

SUBSTITUTE SENATE BILL 5519

State of Washington 61st Legislature 2009 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Hargrove, Stevens, and Regala)

READ FIRST TIME 02/23/09.

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:

PART I

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 detention facility,
12 the court shall order the evaluation to take place in the jail or
13 detention facility. The order shall state that the defendant may be
14 transported to a state hospital or other ((suitably)) secure ((public
15 or private)) mental health facility ((for a period of time necessary to
16 complete the examination, but not to exceed fifteen days from the time
17 of admission to the facility. If the defendant is being held in jail
18 or other detention facility, upon agreement of the parties, the court
19 may direct that the examination be conducted at the jail or other
20 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)) at the request of the evaluator, if the evaluator determines~~
33 that such action is necessary in order to complete an accurate
34 evaluation of the defendant. This request shall be provided in writing
35 to the jail or detention facility, court, and representatives of both
36 parties, and the reason for the request shall be documented in the
37 evaluation report. No further order of the court shall be necessary to
38 effectuate transportation of the defendant under this subsection.

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

9 (d) The report of an evaluation of a defendant who is being held in
10 custody at a jail or detention facility shall be completed within
11 twenty-one days from the time of receipt by the secretary of the
12 documents specified in (c) of this subsection, unless transportation of
13 the defendant to a hospital or secure mental health facility is
14 necessary under (b) of this subsection, in which case the secretary
15 shall authorize transportation of the defendant as soon as possible,
16 and within seven days of the request. A defendant transported under
17 (b) of this subsection may be admitted to a hospital or secure mental
18 health facility for only the length of time necessary to complete an
19 evaluation, and for no longer than fifteen days.

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

26 (f) For good cause, the court may extend the time period for
27 completion of an evaluation. Remedies for failure to meet time
28 limitations under this section are limited to those specified in
29 section 109(2) of this act.

30 (g) Upon agreement by the parties, the court may appoint a
31 qualified expert or professional person to evaluate the competency of
32 the defendant instead of requesting the secretary to designate an
33 evaluator. Only an evaluator designated by the secretary may request
34 that the defendant be transported to a state hospital for evaluation
35 under (b) of this subsection.

36 (2) The court may direct that a qualified expert or professional
37 person retained by or appointed for the defendant be permitted to
38 witness the ((~~examination~~)) evaluation authorized by subsection (1) of

1 this section, and that the defendant shall have access to all
2 information obtained by the (~~court appointed experts or professional~~
3 ~~persons~~) evaluator. The defendant's expert or professional person
4 shall have the right to file his or her own report following the
5 guidelines of subsection (3) of this section. If the defendant is
6 indigent, the court shall upon the request of the defendant assist him
7 or her in obtaining an expert or professional person.

8 (3) The report of the (~~examination~~) evaluation shall include the
9 following:

10 (a) A description of the nature of the (~~examination~~) evaluation;

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

12 (c) (~~If the defendant suffers from a mental disease or defect, or~~
13 ~~is developmentally disabled,~~) An opinion as to competency;

14 (d) (~~If the defendant has indicated his or her intention to rely~~
15 ~~on the defense of insanity pursuant to RCW 10.77.030, an opinion as to~~
16 ~~the defendant's sanity at the time of the act;~~

17 (~~When directed by the court, an opinion as to the capacity of~~
18 ~~the defendant to have a particular state of mind which is an element of~~
19 ~~the offense charged;~~

20 (~~f~~)) An opinion as to whether the defendant should be evaluated by
21 a (~~county~~) designated mental health professional under chapter 71.05
22 RCW(~~, and an opinion as to whether the defendant is a substantial~~
23 danger to other persons, or presents a substantial likelihood of
24 committing criminal acts jeopardizing public safety or security, unless
25 kept under further control by the court or other persons or
26 institutions).

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

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

31 (1)(a)(i) (~~The facility conducting the evaluation~~) An evaluator
32 appointed under RCW 10.77.060 or an expert or professional person
33 appointed under section 106 of this act shall provide (~~its~~) a report
34 and recommendation to the court in which the criminal proceeding is
35 pending. A copy of the report and recommendation shall be provided to
36 the designated mental health professional, the prosecuting attorney,
37 the defense attorney, and the professional person at the local

1 correctional facility where the defendant is being held, or if there is
2 no professional person, to the person designated under (a)(ii) of this
3 subsection. Upon request, the ~~((facility))~~ secretary shall also
4 provide copies of any source documents relevant to the evaluation to
5 the designated mental health professional. The report and
6 recommendation shall be provided not less than twenty-four hours
7 preceding the transfer of the defendant to the correctional facility in
8 the county in which the criminal proceeding is pending.

9 (ii) If there is no professional person at the local correctional
10 facility, the local correctional facility shall designate a
11 professional person as defined in RCW 71.05.020 or, in cooperation with
12 the regional support network, a professional person at the regional
13 support network to receive the report and recommendation.

14 (iii) When a defendant is transferred to ~~((the facility conducting
15 the))~~ a hospital or other secure facility for an evaluation, or upon
16 commencement of a defendant's evaluation in the local correctional
17 facility, the local correctional facility must notify the evaluator or
18 the facility conducting the evaluation of the name of the professional
19 person, or person designated under (a)(ii) of this subsection to
20 receive the report and recommendation.

21 (b) If the ~~((facility concludes, under RCW 10.77.060(3)(f), the
22 person should be kept under further control, an evaluation shall be
23 conducted of such person))~~ report of an evaluation performed under RCW
24 10.77.060, 10.77.084(5), or section 106 of this act recommends that a
25 defendant in custody should be evaluated by a designated mental health
26 professional under chapter 71.05 RCW~~((-))~~, the court shall order an
27 evaluation be conducted ~~((by the appropriate designated mental health
28 professional:—(i)))~~ prior to the individual's release from confinement
29 ~~((for such person who is convicted, if sentenced to confinement for
30 twenty four months or less; (ii) for any person who is acquitted; or
31 (iii) for any person:—(A) Whose charges are dismissed pursuant to RCW
32 10.77.086(4); or (B) whose nonfelony charges are dismissed))~~ following
33 any conviction, dismissal, or acquittal, unless the individual is
34 sentenced to confinement for more than twenty-four months.

35 (2) ~~((The))~~ A designated mental health professional conducting an
36 evaluation under subsection (1)(b) of this section shall ~~((provide
37 written notification))~~ notify the persons identified in subsection
38 (1)(a) of this section within twenty-four hours ~~((of the results of the~~

1 ~~determination)) as to whether ((to commence proceedings)) detention was
2 initiated under chapter 71.05 RCW. ~~((The notification shall be~~
3 ~~provided to the persons identified in subsection (1)(a) of this~~
4 ~~section.))~~~~

5 (3) ~~The ((prosecuting attorney))~~ petitioner in a proceeding
6 initiated under subsection (2) of this section shall provide a copy of
7 the results of ~~((any proceedings commenced by the designated mental~~
8 ~~health professional under subsection (2) of this section to the~~
9 ~~facility conducting the evaluation under this chapter))~~ the proceeding
10 to the secretary.

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

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

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

26 (b) ~~((A defendant found incompetent shall be evaluated at the~~
27 ~~direction of the secretary and a determination made whether the~~
28 ~~defendant is an individual with a developmental disability. Such~~
29 ~~evaluation and determination shall be accomplished as soon as possible~~
30 ~~following the court's placement of the defendant in the custody of the~~
31 ~~secretary.~~

32 (i) ~~When appropriate, and subject to available funds, if the~~
33 ~~defendant is determined to be an individual with a developmental~~
34 ~~disability, he or she may be placed in a program specifically reserved~~
35 ~~for the treatment and training of persons with developmental~~
36 ~~disabilities where the defendant shall have the right to habilitation~~

1 according to an individualized service plan specifically developed for
2 the particular needs of the defendant. A copy of the evaluation shall
3 be sent to the program.

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

6 (B) The program shall be appropriately secure under the
7 circumstances and shall be administered by developmental disabilities
8 professionals who shall direct the habilitation efforts.

9 (C) The program shall provide an environment affording security
10 appropriate with the charged criminal behavior and necessary to protect
11 the public safety.

12 (ii) The department may limit admissions of such persons to this
13 specialized program in order to ensure that expenditures for services
14 do not exceed amounts appropriated by the legislature and allocated by
15 the department for such services.

16 (iii) The department may establish admission priorities in the
17 event that the number of eligible persons exceeds the limits set by the
18 department.

19 (e)) At the end of ((the mental health treatment and)) a
20 competency restoration period ordered under (a) of this subsection, or
21 at any time a professional person determines competency has been, or is
22 unlikely to be, restored, the defendant shall be returned to court for
23 a hearing. If, after notice and hearing, the court finds that
24 competency has been restored, the stay entered under (a) of this
25 subsection shall be lifted. ((If competency has not been restored, the
26 proceedings shall be dismissed.)) If the court ((concludes)) finds
27 that competency has not been restored, but that further treatment
28 within the time limit((s)) established by RCW 10.77.086 ((or
29 10.77.088)) is likely to restore competency, the court may order
30 ((that)) the defendant to undergo an additional period of treatment for
31 purposes of competency restoration ((be continued. Such treatment may
32 not extend beyond the combination of time provided for in RCW 10.77.086
33 or 10.77.088)).

34 ((d)) (c) If at any time ((during the proceeding)) the court
35 finds, following notice and hearing, ((a)) that the defendant is not
36 competent and is either not likely to regain competency, or no current
37 or further period of competency restoration treatment is allowable
38 under RCW 10.77.086 or 10.77.088, the ((proceedings shall be

1 ~~dismissed~~) court shall dismiss the charges without prejudice and (~~the~~
2 ~~defendant shall be evaluated for civil commitment proceedings~~) enter
3 one of the following orders:

4 (i) If the charge was a felony, and was a serious offense as
5 defined by RCW 10.77.092, the court shall detain the defendant and
6 order the defendant to be transferred to a state hospital or other
7 suitably secure mental health facility for purpose of evaluation under
8 chapter 71.05 RCW.

9 (ii) If the charge was a nonfelony, and was a serious offense as
10 defined by RCW 10.77.092, and the defendant was in custody and not on
11 conditional release at the time of dismissal, the court may detain the
12 defendant and order the defendant to be transferred to an evaluation
13 and treatment facility for the purpose of evaluation under chapter
14 71.05 RCW. The defendant may be detained in jail for no longer than
15 three days, excluding holidays, prior to transfer or release, and
16 subsequently may be detained by the evaluation and treatment facility
17 for up to seventy-two hours, excluding Saturdays, Sundays, and
18 holidays, prior to the filing of a petition under chapter 71.05 RCW.
19 The secretary may consent to receive the defendant at a state hospital
20 in lieu of transfer to an evaluation and treatment facility. The
21 defendant may be screened prior to transfer to determine whether civil
22 commitment criteria are met.

23 (iii) If the charge was not a serious offense as defined by RCW
24 10.77.092, or if the charge was a nonfelony and the defendant was on
25 conditional release at the time of dismissal, the court may order the
26 defendant to undergo an evaluation by a designated mental health
27 professional, and shall do so if required by RCW 10.77.065(1)(b). A
28 defendant who is in custody, or who refuses to cooperate with the
29 evaluation, may be detained in custody for up to twelve hours for this
30 evaluation.

31 (d) Notwithstanding any other limitations, a defendant who has
32 multiple criminal charges may undergo competency restoration treatment
33 for all charges for the longest time period allowable for any of the
34 charges.

35 (2) If the defendant is referred to the designated mental health
36 professional for consideration of (~~initial~~) detention (~~proceedings~~)
37 under chapter 71.05 RCW (~~pursuant to this chapter~~), the designated
38 mental health professional shall provide (~~prompt written~~)

1 notification of (~~the results of the determination whether to commence~~
2 ~~initial detention proceedings under chapter 71.05 RCW and~~) whether the
3 (~~person~~) defendant was detained according to RCW 10.77.065(2). (~~The~~
4 ~~notification shall be provided to the court in which the criminal~~
5 ~~action was pending, the prosecutor, the defense attorney in the~~
6 ~~criminal action, and the facility that evaluated the defendant for~~
7 ~~competency.~~)

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

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

16 (5) At or before the conclusion of any (~~commitment~~) competency
17 restoration period provided for by (~~this section~~) RCW 10.77.086 or
18 10.77.088, the facility providing evaluation and treatment shall
19 provide to the court a written report (~~of examination~~) which meets
20 the requirements of RCW 10.77.060(3).

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

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

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

30 ~~(a)~~) shall commit the defendant to the custody of the secretary
31 who shall place such defendant in an appropriate facility (~~of the~~
32 ~~department~~) for evaluation and treatment(~~(+ or~~

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

36 (2) On or before expiration of the initial (~~ninety day~~) period of
37 commitment under subsection (1) of this section, the secretary shall

1 provide the court and the parties with a report in accordance with RCW
2 10.77.060(3). The secretary shall return the defendant to court
3 ((shall conduct)) for a hearing, at which ((it)) the court shall
4 determine by a preponderance of the evidence whether or not the
5 defendant is incompetent as provided by RCW 10.77.084(1)(b).

6 (3) If, following a hearing under subsection (2) of this section,
7 the court finds ((by a preponderance of the evidence)) that ((a)) the
8 defendant ((charged with a felony is)) remains incompetent, the court
9 ((shall have the option of extending the)) may order ((of commitment or
10 alternative)) a second period of competency restoration treatment for
11 an additional ((ninety day)) period(, but) of up to ninety days.

12 (a) If a second period of competency restoration treatment would
13 cause the defendant to be held in custody for a longer period than the
14 defendant would have been likely to spend in custody if the defendant
15 were convicted and sentenced to the top of the defendant's standard
16 sentencing range, the court shall not order a second period of
17 competency restoration treatment unless it finds by a preponderance of
18 the evidence following a hearing that further competency restoration
19 treatment is in the public interest due to particular circumstances
20 related to the nature or impact of the alleged offense, or the criminal
21 or treatment history of the defendant.

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

27 (c) No extension shall be ordered for a second ninety-day period,
28 nor for any subsequent period as provided in subsection (4) of this
29 section, if the defendant's incompetence has been determined by the
30 secretary to be solely the result of a developmental disability which
31 is such that competence is not reasonably likely to be regained during
32 an extension.

33 (4) ((For persons charged with a felony, at the hearing upon the
34 expiration of the second ninety day period or at the end of the first
35 ninety day period, in the case of a defendant with a developmental
36 disability, if the jury or court finds that the defendant is
37 incompetent, the charges shall be dismissed without prejudice, and
38 either civil commitment proceedings shall be instituted or the court

1 ~~shall order the release of the defendant. The criminal charges shall~~
2 ~~not be dismissed))~~ If the court or jury finds that the defendant
3 remains incompetent following a second period of competency restoration
4 treatment under subsection (3) of this section, the court may order a
5 third and final period of competency restoration treatment only if the
6 court or jury finds that: (a) The defendant (i) is a substantial
7 danger to other persons; or (ii) presents a substantial likelihood of
8 committing criminal acts jeopardizing public safety or security; and
9 (b) there is a substantial probability that the defendant will regain
10 competency within a reasonable period of time. In the event that the
11 court or jury makes such a finding, the court may extend the period of
12 commitment for up to an additional six months. A third period of
13 competency restoration treatment shall not be ordered if the
14 allegations against the defendant do not include one or more charges
15 which are serious offenses as defined by RCW 10.77.092.

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

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

20 (1) If at least one of the charges is a serious offense as
21 ~~((identified in))~~ defined by RCW 10.77.092 ~~((and found by the court to~~
22 ~~be not competent))~~, then the court shall order the secretary to place
23 the defendant:

24 ~~((i))~~ (a) At a secure mental health facility in the custody of
25 the department or an agency designated by the department for mental
26 health treatment and restoration of competency. The placement shall
27 not exceed fourteen days in addition to any unused time of the
28 evaluation under RCW 10.77.060(1)(d). The court shall compute this
29 total period and include its computation in the order. The fourteen-
30 day period plus any unused time of the evaluation under RCW
31 10.77.060(1)(d) shall be considered to include only the time the
32 defendant is actually at the facility and shall be in addition to
33 reasonable time for transport to or from the facility; or

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

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

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

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

14 (2) If the defendant is charged with a nonfelony ((~~erime~~)) that is
15 not a serious offense as defined in RCW 10.77.092((~~+~~

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

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

27 (1)(a) Whenever a defendant has pleaded not guilty by reason of
28 insanity, or has advised the court or a party of his or her intention
29 to rely upon a defense of diminished capacity and endorsed an expert
30 witness who will testify in support of a diminished capacity defense,
31 the court, on motion of the prosecuting attorney, shall either appoint
32 or request the secretary to designate a qualified expert or
33 professional person to evaluate and report upon the mental condition of
34 the defendant. The signed order of the court shall serve as authority
35 for the evaluator to be given access to all records held by any mental
36 health, medical, educational, or correctional facility that relate to

1 the present or past mental, emotional, or physical condition of the
2 defendant.

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

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

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

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

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

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

20 (c) An opinion as to competency;

21 (d) An opinion as to the defendant's sanity at the time of the act;

22 (e) An opinion as to whether the defendant is a substantial danger
23 to other persons, or presents a substantial likelihood of committing
24 criminal acts jeopardizing public safety or security, unless kept under
25 further control by the court or other persons or institutions;

26 (f) When directed by the court, an opinion as to the capacity of
27 the defendant to have a particular state of mind which is an element of
28 the offense charged;

29 (g) An opinion as to whether the defendant should be evaluated by
30 a designated mental health professional for civil commitment under
31 chapter 71.05 RCW prior to release from custody.

32 (3) The court may direct that a qualified expert or professional
33 person retained by or appointed for the defendant be permitted to
34 witness the evaluation authorized by subsection (1) of this section,
35 and that the defendant shall have access to all information obtained by
36 the evaluator. The defendant's expert or professional person has the
37 right to file his or her own report following the guidelines of

1 subsection (2) of this section. If the defendant is indigent, the
2 court shall upon the request of the defendant assist him or her in
3 obtaining an expert or professional person.

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

6 Statements made by a defendant during a competency evaluation,
7 competency hearing, or competency restoration treatment shall not be
8 admissible in the state's case in chief. After the state's case in
9 chief, those statements may be admissible according to the rules of
10 evidence if a mental defense such as insanity or diminished capacity is
11 asserted or to impeach testimony by the defendant.

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

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

18 (1) When appropriate, and subject to available funds, if the
19 defendant is determined to be an individual with a developmental
20 disability, he or she may be placed in a program specifically reserved
21 for the treatment and training of persons with developmental
22 disabilities where the defendant has the right to habilitation
23 according to an individualized service plan specifically developed for
24 the particular needs of the defendant. A copy of the evaluation shall
25 be sent to the program.

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

28 (b) The program shall be appropriately secure under the
29 circumstances and shall be administered by developmental disabilities
30 professionals who shall direct the habilitation efforts.

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

34 (2) The department may limit admissions of such persons to this
35 specialized program in order to ensure that expenditures for services

1 do not exceed amounts appropriated by the legislature and allocated by
2 the department for such services.

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

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

8 (1) Whenever a jail or detention center receives notice of a
9 request or order requiring transfer of a defendant to a state hospital
10 or other medical facility under RCW 10.77.060 or 10.77.084, the jail or
11 detention center shall provide all medical information in its
12 possession necessary for the admission of the defendant to the
13 secretary within three days. The secretary shall not be responsible
14 under subsection (2) of this section for unreasonable delays in
15 transmission of medical information.

16 (2) If the secretary fails to conduct or complete a competency
17 evaluation within the time limits prescribed by RCW 10.77.060(1)(d),
18 the court may conduct a show cause hearing upon the motion of any party
19 to determine why the evaluation was not conducted or completed within
20 the allotted time. An order to show cause shall be set forth in
21 writing and shall be served upon the secretary. If the court finds
22 that time limits were exceeded by the secretary without good cause, it
23 may set a fixed time for the completion of the evaluation and may order
24 the secretary to reimburse expenses to the jail for any excess days at
25 a rate of ninety dollars per day. The hearing may include review of a
26 corrective action plan entered under section 110(7) of this act.
27 Failure to conduct or complete a competency evaluation within time
28 limitations shall not be cause for dismissal of criminal charges.

29 (3) A jail is not civilly liable for delays by the secretary in
30 providing competency evaluation services under RCW 10.77.060, or for
31 the release of an individual from custody according to the requirements
32 of RCW 10.77.084.

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

35 The department shall report annually to the legislature beginning

1 October 1, 2010, concerning the waiting period for competency
2 evaluations and competency restoration treatment during the past state
3 fiscal year.

4 The report shall include:

5 (1) The number of competency evaluation referrals received, grouped
6 by state hospital catchment;

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

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

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

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

32 (6) The number of hearings held pursuant to section 109(2) of this
33 act during the reporting period, grouped by state hospital catchment;
34 and

35 (7) If the data indicates that the department has failed to comply
36 with the time limits prescribed by RCW 10.77.060(1)(d) and 10.77.220,
37 a description of a corrective action plan entered by the department to
38 bring the department into 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.

--- END ---