

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1114

Chapter 289, Laws of 2013

63rd Legislature
2013 Regular Session

CRIMINAL INCOMPETENCY--CIVIL COMMITMENT--CRIMINAL INSANITY

EFFECTIVE DATE: 07/28/13

Passed by the House April 22, 2013
Yeas 89 Nays 6

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 17, 2013
Yeas 47 Nays 1

BRAD OWEN

President of the Senate

Approved May 20, 2013, 2:25 p.m.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1114** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 20, 2013

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1114

AS AMENDED BY THE SENATE

Passed Legislature - 2013 Regular Session

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, civil commitment, and
2 commitments based on criminal insanity; amending RCW 10.77.086,
3 10.77.270, 71.05.280, 71.05.320, 71.05.425, and 10.77.200; and creating
4 new sections.

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

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

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

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

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

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

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

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

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

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

1 as provided in subsection (4) of this section if the defendant's
2 incompetence has been determined by the secretary to be solely the
3 result of a developmental disability which is such that competence is
4 not reasonably likely to be regained during an extension.

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

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

26 (1) The secretary shall establish an independent public safety
27 review panel for the purpose of advising the secretary and the courts
28 with respect to persons who have been found not guilty by reason of
29 insanity, or persons committed under the involuntary treatment act
30 where the court has made a special finding under RCW 71.05.280(3)(b).
31 The panel shall provide advice regarding all recommendations to the
32 secretary, decisions by the secretary, or actions pending in court:
33 (a) For a change in commitment status; (b) to allow furloughs or
34 temporary leaves accompanied by staff; (c) not to seek further
35 commitment terms under RCW 71.05.320; or (~~(c)~~) (d) to permit movement
36 about the grounds of the treatment facility, with or without the
37 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 when incompetency prevents operation of the criminal
15 justice system and long-term commitment of the criminally insane; and

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

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

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

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

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

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

36 (a) In any proceeding pursuant to this subsection it shall not be

1 necessary to show intent, willfulness, or state of mind as an element
2 of the crime;

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

8 (4) Such person is gravely disabled.

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

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

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

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

1 professional, files a new petition for involuntary treatment on the
2 grounds that the committed person:

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

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

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

31 (d) Continues to be gravely disabled.

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

35 (4) For a person committed under subsection (2) of this section who
36 has been remanded to a period of less restrictive treatment, in
37 addition to the grounds specified in subsection (3) of this section,

1 the designated mental health professional may file a new petition for
2 continued less restrictive treatment if:

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (ii) Any witnesses who testified against the person in any court
30 proceedings;

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

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

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

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

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

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

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

34 (5) For purposes of this section the following terms have the
35 following meanings:

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

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

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

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

5 **Sec. 7.** RCW 10.77.200 and 2010 c 263 s 8 are each amended to read
6 as follows:

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

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

23 (3) The petition shall be served upon the court and the prosecuting
24 attorney. The court, upon receipt of the petition for release, shall
25 within forty-five days order a hearing. Continuance of the hearing
26 date shall only be allowed for good cause shown. The prosecuting
27 attorney shall represent the state, and shall have the right to have
28 the ((petitioner)) person who is the subject of the petition examined
29 by an expert or professional person of the prosecuting attorney's
30 choice. If the secretary is the petitioner, the attorney general shall
31 represent the secretary. If the ((petitioner)) person who is the
32 subject of the petition is indigent, and the person so requests, the
33 court shall appoint a qualified expert or professional person to
34 examine him or her. If the ((petitioner)) person who is the subject of
35 the petition has a developmental disability, the examination shall be
36 performed by a developmental disabilities professional. The hearing
37 shall be before a jury if demanded by either the petitioner or the

1 prosecuting attorney. The burden of proof shall be upon the petitioner
2 to show by a preponderance of the evidence that the ((~~petitioner~~))
3 person who is the subject of the petition no longer presents, as a
4 result of a mental disease or defect, a substantial danger to other
5 persons, or a substantial likelihood of committing criminal acts
6 jeopardizing public safety or security, unless kept under further
7 control by the court or other persons or institutions. If the person
8 who is the subject of the petition will be transferred to a state
9 correctional institution or facility upon release to serve a sentence
10 for any class A felony, the petitioner must show that the person's
11 mental disease or defect is manageable within a state correctional
12 institution or facility, but must not be required to prove that the
13 person does not present either a substantial danger to other persons,
14 or a substantial likelihood of committing criminal acts jeopardizing
15 public safety or security, if released.

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

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

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

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

7 NEW_SECTION. **Sec. 9.** If specific funding for the purposes of
8 sections 3 through 5 of this act, referencing sections 3 through 5 of
9 this act by bill or chapter number and section number, is not provided
10 by June 30, 2013, in the omnibus appropriations act, sections 3 through
11 5 of this act are null and void.

Passed by the House April 22, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.