

ESSB 5690 - H COMM AMD

By Committee on Civil Rights & Judiciary

ADOPTED AS AMENDED 02/27/2024

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

3 **"Sec. 1.** RCW 10.77.110 and 2000 c 94 s 14 are each amended to
4 read as follows:

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

18 (2) If the defendant has been found not guilty by reason of
19 insanity and a substantial danger, or presents a substantial
20 likelihood of committing criminal acts jeopardizing public safety or
21 security, so as to require treatment then the secretary shall
22 immediately cause the defendant to be evaluated to ascertain if the
23 defendant (~~is developmentally disabled~~) has a developmental
24 disability. When appropriate, and subject to available funds, the
25 defendant may be committed to a program specifically reserved for the
26 treatment and training of (~~developmentally disabled~~) persons with
27 developmental disabilities. A person so committed shall receive
28 habilitation services according to an individualized service plan
29 specifically developed to treat the behavior which was the subject of
30 the criminal proceedings. The treatment program shall be administered
31 by developmental disabilities professionals and others trained

1 specifically in the needs of (~~developmentally disabled~~) persons
2 with developmental disabilities. The treatment program shall provide
3 physical security to a degree consistent with the finding that the
4 defendant is dangerous and may incorporate varying conditions of
5 security and alternative sites when the dangerousness of any
6 particular defendant makes this necessary. The department may limit
7 admissions to this specialized program in order to ensure that
8 expenditures for services do not exceed amounts appropriated by the
9 legislature and allocated by the department for such services. The
10 department may establish admission priorities in the event that the
11 number of eligible persons exceeds the limits set by the department.

12 (3) If it is found that such defendant is not a substantial
13 danger to other persons, and does not present a substantial
14 likelihood of committing criminal acts jeopardizing public safety or
15 security, but that he or she is in need of control by the court or
16 other persons or institutions, the court shall direct the defendant's
17 conditional release to a less restrictive alternative under
18 conditions that satisfy the minimum requirements of RCW 10.77.150 and
19 10.77.175.

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

22 As used in this chapter:

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

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

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

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

37 (5) "Community behavioral health agency" has the same meaning as
38 "licensed or certified behavioral health agency" defined in RCW
39 71.24.025.

1 (6) "Conditional release" means modification of a court-ordered
2 commitment, which may be revoked upon violation of any of its terms.
3 A conditional release includes partial conditional release where a
4 person continues inpatient at a department institution or facility
5 designated to provide treatment for persons acquitted as not guilty
6 by reason of insanity under RCW 10.77.150, or conditional release to
7 a less restrictive setting that meets the minimum requirements of RCW
8 10.77.150 and 10.77.175 where the person resides in the community.

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

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

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

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

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

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

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

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

39 (15) "Genuine doubt as to competency" means that there is
40 reasonable cause to believe, based upon actual interactions with or

1 observations of the defendant or information provided by counsel,
2 that a defendant is incompetent to stand trial.

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

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

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

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

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

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

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

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

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

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

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

39 (f) Where relevant in light of past criminal behavior and due
40 consideration for public safety, the criteria for proposed movement

1 to less-restrictive settings, criteria for proposed eventual release,
2 and a projected possible date for release; and

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

5 (22) "Professional person" means:

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

13 (b) A psychologist licensed as a psychologist pursuant to chapter
14 18.83 RCW;

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

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

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

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

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

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

37 (27) "Violent act" means behavior that: (a) (i) Resulted in; (ii)
38 if completed as intended would have resulted in; or (iii) was
39 threatened to be carried out by a person who had the intent and
40 opportunity to carry out the threat and would have resulted in,

1 homicide, nonfatal injuries, or substantial damage to property; or
2 (b) recklessly creates an immediate risk of serious physical injury
3 to another person. As used in this subsection, "nonfatal injuries"
4 means physical pain or injury, illness, or an impairment of physical
5 condition. "Nonfatal injuries" shall be construed to be consistent
6 with the definition of "bodily injury," as defined in RCW 9A.04.110.

7 **Sec. 3.** RCW 10.77.150 and 2023 c 120 s 8 are each amended to
8 read as follows:

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

28 (2) In instances in which persons examined pursuant to RCW
29 10.77.140 have not made application to the secretary for conditional
30 release, but the secretary, after considering the reports of experts
31 or professional persons conducting the examination pursuant to RCW
32 10.77.140, reasonably believes the person may be conditionally
33 released, the secretary may submit a recommendation for conditional
34 release to the court of the county that ordered the person's
35 commitment. The secretary's recommendation must include any proposed
36 terms and conditions upon which the secretary reasonably believes the
37 person may be conditionally released. ~~((Conditional release may also~~
38 ~~include partial release for work, training, or educational~~
39 ~~purposes-))~~ Recommendations for terms and conditions for conditional

1 release to a less restrictive alternative must ensure that the
2 conditional release will satisfy the minimum requirements of this
3 section and RCW 10.77.175. The department of corrections may provide
4 information to the secretary as to the proposed terms and conditions
5 for cases considered for unescorted access to the community or
6 conditional release to a less restrictive alternative for which they
7 have court-ordered supervision. Notice of the secretary's
8 recommendation under this subsection must be provided to the person
9 for whom the secretary has made the recommendation for conditional
10 release and to his or her attorney.

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

17 (b) The prosecuting attorney shall represent the state at such
18 hearings and shall have the right to have the person examined by an
19 expert or professional person of the prosecuting attorney's choice.
20 If the committed person is indigent ~~((7))~~ and ~~((he or she))~~ so
21 requests, the court shall assist the person in obtaining a qualified
22 expert or professional person to examine the person on ~~((his or her))~~
23 the person's behalf. An expert or professional person obtained by an
24 indigent person who is committed to state psychiatric care following
25 acquittal by reason of insanity shall be compensated out of funds of
26 the office of public defense as provided in policies and procedures
27 under chapter 2.70 RCW, in a manner consistent with the rules of
28 professional conduct and the standards for indigent defense.

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

39 (d) In cases that come before the court under subsection (1) or
40 (2) of this section, the court may deny conditional release ~~((to a~~

1 ~~less restrictive alternative~~) only on the basis of substantial
2 evidence. The court may modify the suggested terms and conditions on
3 which the person is to be conditionally released. Pursuant to the
4 determination of the court after hearing, the committed person shall
5 thereupon be released on such conditions as the court determines to
6 be necessary, or shall be remitted to the custody of the secretary.

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

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

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

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

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

34 (~~(e)~~) (iii) If the court requires participation in behavioral
35 health treatment, the name of the licensed or certified behavioral
36 health agency responsible for identifying the services the person
37 will receive under RCW 10.77.175, and a requirement that the person
38 cooperate with the services planned by the licensed or certified
39 behavioral health agency. The licensed or certified behavioral health
40 agency must comply with the reporting requirements of RCW 10.77.160,

1 and must immediately report to the court, prosecutor, and defense
2 counsel any substantial withdrawal or disengagement from medication
3 or treatment, or any change in the person's mental health condition
4 that renders him or her a potential risk to the public.

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

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

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

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

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

1 application for conditional release by instead supporting (~~limited~~)
2 partial conditional release.

3 **Sec. 4.** RCW 10.77.175 and 2022 c 210 s 22 are each amended to
4 read as follows:

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

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

18 (a) Assignment of a care coordinator;

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

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

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

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

28 (f) An individual crisis plan;

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

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

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

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

39 (a) Medication management;

- 1 (b) Psychotherapy;
- 2 (c) Nursing;
- 3 (d) Substance use disorder counseling;
- 4 (e) Residential treatment;
- 5 (f) Partial hospitalization;
- 6 (g) Intensive outpatient treatment;
- 7 (h) Support for housing, benefits, education, and employment; and
- 8 (i) Periodic court review.

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

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

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

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

39 (8) A care coordinator may disclose information and records
40 related to mental health treatment under RCW 70.02.230(2)(k) for

1 purposes of implementing less restrictive alternative treatment
2 pursuant to a conditional release order.

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

13 **Sec. 5.** RCW 10.77.160 and 2010 c 263 s 6 are each amended to
14 read as follows:

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

32 Correct the title.

EFFECT: Removes the provision requiring a court, before ordering conditional release to a less restrictive alternative (LRA), to consider the report and recommended conditions of the community corrections officer, as well as the recommendations of the Public Safety Review Panel. Provides instead that the Department of Corrections may provide information to the Department of Social and Health Services (Department) as to proposed terms and conditions for

cases considered for unescorted access to the community or conditional release to a LRA for which they have court ordered supervision.

Removes language providing that: (1) a facility's recommendation to the Department for review of partial conditional release that allows unsupervised community access must be informed by advisement of a community corrections officer; and (2) a person on partial conditional release must be under the continued supervision of the Department.

Removes the requirement that LRA treatment under a conditional release order must include specified minimum services, and instead provides that LRA treatment under a conditional release order must "address" the specified minimum services.

Clarifies that the required reports from a physician, community corrections officer, or medical or mental health practitioner, apply only with respect to persons conditionally released to a LRA.

Replaces a reference to "state hospital" with "a Department institution or facility designated to provide treatment for persons acquitted by reason of insanity." Moves language relating to the Department's recommendations for terms and conditions of conditional release to alternative subsections of the bill.

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