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SENATE BILL 5519

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State of Washington

61st Legislature

2009 Regular Session

By Senators Hargrove, Stevens, and Regala

Read first time 01/26/09. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to reform of competency evaluation and competency  
2 restoration procedures; amending RCW 10.77.060, 10.77.065, 10.77.084,  
3 10.77.086, 10.77.088, 10.77.163, 71.05.280, 71.05.290, 71.05.300,  
4 71.05.320, 71.05.425, 71.09.025, 71.09.030, and 71.09.060; adding new  
5 sections to chapter 10.77 RCW; and creating a new section.

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

7 **PART I**

8 **COMPETENCY EVALUATION AND RESTORATION**

9 **Sec. 101.** RCW 10.77.060 and 2004 c 9 s 1 are each amended to read  
10 as follows:

11 (1)(a) Whenever (~~a defendant has pleaded not guilty by reason of~~  
12 ~~insanity, or~~) there is reason to doubt (~~his or her~~) a defendant's  
13 competency, the court on its own motion or on the motion of any party  
14 shall (~~either appoint or~~) request the secretary to designate (~~at~~  
15 ~~least two~~) a qualified expert(~~s~~) or professional person(~~s, one of~~  
16 ~~whom shall be approved by the prosecuting attorney, to examine and~~  
17 ~~report upon the mental condition~~) to evaluate the competency of the  
18 defendant. The signed order of the court shall serve as authority for

1 the (~~experts~~) evaluator to be given access to all records held by any  
2 mental health, medical, educational, or correctional facility that  
3 relate to the present or past mental, emotional, or physical condition  
4 of the defendant. (~~At least one of the experts or professional~~  
5 ~~persons appointed shall be a developmental disabilities professional if~~  
6 ~~the court is advised by any party that the defendant may be~~  
7 ~~developmentally disabled. Upon agreement of the parties, the court may~~  
8 ~~designate one expert or professional person to conduct the examination~~  
9 ~~and report on the mental condition of the defendant. For purposes of~~  
10 ~~the examination, the court may order the defendant committed to)~~)

11 (b) If the defendant is being held in a jail or other detention  
12 facility, the court shall order the evaluation to occur in the jail or  
13 detention facility. The order shall state that the evaluator may  
14 request the defendant to be transported to a hospital or other suitably  
15 secure public or private mental health facility ((for a period of time  
16 necessary to complete the examination, but not to exceed fifteen days  
17 from the time of admission to the facility. If the defendant is being  
18 held in jail or other detention facility, upon agreement of the  
19 parties, the court may direct that the examination be conducted at the  
20 jail or other detention facility.

21 ~~(b) When a defendant is ordered to be committed for inpatient~~  
22 ~~examination under this subsection (1), the court may delay granting~~  
23 ~~bail until the defendant has been evaluated for competency or sanity~~  
24 ~~and appears before the court. Following the evaluation, in determining~~  
25 ~~bail the court shall consider: (i) Recommendations of the expert or~~  
26 ~~professional persons regarding the defendant's competency, sanity, or~~  
27 ~~diminished capacity; (ii) whether the defendant has a recent history of~~  
28 ~~one or more violent acts; (iii) whether the defendant has previously~~  
29 ~~been acquitted by reason of insanity or found incompetent; (iv) whether~~  
30 ~~it is reasonably likely the defendant will fail to appear for a future~~  
31 ~~court hearing; and (v) whether the defendant is a threat to public~~  
32 ~~safety)), if the evaluator determines that transportation to a hospital  
33 or secure facility is necessary in order to complete an accurate  
34 evaluation of the defendant. The evaluator shall provide written  
35 notice of such a request to the court, jail or detention facility, and  
36 representatives of both parties, and shall document the reason for such  
37 request in the evaluation report. No further order of the court shall~~

1 be necessary to effectuate transportation of the defendant under this  
2 subsection.

3 (c) The prosecutor shall send the order for evaluation to the  
4 secretary along with a copy of the charging document, certification of  
5 probable cause, police report, and a summary of the defendant's  
6 criminal history. These documents shall be provided as soon as  
7 possible, and no later than three business days after the order is  
8 signed. The court or either party may provide additional information  
9 to the secretary which it reasonably deems to be of assistance to the  
10 evaluation, unless such action would infringe upon ethical duties of  
11 the court, prosecutor, or defense counsel.

12 (d) If the defendant is being held in a jail or other detention  
13 facility, the evaluator shall complete his or her report of the  
14 evaluation within twenty-one days from the time of receipt by the  
15 secretary of the documents specified in (c) of this subsection, unless  
16 the evaluator has requested transportation of the defendant under (b)  
17 of this subsection, in which case the secretary shall work within  
18 available resources to minimize the length of time the defendant is  
19 required to spend in jail or detention pending completion of the  
20 evaluation. A defendant transported under (b) of this subsection may  
21 be admitted to a hospital or secure facility for only the length of  
22 time necessary to complete the evaluation, and for no longer than  
23 fifteen days.

24 (e) If at any point the evaluator becomes aware that the defendant  
25 may have a developmental disability, or if it appears that the  
26 characteristics of developmental disability may be a significant factor  
27 in the defendant's ability to participate in the criminal proceeding,  
28 the evaluation shall be performed by or in conjunction with a  
29 developmental disabilities professional.

30 (f) Failure of the secretary to meet time limitations for  
31 completion of an evaluation under this section shall not be cause for  
32 dismissal of criminal charges or give rise to a private right of action  
33 by the defendant. Remedies for a jail or detention center are limited  
34 to those specified in section 109(2) of this act. For good cause, the  
35 court may extend the time period for completion of an evaluation.

36 (g) Upon agreement by the parties, the court may appoint a  
37 qualified expert or professional person to evaluate the competency of  
38 the defendant instead of requesting the secretary to designate a

1 qualified expert or professional person. Only an expert designated by  
2 the secretary may request the defendant to be transported to a state  
3 hospital for an evaluation under (b) of this subsection.

4 (2) The court may direct that a qualified expert or professional  
5 person retained by or appointed for the defendant be permitted to  
6 witness the ((~~examination~~)) evaluation authorized by subsection (1) of  
7 this section, and that the defendant shall have access to all  
8 information obtained by the ((~~court appointed experts or professional~~  
9 ~~persons~~)) evaluator. The defendant's expert or professional person  
10 shall have the right to file his or her own report following the  
11 guidelines of subsection (3) of this section. If the defendant is  
12 indigent, the court shall upon the request of the defendant assist him  
13 or her in obtaining an expert or professional person.

14 (3) The report of the ((~~examination~~)) evaluation shall include the  
15 following:

- 16 (a) A description of the nature of the ((~~examination~~)) evaluation;
- 17 (b) A diagnosis of the mental condition of the defendant;
- 18 (c) ((~~If the defendant suffers from a mental disease or defect, or~~  
19 ~~is developmentally disabled,~~)) An opinion as to competency;
- 20 (d) ((~~If the defendant has indicated his or her intention to rely~~  
21 ~~on the defense of insanity pursuant to RCW 10.77.030, an opinion as to~~  
22 ~~the defendant's sanity at the time of the act~~;
- 23 (e) ~~When directed by the court, an opinion as to the capacity of~~  
24 ~~the defendant to have a particular state of mind which is an element of~~  
25 ~~the offense charged~~;
- 26 (f)) An opinion as to whether the defendant should be evaluated by  
27 a ((~~county~~)) designated mental health professional under chapter 71.05  
28 RCW((, and an opinion as to whether the defendant is a substantial  
29 danger to other persons, or presents a substantial likelihood of  
30 committing criminal acts jeopardizing public safety or security, unless  
31 kept under further control by the court or other persons or  
32 institutions)).

33 (4) The secretary may execute such agreements as appropriate and  
34 necessary to implement this section.

35 **Sec. 102.** RCW 10.77.065 and 2008 c 213 s 1 are each amended to  
36 read as follows:

37 (1)(a)(i) ((~~The facility conducting the evaluation~~)) An evaluator

1 appointed under RCW 10.77.060 or an expert or professional person  
2 appointed under section 106 of this act shall provide ~~((its))~~ a report  
3 and recommendation to the court in which the criminal proceeding is  
4 pending. A copy of the report and recommendation shall be provided to  
5 the designated mental health professional, the prosecuting attorney,  
6 the defense attorney, and the professional person at the local  
7 correctional facility where the defendant is being held, or if there is  
8 no professional person, to the person designated under (a)(ii) of this  
9 subsection. Upon request, the ~~((facility))~~ secretary shall also  
10 provide copies of any source documents relevant to the evaluation to  
11 the designated mental health professional. The report and  
12 recommendation shall be provided not less than twenty-four hours  
13 preceding the transfer of the defendant to the correctional facility in  
14 the county in which the criminal proceeding is pending.

15 (ii) If there is no professional person at the local correctional  
16 facility, the local correctional facility shall designate a  
17 professional person as defined in RCW 71.05.020 or, in cooperation with  
18 the regional support network, a professional person at the regional  
19 support network to receive the report and recommendation.

20 (iii) When a defendant is transferred to ~~((the facility conducting~~  
21 ~~the))~~ a hospital or other suitably secure facility for an evaluation,  
22 or upon commencement of a defendant's evaluation in the local  
23 correctional facility, the local correctional facility must notify the  
24 evaluator or the facility conducting the evaluation of the name of the  
25 professional person, or person designated under (a)(ii) of this  
26 subsection to receive the report and recommendation.

27 (b) If the ~~((facility concludes, under RCW 10.77.060(3)(f), the~~  
28 ~~person should be kept under further control, an evaluation shall be~~  
29 ~~conducted of such person))~~ report of an evaluation performed under RCW  
30 10.77.060, 10.77.084(5), or section 106 of this act recommends that a  
31 defendant in custody should be evaluated by a designated mental health  
32 professional under chapter 71.05 RCW~~((-))~~, the court shall order an  
33 evaluation be conducted by the ~~((appropriate))~~ designated mental health  
34 professional~~((-))~~ prior to the defendant's release from  
35 confinement ~~((for such person who is convicted, if sentenced to~~  
36 ~~confinement for twenty-four months or less; (ii) for any person who is~~  
37 ~~acquitted; or (iii) for any person: (A) Whose charges are dismissed~~  
38 ~~pursuant to RCW 10.77.086(4); or (B) whose nonfelony charges are~~

1 ~~dismissed))~~ following any conviction, dismissal, or acquittal, unless  
2 the defendant is sentenced to confinement for more than twenty-four  
3 months.

4 (2) ~~((The))~~ A designated mental health professional who conducts an  
5 evaluation under subsection (1)(b) of this section shall ~~((provide~~  
6 ~~written notification))~~ notify the persons identified in subsection  
7 (1)(a) of this section within twenty-four hours ~~((of the results of the~~  
8 ~~determination))~~ as to whether ~~((to commence))~~ proceedings were  
9 initiated against the defendant under chapter 71.05 RCW. ~~((The~~  
10 ~~notification shall be provided to the persons identified in subsection~~  
11 ~~(1)(a) of this section.))~~

12 (3) The ~~((prosecuting attorney))~~ petitioner in a proceeding  
13 initiated under subsection (2) of this section shall provide a copy of  
14 the results of ~~((any proceedings commenced by the designated mental~~  
15 ~~health professional under subsection (2) of this section to the~~  
16 ~~facility conducting the evaluation under this chapter))~~ the proceeding  
17 to the secretary.

18 (4) The fact of admission and all information and records compiled,  
19 obtained, or maintained in the course of providing services under this  
20 chapter may ~~((also))~~ be disclosed to the courts solely to prevent the  
21 entry of any evaluation or treatment order that is inconsistent with  
22 any order entered under chapter 71.05 RCW.

23 **Sec. 103.** RCW 10.77.084 and 2007 c 375 s 3 are each amended to  
24 read as follows:

25 (1)(a) If at any time during the pendency of an action and prior to  
26 judgment the court finds, following a report ~~((as provided in))~~ under  
27 RCW 10.77.060 or section 106 of this act, a defendant is incompetent,  
28 the court shall order the proceedings against the defendant be stayed  
29 except as provided in subsection (4) of this section. The court shall  
30 order the defendant to undergo a period of treatment for restoration of  
31 competency within the time limits established by RCW 10.77.086 and  
32 10.77.088 and the requirements of this section.

33 (b) ~~((A defendant found incompetent shall be evaluated at the~~  
34 ~~direction of the secretary and a determination made whether the~~  
35 ~~defendant is an individual with a developmental disability. Such~~  
36 ~~evaluation and determination shall be accomplished as soon as possible~~

1 following the court's placement of the defendant in the custody of the  
2 secretary.

3 (i) ~~When appropriate, and subject to available funds, if the~~  
4 ~~defendant is determined to be an individual with a developmental~~  
5 ~~disability, he or she may be placed in a program specifically reserved~~  
6 ~~for the treatment and training of persons with developmental~~  
7 ~~disabilities where the defendant shall have the right to habilitation~~  
8 ~~according to an individualized service plan specifically developed for~~  
9 ~~the particular needs of the defendant. A copy of the evaluation shall~~  
10 ~~be sent to the program.~~

11 (A) ~~The program shall be separate from programs serving persons~~  
12 ~~involved in any other treatment or habilitation program.~~

13 (B) ~~The program shall be appropriately secure under the~~  
14 ~~circumstances and shall be administered by developmental disabilities~~  
15 ~~professionals who shall direct the habilitation efforts.~~

16 (C) ~~The program shall provide an environment affording security~~  
17 ~~appropriate with the charged criminal behavior and necessary to protect~~  
18 ~~the public safety.~~

19 (ii) ~~The department may limit admissions of such persons to this~~  
20 ~~specialized program in order to ensure that expenditures for services~~  
21 ~~do not exceed amounts appropriated by the legislature and allocated by~~  
22 ~~the department for such services.~~

23 (iii) ~~The department may establish admission priorities in the~~  
24 ~~event that the number of eligible persons exceeds the limits set by the~~  
25 ~~department.~~

26 (e)) At the end of ~~((the mental health treatment and))~~ a  
27 competency restoration period ordered under (a) of this subsection, or  
28 at any time a professional person determines competency has been, or is  
29 unlikely to be, restored, the defendant shall be returned to court for  
30 a hearing. If, after notice and hearing, the court finds that  
31 competency has been restored, the stay entered under (a) of this  
32 subsection shall be lifted. ~~((If competency has not been restored, the~~  
33 ~~proceedings shall be dismissed.))~~ If the court ~~((concludes))~~ finds  
34 that competency has not been restored, but that further treatment  
35 within the time limits established by RCW 10.77.086 or 10.77.088 is  
36 likely to restore competency, the court may order ~~((that))~~ the  
37 defendant to undergo an additional period of treatment for purposes of

1 competency restoration (~~be continued. Such treatment may not extend~~  
2 ~~beyond the combination of time provided for in RCW 10.77.086 or~~  
3 ~~10.77.088~~)).

4 ~~((d))~~ (c) If at any time during the proceeding the court finds,  
5 following notice and hearing, ~~((a))~~ that the defendant is not competent  
6 and either is not likely to regain competency, or competency  
7 restoration treatment is not permitted, or all allowable periods of  
8 competency restoration treatment have been exhausted, the  
9 ~~((proceedings))~~ charges shall be dismissed without prejudice and the  
10 ~~((defendant shall be evaluated for civil commitment proceedings))~~ court  
11 shall enter the following order:

12 (i) If the charge was a felony, and was a serious offense as  
13 defined by RCW 10.77.092, the defendant shall be detained and  
14 transferred to a state hospital or other suitably secure mental health  
15 facility for purposes of evaluation under chapter 71.05 RCW.

16 (ii) If the charge was a nonfelony, and was a serious offense as  
17 defined by RCW 10.77.092, and the defendant was in custody and not on  
18 conditional release at the time of dismissal, the defendant shall be  
19 detained for an evaluation under chapter 71.05 RCW. The defendant may  
20 be transferred to an evaluation and treatment facility, state hospital,  
21 or other suitably secure mental health facility that consents to  
22 receive the defendant for purposes of the evaluation. The defendant  
23 may be detained in jail for no more than three days, excluding  
24 holidays, prior to transfer or evaluation under this subsection  
25 (1)(c)(ii). If the defendant is transferred, the defendant may be  
26 detained at the evaluation and treatment facility, state hospital, or  
27 other suitably secure mental health facility for up to seventy-two  
28 hours, excluding Saturdays, Sundays, and holidays, prior to the filing  
29 of a petition under chapter 71.05 RCW.

30 (iii) If the charge was not a serious offense as defined by RCW  
31 10.77.092, or if the charge was a nonfelony and the defendant was on  
32 conditional release at the time of dismissal, the court may order the  
33 defendant to be evaluated by a designated mental health professional,  
34 and shall do so if such evaluation is required by RCW 10.77.065(1)(b).  
35 If the defendant is in custody, or refuses to cooperate with the  
36 evaluation, the defendant may be detained for up to six hours for the  
37 completion of the evaluation.



1 (d) Notwithstanding any other limitations, a defendant who has  
2 multiple criminal charges may undergo competency restoration treatment  
3 for all charges for the longest time period allowable for any of the  
4 charges.

5 (2) If the defendant is referred to the designated mental health  
6 professional for consideration of ~~((initial))~~ detention ~~((proceedings))~~  
7 under chapter 71.05 RCW ~~((pursuant to this chapter))~~, the designated  
8 mental health professional shall provide ~~((prompt—written))~~  
9 notification of ~~((the results of the determination whether to commence~~  
10 ~~initial detention proceedings under chapter 71.05 RCW and))~~ whether the  
11 ~~((person))~~ defendant was detained according to RCW 10.77.065(2). ~~((The~~  
12 ~~notification shall be provided to the court in which the criminal~~  
13 ~~action was pending, the prosecutor, the defense attorney in the~~  
14 ~~criminal action, and the facility that evaluated the defendant for~~  
15 ~~competency.))~~

16 (3) ~~((The fact))~~ A finding that the defendant is ~~((unfit to~~  
17 ~~proceed))~~ not competent does not preclude any pretrial proceedings  
18 which do not require the personal participation of the defendant.

19 (4) A defendant receiving medication for either physical or mental  
20 problems shall not be prohibited from standing trial, if the medication  
21 either enables the defendant to understand the proceedings against him  
22 or her and to assist in his or her own defense, or does not disable him  
23 or her from so understanding and assisting in his or her own defense.

24 (5) At or before the conclusion of any ~~((commitment))~~ competency  
25 restoration period provided for by ~~((this section))~~ RCW 10.77.086 or  
26 10.77.088, the facility providing evaluation and treatment shall  
27 provide to the court a written report ~~((of examination))~~ which meets  
28 the requirements of RCW 10.77.060(3).

29 **Sec. 104.** RCW 10.77.086 and 2007 c 375 s 4 are each amended to  
30 read as follows:

31 ~~((1))~~ If ~~((the))~~ a defendant is charged with a felony and  
32 determined to be incompetent~~((7))~~:

33 (1) Until ((he or she)) the defendant has regained the competency  
34 necessary to understand the proceedings against him or her and assist  
35 in his or her own defense, or has been determined to be unlikely to  
36 regain competency ~~((pursuant to RCW 10.77.084(1)(c))~~, but in any event  
37 for a period of no longer than ninety days, the court~~((÷~~

1       ~~(a)) shall commit the defendant to the custody of the secretary~~  
2       ~~who shall place such defendant in an appropriate facility ((of the~~  
3       ~~department)) for evaluation and treatment((; or~~

4       ~~(b) May alternatively order the defendant to undergo evaluation and~~  
5       ~~treatment at some other facility as determined by the department, or~~  
6       ~~under the guidance and control of a professional person)).~~

7       (2) On or before expiration of the initial ~~((ninety-day))~~ period of  
8       commitment under subsection (1) of this section, the secretary shall  
9       provide the court and the parties with a report in accordance with RCW  
10       10.77.060(3). The secretary shall return the defendant to court  
11       ~~((shall conduct))~~ for a hearing, at which ~~((it))~~ the court shall  
12       determine by a preponderance of the evidence whether or not the  
13       defendant is incompetent as provided by RCW 10.77.084(1)(b).

14       (3) If, following a hearing under subsection (2) of this section,  
15       the court finds ~~((by a preponderance of the evidence))~~ that ~~((a))~~ the  
16       defendant ~~((charged with a felony is))~~ remains incompetent, the court  
17       ~~((shall have the option of extending the))~~ may order ~~((of commitment or~~  
18       ~~alternative))~~ a second period of competency restoration treatment for  
19       an additional ~~((ninety-day))~~ period~~(, but)~~ of up to ninety days.

20       (a) If a second period of competency restoration treatment would  
21       cause the defendant to be held in custody for a longer period than the  
22       defendant would have been likely to spend in custody if the defendant  
23       were convicted and sentenced to the top of the defendant's standard  
24       sentencing range, the court shall order a second period of competency  
25       restoration treatment only if it finds by a preponderance of the  
26       evidence following a hearing that further competency restoration  
27       treatment is in the public interest due to particular circumstances  
28       related to the nature of the alleged offense, the impact of the  
29       offense, the criminal history of the defendant, or the treatment  
30       history of the defendant.

31       (b) If treatment is extended, the court must at the time of  
32       extension set a date for a prompt hearing to determine the defendant's  
33       competency before the expiration of the second ninety-day period. The  
34       defendant, the defendant's attorney, or the prosecutor has the right to  
35       demand that the hearing be before a jury.

36       (c) No extension shall be ordered for a second ninety-day period,  
37       nor for any subsequent period as provided in subsection (4) of this  
38       section, if the defendant's incompetence has been determined by the

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

4 ~~(4) ((For persons charged with a felony, at the hearing upon the~~  
5 ~~expiration of the second ninety day period or at the end of the first~~  
6 ~~ninety day period, in the case of a defendant with a developmental~~  
7 ~~disability, if the jury or court finds that the defendant is~~  
8 ~~incompetent, the charges shall be dismissed without prejudice, and~~  
9 ~~either civil commitment proceedings shall be instituted or the court~~  
10 ~~shall order the release of the defendant. The criminal charges shall~~  
11 ~~not be dismissed)) If the court finds that the defendant remains~~  
12 ~~incompetent following a second period of competency restoration~~  
13 ~~treatment under subsection (3) of this section, the court may order a~~  
14 ~~third and final period of competency restoration treatment only~~ if the  
15 court or jury finds that: (a) The defendant (i) is a substantial  
16 danger to other persons; or (ii) presents a substantial likelihood of  
17 committing criminal acts jeopardizing public safety or security; and  
18 (b) there is a substantial probability that the defendant will regain  
19 competency within a reasonable period of time. In the event that the  
20 court or jury makes such a finding, the court may extend the period of  
21 commitment for up to an additional six months. A third period of  
22 competency restoration treatment shall not be ordered if the  
23 allegations against the defendant do not include one or more charges  
24 which are serious offenses as defined by RCW 10.77.092.

25 **Sec. 105.** RCW 10.77.088 and 2007 c 375 s 5 are each amended to  
26 read as follows:

27 ~~((1)(a))~~ If ~~((the))~~ a defendant is charged with a nonfelony  
28 ~~((crime which))~~ and determined to be incompetent:

29 (1) If the crime is a serious offense as ((identified in)) defined  
30 by RCW 10.77.092 ((and found by the court to be not competent)), then  
31 the court shall order the secretary to place the defendant:

32 ~~((i))~~ (a) At a secure mental health facility in the custody of  
33 the department or an agency designated by the department for mental  
34 health treatment and restoration of competency. The placement shall  
35 not exceed fourteen days in addition to any unused time of the  
36 evaluation under RCW 10.77.060(1)(d). The court shall compute this  
37 total period and include its computation in the order. The fourteen-

1 day period plus any unused time of the evaluation under RCW  
2 10.77.060(1)(d) shall be considered to include only the time the  
3 defendant is actually at the facility and shall be in addition to  
4 reasonable time for transport to or from the facility; or

5 ~~((+ii+))~~ (b) On conditional release for up to ninety days for  
6 mental health treatment and restoration of competency ~~((+or~~

7 ~~(iii) Any combination of this subsection.~~

8 ~~(b)(i) If the proceedings are dismissed under RCW 10.77.084 and the~~  
9 ~~defendant was on conditional release at the time of dismissal, the~~  
10 ~~court shall order the designated mental health professional within that~~  
11 ~~county to evaluate the defendant pursuant to chapter 71.05 RCW. The~~  
12 ~~evaluation may be conducted in any location chosen by the professional.~~

13 ~~(ii) If the defendant was in custody and not on conditional release~~  
14 ~~at the time of dismissal, the defendant shall be detained and sent to~~  
15 ~~an evaluation and treatment facility for up to seventy two hours,~~  
16 ~~excluding Saturdays, Sundays, and holidays, for evaluation for purposes~~  
17 ~~of filing a petition under chapter 71.05 RCW. The seventy two hour~~  
18 ~~period shall commence upon the next nonholiday weekday following the~~  
19 ~~court order and shall run to the end of the last nonholiday weekday~~  
20 ~~within the seventy two hour period)).~~

21 (2) If the defendant is charged with a nonfelony ~~((crime))~~ that is  
22 not a serious offense as defined in RCW 10.77.092 ~~((+~~

23 ~~The court may stay or dismiss proceedings and detain the defendant~~  
24 ~~for sufficient time to allow the designated mental health professional~~  
25 ~~to evaluate the defendant and consider initial detention proceedings~~  
26 ~~under chapter 71.05 RCW. The court must give notice to all parties at~~  
27 ~~least twenty four hours before the dismissal of any proceeding under~~  
28 ~~this subsection, and provide an opportunity for a hearing on whether to~~  
29 ~~dismiss the proceedings)), the court shall not order competency~~  
30 ~~restoration treatment, and shall instead enter an order under RCW~~  
31 ~~10.77.084(1)(c).~~

32 NEW SECTION. Sec. 106. A new section is added to chapter 10.77  
33 RCW to read as follows:

34 (1)(a) Whenever a defendant has pleaded not guilty by reason of  
35 insanity, or has advised the court or a party of his or her intention  
36 to rely upon a defense of diminished capacity and endorsed an expert  
37 witness who will testify in support of a diminished capacity defense,

1 the court, on motion of the prosecuting attorney, shall either appoint  
2 or request the secretary to designate a qualified expert or  
3 professional person to evaluate and report upon the mental condition of  
4 the defendant. The signed order of the court shall serve as authority  
5 for the evaluator to be given access to all records held by any mental  
6 health, medical, educational, or correctional facility that relate to  
7 the present or past mental, emotional, or physical condition of the  
8 defendant.

9 (b) The court shall not order the secretary to perform an  
10 evaluation under this section for reasons other than those specified in  
11 (a) of this subsection.

12 (c) A defendant who is transported to a state hospital or other  
13 suitably secure mental health facility for an evaluation under this  
14 section may be admitted for only the length of time necessary to  
15 complete the evaluation, and for no longer than fifteen days.

16 (d) The prosecutor shall send the order for evaluation to the  
17 secretary along with a copy of the charging document, certification of  
18 probable cause, police report, and a summary of the defendant's  
19 criminal history. The court or either party may provide additional  
20 information to the secretary which it reasonably deems to be of  
21 assistance to the evaluation, unless such action would infringe upon  
22 ethical duties.

23 (2) The report of the evaluation shall include the following:

24 (a) A description of the nature of the evaluation;

25 (b) A diagnosis of the mental condition of the defendant;

26 (c) An opinion as to competency;

27 (d) If the defendant has indicated his or her intention to rely on  
28 the defense of insanity under RCW 10.77.030, an opinion as to the  
29 defendant's sanity at the time of the act, and an opinion as to whether  
30 the defendant is a substantial danger to other persons, or presents a  
31 substantial likelihood of committing criminal acts jeopardizing public  
32 safety or security, unless kept under further control by the court or  
33 other persons or institutions;

34 (e) When directed by the court, an opinion as to the capacity of  
35 the defendant to have a particular state of mind which is an element of  
36 the offense charged;

37 (f) An opinion as to whether the defendant should be evaluated by

1 a designated mental health professional for civil commitment under  
2 chapter 71.05 RCW prior to release from custody.

3 (3) The court may direct that a qualified expert or professional  
4 person retained by or appointed for the defendant be permitted to  
5 witness the evaluation authorized by subsection (1) of this section,  
6 and that the defendant shall have access to all information obtained by  
7 the evaluator. The defendant's expert or professional person has the  
8 right to file his or her own report following the guidelines of  
9 subsection (2) of this section. If the defendant is indigent, the  
10 court shall upon the request of the defendant assist him or her in  
11 obtaining an expert or professional person.

12 NEW SECTION. **Sec. 107.** A new section is added to chapter 10.77  
13 RCW to read as follows:

14 Statements made by a defendant during a competency evaluation,  
15 competency hearing, or competency restoration treatment shall not be  
16 admissible in the state's case in chief. After the state's case in  
17 chief, those statements may be admissible if a mental defense such as  
18 insanity or diminished capacity is asserted and in any event may be  
19 admissible to impeach testimony by the defendant.

20 NEW SECTION. **Sec. 108.** A new section is added to chapter 10.77  
21 RCW to read as follows:

22 Any defendant placed in the custody of the secretary for competency  
23 restoration treatment shall be evaluated at the direction of the  
24 secretary as soon as possible and a determination made whether the  
25 defendant is an individual with a developmental disability.

26 (1) When appropriate, and subject to available funds, if the  
27 defendant is determined to be an individual with a developmental  
28 disability, he or she may be placed in a program specifically reserved  
29 for the treatment and training of persons with developmental  
30 disabilities where the defendant has the right to habilitation  
31 according to an individualized service plan specifically developed for  
32 the particular needs of the defendant. A copy of the evaluation shall  
33 be sent to the program.

34 (a) The program shall be separate from programs serving persons  
35 involved in any other treatment or habilitation program.

1 (b) The program shall be appropriately secure under the  
2 circumstances and shall be administered by developmental disabilities  
3 professionals who shall direct the habilitation efforts.

4 (c) The program shall provide an environment affording security  
5 appropriate with the charged criminal behavior and necessary to protect  
6 the public safety.

7 (2) The department may limit admissions of such persons to this  
8 specialized program in order to ensure that expenditures for services  
9 do not exceed amounts appropriated by the legislature and allocated by  
10 the department for such services.

11 (3) The department may establish admission priorities in the event  
12 that the number of eligible persons exceeds the limits set by the  
13 department.

14 NEW SECTION. **Sec. 109.** A new section is added to chapter 10.77  
15 RCW to read as follows:

16 (1) Whenever a jail or detention center receives notice of a  
17 request or order requiring transfer of a defendant to a state hospital  
18 or other medical facility under RCW 10.77.060(1)(b) or 10.77.084(1)(c),  
19 the jail or detention center shall provide all medical information in  
20 its possession necessary for the admission of the defendant to the  
21 secretary within three days. The secretary shall not be responsible  
22 under subsection (2) of this section for unreasonable delays in  
23 transmission of medical information.

24 (2) If the secretary fails to complete a competency evaluation  
25 within the time limit prescribed by RCW 10.77.060(1)(d), the court may  
26 conduct a show cause hearing to determine why the evaluation was not  
27 completed within the allotted time. This hearing may include review of  
28 a corrective action plan entered under section 110(7) of this act. An  
29 order to show cause shall be set forth in writing and shall be served  
30 upon the secretary.

31 NEW SECTION. **Sec. 110.** A new section is added to chapter 10.77  
32 RCW to read as follows:

33 The department shall report annually to the legislature beginning  
34 October 1, 2010, concerning the waiting period for competency  
35 evaluations and competency restoration treatment during the past state  
36 fiscal year.

1 The report shall include:

2 (1) A statement of the number of competency evaluation referrals  
3 received, separated by state hospital catchment;

4 (2) A statement of the average waiting period for competency  
5 evaluations, presented on a monthly basis, and grouped by western state  
6 hospital catchment and eastern state hospital catchment. The  
7 department shall separate competency evaluations which occur entirely  
8 in a jail or detention center from other competency evaluations. The  
9 waiting period measured shall be from the time the secretary receives  
10 the order for evaluation and other documents identified in RCW  
11 10.77.060(1)(c) to the time of distribution of the evaluation report;

12 (3) A statement of the average waiting period for competency  
13 evaluations, presented on an annual basis, and itemized by county. The  
14 evaluations shall be separated and measured as in subsection (2) of  
15 this section;

16 (4) A statement of the average waiting period for inpatient  
17 competency restoration, presented on a monthly basis, and grouped by  
18 western state hospital catchment and eastern state hospital catchment.  
19 The waiting period measured shall be from the time the secretary  
20 receives the restoration referral to the time the defendant is  
21 transported to the state hospital, but shall not include any delay  
22 solely attributable to a failure by a jail or detention center to  
23 provide information required by section 109(1) of this act;

24 (5) A statement of the number of competency restoration treatment  
25 referrals received on an annual basis, separated by state hospital  
26 catchment. This information shall be separated into nonfelony  
27 referrals, first ninety-day felony referrals, second ninety-day felony  
28 referrals, and final one hundred eighty-day felony referrals. The  
29 statement shall include average length of stay information and the  
30 percentage of successful outcomes at each stage;

31 (6) A statement of the number of hearings held pursuant to section  
32 109(2) of this act during the reporting period, separated by state  
33 hospital catchment; and

34 (7) If the data indicates that the department has failed to comply  
35 with the time limits prescribed by RCW 10.77.060(1)(d) and 10.77.220,  
36 a statement describing a corrective action plan entered by the  
37 department to bring the department in compliance with these sections.



1 The department may include any additional information or  
2 subgroupings in the report that it determines to be appropriate.

3 **PART II**  
4 **TECHNICAL CHANGES**

5 **Sec. 201.** RCW 10.77.163 and 2008 c 213 s 4 are each amended to  
6 read as follows:

7 (1) Before a person committed under this chapter is permitted  
8 temporarily to leave a treatment facility for any period of time  
9 without constant accompaniment by facility staff, the superintendent,  
10 professional person in charge of a treatment facility, or his or her  
11 professional designee shall in writing notify the prosecuting attorney  
12 of any county to which the person is released and the prosecuting  
13 attorney of the county in which the criminal charges against the  
14 committed person were dismissed, of the decision conditionally to  
15 release the person. The notice shall be provided at least forty-five  
16 days before the anticipated release and shall describe the conditions  
17 under which the release is to occur.

18 (2) In addition to the notice required by subsection (1) of this  
19 section, the superintendent of each state institution designated for  
20 the custody, care, and treatment of persons committed under this  
21 chapter shall notify appropriate law enforcement agencies through the  
22 state patrol communications network of the furloughs of persons  
23 committed under RCW (~~(10.77.086)~~) 10.77.084(1)(c) or 10.77.110.  
24 Notification shall be made at least thirty days before the furlough,  
25 and shall include the name of the person, the place to which the person  
26 has permission to go, and the dates and times during which the person  
27 will be on furlough.

28 (3) Upon receiving notice that a person committed under this  
29 chapter is being temporarily released under subsection (1) of this  
30 section, the prosecuting attorney may seek a temporary restraining  
31 order to prevent the release of the person on the grounds that the  
32 person is dangerous to self or others.

33 (4) The notice requirements contained in this section shall not  
34 apply to emergency medical furloughs.

35 (5) The existence of the notice requirements contained in this

1 section shall not require any extension of the release date in the  
2 event the release plan changes after notification.

3 (6) The notice provisions of this section are in addition to those  
4 provided in RCW 10.77.205.

5 **Sec. 202.** RCW 71.05.280 and 2008 c 213 s 6 are each amended to  
6 read as follows:

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

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

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

20 (3) Such person has been determined to be incompetent and criminal  
21 charges have been dismissed pursuant to RCW (~~(10.77.086(4))~~)  
22 10.77.084(1)(c), and has committed acts constituting a felony, and as  
23 a result of a mental disorder, presents a substantial likelihood of  
24 repeating similar acts. In any proceeding pursuant to this subsection  
25 it shall not be necessary to show intent, willfulness, or state of mind  
26 as an element of the crime; or

27 (4) Such person is gravely disabled.

28 **Sec. 203.** RCW 71.05.290 and 2008 c 213 s 7 are each amended to  
29 read as follows:

30 (1) At any time during a person's fourteen day intensive treatment  
31 period, the professional person in charge of a treatment facility or  
32 his or her professional designee or the designated mental health  
33 professional may petition the superior court for an order requiring  
34 such person to undergo an additional period of treatment. Such  
35 petition must be based on one or more of the grounds set forth in RCW  
36 71.05.280.

1 (2) The petition shall summarize the facts which support the need  
2 for further confinement and shall be supported by affidavits signed by  
3 two examining physicians, or by one examining physician and examining  
4 mental health professional. The affidavits shall describe in detail  
5 the behavior of the detained person which supports the petition and  
6 shall explain what, if any, less restrictive treatments which are  
7 alternatives to detention are available to such person, and shall state  
8 the willingness of the affiant to testify to such facts in subsequent  
9 judicial proceedings under this chapter.

10 (3) If a person has been determined to be incompetent pursuant to  
11 RCW ((~~10.77.086(4)~~)) 10.77.084(1)(c), then the professional person in  
12 charge of the treatment facility or his or her professional designee or  
13 the designated mental health professional may directly file a petition  
14 for one hundred eighty day treatment under RCW 71.05.280(3). No  
15 petition for initial detention or fourteen day detention is required  
16 before such a petition may be filed.

17 **Sec. 204.** RCW 71.05.300 and 2008 c 213 s 8 are each amended to  
18 read as follows:

19 (1) The petition for ninety day treatment shall be filed with the  
20 clerk of the superior court at least three days before expiration of  
21 the fourteen-day period of intensive treatment. At the time of filing  
22 such petition, the clerk shall set a time for the person to come before  
23 the court on the next judicial day after the day of filing unless such  
24 appearance is waived by the person's attorney, and the clerk shall  
25 notify the designated mental health professional. The designated  
26 mental health professional shall immediately notify the person  
27 detained, his or her attorney, if any, and his or her guardian or  
28 conservator, if any, the prosecuting attorney, and the regional support  
29 network administrator, and provide a copy of the petition to such  
30 persons as soon as possible. The regional support network  
31 administrator or designee may review the petition and may appear and  
32 testify at the full hearing on the petition.

33 (2) At the time set for appearance the detained person shall be  
34 brought before the court, unless such appearance has been waived and  
35 the court shall advise him or her of his or her right to be represented  
36 by an attorney and of his or her right to a jury trial. If the  
37 detained person is not represented by an attorney, or is indigent or is

1 unwilling to retain an attorney, the court shall immediately appoint an  
2 attorney to represent him or her. The court shall, if requested,  
3 appoint a reasonably available licensed physician, psychologist, or  
4 psychiatrist, designated by the detained person to examine and testify  
5 on behalf of the detained person.

6 (3) The court may, if requested, also appoint a professional person  
7 as defined in RCW 71.05.020 to seek less restrictive alternative  
8 courses of treatment and to testify on behalf of the detained person.  
9 In the case of a person with a developmental disability who has been  
10 determined to be incompetent pursuant to RCW (~~(10.77.086(4))~~)  
11 10.77.084(1)(c), then the appointed professional person under this  
12 section shall be a developmental disabilities professional.

13 (4) The court shall also set a date for a full hearing on the  
14 petition as provided in RCW 71.05.310.

15 **Sec. 205.** RCW 71.05.320 and 2008 c 213 s 9 are each amended to  
16 read as follows:

17 (1) If the court or jury finds that grounds set forth in RCW  
18 71.05.280 have been proven and that the best interests of the person or  
19 others will not be served by a less restrictive treatment which is an  
20 alternative to detention, the court shall remand him or her to the  
21 custody of the department or to a facility certified for ninety day  
22 treatment by the department for a further period of intensive treatment  
23 not to exceed ninety days from the date of judgment: PROVIDED, That

24 (a) If the grounds set forth in RCW 71.05.280(3) are the basis of  
25 commitment, then the period of treatment may be up to but not exceed  
26 one hundred eighty days from the date of judgment in a facility  
27 certified for one hundred eighty day treatment by the department.

28 (b) If the committed person has a developmental disability and has  
29 been determined incompetent pursuant to RCW (~~(10.77.086(4))~~)  
30 10.77.084(1)(c), and the best interests of the person or others will  
31 not be served by a less-restrictive treatment which is an alternative  
32 to detention, the court shall remand him or her to the custody of the  
33 department or to a facility certified for one hundred eighty-day  
34 treatment by the department. When appropriate and subject to available  
35 funds, treatment and training of such persons must be provided in a  
36 program specifically reserved for the treatment and training of persons  
37 with developmental disabilities. A person so committed shall receive

1 habilitation services pursuant to an individualized service plan  
2 specifically developed to treat the behavior which was the subject of  
3 the criminal proceedings. The treatment program shall be administered  
4 by developmental disabilities professionals and others trained  
5 specifically in the needs of persons with developmental disabilities.  
6 The department may limit admissions to this specialized program in  
7 order to ensure that expenditures for services do not exceed amounts  
8 appropriated by the legislature and allocated by the department for  
9 such services. The department may establish admission priorities in  
10 the event that the number of eligible persons exceeds the limits set by  
11 the department. An order for treatment less restrictive than  
12 involuntary detention may include conditions, and if such conditions  
13 are not adhered to, the designated mental health professional or  
14 developmental disabilities professional may order the person  
15 apprehended under the terms and conditions of RCW 71.05.340.

16 (2) If the court or jury finds that grounds set forth in RCW  
17 71.05.280 have been proven, but finds that treatment less restrictive  
18 than detention will be in the best interest of the person or others,  
19 then the court shall remand him or her to the custody of the department  
20 or to a facility certified for ninety day treatment by the department  
21 or to a less restrictive alternative for a further period of less  
22 restrictive treatment not to exceed ninety days from the date of  
23 judgment: PROVIDED, That if the grounds set forth in RCW 71.05.280(3)  
24 are the basis of commitment, then the period of treatment may be up to  
25 but not exceed one hundred eighty days from the date of judgment.

26 (3) The person shall be released from involuntary treatment at the  
27 expiration of the period of commitment imposed under subsection (1) or  
28 (2) of this section unless the superintendent or professional person in  
29 charge of the facility in which he or she is confined, or in the event  
30 of a less restrictive alternative, the designated mental health  
31 professional or developmental disabilities professional, files a new  
32 petition for involuntary treatment on the grounds that the committed  
33 person;

34 (a) During the current period of court ordered treatment: (i) Has  
35 threatened, attempted, or inflicted physical harm upon the person of  
36 another, or substantial damage upon the property of another, and (ii)  
37 as a result of mental disorder or developmental disability presents a  
38 likelihood of serious harm; or

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

5 (c) Is in custody pursuant to RCW 71.05.280(3) and as a result of  
6 mental disorder or developmental disability presents a substantial  
7 likelihood of repeating similar acts considering the charged criminal  
8 behavior, life history, progress in treatment, and the public safety;  
9 or

10 (d) Continues to be gravely disabled.

11 If the conduct required to be proven in (b) and (c) of this  
12 subsection was found by a judge or jury in a prior trial under this  
13 chapter, it shall not be necessary to reprove that element. Such new  
14 petition for involuntary treatment shall be filed and heard in the  
15 superior court of the county of the facility which is filing the new  
16 petition for involuntary treatment unless good cause is shown for a  
17 change of venue. The cost of the proceedings shall be borne by the  
18 state.

19 The hearing shall be held as provided in RCW 71.05.310, and if the  
20 court or jury finds that the grounds for additional confinement as set  
21 forth in this subsection are present, the court may order the committed  
22 person returned for an additional period of treatment not to exceed one  
23 hundred eighty days from the date of judgment. At the end of the one  
24 hundred eighty day period of commitment, the committed person shall be  
25 released unless a petition for another one hundred eighty day period of  
26 continued treatment is filed and heard in the same manner as provided  
27 in this subsection. Successive one hundred eighty day commitments are  
28 permissible on the same grounds and pursuant to the same procedures as  
29 the original one hundred eighty day commitment.

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

33 **Sec. 206.** RCW 71.05.425 and 2008 c 213 s 10 are each amended to  
34 read as follows:

35 (1)(a) Except as provided in subsection (2) of this section, at the  
36 earliest possible date, and in no event later than thirty days before  
37 conditional release, final release, authorized leave under RCW

1 71.05.325(2), or transfer to a facility other than a state mental  
2 hospital, the superintendent shall send written notice of conditional  
3 release, release, authorized leave, or transfer of a person committed  
4 under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex,  
5 violent, or felony harassment offense pursuant to RCW ((~~10.77.086(4)~~))  
6 10.77.084(1)(c) to the following:

7 (i) The chief of police of the city, if any, in which the person  
8 will reside; and

9 (ii) The sheriff of the county in which the person will reside.

10 (b) The same notice as required by (a) of this subsection shall be  
11 sent to the following, if such notice has been requested in writing  
12 about a specific person committed under RCW 71.05.280(3) or  
13 71.05.320(3)(c) following dismissal of a sex, violent, or felony  
14 harassment offense pursuant to RCW ((~~10.77.086(4)~~)) 10.77.084(1)(c):

15 (i) The victim of the sex, violent, or felony harassment offense  
16 that was dismissed pursuant to RCW ((~~10.77.086(4)~~)) 10.77.084(1)(c)  
17 preceding commitment under RCW 71.05.280(3) or 71.05.320(3)(c) or the  
18 victim's next of kin if the crime was a homicide;

19 (ii) Any witnesses who testified against the person in any court  
20 proceedings; and

21 (iii) Any person specified in writing by the prosecuting attorney.  
22 Information regarding victims, next of kin, or witnesses requesting the  
23 notice, information regarding any other person specified in writing by  
24 the prosecuting attorney to receive the notice, and the notice are  
25 confidential and shall not be available to the person committed under  
26 this chapter.

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

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

32 (2) If a person committed under RCW 71.05.280(3) or 71.05.320(3)(c)  
33 following dismissal of a sex, violent, or felony harassment offense  
34 pursuant to RCW ((~~10.77.086(4)~~)) 10.77.084(1)(c) escapes, the  
35 superintendent shall immediately notify, by the most reasonable and  
36 expedient means available, the chief of police of the city and the  
37 sheriff of the county in which the person resided immediately before  
38 the person's arrest. If previously requested, the superintendent shall

1 also notify the witnesses and the victim of the sex, violent, or felony  
2 harassment offense that was dismissed pursuant to RCW (~~(10.77.086(4))~~)  
3 10.77.084(1)(c) preceding commitment under RCW 71.05.280(3) or  
4 71.05.320(3) or the victim's next of kin if the crime was a homicide.  
5 In addition, the secretary shall also notify appropriate parties  
6 pursuant to RCW 71.05.390(18). If the person is recaptured, the  
7 superintendent shall send notice to the persons designated in this  
8 subsection as soon as possible but in no event later than two working  
9 days after the department learns of such recapture.

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

13 (4) The superintendent shall send the notices required by this  
14 chapter to the last address provided to the department by the  
15 requesting party. The requesting party shall furnish the department  
16 with a current address.

17 (5) For purposes of this section the following terms have the  
18 following meanings:

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

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

21 (c) "Next of kin" means a person's spouse, parents, siblings, and  
22 children;

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

25 **Sec. 207.** RCW 71.09.025 and 2008 c 213 s 11 are each amended to  
26 read as follows:

27 (1)(a) When it appears that a person may meet the criteria of a  
28 sexually violent predator as defined in RCW 71.09.020(16), the agency  
29 with jurisdiction shall refer the person in writing to the prosecuting  
30 attorney of the county where that person was charged, three months  
31 prior to:

32 (i) The anticipated release from total confinement of a person who  
33 has been convicted of a sexually violent offense;

34 (ii) The anticipated release from total confinement of a person  
35 found to have committed a sexually violent offense as a juvenile;

36 (iii) Release of a person who has been charged with a sexually



1 violent offense and who has been determined to be incompetent to stand  
2 trial pursuant to RCW (~~10.77.086(4)~~) 10.77.084(1)(c); or

3 (iv) Release of a person who has been found not guilty by reason of  
4 insanity of a sexually violent offense pursuant to RCW 10.77.020(3).

5 (b) The agency shall provide the prosecutor with all relevant  
6 information including but not limited to the following information:

7 (i) A complete copy of the institutional records compiled by the  
8 department of corrections relating to the person, and any such out-of-  
9 state department of corrections' records, if available;

10 (ii) A complete copy, if applicable, of any file compiled by the  
11 indeterminate sentence review board relating to the person;

12 (iii) All records relating to the psychological or psychiatric  
13 evaluation and/or treatment of the person;

14 (iv) A current record of all prior arrests and convictions, and  
15 full police case reports relating to those arrests and convictions; and

16 (v) A current mental health evaluation or mental health records  
17 review.

18 (2) This section applies to acts committed before, on, or after  
19 March 26, 1992.

20 (3) The agency, its employees, and officials shall be immune from  
21 liability for any good-faith conduct under this section.

22 (4) As used in this section, "agency with jurisdiction" means that  
23 agency with the authority to direct the release of a person serving a  
24 sentence or term of confinement and includes the department of  
25 corrections, the indeterminate sentence review board, and the  
26 department of social and health services.

27 **Sec. 208.** RCW 71.09.030 and 2008 c 213 s 12 are each amended to  
28 read as follows:

29 When it appears that: (1) A person who at any time previously has  
30 been convicted of a sexually violent offense is about to be released  
31 from total confinement on, before, or after July 1, 1990; (2) a person  
32 found to have committed a sexually violent offense as a juvenile is  
33 about to be released from total confinement on, before, or after July  
34 1, 1990; (3) a person who has been charged with a sexually violent  
35 offense and who has been determined to be incompetent to stand trial is  
36 about to be released, or has been released on, before, or after July 1,  
37 1990, pursuant to RCW (~~10.77.086(4)~~) 10.77.084(1)(c); (4) a person

1 who has been found not guilty by reason of insanity of a sexually  
2 violent offense is about to be released, or has been released on,  
3 before, or after July 1, 1990, pursuant to RCW 10.77.020(3), 10.77.110  
4 (1) or (3), or 10.77.150; or (5) a person who at any time previously  
5 has been convicted of a sexually violent offense and has since been  
6 released from total confinement and has committed a recent overt act;  
7 and it appears that the person may be a sexually violent predator, the  
8 prosecuting attorney of the county where the person was convicted or  
9 charged or the attorney general if requested by the prosecuting  
10 attorney may file a petition alleging that the person is a "sexually  
11 violent predator" and stating sufficient facts to support such  
12 allegation.

13 **Sec. 209.** RCW 71.09.060 and 2008 c 213 s 13 are each amended to  
14 read as follows:

15 (1) The court or jury shall determine whether, beyond a reasonable  
16 doubt, the person is a sexually violent predator. In determining  
17 whether or not the person would be likely to engage in predatory acts  
18 of sexual violence if not confined in a secure facility, the fact  
19 finder may consider only placement conditions and voluntary treatment  
20 options that would exist for the person if unconditionally released  
21 from detention on the sexually violent predator petition. The  
22 community protection program under RCW 71A.12.230 may not be considered  
23 as a placement condition or treatment option available to the person if  
24 unconditionally released from detention on a sexually violent predator  
25 petition. When the determination is made by a jury, the verdict must  
26 be unanimous.

27 If, on the date that the petition is filed, the person was living  
28 in the community after release from custody, the state must also prove  
29 beyond a reasonable doubt that the person had committed a recent overt  
30 act. If the state alleges that the prior sexually violent offense that  
31 forms the basis for the petition for commitment was an act that was  
32 sexually motivated as provided in RCW 71.09.020(15)(c), the state must  
33 prove beyond a reasonable doubt that the alleged sexually violent act  
34 was sexually motivated as defined in RCW 9.94A.030.

35 If the court or jury determines that the person is a sexually  
36 violent predator, the person shall be committed to the custody of the  
37 department of social and health services for placement in a secure

1 facility operated by the department of social and health services for  
2 control, care, and treatment until such time as: (a) The person's  
3 condition has so changed that the person no longer meets the definition  
4 of a sexually violent predator; or (b) conditional release to a less  
5 restrictive alternative as set forth in RCW 71.09.092 is in the best  
6 interest of the person and conditions can be imposed that would  
7 adequately protect the community.

8 If the court or unanimous jury decides that the state has not met  
9 its burden of proving that the person is a sexually violent predator,  
10 the court shall direct the person's release.

11 If the jury is unable to reach a unanimous verdict, the court shall  
12 declare a mistrial and set a retrial within forty-five days of the date  
13 of the mistrial unless the prosecuting agency earlier moves to dismiss  
14 the petition. The retrial may be continued upon the request of either  
15 party accompanied by a showing of good cause, or by the court on its  
16 own motion in the due administration of justice provided that the  
17 respondent will not be substantially prejudiced. In no event may the  
18 person be released from confinement prior to retrial or dismissal of  
19 the case.

20 (2) If the person charged with a sexually violent offense has been  
21 found incompetent to stand trial, and is about to (~~(be)~~) be or has  
22 been released pursuant to RCW (~~(10.77.086(4))~~) 10.77.084(1)(c), and his  
23 or her commitment is sought pursuant to subsection (1) of this section,  
24 the court shall first hear evidence and determine whether the person  
25 did commit the act or acts charged if the court did not enter a finding  
26 prior to dismissal under RCW (~~(10.77.086(4))~~) 10.77.084(1)(c) that the  
27 person committed the act or acts charged. The hearing on this issue  
28 must comply with all the procedures specified in this section. In  
29 addition, the rules of evidence applicable in criminal cases shall  
30 apply, and all constitutional rights available to defendants at  
31 criminal trials, other than the right not to be tried while  
32 incompetent, shall apply. After hearing evidence on this issue, the  
33 court shall make specific findings on whether the person did commit the  
34 act or acts charged, the extent to which the person's incompetence or  
35 developmental disability affected the outcome of the hearing, including  
36 its effect on the person's ability to consult with and assist counsel  
37 and to testify on his or her own behalf, the extent to which the  
38 evidence could be reconstructed without the assistance of the person,

1 and the strength of the prosecution's case. If, after the conclusion  
2 of the hearing on this issue, the court finds, beyond a reasonable  
3 doubt, that the person did commit the act or acts charged, it shall  
4 enter a final order, appealable by the person, on that issue, and may  
5 proceed to consider whether the person should be committed pursuant to  
6 this section.

7 (3) The state shall comply with RCW 10.77.220 while confining the  
8 person pursuant to this chapter, except that during all court  
9 proceedings the person shall be detained in a secure facility. The  
10 department shall not place the person, even temporarily, in a facility  
11 on the grounds of any state mental facility or regional habilitation  
12 center because these institutions are insufficiently secure for this  
13 population.

14 (4) A court has jurisdiction to order a less restrictive  
15 alternative placement only after a hearing ordered pursuant to RCW  
16 71.09.090 following initial commitment under this section and in accord  
17 with the provisions of this chapter.

18 **PART III**  
19 **MISCELLANEOUS**

20 NEW SECTION. **Sec. 301.** Part headings used in this act are not any  
21 part of the law.

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