

E2SHB 1114 - S COMM AMD

By Committee on Human Services & Corrections

OUT OF ORDER 04/17/2013

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that persons with a
4 mental illness or developmental disability are more likely to be
5 victimized by crime than to be perpetrators of crime. The legislature
6 finds that it is appropriate to lengthen the term of civil commitment
7 available for the small number of persons who receive commitment on the
8 basis of the commission of an offense classified as violent under RCW
9 9.94A.030 who, based on a mental disorder, present a substantial
10 likelihood of committing similar acts after criminal charges that
11 include a violent offense under RCW 9.94A.030 have been dismissed based
12 on incompetence to stand trial that cannot be restored within the
13 treatment periods authorized by RCW 10.77.086.

14 **Sec. 2.** RCW 10.77.086 and 2012 c 256 s 6 are each amended to read
15 as follows:

16 (1)(a) If the defendant is charged with a felony and determined to
17 be incompetent, until he or she has regained the competency necessary
18 to understand the proceedings against him or her and assist in his or
19 her own defense, or has been determined unlikely to regain competency
20 pursuant to RCW 10.77.084(1)(b), but in any event for a period of no
21 longer than ninety days, the court:

22 (i) Shall commit the defendant to the custody of the secretary who
23 shall place such defendant in an appropriate facility of the department
24 for evaluation and treatment; or

25 (ii) May alternatively order the defendant to undergo evaluation
26 and treatment at some other facility as determined by the department,
27 or under the guidance and control of a professional person.

28 (b) For a defendant whose highest charge is a class C felony, or a

1 class B felony that is not classified as violent under RCW 9.94A.030,
2 the maximum time allowed for the initial period of commitment for
3 competency restoration is forty-five days.

4 (2) On or before expiration of the initial period of commitment
5 under subsection (1) of this section the court shall conduct a hearing,
6 at which it shall determine whether or not the defendant is
7 incompetent.

8 (3) If the court finds by a preponderance of the evidence that a
9 defendant charged with a felony is incompetent, the court shall have
10 the option of extending the order of commitment or alternative
11 treatment for an additional period of ninety days, but the court must
12 at the time of extension set a date for a prompt hearing to determine
13 the defendant's competency before the expiration of the second
14 restoration period. The defendant, the defendant's attorney, or the
15 prosecutor has the right to demand that the hearing be before a jury.
16 No extension shall be ordered for a second or third restoration period
17 as provided in subsection (4) of this section if the defendant's
18 incompetence has been determined by the secretary to be solely the
19 result of a developmental disability which is such that competence is
20 not reasonably likely to be regained during an extension.

21 (4) For persons charged with a felony, at the hearing upon the
22 expiration of the second restoration period or at the end of the first
23 restoration period, in the case of a defendant with a developmental
24 disability, if the jury or court finds that the defendant is
25 incompetent, the charges shall be dismissed without prejudice, and the
26 court shall (~~either order the release of the defendant or~~) order the
27 defendant be committed to a state hospital (~~or secure mental health~~
28 ~~facility~~) as defined in RCW 72.23.010 for up to seventy-two hours
29 starting from admission to the facility, excluding Saturdays, Sundays,
30 and holidays, for evaluation for the purpose of filing a civil
31 commitment petition. The criminal charges shall not be dismissed if
32 the court or jury finds that: (a) The defendant (i) is a substantial
33 danger to other persons; or (ii) presents a substantial likelihood of
34 committing criminal acts jeopardizing public safety or security; and
35 (b) there is a substantial probability that the defendant will regain
36 competency within a reasonable period of time. In the event that the
37 court or jury makes such a finding, the court may extend the period of
38 commitment for up to an additional six months.

1 **Sec. 3.** RCW 10.77.088 and 2007 c 375 s 5 are each amended to read
2 as follows:

3 (1)(a) If the defendant is charged with a nonfelony crime which is
4 a serious offense (~~(as identified in)~~) under RCW 10.77.092 and found by
5 the court to be not competent, (~~(then)~~) the court shall order the
6 secretary to place the defendant:

7 (i) At a secure mental health facility in the custody of the
8 department or an agency designated by the department for mental health
9 treatment and restoration of competency. The placement shall not
10 exceed fourteen days in addition to any unused time of the evaluation
11 under RCW 10.77.060. The court shall compute this total period and
12 include its computation in the order. The fourteen-day period plus any
13 unused time of the evaluation under RCW 10.77.060 shall be considered
14 to include only the time the defendant is actually at the facility and
15 shall be in addition to reasonable time for transport to or from the
16 facility;

17 (ii) On conditional release for up to ninety days for mental health
18 treatment and restoration of competency; or

19 (iii) Any combination of this subsection.

20 (b)(i) If the proceedings are dismissed under RCW 10.77.084 and the
21 defendant was on conditional release at the time of dismissal, the
22 court shall order the designated mental health professional within that
23 county to evaluate the defendant pursuant to chapter 71.05 RCW. The
24 evaluation may be conducted in any location chosen by the professional.

25 (ii) If the defendant was in custody and not on conditional release
26 at the time of dismissal, the defendant shall be detained and sent to
27 an evaluation and treatment facility (~~(for up to)~~) within seventy-two
28 hours, excluding Saturdays, Sundays, and holidays, for evaluation for
29 purposes of filing a petition under chapter 71.05 RCW. A designated
30 mental health professional or other professional person agreed upon by
31 the department and regional support network must be permitted to screen
32 the defendant prior to transport and release the defendant if civil
33 commitment criteria are not met, provided that notification is provided
34 under RCW 10.77.065(4). The seventy-two-hour period shall commence
35 upon the next nonholiday weekday following the court order and shall
36 run to the end of the last nonholiday weekday within the seventy-two-
37 hour period.

1 (2) If the defendant is charged with a nonfelony crime that is not
2 a serious offense as defined in RCW 10.77.092(~~(+)~~), the court (~~(may~~
3 ~~stay or)~~) shall ~~(proceedings)~~ the charges and detain the
4 defendant for sufficient time to allow the designated mental health
5 professional to evaluate the defendant (~~(and consider initial detention~~
6 ~~proceedings)~~) for commitment under chapter 71.05 RCW. (~~(The court must~~
7 ~~give notice to all parties at least twenty-four hours before the~~
8 ~~dismissal of any proceeding under this subsection, and provide an~~
9 ~~opportunity for a hearing on whether to dismiss the proceedings.)~~)

10 **Sec. 4.** RCW 10.77.270 and 2010 c 263 s 1 are each amended to read
11 as follows:

12 (1) The secretary shall establish an independent public safety
13 review panel for the purpose of advising the secretary and the courts
14 with respect to persons who have been found not guilty by reason of
15 insanity, or persons committed for an indefinite period under RCW
16 71.05.290(3). The panel shall provide advice regarding all
17 recommendations by the secretary: (a) For a change in commitment
18 status; (b) to allow furloughs or temporary leaves accompanied by
19 staff; or (c) to permit movement about the grounds of the treatment
20 facility, with or without the accompaniment of staff.

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

- 24 (a) A psychiatrist;
- 25 (b) A licensed clinical psychologist;
- 26 (c) A representative of the department of corrections;
- 27 (d) A prosecutor or a representative of a prosecutor's association;
- 28 (e) A representative of law enforcement or a law enforcement
29 association;
- 30 (f) A consumer and family advocate representative; and
- 31 (g) A public defender or a representative of a defender's
32 association.

33 (3) Thirty days prior to issuing a recommendation for conditional
34 release under RCW 10.77.150 or forty-five days prior to issuing a
35 recommendation for release under RCW 10.77.200, the secretary shall
36 submit its recommendation with the committed person's application and
37 the department's risk assessment to the public safety review panel.

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

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

19 (5) The secretary shall notify the public safety review panel at
20 least thirty days prior to the planned termination of a commitment for
21 a person committed for an indefinite period under RCW 71.05.290(3).

22 (6) The department shall provide administrative and financial
23 support to the public safety review panel. The department, in
24 consultation with the public safety review panel, may adopt rules to
25 implement this section.

26 ((+6+)) (7) By December 1, 2014, the public safety review panel
27 shall report to the appropriate legislative committees the following:

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

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

34 (c) Whether changes in the law are appropriate concerning persons
35 committed for an indefinite period under RCW 71.05.290(3); and

36 (d) Any other issues the public safety review panel deems relevant.

1 **Sec. 5.** RCW 71.05.235 and 2008 c 213 s 5 are each amended to read
2 as follows:

3 (1) ~~((If an individual is referred to a designated mental health
4 professional under RCW 10.77.088(1)(b)(i),))~~ The designated mental
5 health professional shall ((examine the individual)) evaluate
6 individuals referred under RCW 10.77.088(1)(b)(i) within forty-eight
7 hours. ((If the designated mental health professional determines it is
8 not appropriate to detain the individual or petition for a ninety day
9 less restrictive alternative under RCW 71.05.230(4), that decision
10 shall be immediately presented to the superior court for hearing. The
11 court shall hold a hearing to consider the decision of the designated
12 mental health professional not later than the next judicial day. At
13 the hearing the superior court shall review the determination of the
14 designated mental health professional and determine whether an order
15 should be entered requiring the person to be evaluated at an evaluation
16 and treatment facility. No person referred to an evaluation and
17 treatment facility may be held at the facility longer than seventy two
18 hours.))

19 (2) If an individual is ~~((placed in))~~ sent to an evaluation and
20 treatment facility under RCW 10.77.088(1)(b)(ii), a professional person
21 shall evaluate the individual within seventy-two hours from admission
22 to the facility, excluding Saturdays, Sundays, and holidays, for
23 purposes of ~~((determining whether to file a ninety day inpatient or~~
24 ~~outpatient petition under chapter 71.05 RCW. Before expiration of the~~
25 ~~seventy two hour evaluation period authorized under RCW~~
26 ~~10.77.088(1)(b)(ii), the professional person shall file a petition or,~~
27 ~~if the recommendation of the professional person is to release the~~
28 ~~individual, present his or her recommendation to the superior court of~~
29 ~~the county in which the criminal charge was dismissed. The superior~~
30 ~~court shall review the recommendation not later than forty eight hours,~~
31 ~~excluding Saturdays, Sundays, and holidays, after the recommendation is~~
32 ~~presented. If the court rejects the recommendation to unconditionally~~
33 ~~release the individual, the court may order the individual detained at~~
34 ~~a designated evaluation and treatment facility for not more than a~~
35 ~~seventy two hour evaluation and treatment period and direct the~~
36 ~~individual to appear at a surety hearing before that court within~~
37 ~~seventy two hours, or the court may release the individual but direct~~
38 ~~the individual to appear at a surety hearing set before that court~~

1 within eleven days, at which time the prosecutor may file a petition
2 under this chapter for ninety-day inpatient or outpatient treatment.
3 If a petition is filed by the prosecutor, the court may order that the
4 person named in the petition be detained at the evaluation and
5 treatment facility that performed the evaluation under this subsection
6 or order the respondent to be in outpatient treatment. If a petition
7 is filed but the individual fails to appear in court for the surety
8 hearing, the court shall order that a mental health professional or
9 peace officer shall take such person or cause such person to be taken
10 into custody and placed in an evaluation and treatment facility to be
11 brought before the court the next judicial day after detention. Upon
12 the individual's first appearance in court after a petition has been
13 filed, proceedings under RCW 71.05.310 and 71.05.320 shall commence.
14 For an individual subject to this subsection,)) filing a petition under
15 this chapter. The ((prosecutor or)) professional person may directly
16 file a petition for ((ninety-day inpatient or outpatient treatment and
17 no)) ninety days of treatment under RCW 71.05.280 without filing a
18 petition for initial detention or fourteen-day detention ((is required
19 before such a petition may be filed)).

20 ((The court shall conduct the hearing on the petition filed under
21 this subsection within five judicial days of the date the petition is
22 filed. The court may continue the hearing upon the written request of
23 the person named in the petition or the person's attorney, for good
24 cause shown, which continuance shall not exceed five additional
25 judicial days. If the person named in the petition requests a jury
26 trial, the trial shall commence within ten judicial days of the date of
27 the filing of the petition. The burden of proof shall be by clear,
28 cogent, and convincing evidence and shall be upon the petitioner. The
29 person shall be present at such proceeding, which shall in all respects
30 accord with the constitutional guarantees of due process of law and the
31 rules of evidence pursuant to RCW 71.05.360 (8) and (9)).

32 During the proceeding the person named in the petition shall
33 continue to be detained and treated until released by order of the
34 court. If no order has been made within thirty days after the filing
35 of the petition, not including any extensions of time requested by the
36 detained person or his or her attorney, the detained person shall be
37 released.

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

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

9 **Sec. 6.** RCW 71.05.280 and 2008 c 213 s 6 are each amended to read
10 as follows:

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

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

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

24 (3) Such person has been determined to be incompetent and criminal
25 charges have been dismissed pursuant to RCW 10.77.086(4), and has
26 committed acts constituting a felony, and as a result of a mental
27 disorder, presents a substantial likelihood of repeating similar acts.
28 In any proceeding pursuant to this subsection it shall not be necessary
29 to show intent, willfulness, or state of mind as an element of the
30 crime, and the court shall further determine whether the dismissed
31 criminal charges include a violent offense under RCW 9.94A.030, and
32 also determine whether the person has committed acts that would
33 constitute a violent offense under RCW 9.94A.030; or

34 (4) Such person is gravely disabled.

35 **Sec. 7.** RCW 71.05.290 and 2009 c 217 s 3 are each amended to read
36 as follows:

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

8 (2) The petition shall summarize the facts which support the need
9 for further confinement and shall be supported by affidavits signed by:

10 (a) Two examining physicians;

11 (b) One examining physician and examining mental health
12 professional;

13 (c) Two psychiatric advanced registered nurse practitioners;

14 (d) One psychiatric advanced registered nurse practitioner and a
15 mental health professional; or

16 (e) An examining physician and an examining psychiatric advanced
17 registered nurse practitioner. 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 10.77.086(4), then the professional person in charge of the
25 treatment facility or his or her professional designee or the
26 designated mental health professional may directly file a petition
27 (~~for one hundred eighty day treatment~~) under RCW 71.05.280(3). The
28 length of commitment shall be for one hundred eighty days, or if the
29 court determines that the dismissed charges include a violent offense
30 under RCW 9.94A.030 and determines the person committed acts
31 constituting a violent offense under RCW 9.94A.030, the commitment
32 shall last until such time as the person no longer meets grounds for
33 involuntary commitment, or until such a time as the commitment period
34 ends as provided in subsection (4) of this section. No petition for
35 initial detention or fourteen day detention is required before such a
36 petition may be filed.

37 (4) For a person committed for an indefinite period under RCW
38 71.05.280(3) based on dismissal of a violent offense under RCW

1 9.94A.030 and a determination that the person committed acts
2 constituting a violent offense under RCW 9.94A.030, at the time of
3 commitment the court shall set a review date in one hundred eighty
4 days. The commitment shall end on the review date unless the
5 superintendent or professional person in charge of the facility or
6 designated mental health professional files a petition for review
7 alleging that the person continues to meet one or more of the grounds
8 for involuntary commitment specified in RCW 71.05.320(3). The petition
9 for review shall be submitted in the form specified in subsection (2)
10 of this section. The court shall approve the petition for review and
11 set a new review date in one hundred eighty days if the review petition
12 presents prima facie evidence that the person continues to meet one or
13 more grounds for commitment specified in RCW 71.05.320(3), except that
14 the court shall schedule a hearing as provided in RCW 71.05.310 if the
15 person presents proof that the person's condition has so changed that
16 the person no longer meets one or more of the grounds for involuntary
17 commitment. The person shall be entitled to counsel upon filing of a
18 petition for review under this subsection.

19 **Sec. 8.** RCW 71.05.320 and 2009 c 323 s 2 are each amended to read
20 as follows:

21 (1) If the court or jury finds that grounds set forth in RCW
22 71.05.280 have been proven and that the best interests of the person or
23 others will not be served by a less restrictive treatment which is an
24 alternative to detention, the court shall remand him or her to the
25 custody of the department or to a facility certified for ninety day
26 treatment by the department for a further period of intensive treatment
27 not to exceed ninety days from the date of judgment. If the grounds
28 set forth in RCW 71.05.280(3) are the basis of commitment, then the
29 period of treatment (~~may be up to but not exceed one hundred eighty~~
30 ~~days from the date of judgment~~) shall be for the time period specified
31 in RCW 71.05.290(3) in a facility certified for one hundred eighty day
32 treatment by the department.

33 (2) If the court or jury finds that grounds set forth in RCW
34 71.05.280 have been proven, but finds that treatment less restrictive
35 than detention will be in the best interest of the person or others,
36 then the court shall remand him or her to the custody of the department
37 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. If the grounds set forth in RCW 71.05.280(3) are the basis
4 of commitment, then the period of treatment (~~may be up to but not~~
5 ~~exceed one hundred eighty days from the date of judgment~~) shall be for
6 the time period specified in RCW 71.05.290(3).

7 (3) The person shall be released from involuntary treatment at the
8 expiration of the period of commitment imposed under subsection (1) or
9 (2) of this section unless the superintendent or professional person in
10 charge of the facility in which he or she is confined, or in the event
11 of a less restrictive alternative, the designated mental health
12 professional, files a new petition for involuntary treatment on the
13 grounds that the committed 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 prove such conduct again.

32 (4) For a person committed under subsection (2) of this section who
33 has been remanded to a period of less restrictive treatment, in
34 addition to the grounds specified in subsection (3) of this section,
35 the designated mental health professional may file a new petition for
36 continued less restrictive treatment if:

37 (a) The person was previously committed by a court to detention for
38 involuntary mental health treatment during the thirty-six months that

1 preceded the person's initial detention date during the current
2 involuntary commitment cycle, excluding any time spent in a mental
3 health facility or in confinement as a result of a criminal conviction;

4 (b) In view of the person's treatment history or current behavior,
5 the person is unlikely to voluntarily participate in outpatient
6 treatment without an order for less restrictive treatment; and

7 (c) Outpatient treatment that would be provided under a less
8 restrictive treatment order is necessary to prevent a relapse,
9 decompensation, or deterioration that is likely to result in the person
10 presenting a likelihood of serious harm or the person becoming gravely
11 disabled within a reasonably short period of time.

12 (5) A new petition for involuntary treatment filed under subsection
13 (3) or (4) of this section shall be filed and heard in the superior
14 court of the county of the facility which is filing the new petition
15 for involuntary treatment unless good cause is shown for a change of
16 venue. The cost of the proceedings shall be borne by the state.

17 (6) The hearing shall be held as provided in RCW 71.05.310, and if
18 the court or jury finds that the grounds for additional confinement as
19 set forth in this section are present, the court may order the
20 committed person returned for an additional period of treatment not to
21 exceed one hundred eighty days from the date of judgment. At the end
22 of the one hundred eighty day period of commitment, the committed
23 person shall be released unless a petition for another one hundred
24 eighty day period of continued treatment is filed and heard in the same
25 manner as provided in this section. Successive one hundred eighty day
26 commitments are permissible on the same grounds and pursuant to the
27 same procedures as the original one hundred eighty day commitment.
28 However, a commitment is not permissible under subsection (4) of this
29 section if thirty-six months have passed since the last date of
30 discharge from detention for inpatient treatment that preceded the
31 current less restrictive alternative order, nor shall a commitment
32 under subsection (4) of this section be permissible if the likelihood
33 of serious harm in subsection (4)(c) of this section is based solely on
34 harm to the property of others.

35 (7) No person committed as provided in this section may be detained
36 unless a valid order of commitment is in effect. No order of
37 commitment can exceed one hundred eighty days in length, except as
38 provided in RCW 71.05.290(3).

1 **Sec. 9.** RCW 71.05.425 and 2011 c 305 s 5 are each amended to read
2 as follows:

3 (1)(a) Except as provided in subsection (2) of this section, at the
4 earliest possible date, and in no event later than thirty days before
5 conditional release, final release, authorized leave under RCW
6 71.05.325(2), or transfer to a facility other than a state mental
7 hospital, the superintendent shall send written notice of conditional
8 release, release, authorized leave, or transfer of a person committed
9 under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex,
10 violent, or felony harassment offense pursuant to RCW 10.77.086(4) to
11 the following:

12 (i) The chief of police of the city, if any, in which the person
13 will reside; (~~and~~)

14 (ii) The sheriff of the county in which the person will reside; and

15 (iii) The prosecuting attorney of the county in which the criminal
16 charges against the committed person were dismissed.

17 (b) The same notice as required by (a) of this subsection shall be
18 sent to the following, if such notice has been requested in writing
19 about a specific person committed under RCW 71.05.280(3) or
20 71.05.320(3)(c) following dismissal of a sex, violent, or felony
21 harassment offense pursuant to RCW 10.77.086(4):

22 (i) The victim of the sex, violent, or felony harassment offense
23 that was dismissed pursuant to RCW 10.77.086(4) preceding commitment
24 under RCW 71.05.280(3) or 71.05.320(3)(c) or the victim's next of kin
25 if the crime was a homicide;

26 (ii) Any witnesses who testified against the person in any court
27 proceedings;

28 (iii) Any person specified in writing by the prosecuting attorney.
29 Information regarding victims, next of kin, or witnesses requesting the
30 notice, information regarding any other person specified in writing by
31 the prosecuting attorney to receive the notice, and the notice are
32 confidential and shall not be available to the person committed under
33 this chapter; and

34 (iv) The chief of police of the city, if any, and the sheriff of
35 the county, if any, which had jurisdiction of the person on the date of
36 the applicable offense.

37 (c) The thirty-day notice requirements contained in this subsection
38 shall not apply to emergency medical transfers.

1 (d) The existence of the notice requirements in this subsection
2 will not require any extension of the release date in the event the
3 release plan changes after notification.

4 (2) If a person committed under RCW 71.05.280(3) or 71.05.320(3)(c)
5 following dismissal of a sex, violent, or felony harassment offense
6 pursuant to RCW 10.77.086(4) escapes, the superintendent shall
7 immediately notify, by the most reasonable and expedient means
8 available, the chief of police of the city and the sheriff of the
9 county in which the person escaped and in which the person resided
10 immediately before the person's arrest and the prosecuting attorney of
11 the county in which the criminal charges against the committed person
12 were dismissed. If previously requested, the superintendent shall also
13 notify the witnesses and the victim of the sex, violent, or felony
14 harassment offense that was dismissed pursuant to RCW 10.77.086(4)
15 preceding commitment under RCW 71.05.280(3) or 71.05.320(3) or the
16 victim's next of kin if the crime was a homicide. In addition, the
17 secretary shall also notify appropriate parties pursuant to RCW
18 71.05.390(18). If the person is recaptured, the superintendent shall
19 send notice to the persons designated in this subsection as soon as
20 possible but in no event later than two working days after the
21 department learns of such recapture.

22 (3) If the victim, the victim's next of kin, or any witness is
23 under the age of sixteen, the notice required by this section shall be
24 sent to the parent or legal guardian of the child.

25 (4) The superintendent shall send the notices required by this
26 chapter to the last address provided to the department by the
27 requesting party. The requesting party shall furnish the department
28 with a current address.

29 (5) For purposes of this section the following terms have the
30 following meanings:

31 (a) "Violent offense" means a violent offense under RCW 9.94A.030;

32 (b) "Sex offense" means a sex offense under RCW 9.94A.030;

33 (c) "Next of kin" means a person's spouse, state registered
34 domestic partner, parents, siblings, and children;

35 (d) "Felony harassment offense" means a crime of harassment as
36 defined in RCW 9A.46.060 that is a felony.

1 **Sec. 10.** RCW 10.77.200 and 2010 c 263 s 8 are each amended to read
2 as follows:

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

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

19 (3) The petition shall be served upon the court and the prosecuting
20 attorney. The court, upon receipt of the petition for release, shall
21 within forty-five days order a hearing. Continuance of the hearing
22 date shall only be allowed for good cause shown. The prosecuting
23 attorney shall represent the state, and shall have the right to have
24 the ~~((petitioner))~~ person who is the subject of the petition examined
25 by an expert or professional person of the prosecuting attorney's
26 choice. If the secretary is the petitioner, the attorney general shall
27 represent the secretary. If the ~~((petitioner))~~ person who is the
28 subject of the petition is indigent, and the person so requests, the
29 court shall appoint a qualified expert or professional person to
30 examine him or her. If the ~~((petitioner))~~ person who is the subject of
31 the petition has a developmental disability, the examination shall be
32 performed by a developmental disabilities professional. The hearing
33 shall be before a jury if demanded by either the petitioner or the
34 prosecuting attorney. The burden of proof shall be upon the petitioner
35 to show by a preponderance of the evidence that the ~~((petitioner))~~
36 person who is the subject of the petition no longer presents, as a
37 result of a mental disease or defect, a substantial danger to other
38 persons, or a substantial likelihood of committing criminal acts

1 jeopardizing public safety or security, unless kept under further
2 control by the court or other persons or institutions. If the person
3 who is the subject of the petition will be transferred to a state
4 correctional institution or facility upon release to serve a sentence
5 for any class A felony, the petitioner must show that the person's
6 mental disease or defect is manageable within a state correctional
7 institution or facility, but must not be required to prove that the
8 person does not present either a substantial danger to other persons,
9 or a substantial likelihood of committing criminal acts jeopardizing
10 public safety or security, if released.

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

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

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

35 **Sec. 11.** RCW 10.77.065 and 2012 c 256 s 4 are each amended to read
36 as follows:

37 (1)(a)(i) The expert conducting the evaluation shall provide his or

1 her report and recommendation to the court in which the criminal
2 proceeding is pending. For a competency evaluation of a defendant who
3 is released from custody, if the evaluation cannot be completed within
4 twenty-one days due to a lack of cooperation by the defendant, the
5 evaluator shall notify the court that he or she is unable to complete
6 the evaluation because of such lack of cooperation.

7 (ii) A copy of the report and recommendation shall be provided to
8 the designated mental health professional, the prosecuting attorney,
9 the defense attorney, and the professional person at the local
10 correctional facility where the defendant is being held, or if there is
11 no professional person, to the person designated under (a)(iv) of this
12 subsection. Upon request, the evaluator shall also provide copies of
13 any source documents relevant to the evaluation to the designated
14 mental health professional.

15 (iii) Any facility providing inpatient services related to
16 competency shall discharge the defendant as soon as the facility
17 determines that the defendant is competent to stand trial. Discharge
18 shall not be postponed during the writing and distribution of the
19 evaluation report. Distribution of an evaluation report by a facility
20 providing inpatient services shall ordinarily be accomplished within
21 two working days or less following the final evaluation of the
22 defendant. If the defendant is discharged to the custody of a local
23 correctional facility, the local correctional facility must continue
24 the medication regimen prescribed by the facility, when clinically
25 appropriate, unless the defendant refuses to cooperate with medication.

26 (iv) If there is no professional person at the local correctional
27 facility, the local correctional facility shall designate a
28 professional person as defined in RCW 71.05.020 or, in cooperation with
29 the regional support network, a professional person at the regional
30 support network to receive the report and recommendation.

31 (v) Upon commencement of a defendant's evaluation in the local
32 correctional facility, the local correctional facility must notify the
33 evaluator of the name of the professional person, or person designated
34 under (a)(iv) of this subsection, to receive the report and
35 recommendation.

36 (b) If the evaluator concludes, under RCW 10.77.060(3)(f), the
37 person should be evaluated by a designated mental health professional
38 under chapter 71.05 RCW, the court shall order such evaluation be

1 conducted prior to release from confinement when the person is
2 acquitted or convicted and sentenced to confinement for twenty-four
3 months or less, or when charges are dismissed pursuant to a finding of
4 incompetent to stand trial.

5 (2) The designated mental health professional shall provide written
6 notification within twenty-four hours of the results of the
7 determination whether to commence proceedings under chapter 71.05 RCW.
8 The notification shall be provided to the persons identified in
9 subsection (1)(a) of this section.

10 (3) The prosecuting attorney shall provide a copy of the results of
11 any proceedings commenced by the designated mental health professional
12 under subsection (2) of this section to the secretary.

13 (4) A facility, designated mental health professional, or
14 professional person conducting a civil commitment evaluation under RCW
15 10.77.086(4) or 10.77.088(1)(b)(ii) that makes a determination to
16 release the person instead of filing a civil commitment petition must
17 provide written notification to the prosecuting attorney and defense
18 attorney within twenty-four hours of the determination.

19 (5) The fact of admission and all information and records compiled,
20 obtained, or maintained in the course of providing services under this
21 chapter may also be disclosed to the courts solely to prevent the entry
22 of any evaluation or treatment order that is inconsistent with any
23 order entered under chapter 71.05 RCW.

24 NEW SECTION. **Sec. 12.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected."

E2SHB 1114 - S COMM AMD

By Committee on Human Services & Corrections

OUT OF ORDER 04/17/2013

28 On page 1, line 1 of the title, after "Relating to" strike the
29 remainder of the title and insert "criminal incompetency, civil

1 commitment, and commitments based on criminal insanity; amending RCW
2 10.77.086, 10.77.088, 10.77.270, 71.05.235, 71.05.280, 71.05.290,
3 71.05.320, 71.05.425, 10.77.200, and 10.77.065; and creating a new
4 section."

EFFECT: The contents of the bill are replaced with the contents of the Senate companion, ESSB 5176. The differences between ESSB 5176 and the House bill are as follows:

(1) When felony charges are dismissed based on incompetence to stand trial, the duration of civil commitment on the grounds that the person committed acts constituting a violent felony and is likely, due to a mental disorder, to commit similar acts is changed until such time as the person no longer meets grounds for civil commitment provided that the facility files a petition for review every 180 days.

(2) Language granting the Public Safety Review Panel access to any DSHS records it deems necessary is removed.

(3) A provision allowing the superintendent of a mental health facility to interrupt the competency restoration process by filing a civil commitment petition prior to dismissal of criminal charges is removed.

(4) Provisions are added which do the following: Allow a mental health professional to screen a misdemeanor defendant whose charges are dismissed based on incompetence to stand trial prior to transport to an evaluation and treatment facility and release the defendant if civil commitment criteria are not met; eliminate a 48-hour hold provision for superior court review when a civil commitment petition is not filed after misdemeanor charges are dismissed based on incompetence to stand trial; provide notice to the prosecutor and defense attorney when a civil commitment petition is not filed after criminal charges are dismissed based on incompetent to stand trial; require petitions for court release of a person committed as criminally insane to be served upon DSHS; and change the release criteria for persons committed as criminally insane who will be transferred to prison upon release to serve a sentence for a class A felony.

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