

**Chapter 388-875 WAC**  
**CRIMINALLY INSANE PERSON COMMITTED TO THE CARE OF THE DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES—EVALUATION, PLACEMENT, CARE AND DISCHARGE**  
(Formerly chapter 275-59 WAC)

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**WAC**

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**DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

388-875-0080	Restoration procedure for a former involuntarily committed person's right to firearm possession. [Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, recodified as § 388-875-0080, filed 12/6/00, effective 1/6/01. Statutory Authority: RCW 9.41.040(6). WSR 94-06-025 (Order 3709), § 275-59-072, filed 2/23/94, effective 3/26/94.] Repealed by WSR 19-11-055, filed 5/13/19, effective 6/13/19. Statutory Authority: Chapter 10.77 RCW, RCW 72.01.090, 70.02.290, 70.02.340, 71.05.560, 71.24.035 (5) (c), and 71.34.380.
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**WAC 388-875-0010 Purpose.** To provide procedures for the evaluation, restoration, placement, care, and discharge of persons committed to the care of the department of social and health services, required under chapter 10.77 RCW.

[Statutory Authority: Chapter 10.77 RCW, RCW 72.01.090, 70.02.290, 70.02.340, 71.05.560, 71.24.035 (5) (c), and 71.34.380. WSR 19-11-055, § 388-875-0010, filed 5/13/19, effective 6/13/19. Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, recodified as § 388-875-0010, filed 12/6/00, effective 1/6/01; Order 846, § 275-59-010, filed 8/9/73.]

**WAC 388-875-0020 Definitions.** "**Administration**" means the behavioral health administration, department of social and health services.

"**Department**" means the state department of social and health services.

"**Director**" means the director of the office of forensic mental health services.

"**Evaluation**" means the initial procedure when a court requests the department to provide an opinion if a person charged with a crime is competent to stand trial or, if indicated and appropriate, if the person was suffering under a mental disease or defect excluding responsibility at the time of the commission of the crime.

"**Indigent**" means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to the person or his or her family.

"**Office**" means the office of forensic mental health services, department of social and health services.

"**Professional person**" means:

(1) A psychiatrist. This is defined as a person having a license 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 who is certified or is eligible to be certified by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry.

(2) A psychologist. This is defined as a person who has been licensed as a psychologist under chapter 18.83 RCW.

(3) A social worker. This is defined as a person with a master's or further advanced degree from an accredited school of social work educational program accredited and approved under RCW 18.320.010.

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

**"Superintendent"** means the person responsible for the functioning of a treatment facility.

**"Treatment"** means any currently standardized medical or mental health procedure including medication.

**"Treatment facility"** means any facility operated or approved by the department of social and health services that provides services for the criminally insane or persons receiving competency services. This definition does not include any state correctional institution or facility.

[Statutory Authority: Chapter 10.77 RCW, RCW 72.01.090, 70.02.290, 70.02.340, 71.05.560, 71.24.035 (5) (c), and 71.34.380. WSR 19-11-055, § 388-875-0020, filed 5/13/19, effective 6/13/19. Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, amended and recodified as § 388-875-0020, filed 12/6/00, effective 1/6/01. Statutory Authority: RCW 72.01.090. WSR 79-03-038 (Order 1373), § 275-59-020, filed 3/1/79; Order 846, § 275-59-020, filed 8/9/73.]

**WAC 388-875-0030 Evaluation & treatment.** (1) The secretary designates to the administration the responsibility for:

(a) Evaluation and treatment of any person committed to the secretary for evaluation or treatment, under chapter 10.77 RCW; and

(b) Determination of which treatment facility must have custody of the persons committed to the secretary under chapter 10.77 RCW.

(2) The secretary designates to the office the responsibility for:

(a) Assisting the court in obtaining nondepartmental experts or professional persons to participate in the evaluation or a hearing on behalf of the defendant and providing quality standards in addition to compensating such professionals, according to payment schedule published under WAC 388-875-0040 if the person being evaluated or treated is an indigent person;

(b) Ensuring that any nondepartmental expert or professional person requesting compensation has maintained adequate evaluation and treatment records, as determined by the office, which justify compensation;

(c) Assisting the court by designation of experts or professional persons to examine the defendant and report to the court when the defendant is not committed to the secretary; and

(d) Assisting the court by designating an expert or professional person who is a developmental disabilities professional to examine the defendant if the court is advised by any party that the defendant may be developmentally disabled.

[Statutory Authority: Chapter 10.77 RCW, RCW 72.01.090, 70.02.290, 70.02.340, 71.05.560, 71.24.035 (5) (c), and 71.34.380. WSR 19-11-055,

§ 388-875-0030, filed 5/13/19, effective 6/13/19. Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, amended and recodified as § 388-875-0030, filed 12/6/00, effective 1/6/01. Statutory Authority: RCW 72.01.090. WSR 79-03-038 (Order 1373), § 275-59-030, filed 3/1/79; Order 846, § 275-59-030, filed 8/9/73.]

**WAC 388-875-0040 Schedule of payment for defendant expert or professional person.** Department payments to an expert or professional person for department services an indigent person receives must occur as follows:

(1) The department must publish a schedule of hourly fees, and travel time, in amounts that the department determines to be fair and reasonable. The department will review the hourly reimbursement schedule annually and make adjustments as appropriate. This schedule may be found online at: <https://www.dshs.wa.gov/bha/office-service-integration/office-forensic-mental-health-services>.

(2) Under RCW 10.77.140, the department must only approve payment for one mental health examination per indigent person in each six month period.

(3) All invoices for court-ordered services must be submitted using the department's invoicing procedure, with each service itemized by hour and quarter-hour increments. Forensic evaluation reports conducted by a professional person and submitted for payment are subject to accounting and quality review by the office prior to approving payment.

[Statutory Authority: Chapter 10.77 RCW, RCW 72.01.090, 70.02.290, 70.02.340, 71.05.560, 71.24.035 (5)(c), and 71.34.380. WSR 19-11-055, § 388-875-0040, filed 5/13/19, effective 6/13/19. Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, recodified as § 388-875-0040, filed 12/6/00, effective 1/6/01. Statutory Authority: RCW 72.01.090. WSR 91-24-045 (Order 3298), § 275-59-041, filed 11/27/91, effective 1/1/92; WSR 79-03-038 (Order 1373), § 275-59-041, filed 3/1/79.]

**WAC 388-875-0050 Time limitations and requirements.** If a person is committed to the secretary as criminally insane, commitment and treatment must not exceed the maximum possible sentence for any offense charged. Therefore:

(1) The administration, with the assistance of the office of the attorney general where necessary must determine at the time of commitment the maximum possible sentence for any offense charged, and there-by compute a maximum release date for every individual so committed.

(2) If the committed person has not been released by court order six months prior to the expiration of the maximum possible release date, the administration, must notify the committing court and prosecuting attorney of its computation of maximum release date and the requirement that the person must be released on that date unless civil proceedings are instituted or the court determines that the computation of maximum release date is incorrect.

[Statutory Authority: Chapter 10.77 RCW, RCW 72.01.090, 70.02.290, 70.02.340, 71.05.560, 71.24.035 (5)(c), and 71.34.380. WSR 19-11-055, § 388-875-0050, filed 5/13/19, effective 6/13/19. Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, recodified as § 388-875-0050, filed 12/6/00, effective 1/6/01. Statutory Authority: RCW 72.01.090. WSR

**WAC 388-875-0060 Individualized treatment.** (1) Whenever a person is committed to the secretary as criminally insane, the treatment facility to which the person is assigned must, within fifteen days of admission to the facility, evaluate and diagnose the committed person for the purpose of devising an individualized treatment program.

(2) Every person, committed to the secretary as criminally insane, must have an individualized treatment plan formulated by the treatment facility. This plan shall be developed by appropriate treatment team members and implemented as soon as possible but no later than fifteen days after the person is admitted to the treatment facility. Each individualized treatment plan must include, but not be limited to:

(a) A statement of the nature of the specific problems and specific needs of the patient;

(b) A statement of the physical setting necessary to achieve the purposes of commitment;

(c) A description of intermediate and long-range treatment goals, with a projected timetable for their attainment;

(d) A statement and rationale for the plan of treatment for achieving these intermediate and long-range goals;

(e) A specification of staff responsibility and a description of proposed staff involvement with a patient in order to attain these treatment goals; and

(f) Criteria for recommendation to the court for release.

(3) This individualized treatment plan must be reviewed by the treatment facility periodically, at least every six months.

(4) This individualized treatment plan must be made available to the committing court, and other authorized persons or entities, upon request.

[Statutory Authority: Chapter 10.77 RCW, RCW 72.01.090, 70.02.290, 70.02.340, 71.05.560, 71.24.035 (5) (c), and 71.34.380. WSR 19-11-055, § 388-875-0060, filed 5/13/19, effective 6/13/19. Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, amended and recodified as § 388-875-0060, filed 12/6/00, effective 1/6/01. Statutory Authority: RCW 72.01.090. WSR 79-03-038 (Order 1373), § 275-59-060, filed 3/1/79; Order 846, § 275-59-060, filed 8/9/73.]

**WAC 388-875-0070 Transfer of a patient between treatment facilities.** In some instances, it is appropriate for the department to transfer a patient currently residing in a state facility to another state facility for ongoing treatment. The department accomplishes the transfer with the utmost care given to the therapeutic needs and legal status of the patient. This section describes the procedures for handling a patient transfer between state facilities in a manner consistent with the best interest of the patient.

(1) The department uses the following criteria when determining the appropriateness of a patient transfer:

(a) The patient's family resides within the receiving facility's service area;

(b) The patient's primary home of residence is in the receiving facility's service area;

(c) A particular service or need of the patient is better met at the receiving facility;

(d) Transfer to the receiving facility may facilitate continuity of care; or

(e) The prosecutor, defense counsel, or the court requests a transfer.

(2) Prior to any proposed transfer of a patient, the treatment facility must comply with the following:

(a) The sending facility, at the request of the superintendent, must have forwarded in writing information necessary to make a decision on whether transfer is appropriate to the receiving facility's attending physician or the physician's designee, copying the prosecutor and defense counsel on that communication;

(b) The receiving facility's attending physician or the physician's designee must have recommended appropriate action to the superintendent of the sending facility in writing within five calendar days of receipt of the request, and where exigent circumstances exist, necessitating immediate transfer of a patient, these communications must be made immediately as well;

(c) If the receiving facility accepts the proposed patient transfer, the sending facility must notify the patient, guardian, prosecutor, and defense counsel, at least five days before the proposed patient transfer;

(d) The sending facility is responsible for all patient transfer arrangements, such as, transportation and staff escort, and coordinates the day and time of arrival with the receiving facility; and

(e) The sending facility arranges for the transfer of patient's medical record to the receiving facility.

(3) The sending facility must document the following in the patient's record:

(a) That the physician documented the medical suitability of the patient for transfer; and

(b) That the facility documented:

(i) Justification as to why the transfer is considered in the patient's best interests; and

(ii) The patient's wishes regarding transfer.

(4) The sending facility must contact the prosecuting attorney's office of the committing county, and defense counsel before the transfer. Where court orders need to be amended as a result of transfer of a patient, the relevant court must also be contacted in order to affect such amendments.

[Statutory Authority: Chapter 10.77 RCW, RCW 72.01.090, 70.02.290, 70.02.340, 71.05.560, 71.24.035 (5)(c), and 71.34.380. WSR 19-11-055, § 388-875-0070, filed 5/13/19, effective 6/13/19. Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05.560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-875-0070, filed 6/15/16, effective 7/16/16. Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, recodified as § 388-875-0070, filed 12/6/00, effective 1/6/01. Statutory Authority: RCW 74.05.560 [71.05.560]. WSR 91-22-044 (Order 3275), § 275-59-071, filed 10/31/91, effective 12/1/91. Statutory Authority: RCW 71.05.560. WSR 88-23-021 (Order 2724), § 275-59-071, filed 11/7/88.]

**WAC 388-875-0090 Conditional release.** (1) Any person committed to the secretary as criminally insane may make application to the secretary for conditional release.

(2) The administration is responsible for receiving and acting on applications for conditional release.

(3) The person making application for conditional release must not, under any circumstances, be released until there is a court hearing on the application, and recommendations and a court order authorizing conditional release has been issued.

(4) If conditional release is denied by the court the person making the applications may reapply after a period of six months from the date of denial.

(5) If the court grants conditional release and places the person making application under the supervision of the department, the department must make monthly reports for the first six months, and semi-annually thereafter, unless indicated otherwise by the committing court, concerning the conditionally released person's progress and compliance with the terms and conditions of conditional release. Such reports must be forwarded to the committing court, the prosecuting attorney, and the treatment facility in which the person was most recently housed.

(6) The following persons are designated to exercise power and authority of the secretary contained in RCW 10.77.190:

(a) The assistant secretary of the behavioral health administration, the director or designee of the office;

(b) The probation and parole office, if any, supervising the conditionally released person; and

(c) The treatment facility supervising the conditionally released person or from which the person was conditionally released.

[Statutory Authority: Chapter 10.77 RCW, RCW 72.01.090, 70.02.290, 70.02.340, 71.05.560, 71.24.035 (5)(c), and 71.34.380. WSR 19-11-055, § 388-875-0090, filed 5/13/19, effective 6/13/19. Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, recodified as § 388-875-0090, filed 12/6/00, effective 1/6/01. Statutory Authority: RCW 72.01.090. WSR 79-03-038 (Order 1373), § 275-59-080, filed 3/1/79; Order 846, § 275-59-080, filed 8/9/73.]

**WAC 388-875-0100 Retroactivity.** (1) This chapter shall apply to persons committed to the secretary or the department, under prior rules and regulations, as incompetent to stand trial or as being criminally insane and therefore requires that these individuals be provided:

(a) An individualized treatment plan;

(b) An evaluation to be forwarded to the committing court;

(c) Applicability of time limitations and requirements provided herein;

(d) A maximum release date; and

(e) An opportunity to apply for conditional release.

[Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, recodified as § 388-875-0100, filed 12/6/00, effective 1/6/01; Order 846, § 275-59-090, filed 8/9/73.]

**WAC 388-875-0110 Access to records by criminal justice agencies.**

Upon written request, criminal justice agencies must have access to the following documents developed pursuant to the procedures set forth in chapter 10.77 RCW. The most recent forensic:

- (1) Psychiatric assessment;
- (2) Release summary; and
- (3) Pretrial report of the examination, either inpatient or out-patient.

Other relevant information may be provided by agreement between the requesting criminal justice agency and the treatment facility, subject to federal and state confidentiality provisions.

[Statutory Authority: Chapter 10.77 RCW, RCW 72.01.090, 70.02.290, 70.02.340, 71.05.560, 71.24.035 (5)(c), and 71.34.380. WSR 19-11-055, § 388-875-0110, filed 5/13/19, effective 6/13/19. Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, § 388-875-0110, filed 12/6/00, effective 1/6/01.]

**WAC 388-875-0200 Forensic navigators—Access to jails.**

Jails that are holding forensic navigator clients must allow forensic navigators access to their clients held within that jail within twenty-four hours of a request by a forensic navigator.

[Statutory Authority: Chapter 10.77 RCW, RCW 10.77.074 and 72.01.090. WSR 21-01-017, § 388-875-0200, filed 12/3/20, effective 1/3/21.]

**WAC 388-875-0210 Forensic navigators—Access to records.**

A behavioral health, educational, or law enforcement agency, or a correctional facility must provide records to the forensic navigator that relate to an individual who is receiving forensic navigator services within seventy-two hours of a records request.

[Statutory Authority: Chapter 10.77 RCW, RCW 10.77.074 and 72.01.090. WSR 21-01-017, § 388-875-0210, filed 12/3/20, effective 1/3/21.]

**WAC 388-875-0220 Forensic navigator caseload.**

The department has discretion over the manner in which caseloads are prioritized. This prioritization must include, but is not limited to, prioritization of clients who are:

- (1) In jail awaiting competency services for whom DSHS has received an order to provide competency services, over those who are not; and

- (2) Frequent users of forensic mental health services over clients who are not frequent users of the forensic mental health system.

[Statutory Authority: Chapter 10.77 RCW, RCW 10.77.074 and 72.01.090. WSR 21-01-017, § 388-875-0220, filed 12/3/20, effective 1/3/21.]

**WAC 388-875-0230 Discharge of forensic navigator.**

Forensic navigator services must conclude upon the occurrence of any of the following events:

- (1) A forensic navigator client is determined competent to stand trial;
- (2) A forensic navigator client is determined not competent to stand trial, but is not ordered into the outpatient competency restoration program (OCRP);
- (3) A forensic navigator client has their criminal charges dismissed pending a civil commitment hearing;
- (4) A forensic navigator client enters or returns to jail due to a revocation of OCRP or the filing of new charges;
- (5) A forensic navigator client receives a new or amended order directing inpatient admission for restoration;
- (6) A forensic navigator client refuses further forensic navigator services after the court ordered restoration period ends; or
- (7) In other situations, as deemed appropriate by the department, in its sole discretion.

[Statutory Authority: Chapter 10.77 RCW, RCW 10.77.074 and 72.01.090. WSR 21-01-017, § 388-875-0230, filed 12/3/20, effective 1/3/21.]