

**SB 6610 - S AMD 89**

By Senators Hargrove, Carrell, Regala

ADOPTED 02/13/2010

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 10.77 RCW  
4 to read as follows:

5 (1) The secretary shall establish an independent public safety  
6 review panel for the purpose of advising the secretary and the courts  
7 with respect to persons who have been found not guilty by reason of  
8 insanity. The panel shall provide advice regarding all  
9 recommendations: (a) For a change in commitment status; (b) to allow  
10 furloughs or temporary leaves accompanied by staff; or (c) to permit  
11 movement about the grounds of the treatment facility, with or without  
12 the accompaniment of staff.

13 (2) The members of the public safety review panel shall be  
14 appointed by the governor for a renewable term of three years and shall  
15 include the following:

- 16 (a) A psychiatrist;  
17 (b) A licensed clinical psychologist;  
18 (c) A representative of the department of corrections;  
19 (d) A prosecutor or a representative of a prosecutor's association;  
20 (e) A representative of law enforcement or a law enforcement  
21 association;  
22 (f) A consumer and family advocate representative; and  
23 (g) A public defender.

24 (3) Thirty days prior to issuing a recommendation for conditional  
25 release under RCW 10.77.150 or forty-five days prior to issuing a  
26 recommendation for release under RCW 10.77.200, the secretary shall  
27 submit its recommendation with the committed person's application and  
28 the department's risk assessment to the public safety review panel.  
29 The public safety review panel shall complete an independent assessment  
30 of the public safety risk entailed by the secretary's proposed

1 conditional release recommendation or release recommendation and  
2 provide this assessment in writing to the secretary. The public safety  
3 review panel may, within funds appropriated for this purpose, request  
4 additional evaluations of the committed person. The public safety  
5 review panel may indicate whether it is in agreement with the  
6 secretary's recommendation, or whether it would issue a different  
7 recommendation. The secretary shall provide the panel's assessment  
8 when it is received along with any supporting documentation, including  
9 all previous reports of evaluations of the committed person in the  
10 person's hospital record, to the court, prosecutor in the county that  
11 ordered the person's commitment, and counsel for the committed person.

12 (4) The secretary shall notify the public safety review panel at  
13 appropriate intervals concerning any changes in the commitment or  
14 custody status of persons found not guilty by reason of insanity. The  
15 panel shall have access, upon request, to a committed person's complete  
16 hospital record.

17 (5) The department shall provide administrative and financial  
18 support to the public safety review panel. The department, in  
19 consultation with the public safety review panel, may adopt rules to  
20 implement this section.

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

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

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

29 (c) Any other issues the public safety review panel deems relevant.

30 NEW SECTION. **Sec. 2.** A new section is added to chapter 10.77 RCW  
31 to read as follows:

32 If the secretary determines that a person committed to the custody  
33 of the secretary for treatment as criminally insane presents an  
34 unreasonable safety risk which, based on behavior and clinical history,  
35 is not manageable in a state hospital setting, the secretary may place  
36 the person in any secure facility operated by the secretary or the  
37 secretary of the department of corrections, provided that appropriate

1 mental health treatment is provided to the person and the person is  
2 afforded his or her rights under RCW 10.77.140, 10.77.150, and  
3 10.77.200. The secretary of the department of social and health  
4 services shall retain legal custody of any person placed under this  
5 section.

6 **Sec. 3.** RCW 10.77.120 and 2000 c 94 s 15 are each amended to read  
7 as follows:

8 (1) The secretary shall ~~((forthwith))~~ provide adequate care and  
9 individualized treatment to persons found criminally insane at one or  
10 several of the state institutions or facilities under ~~((his or her))~~  
11 the direction and control ~~((wherein persons committed as criminally~~  
12 ~~insane may be confined. Such persons shall be under the custody and~~  
13 ~~control of the secretary to the same extent as are other persons who~~  
14 ~~are committed to the secretary's custody, but such provision shall be~~  
15 ~~made for their control, care, and treatment as is proper in view of~~  
16 ~~their condition))~~ of the secretary. In order that the secretary may  
17 adequately determine the nature of the mental illness or developmental  
18 disability of the person committed ~~((to him or her))~~ as criminally  
19 insane, ~~((and in order for the secretary to place such individuals in~~  
20 ~~a proper facility,))~~ all persons who are committed to the secretary as  
21 criminally insane shall be promptly examined by qualified personnel in  
22 ~~((such a manner as))~~ order to provide a proper evaluation and diagnosis  
23 of such individual. The examinations of all ~~((developmentally~~  
24 ~~disabled))~~ persons with developmental disabilities committed under this  
25 chapter shall be performed by developmental disabilities professionals.  
26 Any person so committed shall not be released from the control of the  
27 secretary ~~((save upon the))~~ except by order of a court of competent  
28 jurisdiction made after a hearing and judgment of release.

29 (2) Whenever there is a hearing which the committed person is  
30 entitled to attend, the secretary shall send ~~((him or her))~~ the person  
31 in the custody of one or more department employees to the county  
32 ~~((where))~~ in which the hearing is to be held at the time the case is  
33 called for trial. During the time the person is absent from the  
34 facility, ~~((he or she shall))~~ the person may be confined in a facility  
35 designated by and arranged for by the department, ~~((and))~~ but shall at  
36 all times be deemed to be in the custody of the department employee and  
37 provided necessary treatment. If the decision of the hearing remits

1 the person to custody, the department employee shall (~~forthwith~~)  
2 return the person to such institution or facility designated by the  
3 secretary. If the state appeals an order of release, such appeal shall  
4 operate as a stay, and the person shall remain in custody (~~shall so~~  
5 ~~remain~~) and be (~~forthwith~~) returned to the institution or facility  
6 designated by the secretary until a final decision has been rendered in  
7 the cause.

8 **Sec. 4.** RCW 10.77.150 and 1998 c 297 s 41 are each amended to read  
9 as follows:

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

20 (2) In an instance in which a person examined pursuant to RCW  
21 10.77.140 has not made application to the secretary for conditional  
22 release, but the secretary, after considering the reports of experts or  
23 professional persons conducting the examination pursuant to RCW  
24 10.77.140, reasonably believes the person may be conditionally  
25 released, the secretary may submit a recommendation for release to the  
26 court of the county that ordered the person's commitment. The attorney  
27 general shall represent the secretary in this proceeding. The  
28 secretary's recommendation must include any proposed terms and  
29 conditions upon which the secretary reasonably believes the person may  
30 be conditionally released. Conditional release may also include  
31 partial release for work, training, or educational purposes.

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

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

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

11       **(d)** The court, after the hearing, shall rule on the secretary's  
12 recommendations, and if it disapproves of conditional release, may do  
13 so only on the basis of substantial evidence. The court may modify the  
14 suggested terms and conditions on which the person is to be  
15 conditionally released. Pursuant to the determination of the court  
16 after hearing, the committed person shall thereupon be released on such  
17 conditions as the court determines to be necessary, or shall be  
18 remitted to the custody of the secretary. If the order of conditional  
19 release includes a requirement for the committed person to report to a  
20 community corrections officer, the order shall also specify that the  
21 conditionally released person shall be under the supervision of the  
22 secretary of corrections or such person as the secretary of corrections  
23 may designate and shall follow explicitly the instructions of the  
24 secretary of corrections including reporting as directed to a community  
25 corrections officer, remaining within prescribed geographical  
26 boundaries, and notifying the community corrections officer prior to  
27 making any change in the offender's address or employment.

28       ~~((+3+))~~ **(4)** If the court determines that receiving regular or  
29 periodic medication or other medical treatment shall be a condition of  
30 the committed person's release, then the court shall require him or her  
31 to report to a physician or other medical or mental health practitioner  
32 for the medication or treatment. In addition to submitting any report  
33 required by RCW 10.77.160, the physician or other medical or mental  
34 health practitioner shall immediately upon the released person's  
35 failure to appear for the medication or treatment or upon a change in  
36 mental health that renders the patient a potential risk to the public  
37 report (~~the failure~~) to the court, to the prosecuting attorney of the

1 county in which the released person was committed, to the secretary,  
2 and to the supervising community corrections officer.

3 ~~((+4))~~ (5) Any person, whose application for conditional release  
4 has been denied, may reapply after a period of six months from the date  
5 of denial.

6 **Sec. 5.** RCW 10.77.160 and 1993 c 31 s 7 are each amended to read  
7 as follows:

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

22 **Sec. 6.** RCW 10.77.190 and 1998 c 297 s 43 are each amended to read  
23 as follows:

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

31 (2) If the prosecuting attorney, the secretary of social and health  
32 services, the secretary of corrections, or the court, after examining  
33 the report filed with them pursuant to RCW 10.77.160, or based on other  
34 information received by them, reasonably believes that a conditionally  
35 released person is failing to adhere to the terms and conditions of his  
36 or her conditional release the court or secretary of social and health

1 services or the secretary of corrections may order that the  
2 conditionally released person be apprehended and taken into custody  
3 (~~until such time as a hearing can be scheduled to determine the facts~~  
4 ~~and whether or not the person's conditional release should be revoked~~  
5 ~~or modified~~). The court shall be notified of the apprehension before  
6 the close of the next judicial day (~~of the apprehension~~). The court  
7 shall schedule a hearing within thirty days to determine whether or not  
8 the person's conditional release should be modified or revoked. Both  
9 the prosecuting attorney and the conditionally released person shall  
10 have the right to request an immediate mental examination of the  
11 conditionally released person. If the conditionally released person is  
12 indigent, the court or secretary of social and health services or the  
13 secretary of corrections or their designees shall, upon request, assist  
14 him or her in obtaining a qualified expert or professional person to  
15 conduct the examination.

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

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

32 **Sec. 7.** RCW 10.77.200 and 2000 c 94 s 16 are each amended to read  
33 as follows:

34 (1) Upon application by the committed or conditionally released  
35 person, the secretary shall determine whether or not reasonable grounds  
36 exist for release. In making this determination, the secretary may  
37 consider the reports filed under RCW 10.77.060, 10.77.110, 10.77.140,

1 and 10.77.160, and other reports and evaluations provided by  
2 professionals familiar with the case. If the secretary approves the  
3 release he or she then shall authorize the person to petition the  
4 court.

5 (2) In an instance in which a person has not made an application  
6 for release, but the secretary believes, after consideration of the  
7 reports filed under RCW 10.77.060, 10.77.110, 10.77.140, and 10.77.160,  
8 and other reports and evaluations provided by professionals familiar  
9 with the case, that reasonable grounds exist for release, the secretary  
10 may petition the court. The attorney general shall represent the  
11 secretary in this proceeding.

12 (3) The petition shall be served upon the court and the prosecuting  
13 attorney. The court, upon receipt of the petition for release, shall  
14 within forty-five days order a hearing. Continuance of the hearing  
15 date shall only be allowed for good cause shown. The prosecuting  
16 attorney shall represent the state, and shall have the right to have  
17 the petitioner examined by an expert or professional person of the  
18 prosecuting attorney's choice. If the petitioner is indigent, and the  
19 person so requests, the court shall appoint a qualified expert or  
20 professional person to examine him or her. If the petitioner (~~is~~  
21 developmentally disabled)) has a developmental disability, the  
22 examination shall be performed by a developmental disabilities  
23 professional. The hearing shall be before a jury if demanded by either  
24 the petitioner or the prosecuting attorney. The burden of proof shall  
25 be upon the petitioner to show by a preponderance of the evidence that  
26 the petitioner no longer presents, as a result of a mental disease or  
27 defect, a substantial danger to other persons, or a substantial  
28 likelihood of committing criminal acts jeopardizing public safety or  
29 security, unless kept under further control by the court or other  
30 persons or institutions.

31 ((+3)) (4) For purposes of this section, a person affected by a  
32 mental disease or defect in a state of remission is considered to have  
33 a mental disease or defect requiring supervision when the disease may,  
34 with reasonable medical probability, occasionally become active and,  
35 when active, render the person a danger to others. The court may  
36 continue such a person on conditional release.

37 (5) Nothing contained in this chapter shall prohibit the patient  
38 from petitioning the court for release or conditional release from the



1 institution in which he or she is committed. The issue to be  
2 determined on such proceeding is whether the petitioner, as a result of  
3 a mental disease or defect, is a substantial danger to other persons,  
4 or presents a substantial likelihood of committing criminal acts  
5 jeopardizing public safety or security, unless kept under further  
6 control by the court or other persons or institutions.

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

9 **Sec. 8.** RCW 10.77.220 and 1982 c 112 s 3 are each amended to read  
10 as follows:

11 No person confined pursuant to this chapter shall be incarcerated  
12 in a state correctional institution or facility(~~(:—PROVIDED, That~~  
13 ~~nothing herein shall prohibit)~~), except as provided in section 2 of  
14 this act. This section does not apply to confinement in a mental  
15 health facility located wholly within a correctional institution.  
16 Confinement in a county jail or other local facility while awaiting  
17 either placement in a treatment program or a court hearing pursuant to  
18 this chapter is permitted for no more than seven days.

19 NEW SECTION. **Sec. 9.** (1) The institute for public policy shall,  
20 in collaboration with the department of social and health services and  
21 other applicable entities, undertake a search for validated mental  
22 health assessment tools in each of the following areas:

23 (a) An assessment tool or combination of tools to be used by  
24 individuals performing court-ordered competency assessments and level  
25 of risk assessments of defendants pursuant to chapter 10.77 RCW; and

26 (b) An assessment tool or combination of tools to be used by  
27 individuals developing recommendations to courts as to the  
28 appropriateness of conditional release from inpatient treatment of  
29 criminally insane patients pursuant to chapter 10.77 RCW.

30 (2) This section expires June 30, 2011."

**SB 6610** - S AMD

By Senators Hargrove, Carrell, Regala

**ADOPTED 02/13/2010**

1        On page 1, line 2 of the title, after "Relating to" strike the  
2 remainder of the title and insert "improving procedures relating to the  
3 commitment of persons found not guilty by reason of insanity; amending  
4 RCW 10.77.120, 10.77.150, 10.77.160, 10.77.190, 10.77.200, and  
5 10.77.220; adding new sections to chapter 10.77 RCW; creating a new  
6 section; and providing an expiration date."

EFFECT: Making technical corrections to the committee substitute.

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