**5690-S.E AMH ENGR H3296.E - NOT FOR FLOOR USE**

**ESSB 5690** - H COMM AMD

By Committee on Civil Rights & Judiciary

**ADOPTED AND ENGROSSED 02/27/2024**

Strike everything after the enacting clause and insert the following:

**"Sec.**  RCW 10.77.110 and 2000 c 94 s 14 are each amended to read as follows:

(1) If a defendant is acquitted of a crime by reason of insanity, and it is found that he or she is not a substantial danger to other persons, and does not present a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall direct the defendant's release. If it is found that such defendant is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall order his or her hospitalization, or any appropriate alternative treatment less restrictive than detention in a state mental hospital, pursuant to the terms of this chapter.

(2) If the defendant has been found not guilty by reason of insanity and a substantial danger, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, so as to require treatment then the secretary shall immediately cause the defendant to be evaluated to ascertain if the defendant ((~~is developmentally disabled~~)) has a developmental disability. When appropriate, and subject to available funds, the defendant may be committed to a program specifically reserved for the treatment and training of ((~~developmentally disabled~~)) persons with developmental disabilities. A person so committed shall receive habilitation services according to an individualized service plan specifically developed to treat the behavior which was the subject of the criminal proceedings. The treatment program shall be administered by developmental disabilities professionals and others trained specifically in the needs of ((~~developmentally disabled~~)) persons with developmental disabilities. The treatment program shall provide physical security to a degree consistent with the finding that the defendant is dangerous and may incorporate varying conditions of security and alternative sites when the dangerousness of any particular defendant makes this necessary. The department may limit admissions to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department.

(3) If it is found that such defendant is not a substantial danger to other persons, and does not present a substantial likelihood of committing criminal acts jeopardizing public safety or security, but that he or she is in need of control by the court or other persons or institutions, the court shall direct the defendant's conditional release to a less restrictive alternative under conditions that satisfy the minimum requirements of RCW 10.77.150 and 10.77.175.

**Sec.**  RCW 10.77.010 and 2023 c 453 s 2 and 2023 c 120 s 5 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "Admission" means acceptance based on medical necessity, of a person as a patient.

(2) "Authority" means the Washington state health care authority.

(3) "Clinical intervention specialist" means a licensed professional with prescribing authority who is employed by or contracted with the department to provide direct services, enhanced oversight and monitoring of the behavioral health status of in-custody defendants who have been referred for evaluation or restoration services related to competency to stand trial and who coordinate treatment options with forensic navigators, the department, and jail health services.

(4) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less-restrictive setting.

(5) "Community behavioral health agency" has the same meaning as "licensed or certified behavioral health agency" defined in RCW 71.24.025.

(6) "Conditional release" means modification of a court-ordered commitment, which may be revoked upon violation of any of its terms. A conditional release includes partial conditional release where a person continues inpatient at a department institution or facility designated to provide treatment for persons acquitted as not guilty by reason of insanity under RCW 10.77.150, or conditional release to a less restrictive setting that meets the minimum requirements of RCW 10.77.150 and 10.77.175 where the person resides in the community.

(7) A "criminally insane" person means any person who has been acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions.

(8) "Department" means the state department of social and health services.

(9) "Designated crisis responder" has the same meaning as provided in RCW 71.05.020.

(10) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter, pending evaluation.

(11) "Developmental disabilities professional" means a person who has specialized training and experience in directly treating or working with persons with developmental disabilities and is a psychiatrist or psychologist, or a social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

(12) "Developmental disability" means the condition as defined in RCW 71A.10.020.

(13) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order.

(14) "Furlough" means an authorized leave of absence for a resident of a state institution operated by the department designated for the custody, care, and treatment of the criminally insane, consistent with an order of conditional release from the court under this chapter, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or institutional staff, while on such unescorted leave.

(15) "Genuine doubt as to competency" means that there is reasonable cause to believe, based upon actual interactions with or observations of the defendant or information provided by counsel, that a defendant is incompetent to stand trial.

(16) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct.

(17) "History of one or more violent acts" means violent acts committed during: (a) The 10-year period of time prior to the filing of criminal charges; plus (b) the amount of time equal to time spent during the 10-year period in a mental health facility or in confinement as a result of a criminal conviction.

(18) "Immediate family member" means a spouse, child, stepchild, parent, stepparent, grandparent, sibling, or domestic partner.

(19) "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

(20) "Indigent" means any person who is indigent as defined in RCW 10.101.010, or financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to the person or his or her family.

(21) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for an individual with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual release, and a projected possible date for release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences.

(22) "Professional person" means:

(a) A psychiatrist licensed as a physician and surgeon in this state who has, in addition, completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology or the American osteopathic board of neurology and psychiatry;

(b) A psychologist licensed as a psychologist pursuant to chapter 18.83 RCW;

(c) A psychiatric advanced registered nurse practitioner, as defined in RCW 71.05.020; or

(d) A social worker with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

(23) "Release" means legal termination of the court-ordered commitment under the provisions of this chapter.

(24) "Secretary" means the secretary of the department of social and health services or his or her designee.

(25) "Treatment" means any currently standardized medical or mental health procedure including medication.

(26) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by behavioral health administrative services organizations and their staffs, by managed care organizations and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, behavioral health administrative services organizations, managed care organizations, or a treatment facility if the notes or records are not available to others.

(27) "Violent act" means behavior that: (a)(i) Resulted in; (ii) if completed as intended would have resulted in; or (iii) was threatened to be carried out by a person who had the intent and opportunity to carry out the threat and would have resulted in, homicide, nonfatal injuries, or substantial damage to property; or (b) recklessly creates an immediate risk of serious physical injury to another person. As used in this subsection, "nonfatal injuries" means physical pain or injury, illness, or an impairment of physical condition. "Nonfatal injuries" shall be construed to be consistent with the definition of "bodily injury," as defined in RCW 9A.04.110.

**Sec.**  RCW 10.77.150 and 2023 c 120 s 8 are each amended to read as follows:

(1) Persons examined pursuant to RCW 10.77.140 may make application to the secretary for conditional release. The secretary shall, after considering the reports of experts or professional persons conducting the examination pursuant to RCW 10.77.140, forward to the court of the county which ordered the person's commitment the person's application for conditional release as well as the secretary's recommendations concerning the application ((~~and~~)). The secretary's recommendation must include any proposed terms and conditions upon which the secretary reasonably believes the person can be conditionally released. ((~~Conditional release may also contemplate partial release for work, training, or educational purposes.~~)) Recommendations for terms and conditions for conditional release to a less restrictive alternative must ensure that the conditional release will satisfy the minimum requirements of this section and RCW 10.77.175. The department of corrections may provide information to the secretary as to the proposed terms and conditions for cases considered for partial conditional release or conditional release to a less restrictive alternative for which they have court-ordered supervision.

(2) In instances in which persons examined pursuant to RCW 10.77.140 have not made application to the secretary for conditional release, but the secretary, after considering the reports of experts or professional persons conducting the examination pursuant to RCW 10.77.140, reasonably believes the person may be conditionally released, the secretary may submit a recommendation for conditional release to the court of the county that ordered the person's commitment. The secretary's recommendation must include any proposed terms and conditions upon which the secretary reasonably believes the person may be conditionally released. ((~~Conditional release may also include partial release for work, training, or educational purposes.~~)) Recommendations for terms and conditions for conditional release to a less restrictive alternative must ensure that the conditional release will satisfy the minimum requirements of this section and RCW 10.77.175. The department of corrections may provide information to the secretary as to the proposed terms and conditions for cases considered for partial conditional release or conditional release to a less restrictive alternative for which they have court-ordered supervision. Notice of the secretary's recommendation under this subsection must be provided to the person for whom the secretary has made the recommendation for conditional release and to his or her attorney.

(3)(a) The court of the county which ordered the person's commitment, upon receipt of an application or recommendation for conditional release with the secretary's recommendation for ((~~conditional release~~)) terms and conditions, shall within 30 days schedule a hearing. The court may schedule a hearing on applications recommended for disapproval by the secretary.

(b) The prosecuting attorney shall represent the state at such hearings and shall have the right to have the person examined by an expert or professional person of the prosecuting attorney's choice. If the committed person is indigent((~~,~~)) and ((~~he or she~~)) so requests, the court shall assist the person in obtaining a qualified expert or professional person to examine the person on ((~~his or her~~)) the person's behalf. An expert or professional person obtained by an indigent person who is committed to state psychiatric care following acquittal by reason of insanity shall be compensated out of funds of the office of public defense as provided in policies and procedures under chapter 2.70 RCW, in a manner consistent with the rules of professional conduct and the standards for indigent defense.

(c) The issue to be determined at such a hearing is whether or not the person may be released conditionally ((~~to less restrictive alternative treatment under the supervision of a multidisciplinary transition team under conditions imposed by the court, including access to services under RCW 10.77.175 without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security~~)) under conditions imposed by the court without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security.

(d) In cases that come before the court under subsection (1) or (2) of this section, the court may deny conditional release ((~~to a less restrictive alternative~~)) only on the basis of substantial evidence. The court may modify the suggested terms and conditions on which the person is to be conditionally released. Pursuant to the determination of the court after hearing, the committed person shall thereupon be released on such conditions as the court determines to be necessary, or shall be remitted to the custody of the secretary.

(4)(a) If the order of conditional release provides for the conditional release of the person to a less restrictive alternative, ((~~including residential treatment or treatment in the community,~~)) the conditional release order ((~~must also~~)) shall include:

((~~(a)~~)) (i) A requirement for the committed person to be supervised by a multidisciplinary transition team, including a specially trained community corrections officer, a representative of the department of social and health services, and a representative of the community behavioral health agency providing treatment to the person under RCW 10.77.175.

((~~(i)~~)) (A) The court may omit appointment of the representative of the community behavioral health agency if the conditional release order does not require participation in behavioral health treatment;

((~~(ii)~~)) (B) The court may omit the appointment of a community corrections officer if it makes a special finding that the appointment of a community corrections officer would not facilitate the success of the person, ((~~or~~)) and the safety of the person and the community;

((~~(b)~~)) (ii) A requirement for the person to comply with conditions of supervision established by the court which shall include at a minimum reporting as directed to a designated member of the transition team, remaining within prescribed geographical boundaries, and notifying the transition team prior to making any change in the person's address or employment. If the person is not in compliance with the court-ordered conditions of release, the community corrections officer or another designated transition team member shall notify the secretary or the secretary's designee; and

((~~(c)~~)) (iii) If the court requires participation in behavioral health treatment, the name of the licensed or certified behavioral health agency responsible for identifying the services the person will receive under RCW 10.77.175, and a requirement that the person cooperate with the services planned by the licensed or certified behavioral health agency. The licensed or certified behavioral health agency must comply with the reporting requirements of RCW 10.77.160, and must immediately report to the court, prosecutor, and defense counsel any substantial withdrawal or disengagement from medication or treatment, or any change in the person's mental health condition that renders him or her a potential risk to the public.

((~~(5)~~)) (b) The court may not order conditional release to a proposed less restrictive alternative unless conditions ensure the conditional release will satisfy the minimum requirements set forth in this section and RCW 10.77.175.

(5) The role of the transition team appointed under subsection (4) of this section shall be to facilitate the success of the person on the conditional release order by monitoring the person's progress in treatment, compliance with court-ordered conditions, and to problem solve around extra support the person may need or circumstances that may arise that threaten the safety of the person or the community. The transition team may develop a monitoring plan that may be carried out by any member of the team. The transition team shall meet according to a schedule developed by the team, and shall communicate as needed if issues arise that require the immediate attention of the team.

(6) The department of corrections shall collaborate with the department to develop specialized training for community corrections officers under this section. The lack of a trained community corrections officer must not be the cause of delay to entry of a conditional release order. Another community corrections officer may be appointed if no specially trained officer is available.

(7) Any person, whose application for conditional release has been denied, may reapply after a period of six months from the date of denial, or sooner with the support of the department.

(8) A person examined under RCW 10.77.140 or the department may make a motion for ((~~limited~~)) partial conditional release under this section, on the grounds that there is insufficient evidence that the person may be released conditionally to less restrictive alternative treatment under subsection (3)(c) of this section, but the person would benefit from the opportunity to exercise increased privileges while remaining under the custody and supervision of the department and with the supervision of the department these increased privileges can be exercised without substantial danger to other persons or substantial likelihood of committing criminal acts jeopardizing public safety or security. The department may respond to a person's application for conditional release by instead supporting ((~~limited~~)) partial conditional release.

**Sec.**  RCW 10.77.175 and 2022 c 210 s 22 are each amended to read as follows:

(1) Conditional release planning should start at admission and proceed in coordination between the department and the person's managed care organization, or behavioral health administrative services organization if the person is not eligible for medical assistance under chapter 74.09 RCW. If needed, the department shall assist the person to enroll in medical assistance in suspense status under RCW 74.09.670. The state hospital liaison for the managed care organization or behavioral health administrative services organization shall facilitate conditional release planning in collaboration with the department.

(2) Less restrictive alternative treatment pursuant to a conditional release order, at a minimum, ((~~includes~~)) addresses the following services:

(a) Assignment of a care coordinator;

(b) An intake evaluation with the provider of the conditional treatment;

(c) A psychiatric evaluation or a substance use disorder evaluation, or both;

(d) A schedule of regular contacts with the provider of the less restrictive alternative treatment services for the duration of the order;

(e) A transition plan addressing access to continued services at the expiration of the order;

(f) An individual crisis plan;

(g) Consultation about the formation of a mental health advance directive under chapter 71.32 RCW;

(h) Appointment of a transition team under RCW 10.77.150; and

(i) Notification to the care coordinator assigned in (a) of this subsection and to the transition team as provided in RCW 10.77.150 if reasonable efforts to engage the client fail to produce substantial compliance with court-ordered treatment conditions.

(3) Less restrictive alternative treatment pursuant to a conditional release order may additionally include requirements to participate in the following services:

(a) Medication management;

(b) Psychotherapy;

(c) Nursing;

(d) Substance use disorder counseling;

(e) Residential treatment;

(f) Partial hospitalization;

(g) Intensive outpatient treatment;

(h) Support for housing, benefits, education, and employment; and

(i) Periodic court review.

(4) Nothing in this section prohibits items in subsection (2) of this section from beginning before the conditional release of the individual.

(5) If the person was provided with involuntary medication under RCW 10.77.094 or pursuant to a judicial order during the involuntary commitment period, the less restrictive alternative treatment pursuant to the conditional release order may authorize the less restrictive alternative treatment provider or its designee to administer involuntary antipsychotic medication to the person if the provider has attempted and failed to obtain the informed consent of the person and there is a concurring medical opinion approving the medication by a psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with an independent mental health professional with prescribing authority.

(6) Less restrictive alternative treatment pursuant to a conditional release order must be administered by a provider that is certified or licensed to provide or coordinate the full scope of services required under the less restrictive alternative order and that has agreed to assume this responsibility.

(7) The care coordinator assigned to a person ordered to less restrictive alternative treatment pursuant to a conditional release order must, in collaboration with and on behalf of the transition team, submit an individualized plan for the person's treatment services to the court that entered the order. An initial plan must be submitted as soon as possible following the intake evaluation and a revised plan must be submitted upon any subsequent modification in which a type of service is removed from or added to the treatment plan.

(8) A care coordinator may disclose information and records related to mental health treatment under RCW 70.02.230(2)(k) for purposes of implementing less restrictive alternative treatment pursuant to a conditional release order.

(9) For the purpose of this section, "care coordinator" means a representative from the department of social and health services who coordinates the activities of less restrictive alternative treatment pursuant to a conditional release order. The care coordinator coordinates activities with the person's transition team that are necessary for enforcement and continuation of the conditional release order and is responsible for coordinating service activities with other agencies ((~~and establishing and maintaining~~)). The transition teams establish and maintain a therapeutic relationship with the individual on a continuing basis.

**Sec.**  RCW 10.77.160 and 2010 c 263 s 6 are each amended to read as follows:

When a person conditionally released ((~~person~~)) to a less restrictive alternative is required by the terms of his or her conditional release to report to a physician, department of corrections community corrections officer, or medical or mental health practitioner on a regular or periodic basis, the physician, department of corrections community corrections officer, medical or mental health practitioner, or other such person shall monthly, for the first six months after release and semiannually thereafter, or as otherwise directed by the court, submit to the court, the secretary, the institution from which released, and to the prosecuting attorney of the county in which the person was committed, a report stating whether the person is adhering to the terms and conditions of his or her conditional release, and detailing any arrests or criminal charges filed and any significant change in the person's mental health condition or other circumstances. Such reports may be combined for members of a transition team under RCW 10.77.150 and submitted by a designated member unless otherwise directed by the court."

Correct the title.