
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1114

State of Washington

63rd Legislature

2013 Regular Session

By House Appropriations (originally sponsored by Representatives Pedersen, Rodne, Morrell, Nealey, Green, and Jinkins)

READ FIRST TIME 03/01/13.

1 AN ACT Relating to criminal incompetency and civil commitment;
2 amending RCW 10.77.086, 10.77.270, 71.05.280, 71.05.320, and 71.05.425;
3 and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that persons with a
6 mental illness or developmental disability are more likely to be
7 victimized by crime than to be perpetrators of crime. The legislature
8 further finds that there are a small number of individuals who commit
9 repeated violent acts against others while suffering from the effects
10 of a mental illness and/or developmental disability that both
11 contributes to their criminal behaviors and renders them legally
12 incompetent to be held accountable for those behaviors. The
13 legislature further finds that the primary statutory mechanisms
14 designed to protect the public from violent behavior, either criminal
15 commitment to a corrections institution, or long-term commitment as not
16 guilty by reason of insanity, are unavailable due to the legal
17 incompetence of these individuals to stand trial. The legislature
18 further finds that the existing civil system of short-term commitments
19 under the Washington's involuntary treatment act is insufficient to

1 protect the public from these violent acts. Finally, the legislature
2 finds that changes to the involuntary treatment act to account for this
3 small number of individuals is necessary in order to serve Washington's
4 compelling interest in public safety and to provide for the proper care
5 of these individuals.

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

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

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

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

20 (b) For a defendant whose highest charge is a class C felony, or a
21 class B felony that is not classified as violent under RCW 9.94A.030,
22 the maximum time allowed for the initial period of commitment for
23 competency restoration is forty-five days.

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

28 (3) If the court finds by a preponderance of the evidence that a
29 defendant charged with a felony is incompetent, the court shall have
30 the option of extending the order of commitment or alternative
31 treatment for an additional period of ninety days, but the court must
32 at the time of extension set a date for a prompt hearing to determine
33 the defendant's competency before the expiration of the second
34 restoration period. The defendant, the defendant's attorney, or the
35 prosecutor has the right to demand that the hearing be before a jury.
36 No extension shall be ordered for a second or third restoration period
37 as provided in subsection (4) of this section if the defendant's

1 incompetence has been determined by the secretary to be solely the
2 result of a developmental disability which is such that competence is
3 not reasonably likely to be regained during an extension.

4 (4) For persons charged with a felony, at the hearing upon the
5 expiration of the second restoration period or at the end of the first
6 restoration period, in the case of a defendant with a developmental
7 disability, if the jury or court finds that the defendant is
8 incompetent, the charges shall be dismissed without prejudice, and the
9 court shall (~~either order the release of the defendant or~~) order the
10 defendant be committed to a state hospital (~~or secure mental health~~
11 ~~facility~~) as defined in RCW 72.23.010 for up to seventy-two hours
12 starting from admission to the facility, excluding Saturdays, Sundays,
13 and holidays, for evaluation for the purpose of filing a civil
14 commitment petition under chapter 71.05 RCW. The criminal charges
15 shall not be dismissed if the court or jury finds that: (a) The
16 defendant (i) is a substantial danger to other persons; or (ii)
17 presents a substantial likelihood of committing criminal acts
18 jeopardizing public safety or security; and (b) there is a substantial
19 probability that the defendant will regain competency within a
20 reasonable period of time. In the event that the court or jury makes
21 such a finding, the court may extend the period of commitment for up to
22 an additional six months.

23 **Sec. 3.** RCW 10.77.270 and 2010 c 263 s 1 are each amended to read
24 as follows:

25 (1) The secretary shall establish an independent public safety
26 review panel for the purpose of advising the secretary and the courts
27 with respect to persons who have been found not guilty by reason of
28 insanity, or persons committed under the involuntary treatment act
29 where the court has made a special finding under RCW 71.05.280(3)(b).

30 The panel shall provide advice regarding all recommendations to the
31 secretary, decisions by the secretary, or actions pending in court:

32 (a) For a change in commitment status; (b) to allow furloughs or
33 temporary leaves accompanied by staff; (c) not to seek further
34 commitment terms under RCW 71.05.320; or (~~(c)~~) (d) to permit movement
35 about the grounds of the treatment facility, with or without the
36 accompaniment of staff.

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

4 (a) A psychiatrist;

5 (b) A licensed clinical psychologist;

6 (c) A representative of the department of corrections;

7 (d) A prosecutor or a representative of a prosecutor's association;

8 (e) A representative of law enforcement or a law enforcement
9 association;

10 (f) A consumer and family advocate representative; and

11 (g) A public defender or a representative of a defender's
12 association.

13 (3) Thirty days prior to issuing a recommendation for conditional
14 release under RCW 10.77.150 or forty-five days prior to issuing a
15 recommendation for release under RCW 10.77.200, the secretary shall
16 submit its recommendation with the committed person's application and
17 the department's risk assessment to the public safety review panel.
18 The public safety review panel shall complete an independent assessment
19 of the public safety risk entailed by the secretary's proposed
20 conditional release recommendation or release recommendation and
21 provide this assessment in writing to the secretary. The public safety
22 review panel may, within funds appropriated for this purpose, request
23 additional evaluations of the committed person. The public safety
24 review panel may indicate whether it is in agreement with the
25 secretary's recommendation, or whether it would issue a different
26 recommendation. The secretary shall provide the panel's assessment
27 when it is received along with any supporting documentation, including
28 all previous reports of evaluations of the committed person in the
29 person's hospital record, to the court, prosecutor in the county that
30 ordered the person's commitment, and counsel for the committed person.

31 (4) The secretary shall notify the public safety review panel at
32 appropriate intervals concerning any changes in the commitment or
33 custody status of persons found not guilty by reason of insanity, or
34 persons committed under the involuntary treatment act where the court
35 has made a special finding under RCW 71.05.280(3)(b). The panel shall
36 have access, upon request, to a committed person's complete hospital
37 record, and any other records deemed necessary by the public safety
38 review panel.

1 (5) The department shall provide administrative and financial
2 support to the public safety review panel. The department, in
3 consultation with the public safety review panel, may adopt rules to
4 implement this section.

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

7 (a) Whether the public safety review panel has observed a change in
8 statewide consistency of evaluations and decisions concerning changes
9 in the commitment status of persons found not guilty by reason of
10 insanity;

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

13 (c) Whether further changes in the law are necessary to enhance
14 public safety in cases where incompetency prevents operation of the
15 criminal justice system and/or long-term commitment of the criminally
16 insane; and

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

18 **Sec. 4.** RCW 71.05.280 and 2008 c 213 s 6 are each amended to read
19 as follows:

20 At the expiration of the fourteen-day period of intensive treatment
21 or a restoration period under RCW 10.77.086, a person may be confined
22 for further treatment pursuant to 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 10.77.086(4), and has
35 committed acts constituting a felony, and as a result of a mental
36 disorder or developmental disability, presents a substantial likelihood
37 of repeating similar acts.

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

4 (b) For any person subject to commitment under this subsection
5 where the charge underlying the finding of incompetence is for a felony
6 classified as violent under RCW 9.94A.030, the court shall determine
7 whether the acts the person committed constitute a violent offense
8 under RCW 9.94A.030; or

9 (4) Such person is gravely disabled.

10 **Sec. 5.** RCW 71.05.320 and 2009 c 323 s 2 are each amended to read
11 as follows:

12 (1) If the court or jury finds that grounds set forth in RCW
13 71.05.280 have been proven and that the best interests of the person or
14 others will not be served by a less restrictive treatment which is an
15 alternative to detention, the court shall remand him or her to the
16 custody of the department or to a facility certified for ninety day
17 treatment by the department for a further period of intensive treatment
18 not to exceed ninety days from the date of judgment. If the grounds
19 set forth in RCW 71.05.280(3) are the basis of commitment, then the
20 period of treatment may be up to but not exceed one hundred eighty days
21 from the date of judgment in a facility certified for one hundred
22 eighty day treatment by the department.

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

33 (3) The person shall be released from involuntary treatment at the
34 expiration of the period of commitment imposed under subsection (1) or
35 (2) of this section unless the superintendent or professional person in
36 charge of the facility in which he or she is confined, or in the event

1 of a less restrictive alternative, the designated mental health
2 professional, files a new petition for involuntary treatment on the
3 grounds that the committed person:

4 (a) During the current period of court ordered treatment: (i) Has
5 threatened, attempted, or inflicted physical harm upon the person of
6 another, or substantial damage upon the property of another, and (ii)
7 as a result of mental disorder or developmental disability presents a
8 likelihood of serious harm; or

9 (b) Was taken into custody as a result of conduct in which he or
10 she attempted or inflicted serious physical harm upon the person of
11 another, and continues to present, as a result of mental disorder or
12 developmental disability a likelihood of serious harm; or

13 (c) (i) Is in custody pursuant to RCW 71.05.280(3) and as a result
14 of mental disorder or developmental disability ~~continues to~~
15 present ~~((s))~~ a substantial likelihood of repeating ~~((similar))~~ acts
16 ~~((considering)) similar to the charged criminal behavior, when~~
17 considering the person's life history, progress in treatment, and the
18 public safety. (ii) In cases under this subsection where the court has
19 made an affirmative special finding under RCW 71.05.280(3)(b), the
20 commitment shall continue for up to an additional one hundred eighty
21 day period whenever the petition presents prima facie evidence that the
22 person continues to suffer from a mental disorder or developmental
23 disability that results in a substantial likelihood of committing acts
24 similar to the charged criminal behavior, unless the person presents
25 proof through an admissible expert opinion that the person's condition
26 has so changed such that the mental disorder or developmental
27 disability no longer presents a substantial likelihood of the person
28 committing acts similar to the charged criminal behavior. The
29 additional commitment period may include transfer to a specialized
30 program of intensive support and treatment, which may be initiated
31 prior to or after release from the state hospital; or

32 (d) Continues to be gravely disabled.

33 If the conduct required to be proven in (b) and (c) of this
34 subsection was found by a judge or jury in a prior trial under this
35 chapter, it shall not be necessary to prove such conduct again.

36 (4) For a person committed under subsection (2) of this section who
37 has been remanded to a period of less restrictive treatment, in

1 addition to the grounds specified in subsection (3) of this section,
2 the designated mental health professional may file a new petition for
3 continued less restrictive treatment if:

4 (a) The person was previously committed by a court to detention for
5 involuntary mental health treatment during the thirty-six months that
6 preceded the person's initial detention date during the current
7 involuntary commitment cycle, excluding any time spent in a mental
8 health facility or in confinement as a result of a criminal conviction;

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

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

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

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

1 of serious harm in subsection (4)(c) of this section is based solely on
2 harm to the property of others.

3 (7) No person committed as provided in this section may be detained
4 unless a valid order of commitment is in effect. No order of
5 commitment can exceed one hundred eighty days in length.

6 **Sec. 6.** RCW 71.05.425 and 2011 c 305 s 5 are each amended to read
7 as follows:

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

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

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

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

22 (b) The same notice as required by (a) of this subsection shall be
23 sent to the following, if such notice has been requested in writing
24 about a specific person committed under RCW 71.05.280(3) or
25 71.05.320(3)(c) following dismissal of a sex, violent, or felony
26 harassment offense pursuant to RCW 10.77.086(4):

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

31 (ii) Any witnesses who testified against the person in any court
32 proceedings;

33 (iii) Any person specified in writing by the prosecuting attorney.
34 Information regarding victims, next of kin, or witnesses requesting the
35 notice, information regarding any other person specified in writing by
36 the prosecuting attorney to receive the notice, and the notice are

1 confidential and shall not be available to the person committed under
2 this chapter; and

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

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

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

11 (2) If a person committed under RCW 71.05.280(3) or 71.05.320(3)(c)
12 following dismissal of a sex, violent, or felony harassment offense
13 pursuant to RCW 10.77.086(4) escapes, the superintendent shall
14 immediately notify, by the most reasonable and expedient means
15 available, the chief of police of the city and the sheriff of the
16 county in which the person escaped and in which the person resided
17 immediately before the person's arrest and the prosecuting attorney of
18 the county in which the criminal charges against the committed person
19 were dismissed. If previously requested, the superintendent shall also
20 notify the witnesses and the victim of the sex, violent, or felony
21 harassment offense that was dismissed pursuant to RCW 10.77.086(4)
22 preceding commitment under RCW 71.05.280(3) or 71.05.320(3) or the
23 victim's next of kin if the crime was a homicide. In addition, the
24 secretary shall also notify appropriate parties pursuant to RCW
25 71.05.390(18). If the person is recaptured, the superintendent shall
26 send notice to the persons designated in this subsection as soon as
27 possible but in no event later than two working days after the
28 department learns of such recapture.

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

32 (4) The superintendent shall send the notices required by this
33 chapter to the last address provided to the department by the
34 requesting party. The requesting party shall furnish the department
35 with a current address.

36 (5) For purposes of this section the following terms have the
37 following meanings:

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

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

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

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

6 NEW_SECTION. **Sec. 7.** If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

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