin if the
23 crime was a homicide. In addition, the secretary shall also notify
24 appropriate parties pursuant to RCW 71.05.390(18). If the person is
25 recaptured, the superintendent shall send notice to the persons
26 designated in this subsection as soon as possible but in no event later
27 than two working 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. 11.** RCW 71.09.025 and 2001 c 286 s 5 are each amended to read
6 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(~~((1+))~~)(16), the
9 agency with jurisdiction shall refer the person in writing to the
10 prosecuting attorney of the county where that person was charged, three
11 months 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 (~~((10.77.090(4))~~) 10.77.086(4); 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. 12.** RCW 71.09.030 and 1995 c 216 s 3 are each amended to read
7 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 (~~(10.77.090(3))~~) 10.77.086(4); (4) a person who
17 has been found not guilty by reason of insanity of a sexually violent
18 offense is about to be released, or has been released on, before, or
19 after July 1, 1990, pursuant to RCW 10.77.020(3), 10.77.110 (1) or (3),
20 or 10.77.150; or (5) a person who at any time previously has been
21 convicted of a sexually violent offense and has since been released
22 from total confinement and has committed a recent overt act; and it
23 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. 13.** RCW 71.09.060 and 2006 c 303 s 11 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] or has been

1 released pursuant to RCW (~~(10.77.090(4))~~) 10.77.086(4), and his or her
2 commitment is sought pursuant to subsection (1) of this section, the
3 court shall first hear evidence and determine whether the person did
4 commit the act or acts charged if the court did not enter a finding
5 prior to dismissal under RCW (~~(10.77.090(4))~~) 10.77.086(4) 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 NEW SECTION. **Sec. 14.** RCW 10.77.800 (Evaluation of chapter 297,
36 Laws of 1998--Recidivism, competency restoration, information sharing)
37 and 1998 c 297 s 54 are each repealed.

1 ***NEW SECTION. Sec. 15. This act is necessary for the immediate**
2 **preservation of the public peace, health, or safety, or support of the**
3 **state government and its existing public institutions, and takes effect**
4 **immediately.**

**Sec. 15 was vetoed. See message at end of chapter.*

Passed by the Senate March 10, 2008.

Passed by the House March 5, 2008.

Approved by the Governor March 27, 2008, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State March 28, 2008.

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

"I am returning, without my approval as to Section 15, Senate Bill
6310 entitled:

"AN ACT Relating to correcting obsolete references concerning
chapter 10.77 RCW."

Section 15 is an emergency clause. An emergency clause is to be used
where it is necessary for the immediate preservation of the public
peace, health or safety or whenever it is essential for the support
of state government. This bill makes technical corrections to
existing law by deleting obsolete terms and correcting references. I
do not believe that an emergency clause is warranted.

For this reason, I have vetoed Section 15 of Senate Bill 6310.

With the exception of Section 15, Senate Bill 6310 is approved."