
SENATE BILL 5176

State of Washington

63rd Legislature

2013 Regular Session

By Senators Hargrove and Carrell

1 AN ACT Relating to criminal incompetency and civil commitment;
2 amending RCW 10.77.086, 10.77.0845, 10.77.088, 10.77.270, 71.05.235,
3 71.05.280, 71.05.320, 71.05.425, and 71.05.360; and creating a new
4 section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the public is
7 placed at grave risk by a small class of individuals who commit
8 repeated violent acts against others while suffering from the effects
9 of a mental condition and/or developmental disability that both
10 contributes to their criminal behaviors and renders them legally
11 incompetent to be held accountable for those behaviors. These
12 individuals continue to have the opportunity to commit serious violent
13 crimes because the primary statutory mechanisms designed to protect the
14 public from their violent behavior, criminal commitment to a penal
15 institution, or long-term commitment of the criminally insane, are
16 unavailable due to the legal incompetence of these individuals to stand
17 trial. The existing system of short-term commitments under the
18 Washington's involuntary treatment act is insufficient to protect the
19 public from the violent acts of these individuals because it fails to

1 recognize the important link in some individuals between continued
2 incompetence, a mental condition, and the risk to commit further acts
3 of violence. As currently enacted, the involuntary treatment act
4 presents an unacceptable risk that violent, incompetent, and mentally
5 ill individuals will be released back into society to commit further
6 acts of violence whereupon the cycle of short-term commitment and
7 violence repeats itself due to continued incompetence that is related
8 to the offender's underlying mental condition and/or developmental
9 disability. The legislature finds that changes to the involuntary
10 treatment act to account for this small class of individuals is
11 necessary in order to serve Washington's compelling interest in
12 protecting citizens from the repeated violent acts of a small group of
13 mentally ill and/or developmentally disabled incompetent offenders.

14 **Sec. 2.** RCW 10.77.086 and 2012 c 256 s 6 are each amended to read
15 as follows:

16 (1)(a) If the defendant is charged with a felony and determined to
17 be incompetent, until he or she has regained the competency necessary
18 to understand the proceedings against him or her and assist in his or
19 her own defense, or has been determined unlikely to regain competency
20 pursuant to RCW 10.77.084(1)(b), but in any event for a period of no
21 longer than ninety days, the court:

22 (i) Shall commit the defendant to the custody of the secretary who
23 shall place such defendant in an appropriate facility of the department
24 for evaluation and treatment; or

25 (ii) May alternatively order the defendant to undergo evaluation
26 and treatment at some other facility as determined by the department,
27 or under the guidance and control of a professional person.

28 (b) For a defendant whose highest charge is a class C felony, or a
29 class B felony that is not classified as violent under RCW 9.94A.030,
30 the maximum time allowed for the initial period of commitment for
31 competency restoration is forty-five days.

32 (2) On or before expiration of the initial period of commitment
33 under subsection (1) of this section the court shall conduct a hearing,
34 at which it shall determine whether or not the defendant is
35 incompetent.

36 (3) If the court finds by a preponderance of the evidence that a
37 defendant charged with a felony is incompetent, the court shall have

1 the option of extending the order of commitment or alternative
2 treatment for an additional period of ninety days, but the court must
3 at the time of extension set a date for a prompt hearing to determine
4 the defendant's competency before the expiration of the second
5 restoration period. The defendant, the defendant's attorney, or the
6 prosecutor has the right to demand that the hearing be before a jury.
7 No extension shall be ordered for a second or third restoration period
8 as provided in subsection (4) of this section if the defendant's
9 incompetence has been determined by the secretary to be solely the
10 result of a developmental disability which is such that competence is
11 not reasonably likely to be regained during an extension.

12 (4) For persons charged with a felony, at the hearing upon the
13 expiration of the second restoration period or at the end of the first
14 restoration period, in the case of a defendant with a developmental
15 disability, if the jury or court finds that the defendant is
16 incompetent, the charges shall be dismissed without prejudice, and the
17 court shall (~~either order the release of the defendant or~~) order the
18 defendant be committed to a state hospital (~~or secure mental health~~
19 ~~facility~~) as defined in RCW 72.23.020 for up to seventy-two hours
20 starting from admission to the facility, excluding Saturdays, Sundays,
21 and holidays, for evaluation for the purpose of filing a civil
22 commitment petition under chapter 71.05 RCW. The criminal charges
23 shall not be dismissed if the court or jury finds that: (a) The
24 defendant (i) is a substantial danger to other persons; or (ii)
25 presents a substantial likelihood of committing criminal acts
26 jeopardizing public safety or security; and (b) there is a substantial
27 probability that the defendant will regain competency within a
28 reasonable period of time. In the event that the court or jury makes
29 such a finding, the court may extend the period of commitment for up to
30 an additional six months.

31 **Sec. 3.** RCW 10.77.0845 and 2012 c 256 s 7 are each amended to read
32 as follows:

33 (1) A defendant found incompetent by the court under RCW 10.77.084
34 must be evaluated at the direction of the secretary and a determination
35 made whether the defendant is an individual with a developmental
36 disability. Such evaluation and determination must be accomplished as

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

3 (2) 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 has 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 must
10 be sent to the program.

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

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

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

19 (3) 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 (4) The department may establish admission priorities in the event
24 that the number of eligible persons exceeds the limits set by the
25 department.

26 (5) If access to this program is not available, the department
27 shall enroll the person into developmental disability division benefits
28 in the community based upon the finding made in the evaluation that the
29 person is an individual with a developmental disability.

30 **Sec. 4.** RCW 10.77.088 and 2007 c 375 s 5 are each amended to read
31 as follows:

32 (1)(a) If the defendant is charged with a nonfelony crime which is
33 a serious offense as identified in RCW 10.77.092 and found by the court
34 to be not competent, then the court shall order the secretary to place
35 the defendant:

36 (i) At a secure mental health facility in the custody of the
37 department or an agency designated by the department for mental health

1 treatment and restoration of competency. The placement shall not
2 exceed fourteen days in addition to any unused time of the evaluation
3 under RCW 10.77.060. The court shall compute this total period and
4 include its computation in the order. The fourteen-day period plus any
5 unused time of the evaluation under RCW 10.77.060 shall be considered
6 to include only the time the defendant is actually at the facility and
7 shall be in addition to reasonable time for transport to or from the
8 facility;

9 (ii) On conditional release for up to ninety days for mental health
10 treatment and restoration of competency; or

11 (iii) Any combination of this subsection.

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

17 (ii) If the defendant was in custody and not on conditional release
18 at the time of dismissal, the defendant shall be detained and sent to
19 ~~((an evaluation and treatment facility))~~ a state hospital as defined in
20 RCW 72.23.020 for up to seventy-two hours, excluding Saturdays,
21 Sundays, and holidays, for evaluation for purposes of filing a petition
22 under chapter 71.05 RCW. The seventy-two-hour period shall commence
23 upon the next nonholiday weekday following the court order and shall
24 run to the end of the last nonholiday weekday within the seventy-two-
25 hour period.

26 (2) If the defendant is charged with a nonfelony crime that is not
27 a serious offense as defined in RCW 10.77.092:

28 The court may stay or dismiss proceedings and detain the defendant
29 for sufficient time to allow the designated mental health professional
30 to evaluate the defendant and consider initial detention proceedings
31 under chapter 71.05 RCW. The court must give notice to all parties at
32 least twenty-four hours before the dismissal of any proceeding under
33 this subsection, and provide an opportunity for a hearing on whether to
34 dismiss the proceedings.

35 **Sec. 5.** RCW 10.77.270 and 2010 c 263 s 1 are each amended to read
36 as follows:

37 (1) The secretary shall establish an independent public safety

1 review panel for the purpose of advising the secretary and the courts
2 with respect to persons who have been found not guilty by reason of
3 insanity, or persons committed under the involuntary treatment act
4 where the court has made a special finding under RCW 71.05.280(3)(b).
5 The panel shall provide advice regarding all recommendations to the
6 secretary, decisions by the secretary, or actions pending in court:
7 (a) For a change in commitment status; (b) to allow furloughs or
8 temporary leaves accompanied by staff; (c) to not seek further
9 commitment terms under RCW 71.05.320; or ~~((e))~~ (d) to permit movement
10 about the grounds of the treatment facility, with or without the
11 accompaniment of staff.

12 (2) The members of the public safety review panel shall be
13 appointed by the governor for a renewable term of three years and shall
14 include the following:

- 15 (a) A psychiatrist;
- 16 (b) A licensed clinical psychologist;
- 17 (c) A representative of the department of corrections;
- 18 (d) A prosecutor or a representative of a prosecutor's association;
- 19 (e) A representative of law enforcement or a law enforcement
20 association;
- 21 (f) A consumer and family advocate representative; and
- 22 (g) A public defender or a representative of a defender's
23 association.

24 (3) Thirty days prior to issuing a recommendation for conditional
25 release under RCW 10.77.150 or forty-five days prior to issuing a
26 recommendation for release under RCW 10.77.200, the secretary shall
27 submit its recommendation with the committed person's application and
28 the department's risk assessment to the public safety review panel.
29 The public safety review panel shall complete an independent assessment
30 of the public safety risk entailed by the secretary's proposed
31 conditional release recommendation or release recommendation and
32 provide this assessment in writing to the secretary. The public safety
33 review panel may, within funds appropriated for this purpose, request
34 additional evaluations of the committed person. The public safety
35 review panel may indicate whether it is in agreement with the
36 secretary's recommendation, or whether it would issue a different
37 recommendation. The secretary shall provide the panel's assessment
38 when it is received along with any supporting documentation, including

1 all previous reports of evaluations of the committed person in the
2 person's hospital record, to the court, prosecutor in the county that
3 ordered the person's commitment, and counsel for the committed person.

4 (4) The secretary shall notify the public safety review panel at
5 appropriate intervals concerning any changes in the commitment or
6 custody status of persons found not guilty by reason of insanity. The
7 panel shall have access, upon request, to a committed person's complete
8 hospital record.

9 (5) The department shall provide administrative and financial
10 support to the public safety review panel. The department, in
11 consultation with the public safety review panel, may adopt rules to
12 implement this section.

13 (6) By December 1, 2014, the public safety review panel shall
14 report to the appropriate legislative committees the following:

15 (a) Whether the public safety review panel has observed a change in
16 statewide consistency of evaluations and decisions concerning changes
17 in the commitment status of persons found not guilty by reason of
18 insanity;

19 (b) Whether the public safety review panel should be given the
20 authority to make release decisions and monitor release conditions;

21 (c) Whether further changes in the law are necessary to enhance
22 public safety in cases where incompetency thwarts operation of the
23 criminal justice system and/or long-term commitment of the criminally
24 insane; and

25 (d) Any other issues the public safety review panel deems relevant.

26 **Sec. 6.** RCW 71.05.235 and 2008 c 213 s 5 are each amended to read
27 as follows:

28 (1) If an individual is referred to a designated mental health
29 professional under RCW 10.77.088(1)(b)(i), the designated mental health
30 professional shall examine the individual within forty-eight hours. If
31 the designated mental health professional determines it is not
32 appropriate to detain the individual or petition for a ninety-day less
33 restrictive alternative under RCW 71.05.230(4), that decision shall be
34 immediately presented to the superior court for hearing. The court
35 shall hold a hearing to consider the decision of the designated mental
36 health professional not later than the next judicial day. At the
37 hearing the superior court shall review the determination of the

1 designated mental health professional and determine whether an order
2 should be entered requiring the person to be evaluated at an evaluation
3 and treatment facility. No person referred to an evaluation and
4 treatment facility may be held at the facility longer than seventy-two
5 hours.

6 (2) If an individual is placed in (~~an evaluation and treatment~~
7 ~~facility~~) a state hospital as defined in RCW 72.23.020, under RCW
8 10.77.088(1)(b)(ii) or 10.77.086(4), a professional person shall
9 evaluate the individual for purposes of determining whether to file a
10 ninety-day inpatient or outpatient petition under chapter 71.05 RCW.
11 Before expiration of the seventy-two hour evaluation period authorized
12 under RCW 10.77.088(1)(b)(ii) or 10.77.086(4), the professional person
13 shall file a petition or, if the recommendation of the professional
14 person is to release the individual, present his or her recommendation
15 to the superior court of the county in which the criminal charge was
16 dismissed. The superior court shall review the recommendation not
17 later than forty-eight hours, excluding Saturdays, Sundays, and
18 holidays, after the recommendation is presented. If the court rejects
19 the recommendation to unconditionally release the individual, the court
20 may order the individual detained at a designated evaluation and
21 treatment facility for not more than a seventy-two hour evaluation and
22 treatment period and direct the individual to appear at a surety
23 hearing before that court within seventy-two hours, or the court may
24 release the individual but direct the individual to appear at a surety
25 hearing set before that court within eleven days, at which time the
26 prosecutor may file a petition under this chapter for ninety-day
27 inpatient or outpatient treatment. If a petition is filed by the
28 prosecutor, the court may order that the person named in the petition
29 be detained at the evaluation and treatment facility that performed the
30 evaluation under this subsection or order the respondent to be in
31 outpatient treatment. If a petition is filed but the individual fails
32 to appear in court for the surety hearing, the court shall order that
33 a mental health professional or peace officer shall take such person or
34 cause such person to be taken into custody and placed in an evaluation
35 and treatment facility to be brought before the court the next judicial
36 day after detention. Upon the individual's first appearance in court
37 after a petition has been filed, proceedings under RCW 71.05.310 and
38 71.05.320 shall commence. For an individual subject to this

1 subsection, the prosecutor or professional person may directly file a
2 petition for ninety-day inpatient or outpatient treatment and no
3 petition for initial detention or fourteen-day detention is required
4 before such a petition may be filed.

5 The court shall conduct the hearing on the petition filed under
6 this subsection within five judicial days of the date the petition is
7 filed. The court may continue the hearing upon the written request of
8 the person named in the petition or the person's attorney, for good
9 cause shown, which continuance shall not exceed five additional
10 judicial days. If the person named in the petition requests a jury
11 trial, the trial shall commence within ten judicial days of the date of
12 the filing of the petition. The burden of proof shall be by clear,
13 cogent, and convincing evidence and shall be upon the petitioner. The
14 person shall be present at such proceeding, which shall in all respects
15 accord with the constitutional guarantees of due process of law and the
16 rules of evidence pursuant to RCW 71.05.360 (8) and (9).

17 During the proceeding the person named in the petition shall
18 continue to be detained and treated until released by order of the
19 court. If no order has been made within thirty days after the filing
20 of the petition, not including any extensions of time requested by the
21 detained person or his or her attorney, the detained person shall be
22 released.

23 (3) If a designated mental health professional or the professional
24 person and prosecuting attorney for the county in which the criminal
25 charge was dismissed or attorney general, as appropriate, stipulate
26 that the individual does not present a likelihood of serious harm or is
27 not gravely disabled, the hearing under this section is not required
28 and the individual, if in custody, shall be released.

29 (4) The individual shall have the rights specified in RCW 71.05.360
30 (8) and (9).

31 **Sec. 7.** RCW 71.05.280 and 2008 c 213 s 6 are each amended to read
32 as follows:

33 At the expiration of the fourteen-day period of intensive treatment
34 or a restoration period under RCW 10.77.086, a person may be confined
35 for further treatment pursuant to RCW 71.05.320 if:

36 (1) Such person after having been taken into custody for evaluation
37 and treatment has threatened, attempted, or inflicted: (a) Physical

1 harm upon the person of another or himself or herself, or substantial
2 damage upon the property of another, and (b) as a result of mental
3 disorder presents a likelihood of serious harm; or

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

9 (3) Such person has been determined to be incompetent and criminal
10 charges have been dismissed pursuant to RCW 10.77.086(4), and has
11 committed acts constituting a felony, and as a result of a mental
12 disorder or developmental disability, presents a substantial likelihood
13 of repeating similar acts.

14 (a) In any proceeding pursuant to this subsection it shall not be
15 necessary to show intent, willfulness, or state of mind as an element
16 of the crime;

17 (b) For any person subject to commitment under this subsection
18 where the charge underlying the finding of incompetence is for a felony
19 classified as violent under RCW 9.94A.030, the court shall further
20 determine whether the mental disorder or developmental disability that
21 results in a substantial likelihood of committing similar acts is a
22 contributing factor to the person's continued inability to regain
23 competence; or

24 (4) Such person is gravely disabled.

25 **Sec. 8.** RCW 71.05.320 and 2009 c 323 s 2 are each amended to read
26 as follows:

27 (1) If the court or jury finds that grounds set forth in RCW
28 71.05.280 have been proven and that the best interests of the person or
29 others will not be served by a less restrictive treatment which is an
30 alternative to detention, the court shall remand him or her to the
31 custody of the department or to a facility certified for ninety day
32 treatment by the department for a further period of intensive treatment
33 not to exceed ninety days from the date of judgment. If the grounds
34 set forth in RCW 71.05.280(3) are the basis of commitment, then the
35 period of treatment may be up to but not exceed one hundred eighty days
36 from the date of judgment in a facility certified for one hundred
37 eighty day treatment by the department.

1 (2) If the court or jury finds that grounds set forth in RCW
2 71.05.280 have been proven, but finds that treatment less restrictive
3 than detention will be in the best interest of the person or others,
4 then the court shall remand him or her to the custody of the department
5 or to a facility certified for ninety day treatment by the department
6 or to a less restrictive alternative for a further period of less
7 restrictive treatment not to exceed ninety days from the date of
8 judgment. If the grounds set forth in RCW 71.05.280(3) are the basis
9 of commitment, then the period of treatment may be up to but not exceed
10 one hundred eighty days from the date of judgment.

11 (3) The person shall be released from involuntary treatment at the
12 expiration of the period of commitment imposed under subsection (1) or
13 (2) of this section unless the superintendent or professional person in
14 charge of the facility in which he or she is confined, or in the event
15 of a less restrictive alternative, the designated mental health
16 professional, files a new petition for involuntary treatment on the
17 grounds that the committed person:

18 (a) During the current period of court ordered treatment: (i) Has
19 threatened, attempted, or inflicted physical harm upon the person of
20 another, or substantial damage upon the property of another, and (ii)
21 as a result of mental disorder or developmental disability presents a
22 likelihood of serious harm; or

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

27 (c) Is in custody pursuant to RCW 71.05.280(3) and as a result of
28 mental disorder or developmental disability continues to present~~((s))~~
29 a substantial likelihood of repeating ~~((similar))~~ acts ~~((considering))~~
30 similar to the charged criminal behavior, when considering the person's
31 life history, progress in treatment, continued incompetence, and the
32 public safety. In cases under this subsection where the court has made
33 an affirmative special finding under RCW 71.05.280(3)(b), the
34 commitment shall continue for an additional one hundred eighty day
35 period whenever the petition presents prima facie evidence that the
36 person continues to suffer from a mental disorder or developmental
37 disability that results in a substantial likelihood of committing acts
38 similar to the charged criminal behavior, unless the person presents

1 proof through an admissible expert opinion that the person's condition
2 has so changed such that his or her competence has been restored, or
3 that the mental disorder or developmental disability contributing to
4 the legal incompetence no longer has an impact on the person's
5 continuing risk to commit acts similar to the charged criminal
6 behavior; or

7 (d) Continues to be gravely disabled.

8 If the conduct required to be proven in (b) and (c) of this
9 subsection was found by a judge or jury in a prior trial under this
10 chapter, it shall not be necessary to prove such conduct again.

11 (4) For a person committed under subsection (2) of this section who
12 has been remanded to a period of less restrictive treatment, in
13 addition to the grounds specified in subsection (3) of this section,
14 the designated mental health professional may file a new petition for
15 continued less restrictive treatment if:

16 (a) The person was previously committed by a court to detention for
17 involuntary mental health treatment during the thirty-six months that
18 preceded the person's initial detention date during the current
19 involuntary commitment cycle, excluding any time spent in a mental
20 health facility or in confinement as a result of a criminal conviction;

21 (b) In view of the person's treatment history or current behavior,
22 the person is unlikely to voluntarily participate in outpatient
23 treatment without an order for less restrictive treatment; and

24 (c) Outpatient treatment that would be provided under a less
25 restrictive treatment order is necessary to prevent a relapse,
26 decompensation, or deterioration that is likely to result in the person
27 presenting a likelihood of serious harm or the person becoming gravely
28 disabled within a reasonably short period of time.

29 (5) A new petition for involuntary treatment filed under subsection
30 (3) or (4) of this section shall be filed and heard in the superior
31 court of the county of the facility which is filing the new petition
32 for involuntary treatment unless good cause is shown for a change of
33 venue. The cost of the proceedings shall be borne by the state.

34 (6) The hearing shall be held as provided in RCW 71.05.310, and if
35 the court or jury finds that the grounds for additional confinement as
36 set forth in this section are present, the court may order the
37 committed person returned for an additional period of treatment not to
38 exceed one hundred eighty days from the date of judgment. At the end

1 of the one hundred eighty day period of commitment, the committed
2 person shall be released unless a petition for another one hundred
3 eighty day period of continued treatment is filed and heard in the same
4 manner as provided in this section. Successive one hundred eighty day
5 commitments are permissible on the same grounds and pursuant to the
6 same procedures as the original one hundred eighty day commitment.
7 However, a commitment is not permissible under subsection (4) of this
8 section if thirty-six months have passed since the last date of
9 discharge from detention for inpatient treatment that preceded the
10 current less restrictive alternative order, nor shall a commitment
11 under subsection (4) of this section be permissible if the likelihood
12 of serious harm in subsection (4)(c) of this section is based solely on
13 harm to the property of others.

14 (7) No person committed as provided in this section may be detained
15 unless a valid order of commitment is in effect. No order of
16 commitment can exceed one hundred eighty days in length.

17 **Sec. 9.** RCW 71.05.425 and 2011 c 305 s 5 are each amended to read
18 as follows:

19 (1)(a) Except as provided in subsection (2) of this section, at the
20 earliest possible date, and in no event later than thirty days before
21 conditional release, final release, authorized leave under RCW
22 71.05.325(2), or transfer to a facility other than a state mental
23 hospital, the superintendent shall send written notice of conditional
24 release, release, authorized leave, or transfer of a person committed
25 under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex,
26 violent, or felony harassment offense pursuant to RCW 10.77.086(4) to
27 the following:

28 (i) The chief of police of the city, if any, in which the person
29 will reside; (~~and~~)

30 (ii) The sheriff of the county in which the person will reside; and

31 (iii) The prosecuting attorney of the county in which the criminal
32 charges against the committed person were dismissed.

33 (b) The same notice as required by (a) of this subsection shall be
34 sent to the following, if such notice has been requested in writing
35 about a specific person committed under RCW 71.05.280(3) or
36 71.05.320(3)(c) following dismissal of a sex, violent, or felony
37 harassment offense pursuant to RCW 10.77.086(4):

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

5 (ii) Any witnesses who testified against the person in any court
6 proceedings;

7 (iii) Any person specified in writing by the prosecuting attorney.
8 Information regarding victims, next of kin, or witnesses requesting the
9 notice, information regarding any other person specified in writing by
10 the prosecuting attorney to receive the notice, and the notice are
11 confidential and shall not be available to the person committed under
12 this chapter; and

13 (iv) The chief of police of the city, if any, and the sheriff of
14 the county, if any, which had jurisdiction of the person on the date of
15 the applicable offense.

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

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

21 (2) If a person committed under RCW 71.05.280(3) or 71.05.320(3)(c)
22 following dismissal of a sex, violent, or felony harassment offense
23 pursuant to RCW 10.77.086(4) escapes, the superintendent shall
24 immediately notify, by the most reasonable and expedient means
25 available, the chief of police of the city and the sheriff of the
26 county in which the person escaped and in which the person resided
27 immediately before the person's arrest and the prosecuting attorney of
28 the county in which the criminal charges against the committed person
29 were dismissed. If previously requested, the superintendent shall also
30 notify the witnesses and the victim of the sex, violent, or felony
31 harassment offense that was dismissed pursuant to RCW 10.77.086(4)
32 preceding commitment under RCW 71.05.280(3) or 71.05.320(3) or the
33 victim's next of kin if the crime was a homicide. In addition, the
34 secretary shall also notify appropriate parties pursuant to RCW
35 71.05.390(18). If the person is recaptured, the superintendent shall
36 send notice to the persons designated in this subsection as soon as
37 possible but in no event later than two working days after the
38 department learns of such recapture.

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

4 (4) The superintendent shall send the notices required by this
5 chapter to the last address provided to the department by the
6 requesting party. The requesting party shall furnish the department
7 with a current address.

8 (5) For purposes of this section the following terms have the
9 following meanings:

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

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

12 (c) "Next of kin" means a person's spouse, state registered
13 domestic partner, parents, siblings, and children;

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

16 **Sec. 10.** RCW 71.05.360 and 2009 c 217 s 5 are each amended to read
17 as follows:

18 (1)(a) Every person involuntarily detained or committed under the
19 provisions of this chapter shall be entitled to all the rights set
20 forth in this chapter, which shall be prominently posted in the
21 facility, and shall retain all rights not denied him or her under this
22 chapter except as chapter 9.41 RCW may limit the right of a person to
23 purchase or possess a firearm or to qualify for a concealed pistol
24 license.

25 (b) No person shall be presumed incompetent as a consequence of
26 receiving an evaluation or voluntary or involuntary treatment for a
27 mental disorder, under this chapter or any prior laws of this state
28 dealing with mental illness. (~~Competency shall not be determined or~~
29 ~~withdrawn except under the provisions of chapter 10.77 or 11.88 RCW.~~)

30 (c) Any person who leaves a public or private agency following
31 evaluation or treatment for mental disorder shall be given a written
32 statement setting forth the substance of this section.

33 (2) Each person involuntarily detained or committed pursuant to
34 this chapter shall have the right to adequate care and individualized
35 treatment.

36 (3) The provisions of this chapter shall not be construed to deny

1 to any person treatment by spiritual means through prayer in accordance
2 with the tenets and practices of a church or religious denomination.

3 (4) Persons receiving evaluation or treatment under this chapter
4 shall be given a reasonable choice of an available physician,
5 psychiatric advanced registered nurse practitioner, or other
6 professional person qualified to provide such services.

7 (5) Whenever any person is detained for evaluation and treatment
8 pursuant to this chapter, both the person and, if possible, a
9 responsible member of his or her immediate family, personal
10 representative, guardian, or conservator, if any, shall be advised as
11 soon as possible in writing or orally, by the officer or person taking
12 him or her into custody or by personnel of the evaluation and treatment
13 facility where the person is detained that unless the person is
14 released or voluntarily admits himself or herself for treatment within
15 seventy-two hours of the initial detention:

16 (a) A judicial hearing in a superior court, either by a judge or
17 court commissioner thereof, shall be held not more than seventy-two
18 hours after the initial detention to determine whether there is
19 probable cause to detain the person after the seventy-two hours have
20 expired for up to an additional fourteen days without further automatic
21 hearing for the reason that the person is a person whose mental
22 disorder presents a likelihood of serious harm or that the person is
23 gravely disabled;

24 (b) The person has a right to communicate immediately with an
25 attorney; has a right to have an attorney appointed to represent him or
26 her before and at the probable cause hearing if he or she is indigent;
27 and has the right to be told the name and address of the attorney that
28 the mental health professional has designated pursuant to this chapter;

29 (c) The person has the right to remain silent and that any
30 statement he or she makes may be used against him or her;

31 (d) The person has the right to present evidence and to cross-
32 examine witnesses who testify against him or her at the probable cause
33 hearing; and

34 (e) The person has the right to refuse psychiatric medications,
35 including antipsychotic medication beginning twenty-four hours prior to
36 the probable cause hearing.

37 (6) When proceedings are initiated under RCW 71.05.153, no later
38 than twelve hours after such person is admitted to the evaluation and

1 treatment facility the personnel of the evaluation and treatment
2 facility or the designated mental health professional shall serve on
3 such person a copy of the petition for initial detention and the name,
4 business address, and phone number of the designated attorney and shall
5 forthwith commence service of a copy of the petition for initial
6 detention on the designated attorney.

7 (7) The judicial hearing described in subsection (5) of this
8 section is hereby authorized, and shall be held according to the
9 provisions of subsection (5) of this section and rules promulgated by
10 the supreme court.

11 (8) At the probable cause hearing the detained person shall have
12 the following rights in addition to the rights previously specified:

13 (a) To present evidence on his or her behalf;

14 (b) To cross-examine witnesses who testify against him or her;

15 (c) To be proceeded against by the rules of evidence;

16 (d) To remain silent;

17 (e) To view and copy all petitions and reports in the court file.

18 (9) Privileges between patients and physicians, psychologists, or
19 psychiatric advanced registered nurse practitioners are deemed waived
20 in proceedings under this chapter relating to the administration of
21 antipsychotic medications. As to other proceedings under this chapter,
22 the privileges shall be waived when a court of competent jurisdiction
23 in its discretion determines that such waiver is necessary to protect
24 either the detained person or the public.

25 The waiver of a privilege under this section is limited to records
26 or testimony relevant to evaluation of the detained person for purposes
27 of a proceeding under this chapter. Upon motion by the detained person
28 or on its own motion, the court shall examine a record or testimony
29 sought by a petitioner to determine whether it is within the scope of
30 the waiver.

31 The record maker shall not be required to testify in order to
32 introduce medical or psychological records of the detained person so
33 long as the requirements of RCW 5.45.020 are met except that portions
34 of the record which contain opinions as to the detained person's mental
35 state must be deleted from such records unless the person making such
36 conclusions is available for cross-examination.

37 (10) Insofar as danger to the person or others is not created, each
38 person involuntarily detained, treated in a less restrictive

1 alternative course of treatment, or committed for treatment and
2 evaluation pursuant to this chapter shall have, in addition to other
3 rights not specifically withheld by law, the following rights:

4 (a) To wear his or her own clothes and to keep and use his or her
5 own personal possessions, except when deprivation of same is essential
6 to protect the safety of the resident or other persons;

7 (b) To keep and be allowed to spend a reasonable sum of his or her
8 own money for canteen expenses and small purchases;

9 (c) To have access to individual storage space for his or her
10 private use;

11 (d) To have visitors at reasonable times;

12 (e) To have reasonable access to a telephone, both to make and
13 receive confidential calls, consistent with an effective treatment
14 program;

15 (f) To have ready access to letter writing materials, including
16 stamps, and to send and receive uncensored correspondence through the
17 mails;

18 (g) To discuss treatment plans and decisions with professional
19 persons;

20 (h) Not to consent to the administration of antipsychotic
21 medications and not to thereafter be administered antipsychotic
22 medications unless ordered by a court under RCW 71.05.217 or pursuant
23 to an administrative hearing under RCW 71.05.215;

24 (i) Not to consent to the performance of electroconvulsant therapy
25 or surgery, except emergency life-saving surgery, unless ordered by a
26 court under RCW 71.05.217;

27 (j) Not to have psychosurgery performed on him or her under any
28 circumstances;

29 (k) To dispose of property and sign contracts unless such person
30 has been adjudicated an incompetent in a court proceeding directed to
31 that particular issue.

32 (11) Every person involuntarily detained shall immediately be
33 informed of his or her right to a hearing to review the legality of his
34 or her detention and of his or her right to counsel, by the
35 professional person in charge of the facility providing evaluation and
36 treatment, or his or her designee, and, when appropriate, by the court.
37 If the person so elects, the court shall immediately appoint an
38 attorney to assist him or her.

1 (12) A person challenging his or her detention or his or her
2 attorney shall have the right to designate and have the court appoint
3 a reasonably available independent physician, psychiatric advanced
4 registered nurse practitioner, or licensed mental health professional
5 to examine the person detained, the results of which examination may be
6 used in the proceeding. The person shall, if he or she is financially
7 able, bear the cost of such expert examination, otherwise such expert
8 examination shall be at public expense.

9 (13) Nothing contained in this chapter shall prohibit the patient
10 from petitioning by writ of habeas corpus for release.

11 (14) Nothing in this chapter shall prohibit a person committed on
12 or prior to January 1, 1974, from exercising a right available to him
13 or her at or prior to January 1, 1974, for obtaining release from
14 confinement.

15 (15) Nothing in this section permits any person to knowingly
16 violate a no-contact order or a condition of an active judgment and
17 sentence or an active condition of supervision by the department of
18 corrections.

19 NEW SECTION. **Sec. 11.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

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