

CERTIFICATION OF ENROLLMENT

SENATE BILL 6628

Chapter 318, Laws of 2008

60th Legislature
2008 Regular Session

MENTAL HEALTH TREATMENT--DEFENDANTS--COST RECOVERY

EFFECTIVE DATE: 04/01/08

Passed by the Senate March 11, 2008
YEAS 48 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 12, 2008
YEAS 97 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved April 1, 2008, 4:06 p.m.

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 6628** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

April 2, 2008

**Secretary of State
State of Washington**

SENATE BILL 6628

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By Senators Prentice, Fairley, and Rasmussen; by request of
Department of Social and Health Services

Read first time 01/21/08. Referred to Committee on Human Services &
Corrections.

1 AN ACT Relating to clarifying the state's ability to recover from
2 defendants the cost of mental health treatment provided at state
3 hospitals; amending RCW 10.01.160; creating a new section; and
4 declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that because of the
7 decision in *Utter v. DSHS*, 165 P.3d 399 (Wash. 2007), there is
8 unintended ambiguity about the authority of the secretary of the
9 department of social and health services under the criminal procedure
10 act to seek reimbursement from defendants under RCW 10.77.250 who are
11 committed for competency evaluation and mental health treatment under
12 RCW 10.77.060 and 10.77.084, and the general provision prohibiting a
13 criminal defendant from being charged for prosecution related costs
14 prior to conviction provided in RCW 10.01.160. Mental health
15 evaluation and treatment, and other medical treatment relate entirely
16 to the medically necessary care that defendants receive at state
17 hospitals and other facilities. The legislature intended for treatment
18 costs to be the responsibility of the defendant's insurers and
19 ultimately the defendant based on their ability to pay, and it is

1 permissible under chapters 10.77, 70.48, and 43.20B RCW for the state
2 and other governmental units to assess financial liability on
3 defendants who become patients and receive medical and mental health
4 care. The legislature further finds that it intended that a court
5 order staying criminal proceedings under RCW 10.77.084, and committing
6 a defendant to the custody of the secretary of the department of social
7 and health services for placement in an appropriate facility involve
8 costs payable by the defendant, because the commitment primarily and
9 directly benefits the defendant through treatment of their medical and
10 mental health conditions. The legislature did not intend for medical
11 and mental health services provided to a defendant in the custody of a
12 governmental unit, and the associated costs, to be costs related to the
13 prosecution of the defendant. Thus, if a court orders a stay of the
14 criminal proceeding under RCW 10.77.084 and orders commitment to the
15 custody of the secretary, or if at any time a defendant receives other
16 medical care while in custody of a governmental unit, but prior to
17 conviction, the costs associated with such care shall be the
18 responsibility of the defendant and the defendant's insurers as
19 provided in chapters 10.77, 70.48, and 43.20B RCW. The intent of the
20 legislature is to clarify this reimbursement requirement, and the
21 purpose of this act is to make retroactive, remedial, curative, and
22 technical amendments in order to resolve any ambiguity about the
23 legislature's intent in enacting these chapters.

24 **Sec. 2.** RCW 10.01.160 and 2007 c 367 s 3 are each amended to read
25 as follows:

26 (1) The court may require a defendant to pay costs. Costs may be
27 imposed only upon a convicted defendant, except for costs imposed upon
28 a defendant's entry into a deferred prosecution program, costs imposed
29 upon a defendant for pretrial supervision, or costs imposed upon a
30 defendant for preparing and serving a warrant for failure to appear.

31 (2) Costs shall be limited to expenses specially incurred by the
32 state in prosecuting the defendant or in administering the deferred
33 prosecution program under chapter 10.05 RCW or pretrial supervision.
34 They cannot include expenses inherent in providing a constitutionally
35 guaranteed jury trial or expenditures in connection with the
36 maintenance and operation of government agencies that must be made by
37 the public irrespective of specific violations of law. Expenses

1 incurred for serving of warrants for failure to appear and jury fees
2 under RCW 10.46.190 may be included in costs the court may require a
3 defendant to pay. Costs for administering a deferred prosecution or
4 pretrial supervision may not exceed one hundred fifty dollars. Costs
5 for preparing and serving a warrant for failure to appear may not
6 exceed one hundred dollars. Costs of incarceration imposed on a
7 defendant convicted of a misdemeanor or a gross misdemeanor may not
8 exceed the actual cost of incarceration. In no case may the court
9 require the offender to pay more than one hundred dollars per day for
10 the cost of incarceration. Payment of other court-ordered financial
11 obligations, including all legal financial obligations and costs of
12 supervision take precedence over the payment of the cost of
13 incarceration ordered by the court. All funds received from defendants
14 for the cost of incarceration in the county or city jail must be
15 remitted for criminal justice purposes to the county or city that is
16 responsible for the defendant's jail costs. Costs imposed constitute
17 a judgment against a defendant and survive a dismissal of the
18 underlying action against the defendant. However, if the defendant is
19 acquitted on the underlying action, the costs for preparing and serving
20 a warrant for failure to appear do not survive the acquittal, and the
21 judgment that such costs would otherwise constitute shall be vacated.

22 (3) The court shall not order a defendant to pay costs unless the
23 defendant is or will be able to pay them. In determining the amount
24 and method of payment of costs, the court shall take account of the
25 financial resources of the defendant and the nature of the burden that
26 payment of costs will impose.

27 (4) A defendant who has been ordered to pay costs and who is not in
28 contumacious default in the payment thereof may at any time petition
29 the sentencing court for remission of the payment of costs or of any
30 unpaid portion thereof. If it appears to the satisfaction of the court
31 that payment of the amount due will impose manifest hardship on the
32 defendant or the defendant's immediate family, the court may remit all
33 or part of the amount due in costs, or modify the method of payment
34 under RCW 10.01.170.

35 (5) Except for direct costs relating to evaluating and reporting to
36 the court, prosecutor, or defense counsel regarding a defendant's
37 competency to stand trial as provided in RCW 10.77.060, this section
38 shall not apply to costs related to medical or mental health treatment

1 or services a defendant receives while in custody of the secretary of
2 the department of social and health services or other governmental
3 units. This section shall not prevent the secretary of the department
4 of social and health services or other governmental units from imposing
5 liability and seeking reimbursement from a defendant committed to an
6 appropriate facility as provided in RCW 10.77.084 while criminal
7 proceedings are stayed. This section shall also not prevent
8 governmental units from imposing liability on defendants for costs
9 related to providing medical or mental health treatment while the
10 defendant is in the governmental unit's custody. Medical or mental
11 health treatment and services a defendant receives at a state hospital
12 or other facility are not a cost of prosecution and shall be
13 recoverable under RCW 10.77.250 and 70.48.130, chapter 43.20B RCW, and
14 any other applicable statute.

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

Passed by the Senate March 11, 2008.

Passed by the House March 12, 2008.

Approved by the Governor April 1, 2008.

Filed in Office of Secretary of State April 2, 2008.