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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: S-3519.1/98

ATTY/TYPIST: KT:mos

BRIEF TITLE: Revising provisions relating to commitment of  
mentally ill persons.

1 AN ACT Relating to mental illness; amending RCW 71.05.010,  
2 71.05.020, 71.05.030, 71.05.035, 71.05.130, 71.05.150, 71.05.200,  
3 71.05.250, 71.05.280, 71.05.330, 71.05.340, 71.05.370, 71.05.390,  
4 71.05.530, 71.05.560, 10.77.005, 10.77.010, 10.77.020, 10.77.030,  
5 10.77.040, 10.77.060, 10.77.070, 10.77.080, 10.77.090, 10.77.110,  
6 10.77.140, 10.77.150, 10.77.180, 10.77.200, 10.77.210, 10.77.240, and  
7 10.97.030; adding new sections to chapter 71.05 RCW; adding new  
8 sections to chapter 10.77 RCW; creating new sections; recodifying RCW  
9 10.77.005; repealing RCW 71.05.015, 71.05.080, and 71.05.490; making  
10 an appropriation; providing effective dates; and declaring an  
11 emergency.

12

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

14

15 1. NEW SECTION. **Sec.**

1 It is the intent of the legislature to: (1) Clarify that it is the  
2 nature of a person's current conduct, current mental condition,  
3 history, and likelihood of committing future acts that pose a threat  
4 to public safety or himself or herself, rather than categorization of  
5 an offense, that should determine treatment procedures and level; (2)  
6 improve and clarify the sharing of information between the mental  
7 health and criminal justice systems; and (3) provide additional  
8 opportunities for mental health treatment for persons whose conduct  
9 threatens himself or herself or threatens public safety and has led  
10 to contact with the criminal justice system.

11

12 1. **Sec.** RCW 71.05.010 and 1997 c 112 s 2 are each amended  
13 to read as follows:

14 The provisions of this chapter are intended by the legislature:

15 (1) To (~~end~~) prevent inappropriate, indefinite commitment of  
16 mentally disordered persons and to eliminate legal disabilities that  
17 arise from such commitment;

18 (2) To provide prompt evaluation and timely and appropriate  
19 treatment of persons with serious mental disorders;

20 (3) To safeguard individual rights;

21 (4) To provide continuity of care for persons with serious mental  
22 disorders;

23 (5) To encourage the full use of all existing agencies,  
24 professional personnel, and public funds to prevent duplication of  
25 services and unnecessary expenditures;

26 (6) To encourage, whenever appropriate, that services be provided  
27 within the community;

28 (7) To protect the public safety.

29

30 1. **Sec.** RCW 71.05.020 and 1997 c 112 s 3 are each amended  
31 to read as follows:

32 For the purposes of this chapter:

33 (1) "Antipsychotic medications," also referred to as  
34 "neuroleptics," means that class of drugs primarily used to treat  
35 serious manifestations of mental illness associated with thought

1 disorders and ((currently)) includes phenothiazines, thioxanthenes,  
2 butyrophenone, dihydroindolone, and dibenzoxazipine;

3 (2) "Attending staff" means any person on the staff of a public  
4 or private agency having responsibility for the care and treatment of  
5 a patient;

6 (3) "Custody" means involuntary detention under the provisions of  
7 this chapter or chapter 10.77 RCW, uninterrupted by any period of  
8 unconditional release from a facility providing involuntary care and  
9 treatment;

10 (4) "Department" means the department of social and health  
11 services;

12 (5) "Developmental disabilities professional" means a person who  
13 has specialized training and three years of experience in directly  
14 treating or working with persons with developmental disabilities and  
15 is a psychiatrist, psychologist, or social worker, and such other  
16 developmental disabilities professionals as may be defined by rules  
17 adopted by the secretary;

18 (6) "Developmental disability" means that condition defined in  
19 RCW 71A.10.020(2);

20 (7) "Evaluation and treatment facility" means any facility which  
21 can provide directly, or by direct arrangement with other public or  
22 private agencies, emergency evaluation and treatment, outpatient  
23 care, and timely and appropriate inpatient care to persons suffering  
24 from a mental disorder, and which is certified as such by the  
25 department. A physically separate and separately operated portion of  
26 a state hospital may be designated as an evaluation and treatment  
27 facility. A facility which is part of, or operated by, the  
28 department or any federal agency will not require certification. No  
29 correctional institution or facility, or jail, shall be an evaluation  
30 and treatment facility within the meaning of this chapter;

31 (8) "Gravely disabled" means a condition in which a person, as a  
32 result of a mental disorder: (a) Is in danger of serious physical  
33 harm resulting from a failure to provide for his or her essential

1 human needs of health or safety((7))i or (b) manifests severe  
2 deterioration in routine functioning evidenced by repeated and  
3 escalating loss of cognitive or volitional control over his or her  
4 actions and is not receiving such care as is essential for his or her  
5 health or safety;

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

14 (10) "Individualized service plan" means a plan prepared by a  
15 developmental disabilities professional with other professionals as a  
16 team, for an individual with developmental disabilities, which shall  
17 state:

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

20 (b) The conditions and strategies necessary to achieve the  
21 purposes of habilitation;

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

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

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

27 (f) Where relevant in light of past criminal behavior and due  
28 consideration for public safety, the criteria for proposed movement  
29 to less-restrictive settings, criteria for proposed eventual  
30 discharge from involuntary confinement, and a projected possible date  
31 for discharge from involuntary confinement; and

32 (g) The type of residence immediately anticipated for the person  
33 and possible future types of residences;

1 (11) "Judicial commitment" means a commitment by a court pursuant  
2 to the provisions of this chapter;

3 (12) "Likelihood of serious harm" means:

4 (a) A substantial risk that: (i) Physical harm will be inflicted  
5 by an individual upon his or her own person, as evidenced by threats  
6 or attempts to commit suicide or inflict physical harm on oneself~~((  
7 ~~(b) a substantial risk that~~))~~; (ii) physical harm will be inflicted  
8 by an individual upon another, as evidenced by behavior which has  
9 caused such harm or which places another person or persons in  
10 reasonable fear of sustaining such harm~~((, or (c) a substantial risk~~  
11 ~~that~~)); or (iii) physical harm will be inflicted by an individual  
12 upon the property of others, as evidenced by behavior which has  
13 caused substantial loss or damage to the property of others; or  
14 (b) The individual has threatened the physical safety of another  
15 and has a history of one or more violent acts as defined in RCW  
16 10.77.010;

17 (13) "Mental disorder" means any organic, mental, or emotional  
18 impairment which has substantial adverse effects on an individual's  
19 cognitive or volitional functions;

20 (14) "Mental health professional" means a psychiatrist,  
21 psychologist, psychiatric nurse, or social worker, and such other  
22 mental health professionals as may be defined by rules adopted by the  
23 secretary pursuant to the provisions of this chapter;

24 (15) "Peace officer" means a law enforcement official of a public  
25 agency or governmental unit, and includes persons specifically given  
26 peace officer powers by any state law, local ordinance, or judicial  
27 order of appointment;

28 (16) "Private agency" means any person, partnership, corporation,  
29 or association not defined as a public agency, whether or not  
30 financed in whole or in part by public funds, which constitutes an  
31 evaluation and treatment facility or private institution, hospital,  
32 or sanitarium, which is conducted for, or includes a department or

1 ward conducted for the care and treatment of persons who are mentally  
2 ill;

3 (17) "Professional person" (~~shall~~) means a mental health  
4 professional, as above defined, and shall also mean a physician,  
5 registered nurse, and such others as may be defined by rules adopted  
6 by the secretary pursuant to the provisions of this chapter;

7 (18) "Psychiatrist" means a person having a license as a  
8 physician and surgeon in this state who has in addition completed  
9 three years of graduate training in psychiatry in a program approved  
10 by the American medical association or the American osteopathic  
11 association and is certified or eligible to be certified by the  
12 American board of psychiatry and neurology;

13 (19) "Psychologist" means a person who has been licensed as a  
14 psychologist pursuant to chapter 18.83 RCW;

15 (20) "Public agency" means any evaluation and treatment facility  
16 or institution, hospital, or sanitarium which is conducted for, or  
17 includes a department or ward conducted for, the care and treatment  
18 of persons who are mentally ill or deranged, if the agency is  
19 operated directly by, federal, state, county, or municipal  
20 government, or a combination of such governments;

21 (21) "Resource management services" has the meaning given in  
22 chapter 71.24 RCW;

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

25 (23) "Social worker" means a person with a master's or further  
26 advanced degree from an accredited school of social work or a degree  
27 deemed equivalent under rules adopted by the secretary.

28

29 1. **Sec.** RCW 71.05.030 and 1985 c 354 s 31 are each amended  
30 to read as follows:

31 Persons suffering from a mental disorder may not be involuntarily  
32 committed for treatment of such disorder except pursuant to  
33 provisions of this chapter, chapter 10.77 RCW (~~or its successor~~),

1 chapter 71.06 RCW, chapter 71.34 RCW, transfer pursuant to RCW  
2 72.68.031 through 72.68.037, or pursuant to court ordered evaluation  
3 and treatment not to exceed ninety days pending a criminal trial or  
4 sentencing.

5

6 1. **Sec.** RCW 71.05.035 and 1989 c 420 s 2 are each amended  
7 to read as follows:

8 ((~~With respect to chapter 420, Laws of 1989,~~)) The legislature  
9 finds that among those persons who endanger the safety of others by  
10 committing ((~~felony~~)) crimes are a small number of persons with  
11 developmental disabilities. While their conduct is not typical of  
12 the vast majority of persons with developmental disabilities who are  
13 responsible citizens, for their own welfare and for the safety of  
14 others the state may need to exercise control over those few  
15 dangerous individuals who are developmentally disabled, have been  
16 charged with ((~~felony~~)) crimes that involve a threat to public  
17 safety, and have been found either incompetent to stand trial or not  
18 guilty by reason of insanity. The legislature finds, however, that  
19 the use of civil commitment procedures under chapter 71.05 RCW to  
20 effect state control over dangerous developmentally disabled persons  
21 has resulted in their commitment to institutions for the mentally  
22 ill. The legislature finds that existing programs in mental  
23 institutions may be inappropriate for persons who are developmentally  
24 disabled because the services provided in mental institutions are  
25 oriented to persons with mental illness, a condition not necessarily  
26 associated with developmental disabilities. Therefore, the  
27 legislature believes that, where appropriate, and subject to  
28 available funds, persons with developmental disabilities who have  
29 been charged with ((~~felony~~)) crimes that involve a threat to public  
30 safety and have been found incompetent to stand trial or not guilty  
31 by reason of insanity should receive state services addressing their  
32 needs, that such services must be provided in conformance with an  
33 individual habilitation plan, and that their initial treatment should



1 be separate and discrete from treatment for persons involved in any  
2 other treatment or habilitation program in a manner consistent with  
3 the needs of public safety.

4

5 1. **Sec.** RCW 71.05.130 and 1991 c 105 s 3 are each amended  
6 to read as follows:

7 In any judicial proceeding for involuntary commitment or  
8 detention, or in any proceeding challenging such commitment or  
9 detention, the prosecuting attorney for the county in which the  
10 proceeding was initiated shall represent the individuals or agencies  
11 petitioning for commitment or detention and shall defend all  
12 challenges to such commitment or detention: PROVIDED, That (~~after~~  
13 ~~January 1, 1980,~~) the attorney general shall represent and provide  
14 legal services and advice to state hospitals or institutions with  
15 regard to all provisions of and proceedings under this chapter except  
16 in proceedings initiated by such hospitals and institutions seeking  
17 fourteen day detention.

18

19 1. **Sec.** RCW 71.05.150 and 1997 c 112 s 8 are each amended  
20 to read as follows:

21 (1)(a) When a mental health professional designated by the county  
22 receives information alleging that a person, as a result of a mental  
23 disorder: (i) Presents a likelihood of serious harm(~~(, or)~~); (ii) is  
24 gravely disabled; or (iii) is referred under RCW 10.77.090(3); such  
25 mental health professional, after investigation and evaluation of the  
26 specific facts alleged, and of the reliability and credibility of the  
27 person or persons, if any, providing information to initiate  
28 detention, may, if satisfied that the allegations are true and that  
29 the person will not voluntarily seek appropriate treatment, file a  
30 petition for initial detention. Before filing the petition, the  
31 county designated mental health professional must personally  
32 interview the person, unless the person refuses an interview, and

1 determine whether the person will voluntarily receive appropriate  
2 evaluation and treatment at an evaluation and treatment facility.

3 (b) Whenever it appears, by petition for initial detention, to  
4 the satisfaction of a judge of the superior court that a person  
5 presents, as a result of a mental disorder, a likelihood of serious  
6 harm, or is gravely disabled, and that the person has refused or  
7 failed to accept appropriate evaluation and treatment voluntarily,  
8 the judge may issue an order requiring the person to appear within  
9 twenty-four hours after service of the order at a designated  
10 evaluation and treatment facility for not more than a seventy-two  
11 hour evaluation and treatment period. The order shall state the  
12 address of the evaluation and treatment facility to which the person  
13 is to report and whether the required seventy-two hour evaluation and  
14 treatment services may be delivered on an outpatient or inpatient  
15 basis and that if the person named in the order fails to appear at  
16 the evaluation and treatment facility at or before the date and time  
17 stated in the order, such person may be involuntarily taken into  
18 custody for evaluation and treatment. The order shall also designate  
19 retained counsel or, if counsel is appointed from a list provided by  
20 the court, the name, business address, and telephone number of the  
21 attorney appointed to represent the person.

22 (c) The mental health professional shall then serve or cause to  
23 be served on such person, his or her guardian, and conservator, if  
24 any, a copy of the order to appear together with a notice of rights  
25 and a petition for initial detention. After service on such person  
26 the mental health professional shall file the return of service in  
27 court and provide copies of all papers in the court file to the  
28 evaluation and treatment facility and the designated attorney. The  
29 mental health professional shall notify the court and the prosecuting  
30 attorney that a probable cause hearing will be held within seventy-  
31 two hours of the date and time of outpatient evaluation or admission  
32 to the evaluation and treatment facility. The person shall be  
33 permitted to remain in his or her home or other place of his or her

1 choosing prior to the time of evaluation and shall be permitted to be  
2 accompanied by one or more of his or her relatives, friends, an  
3 attorney, a personal physician, or other professional or religious  
4 advisor to the place of evaluation. An attorney accompanying the  
5 person to the place of evaluation shall be permitted to be present  
6 during the admission evaluation. Any other individual accompanying  
7 the person may be present during the admission evaluation. The  
8 facility may exclude the individual if his or her presence would  
9 present a safety risk, delay the proceedings, or otherwise interfere  
10 with the evaluation.

11 (d) If the person ordered to appear does appear on or before the  
12 date and time specified, the evaluation and treatment facility may  
13 admit such person as required by RCW 71.05.170 or may provide  
14 treatment on an outpatient basis. If the person ordered to appear  
15 fails to appear on or before the date and time specified, the  
16 evaluation and treatment facility shall immediately notify the mental  
17 health professional designated by the county who may notify a peace  
18 officer to take such person or cause such person to be taken into  
19 custody and placed in an evaluation and treatment facility. Should  
20 the mental health professional notify a peace officer authorizing him  
21 or her to take a person into custody under the provisions of this  
22 subsection, he or she shall file with the court a copy of such  
23 authorization and a notice of detention. At the time such person is  
24 taken into custody there shall commence to be served on such person,  
25 his or her guardian, and conservator, if any, a copy of the original  
26 order together with a notice of detention, a notice of rights, and a  
27 petition for initial detention.

28 (2) When a mental health professional designated by the county  
29 receives information alleging that a person, as the result of a  
30 mental disorder, presents an imminent likelihood of serious harm, or  
31 is in imminent danger because of being gravely disabled, after  
32 investigation and evaluation of the specific facts alleged and of the  
33 reliability and credibility of the person or persons providing the

1 information if any, the mental health professional may take such  
2 person, or cause by oral or written order such person to be taken  
3 into emergency custody in an evaluation and treatment facility for  
4 not more than seventy-two hours as described in RCW 71.05.180.

5 (3) A peace officer may take such person or cause such person to  
6 be taken into custody and placed in an evaluation and treatment  
7 facility pursuant to subsection (1)(d) of this section.

8 (4) A peace officer may, without prior notice of the proceedings  
9 provided for in subsection (1) of this section, take or cause such  
10 person to be taken into custody and immediately delivered to an  
11 evaluation and treatment facility or the emergency department of a  
12 local hospital:

13 (a) Only pursuant to subsections (1)(d) and (2) of this section;  
14 or

15 (b) When he or she has reasonable cause to believe that such  
16 person is suffering from a mental disorder and presents an imminent  
17 likelihood of serious harm or is in imminent danger because of being  
18 gravely disabled.

19 (5) Persons delivered to evaluation and treatment facilities by  
20 peace officers pursuant to subsection (4)(b) of this section may be  
21 held by the facility for a period of up to twelve hours: PROVIDED,  
22 That they are examined by a mental health professional within three  
23 hours of their arrival. Within twelve hours of their arrival, the  
24 designated county mental health professional must file a supplemental  
25 petition for detention, and commence service on the designated  
26 attorney for the detained person.

27

28 1. **Sec.** RCW 71.05.200 and 1997 c 112 s 14 are each amended  
29 to read as follows:

30 (1) Whenever any person is detained for evaluation and treatment  
31 pursuant to this chapter, both the person and, if possible, a  
32 responsible member of his or her immediate family, guardian, or  
33 conservator, if any, shall be advised as soon as possible in writing

1 or orally, by the officer or person taking him or her into custody or  
2 by personnel of the evaluation and treatment facility where the  
3 person is detained that unless the person is released or voluntarily  
4 admits himself or herself for treatment within seventy-two hours of  
5 the initial detention:

6 (a) That a judicial hearing in a superior court, either by a  
7 judge or court commissioner thereof, shall be held not more than  
8 seventy-two hours after the initial detention to determine whether  
9 there is probable cause to detain the person after the seventy-two  
10 hours have expired for up to an additional fourteen days without  
11 further automatic hearing for the reason that the person is a  
12 mentally ill person whose mental disorder presents a likelihood of  
13 serious harm or that the person is gravely disabled;

14 (b) That the person has a right to communicate immediately with  
15 an attorney; has a right to have an attorney appointed to represent  
16 him or her before and at the probable cause hearing if he or she is  
17 indigent; and has the right to be told the name and address of the  
18 attorney the mental health professional has designated pursuant to  
19 this chapter;

20 (c) That the person has the right to (~~remain silent~~) refrain  
21 from testifying and that any statement he or she makes may be used  
22 against him or her: PROVIDED, That this subsection shall not  
23 prohibit the court from requiring a person who is alleged to be  
24 gravely disabled to answer inquiries from the judge or commissioner  
25 presiding over the proceeding, when such inquiries are related  
26 directly to determining whether the person is gravely disabled;

27 (d) That the person has the right to present evidence and to  
28 cross-examine witnesses who testify against him or her at the  
29 probable cause hearing; and

30 (e) That the person has the right to refuse medications,  
31 including antipsychotic medication beginning twenty-four hours prior  
32 to the probable cause hearing.

1 (2) When proceedings are initiated under RCW 71.05.150 (2), (3),  
2 or (4)(b), no later than twelve hours after such person is admitted  
3 to the evaluation and treatment facility the personnel of the  
4 evaluation and treatment facility or the designated mental health  
5 professional shall serve on such person a copy of the petition for  
6 initial detention and the name, business address, and phone number of  
7 the designated attorney and shall forthwith commence service of a  
8 copy of the petition for initial detention on the designated  
9 attorney.

10 (3) The judicial hearing described in subsection (1) of this  
11 section is hereby authorized, and shall be held according to the  
12 provisions of subsection (1) of this section and rules promulgated by  
13 the supreme court.

14

15 1. **Sec.** RCW 71.05.250 and 1989 c 120 s 7 are each amended  
16 to read as follows:

17 At the probable cause hearing the detained person shall have the  
18 following rights in addition to the rights previously specified:

19 (1) To present evidence on his or her behalf;

20 (2) To cross-examine witnesses who testify against him or her;

21 (3) To be proceeded against by the rules of evidence;

22 (4) To (~~remain silent~~) refrain from testifying: PROVIDED, That  
23 this subsection shall not prohibit the court from requiring a person  
24 who is alleged to be gravely disabled to answer inquiries from the  
25 judge or commissioner presiding over the proceeding, when such  
26 inquiries are related directly to determining whether the person is  
27 gravely disabled;

28 (5) To view and copy all petitions and reports in the court file.

29 The physician-patient privilege or the psychologist-client  
30 privilege shall be deemed waived in proceedings under this chapter  
31 relating to the administration of antipsychotic medications. As to  
32 other proceedings under this chapter, the privileges shall be waived  
33 when a court of competent jurisdiction in its discretion determines

1 that such waiver is necessary to protect either the detained person  
2 or the public.

3 The waiver of a privilege under this section is limited to  
4 records or testimony relevant to evaluation of the detained person  
5 for purposes of a proceeding under this chapter. Upon motion by the  
6 detained person or on its own motion, the court shall examine a  
7 record or testimony sought by a petitioner to determine whether it is  
8 within the scope of the waiver.

9 The record maker shall not be required to testify in order to  
10 introduce medical or psychological records of the detained person so  
11 long as the requirements of RCW 5.45.020 are met except that portions  
12 of the record which contains opinions as to the detained person's  
13 mental state must be deleted from such records unless the person  
14 making such conclusions is available for cross-examination.

15  
16 1. NEW SECTION. **Sec.** A new section is added to chapter  
17 71.05 RCW to read as follows:

18 In making a determination of whether there is a likelihood of  
19 serious harm in a hearing conducted under RCW 71.05.240 or 71.05.320,  
20 the court shall give great weight to whether the person has: (1) A  
21 recent history of one or more violent acts, as defined in RCW  
22 10.77.010; or (2) a recent history of one or more commitments under  
23 this chapter or its equivalent provisions under the laws of another  
24 state which were based on a likelihood of serious harm.

25  
26 1. **Sec.** RCW 71.05.280 and 1997 c 112 s 22 are each amended  
27 to read as follows:

28 At the expiration of the fourteen day period of intensive  
29 treatment, a person may be confined for further treatment pursuant to  
30 RCW 71.05.320 if:

31 (1) Such person after having been taken into custody for  
32 evaluation and treatment has threatened, attempted, or inflicted:  
33 (a) Physical harm upon the person of another or himself or herself,

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

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

8 (3) Such person has been determined to be incompetent and  
9 criminal charges have been dismissed pursuant to RCW 10.77.090(3),  
10 and has committed acts constituting a ((felony)) crime that is a  
11 threat to public safety, and as a result of a mental disorder,  
12 presents a substantial likelihood of repeating similar acts. In any  
13 proceeding pursuant to this subsection it shall not be necessary to  
14 show intent, willfulness, or state of mind as an element of the  
15 ((felony)) crime; or

16 (4) Such person is gravely disabled.

17

18 1. **Sec.** RCW 71.05.330 and 1997 c 112 s 27 are each amended  
19 to read as follows:

20 (1) Nothing in this chapter shall prohibit the superintendent or  
21 professional person in charge of the hospital or facility in which  
22 the person is being involuntarily treated from releasing him or her  
23 prior to the expiration of the commitment period when, in the opinion  
24 of the superintendent or professional person in charge, the person  
25 being involuntarily treated no longer presents a likelihood of  
26 serious harm.

27 Whenever the superintendent or professional person in charge of a  
28 hospital or facility providing involuntary treatment pursuant to this  
29 chapter releases a person prior to the expiration of the period of  
30 commitment, the superintendent or professional person in charge shall  
31 in writing notify the court which committed the person for treatment.

32 (2) Before a person committed under grounds set forth in RCW  
33 71.05.280(3) or 71.05.320(2)(c) is released under this section, the



1 superintendent or professional person in charge shall in writing  
2 notify the prosecuting attorney of the county in which the criminal  
3 charges against the committed person were dismissed, of the release  
4 date. Notice shall be provided at least thirty days before the  
5 release date. Within twenty days after receiving notice, the  
6 prosecuting attorney may petition the court in the county in which  
7 the person is being involuntarily treated for a hearing to determine  
8 whether the person is to be released. The prosecuting attorney shall  
9 provide a copy of the petition to the superintendent or professional  
10 person in charge of the hospital or facility providing involuntary  
11 treatment, the attorney, if any, and the guardian or conservator of  
12 the committed person. The court shall conduct a hearing on the  
13 petition within ten days of filing the petition. The committed  
14 person shall have the same rights with respect to notice, hearing,  
15 and counsel as for an involuntary treatment proceeding, except as set  
16 forth in this subsection and except that there shall be no right to  
17 jury trial. The issue to be determined at the hearing is whether or  
18 not the person may be released without substantial danger to other  
19 persons, or substantial likelihood of committing ((felonious))  
20 criminal acts jeopardizing public safety or security. If the court  
21 disapproves of the release, it may do so only on the basis of  
22 substantial evidence. Pursuant to the determination of the court  
23 upon the hearing, the committed person shall be released or shall be  
24 returned for involuntary treatment subject to release at the end of  
25 the period for which he or she was committed, or otherwise in  
26 accordance with the provisions of this chapter.

27

28 1. **Sec.** RCW 71.05.340 and 1997 c 112 s 28 are each amended  
29 to read as follows:

30 (1)(a) When, in the opinion of the superintendent or the  
31 professional person in charge of the hospital or facility providing  
32 involuntary treatment, the committed person can be appropriately  
33 served by outpatient treatment prior to or at the expiration of the

1 period of commitment, then such outpatient care may be required as a  
2 condition for early release for a period which, when added to the  
3 inpatient treatment period, shall not exceed the period of  
4 commitment. If the hospital or facility designated to provide  
5 outpatient treatment is other than the facility providing involuntary  
6 treatment, the outpatient facility so designated must agree in  
7 writing to assume such responsibility. A copy of the conditions for  
8 early release shall be given to the patient, the designated county  
9 mental health professional in the county in which the patient is to  
10 receive outpatient treatment, and to the court of original  
11 commitment.

12 (b) Before a person committed under grounds set forth in RCW  
13 71.05.280(3) or 71.05.320(2)(c) is conditionally released under (a)  
14 of this subsection, the superintendent or professional person in  
15 charge of the hospital or facility providing involuntary treatment  
16 shall in writing notify the prosecuting attorney of the county in  
17 which the criminal charges against the committed person were  
18 dismissed, of the decision to conditionally release the person.  
19 Notice and a copy of the conditions for early release shall be  
20 provided at least thirty days before the person is released from  
21 inpatient care. Within twenty days after receiving notice, the  
22 prosecuting attorney may petition the court in the county that issued  
23 the commitment order to hold a hearing to determine whether the  
24 person may be conditionally released and the terms of the conditional  
25 release. The prosecuting attorney shall provide a copy of the  
26 petition to the superintendent or professional person in charge of  
27 the hospital or facility providing involuntary treatment, the  
28 attorney, if any, and guardian or conservator of the committed  
29 person, and the court of original commitment. If the county in which  
30 the committed person is to receive outpatient treatment is the same  
31 county in which the criminal charges against the committed person  
32 were dismissed, then the court shall, upon the motion of the  
33 prosecuting attorney, transfer the proceeding to the court in that

1 county. The court shall conduct a hearing on the petition within ten  
2 days of the filing of the petition. The committed person shall have  
3 the same rights with respect to notice, hearing, and counsel as for  
4 an involuntary treatment proceeding, except as set forth in this  
5 subsection and except that there shall be no right to jury trial.  
6 The issue to be determined at the hearing is whether or not the  
7 person may be conditionally released without substantial danger to  
8 other persons, or substantial likelihood of committing ((~~felonious~~))  
9 criminal acts jeopardizing public safety or security. If the court  
10 disapproves of the conditional release, it may do so only on the  
11 basis of substantial evidence. Pursuant to the determination of the  
12 court upon the hearing, the conditional release of the person shall  
13 be approved by the court on the same or modified conditions or the  
14 person shall be returned for involuntary treatment on an inpatient  
15 basis subject to release at the end of the period for which he or she  
16 was committed, or otherwise in accordance with the provisions of this  
17 chapter.

18 (2) The hospital or facility designated to provide outpatient  
19 care or the secretary may modify the conditions for continued release  
20 when such modification is in the best interest of the person.  
21 Notification of such changes shall be sent to all persons receiving a  
22 copy of the original conditions.

23 (3)(a) If the hospital or facility designated to provide  
24 outpatient care, the designated county mental health professional, or  
25 the secretary determines that:

26 (i)(A) A conditionally released person is failing to adhere to  
27 the terms and conditions of his or her release(~~(, that)~~); or

28 (B) Substantial deterioration in ((~~the~~)) a conditionally released  
29 person's functioning has occurred((~~,~~)); and

30 (ii) There is evidence of substantial decompensation with a  
31 ((~~high~~)) reasonable probability that the decompensation can be  
32 reversed by further inpatient treatment((~~,~~ or there is a likelihood  
33 of serious harm,)); then, upon notification by the hospital or

1 facility designated to provide outpatient care, or on his or her own  
2 motion, the designated county mental health professional or the  
3 secretary may order that the conditionally released person be  
4 apprehended and taken into custody and temporarily detained in an  
5 evaluation and treatment facility in or near the county in which he  
6 or she is receiving outpatient treatment.

7 (b) If a conditionally released person presents a likelihood of  
8 serious harm, the designated county mental health professional or  
9 secretary shall order that the conditionally released person be  
10 apprehended and taken into custody. The person shall be detained  
11 until such time, not exceeding five days, as a hearing can be  
12 scheduled to determine whether or not the person should be returned  
13 to the hospital or facility from which he or she had been  
14 conditionally released. The designated county mental health  
15 professional or the secretary may modify or rescind such order at any  
16 time prior to commencement of the court hearing.

17 ~~((b))~~ (c) The court that originally ordered commitment shall be  
18 notified within two judicial days of a person's detention under the  
19 provisions of this section, and the designated county mental health  
20 professional or the secretary shall file his or her petition and  
21 order of apprehension and detention with the court and serve them  
22 upon the person detained. His or her attorney, if any, and his or  
23 her guardian or conservator, if any, shall receive a copy of such  
24 papers as soon as possible. Such person shall have the same rights  
25 with respect to notice, hearing, and counsel as for an involuntary  
26 treatment proceeding, except as specifically set forth in this  
27 section and except that there shall be no right to jury trial. The  
28 issues to be determined shall be: (i) Whether the conditionally  
29 released person did or did not adhere to the terms and conditions of  
30 his or her release; (ii) that substantial deterioration in the  
31 person's functioning has occurred; (iii) there is evidence of  
32 substantial decompensation with a ~~((high))~~ reasonable probability  
33 that the decompensation can be reversed by further inpatient

1 treatment; or (iv) there is a likelihood of serious harm; and, if any  
2 of the conditions listed in this subsection (3)((~~b~~)) (c) have  
3 occurred, whether the conditions of release should be modified or the  
4 person should be returned to the facility.

5 ((~~e~~)) (d) Pursuant to the determination of the court upon such  
6 hearing, the conditionally released person shall either continue to  
7 be conditionally released on the same or modified conditions or shall  
8 be returned for involuntary treatment on an inpatient basis subject  
9 to release at the end of the period for which he or she was committed  
10 for involuntary treatment, or otherwise in accordance with the  
11 provisions of this chapter. Such hearing may be waived by the person  
12 and his or her counsel and his or her guardian or conservator, if  
13 any, but shall not be waivable unless all such persons agree to  
14 waive, and upon such waiver the person may be returned for  
15 involuntary treatment or continued on conditional release on the same  
16 or modified conditions.

17 (4) The proceedings set forth in subsection (3) of this section  
18 may be initiated by the designated county mental health professional  
19 or the secretary on the same basis set forth therein without  
20 requiring or ordering the apprehension and detention of the  
21 conditionally released person, in which case the court hearing shall  
22 take place in not less than five days from the date of service of the  
23 petition upon the conditionally released person.

24 Upon expiration of the period of commitment, or when the person  
25 is released from outpatient care, notice in writing to the court  
26 which committed the person for treatment shall be provided.

27 (5) The grounds and procedures for revocation of less restrictive  
28 alternative treatment shall be the same as those set forth in this  
29 section for conditional releases.

30 (6) In the event of a revocation of a conditional release, the  
31 subsequent treatment period may be for no longer than the actual  
32 period authorized in the original court order.

33

1 1.           **Sec.**    RCW 71.05.370 and 1997 c 112 s 31 are each amended  
2 to read as follows:

3           Insofar as danger to the individual or others is not created,  
4 each person involuntarily detained, treated in a less restrictive  
5 alternative course of treatment, or committed for treatment and  
6 evaluation pursuant to this chapter shall have, in addition to other  
7 rights not specifically withheld by law, the following rights, a list  
8 of which shall be prominently posted in all facilities, institutions,  
9 and hospitals providing such services:

10           (1) To wear his or her own clothes and to keep and use his or her  
11 own personal possessions, except when deprivation of same is  
12 essential to protect the safety of the resident or other persons;

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

15           (3) To have access to individual storage space for his or her  
16 private use;

17           (4) To have visitors at reasonable times;

18           (5) To have reasonable access to a telephone, both to make and  
19 receive confidential calls;

20           (6) To have ready access to letter writing materials, including  
21 stamps, and to send and receive uncensored correspondence through the  
22 mails;

23           (7) Not to consent to the administration of antipsychotic  
24 medications beyond the hearing conducted pursuant to RCW 71.05.320(2)  
25 or the performance of electroconvulsant therapy or surgery, except  
26 emergency life-saving surgery, unless ordered by a court of competent  
27 jurisdiction pursuant to the following standards and procedures:

28           (a) The administration of antipsychotic medication or  
29 electroconvulsant therapy shall not be ordered unless the petitioning  
30 party proves by clear, cogent, and convincing evidence that there  
31 exists a compelling state interest that justifies overriding the  
32 patient's lack of consent to the administration of antipsychotic  
33 medications or electroconvulsant therapy, that the proposed treatment

1 is necessary and effective, and that medically acceptable alternative  
2 forms of treatment are not available, have not been successful, or  
3 are not likely to be effective.

4 (b) The court shall make specific findings of fact concerning:

5 (i) The existence of one or more compelling state interests; (ii) the  
6 necessity and effectiveness of the treatment; and (iii) the person's  
7 desires regarding the proposed treatment. If the patient is unable  
8 to make a rational and informed decision about consenting to or  
9 refusing the proposed treatment, the court shall make a substituted  
10 judgment for the patient as if he or she were competent to make such  
11 a determination.

12 (c) The person shall be present at any hearing on a request to  
13 administer antipsychotic medication or electroconvulsant therapy  
14 filed pursuant to this subsection. The person has the right: (i) To  
15 be represented by an attorney; (ii) to present evidence; (iii) to  
16 cross-examine witnesses; (iv) to have the rules of evidence enforced;  
17 (v) to (~~remain silent~~) refrain from testifying; (vi) to view and  
18 copy all petitions and reports in the court file; and (vii) to be  
19 given reasonable notice and an opportunity to prepare for the  
20 hearing. The court may appoint a psychiatrist, psychologist within  
21 their scope of practice, or physician to examine and testify on  
22 behalf of such person. The court shall appoint a psychiatrist,  
23 psychologist within their scope of practice, or physician designated  
24 by such person or the person's counsel to testify on behalf of the  
25 person in cases where an order for electroconvulsant therapy is  
26 sought.

27 (d) An order for the administration of antipsychotic medications  
28 entered following a hearing conducted pursuant to this section shall  
29 be effective for the period of the current involuntary treatment  
30 order, and any interim period during which the person is awaiting  
31 trial or hearing on a new petition for involuntary treatment or  
32 involuntary medication.

1 (e) Any person detained pursuant to RCW 71.05.320(2), who  
2 subsequently refuses antipsychotic medication, shall be entitled to  
3 the procedures set forth in RCW 71.05.370(7).

4 (f) Antipsychotic medication may be administered to a  
5 nonconsenting person detained or committed pursuant to this chapter  
6 without a court order pursuant to RCW 71.05.215(2) or under the  
7 following circumstances:

8 (i) A person presents an imminent likelihood of serious harm;

9 (ii) Medically acceptable alternatives to administration of  
10 antipsychotic medications are not available, have not been  
11 successful, or are not likely to be effective; and

12 (iii) In the opinion of the physician with responsibility for  
13 treatment of the person, or his or her designee, the person's  
14 condition constitutes an emergency requiring the treatment be  
15 instituted before a judicial hearing as authorized pursuant to this  
16 section can be held.

17 If antipsychotic medications are administered over a person's  
18 lack of consent pursuant to this subsection, a petition for an order  
19 authorizing the administration of antipsychotic medications shall be  
20 filed on the next judicial day. The hearing shall be held within two  
21 judicial days. If deemed necessary by the physician with  
22 responsibility for the treatment of the person, administration of  
23 antipsychotic medications may continue until the hearing is held;

24 (8) To dispose of property and sign contracts unless such person  
25 has been adjudicated an incompetent in a court proceeding directed to  
26 that particular issue;

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

29

30 1. **Sec.** RCW 71.05.390 and 1993 c 448 s 6 are each amended  
31 to read as follows:

32 Except as provided in this section, the fact of admission and all  
33 information and records compiled, obtained, or maintained in the



1 course of providing services to either voluntary or involuntary  
2 recipients of services at public or private agencies shall be  
3 confidential.

4 Information and records may be disclosed only:

5 (1) In communications between qualified professional persons to  
6 meet the requirements of this chapter, in the provision of services  
7 or appropriate referrals, or in the course of guardianship  
8 proceedings. The consent of the patient, or his or her guardian,  
9 shall be obtained before information or records may be disclosed by a  
10 professional person employed by a facility unless provided to a  
11 professional person(~~(, not)~~): (a) Employed by the facility(~~(, who~~  
12 does not have the)); (b) who has medical responsibility for the  
13 patient's care (~~(or who is not)~~); (c) who is a designated county  
14 mental health professional (~~(or who is not involved in)~~); (d) who is  
15 providing services under (~~(the community mental health services~~  
16 ~~act,)~~) chapter 71.24 RCW; or (e) who is employed by a local  
17 correctional facility where the person is confined.

18 (2) When the communications regard the special needs of a patient  
19 and the necessary circumstances giving rise to such needs and the  
20 disclosure is made by a facility providing outpatient services to the  
21 operator of a care facility in which the patient resides.

22 (3) When the person receiving services, or his or her guardian,  
23 designates persons to whom information or records may be released, or  
24 if the person is a minor, when his or her parents make such  
25 designation.

26 (4) To the extent necessary for a recipient to make a claim, or  
27 for a claim to be made on behalf of a recipient for aid, insurance,  
28 or medical assistance to which he or she may be entitled.

29 (5) For either program evaluation or research, or both:  
30 PROVIDED, That the secretary of social and health services adopts  
31 rules for the conduct of the evaluation or research, or both. Such  
32 rules shall include, but need not be limited to, the requirement that

1 all evaluators and researchers must sign an oath of confidentiality  
2 substantially as follows:

3  
4 "As a condition of conducting evaluation or research concerning  
5 persons who have received services from (fill in the facility,  
6 agency, or person) I, . . . . ., agree not to divulge,  
7 publish, or otherwise make known to unauthorized persons or the  
8 public any information obtained in the course of such evaluation or  
9 research regarding persons who have received services such that the  
10 person who received such services is identifiable.

11 I recognize that unauthorized release of confidential information  
12 may subject me to civil liability under the provisions of state law.

13  
14 /s/ "  
15

16 (6) To the courts as necessary to the administration of this  
17 chapter.

18 (7) To law enforcement officers, public health officers, or  
19 personnel of the department of corrections or the indeterminate  
20 sentence review board for persons who are the subject of the records  
21 and who are committed to the custody of the department of corrections  
22 or indeterminate sentence review board which information or records  
23 are necessary to carry out the responsibilities of their office.  
24 Except for dissemination of information released pursuant to RCW  
25 71.05.425 and 4.24.550, regarding persons committed under this  
26 chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of  
27 a sex offense as defined in RCW 9.94A.030, the extent of information  
28 that may be released is limited as follows:

29 (a) Only the fact, place, and date of involuntary admission, the  
30 fact and date of discharge, and the last known address shall be  
31 disclosed upon request; and

32 (b) The law enforcement and public health officers or personnel  
33 of the department of corrections or indeterminate sentence review  
34 board shall be obligated to keep such information confidential in  
35 accordance with this chapter; and

36 (c) Additional information shall be disclosed only after giving  
37 notice to said person and his or her counsel and upon a showing of  
38 clear, cogent and convincing evidence that such information is  
39 necessary and that appropriate safeguards for strict confidentiality  
40 are and will be maintained. However, in the event the said person  
41 has escaped from custody, said notice prior to disclosure is not  
42 necessary and that the facility from which the person escaped shall  
43 include an evaluation as to whether the person is of danger to  
44 persons or property and has a propensity toward violence.

45 (8) To the attorney of the detained person.

46 (9) To the prosecuting attorney as necessary to carry out the  
47 responsibilities of the office under RCW 71.05.330(2) and  
48 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided  
49 access to records regarding the committed person's treatment and  
50 prognosis, medication, behavior problems, and other records relevant  
51 to the issue of whether treatment less restrictive than inpatient

1 treatment is in the best interest of the committed person or others.  
2 Information shall be disclosed only after giving notice to the  
3 committed person and the person's counsel.

4 (10) To appropriate law enforcement agencies and to a person,  
5 when the identity of the person is known to the public or private  
6 agency, whose health and safety has been threatened, or who is known  
7 to have been repeatedly harassed, by the patient. The person may  
8 designate a representative to receive the disclosure. The disclosure  
9 shall be made by the professional person in charge of the public or  
10 private agency or his or her designee and shall include the dates of  
11 admission, discharge, authorized or unauthorized absence from the  
12 agency's facility, and only such other information that is pertinent  
13 to the threat or harassment. The decision to disclose or not shall  
14 not result in civil liability for the agency or its employees so long  
15 as the decision was reached in good faith and without gross  
16 negligence.

17 (11) To the persons designated in RCW 71.05.425 for the purposes  
18 described in that section.

19 (12) Civil liability and immunity for the release of information  
20 about a particular person who is committed to the department under  
21 RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense  
22 as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

23 (13) To a patient's next of kin, guardian, or conservator, if  
24 any, in the event of death, as provided in RCW 71.05.400.

25 (14) To the department of health of the purposes of determining  
26 compliance with state or federal licensure, certification, or  
27 registration rules or laws. However, the information and records  
28 obtained under this subsection are exempt from public inspection and  
29 copying pursuant to chapter 42.17 RCW.

30 The fact of admission, as well as all records, files, evidence,  
31 findings, or orders made, prepared, collected, or maintained pursuant  
32 to this chapter shall not be admissible as evidence in any legal  
33 proceeding outside this chapter without the written consent of the  
34 person who was the subject of the proceeding except in a subsequent  
35 criminal prosecution of a person committed pursuant to RCW  
36 71.05.280(3) or 71.05.320(2)(c) on charges that were dismissed  
37 pursuant to chapter 10.77 RCW due to incompetency to stand trial or  
38 in a civil commitment proceeding pursuant to chapter 71.09 RCW. The  
39 records and files maintained in any court proceeding pursuant to this  
40 chapter shall be confidential and available subsequent to such  
41 proceedings only to the person who was the subject of the proceeding  
42 or his or her attorney. In addition, the court may order the  
43 subsequent release or use of such records or files only upon good  
44 cause shown if the court finds that appropriate safeguards for strict  
45 confidentiality are and will be maintained.

46  
47 1. **Sec.** RCW 71.05.530 and 1973 1st ex.s. c 142 s 58 are  
48 each amended to read as follows:

49 Evaluation and treatment facilities authorized pursuant to this  
50 chapter may be part of the comprehensive community mental health

1 services program conducted in counties pursuant to (~~the Community~~  
2 ~~Mental Health Services Act,~~) chapter 71.24 RCW, and may receive  
3 funding pursuant to the provisions thereof.

4  
5 1. **Sec.** RCW 71.05.560 and 1973 1st ex.s. c 142 s 61 are  
6 each amended to read as follows:

7 The department (~~of social and health services~~) shall adopt such  
8 rules (~~and regulations~~) as may be necessary to effectuate the  
9 intent and purposes of this chapter, which shall include but not be  
10 limited to evaluation of the quality of the program and facilities  
11 operating pursuant to this chapter, evaluation of the effectiveness  
12 and cost effectiveness of such programs and facilities, and  
13 procedures and standards for certification and other action relevant  
14 to evaluation and treatment facilities.

15  
16 1. NEW SECTION. **Sec.** A new section is added to chapter  
17 71.05 RCW to read as follows:

18 In any judicial proceeding in which a professional person has  
19 recommended an individual be committed for treatment under this  
20 chapter, and the court does not follow the recommendation, the court  
21 shall enter a finding which states with particularity the reasons for  
22 not following the recommendation. The court shall include a finding  
23 as to why the person does not present a likelihood of serious harm,  
24 if the professional person has indicated he or she believes a  
25 likelihood exists.

26  
27 1. NEW SECTION. **Sec.** A new section is added to chapter  
28 71.05 RCW to read as follows:

29 The department shall develop state-wide protocols to be utilized  
30 by professional persons and county designated mental health  
31 professionals in administration of this chapter. The protocols shall  
32 be updated at least every three years. The protocols shall provide  
33 uniform development and application of criteria in evaluation and  
34 commitment recommendations, of persons who have, or are alleged to  
35 have, mental disorders and are subject to this chapter.

36 The initial protocols shall be developed not later than December  
37 1, 1998. The department shall develop the protocols in consultation  
38 with representatives of mental health professionals, local  
39 government, law enforcement, county and city prosecutors, public  
40 defenders, and groups concerned with mental illness. The protocols  
41 shall be submitted to the governor and legislature upon adoption by  
42 the department.

43  
44 1. **Sec.** RCW 10.77.005 and 1989 c 420 s 1 are each amended  
45 to read as follows:

46 (~~With respect to this act,~~) The legislature finds that among  
47 those persons who endanger the safety of others by committing  
48 (~~felony~~) crimes are a small number of persons with developmental  
49 disabilities. While their conduct is not typical of the vast  
50 majority of persons with developmental disabilities who are

1 responsible citizens, for their own welfare and for the safety of  
2 others the state may need to exercise control over those few  
3 dangerous individuals who are developmentally disabled, have been  
4 charged with ((felony)) crimes, and have been found either  
5 incompetent to stand trial or not guilty by reason of insanity. The  
6 legislature finds, however, that the use of civil commitment  
7 procedures under chapter 71.05 RCW to effect state control over  
8 dangerous developmentally disabled persons has resulted in their  
9 commitment to institutions for the mentally ill. The legislature  
10 finds that existing programs in mental institutions may be  
11 inappropriate for persons who are developmentally disabled because  
12 the services provided in mental institutions are oriented to persons  
13 with mental illness, a condition not necessarily associated with  
14 developmental disabilities. Therefore, the legislature believes  
15 that, where appropriate, and subject to available funds, persons with  
16 developmental disabilities who have been charged with ((felony))  
17 crimes and have been found incompetent to stand trial or not guilty  
18 by reason of insanity should receive state services addressing their  
19 needs, that such services must be provided in conformance with an  
20 individual habilitation plan, and that their initial treatment should  
21 be separate and discrete from treatment for persons involved in any  
22 other treatment or habilitation program in a manner consistent with  
23 the needs of public safety.

24  
25 1. **Sec.** RCW 10.77.010 and 1993 c 31 s 4 are each amended to  
26 read as follows:

27 As used in this chapter:

28 (1) A "criminally insane" person means any person who has been  
29 acquitted of a crime charged by reason of insanity, and thereupon  
30 found to be a substantial danger to other persons or to present a  
31 substantial likelihood of committing ((felonious)) criminal acts  
32 jeopardizing public safety or security unless kept under further  
33 control by the court or other persons or institutions.

34 (2) "Indigent" means any person who is financially unable to  
35 obtain counsel or other necessary expert or professional services  
36 without causing substantial hardship to the person or his or her  
37 family.

38 (3) "Secretary" means the secretary of the department of social  
39 and health services or his or her designee.

40 (4) "Department" means the state department of social and health  
41 services.

42 (5) "Treatment" means any currently standardized medical or  
43 mental health procedure including medication.

44 (6) "Incompetency" means a person lacks the capacity to  
45 understand the nature of the proceedings against him or her or to  
46 assist in his or her own defense as a result of mental disease or  
47 defect.

48 (7) ~~((No condition of mind proximately induced by the voluntary  
49 act of a person charged with a crime shall constitute "insanity".~~

1 ~~——(8))~~ "Furlough" means an authorized leave of absence for a  
2 resident of a state institution operated by the department designated  
3 for the custody, care, and treatment of the criminally insane,  
4 consistent with an order of conditional release from the court under  
5 this chapter, without any requirement that the resident be  
6 accompanied by, or be in the custody of, any law enforcement or  
7 institutional staff, while on such unescorted leave.

8 ((~~+9~~)) (8) "Developmental disability" means the condition  
9 defined in RCW 71A.10.020(2).

10 ((~~+10~~)) (9) "Developmental disabilities professional" means a  
11 person who has specialized training and three years of experience in  
12 directly treating or working with persons with developmental  
13 disabilities and is a psychiatrist or psychologist, or a social  
14 worker, and such other developmental disabilities professionals as  
15 may be defined by rules adopted by the secretary.

16 ((~~+11~~)) (10) "Habilitative services" means those services  
17 provided by program personnel to assist persons in acquiring and  
18 maintaining life skills and in raising their levels of physical,  
19 mental, social, and vocational functioning. Habilitative services  
20 include education, training for employment, and therapy. The  
21 habilitative process shall be undertaken with recognition of the risk  
22 to the public safety presented by the individual being assisted as  
23 manifested by prior charged criminal conduct.

24 ((~~+12~~ "~~Psychiatrist~~" means a person having a license)) (11)  
25 "Expert or professional person" means:

26 (a) A psychiatrist licensed as a physician and surgeon in this  
27 state who has, in addition, completed three years of graduate  
28 training in psychiatry in a program approved by the American medical  
29 association or the American osteopathic association and is certified  
30 or eligible to be certified by the American board of psychiatry and  
31 neurology(~~(-~~

32 ~~——(13) "~~Psychologist~~" means a person who has been))~~;

33 (b) A psychologist licensed as a psychologist pursuant to chapter  
34 18.83 RCW(~~(-~~

35 ~~——(14) "~~Social worker~~" means a person))~~; or

36 (c) A social worker with a master's or further advanced degree  
37 from an accredited school of social work or a degree deemed  
38 equivalent under rules adopted by the secretary.

39 ((~~+15~~)) (12) "Individualized service plan" means a plan prepared  
40 by a developmental disabilities professional with other professionals  
41 as a team, for an individual with developmental disabilities, which  
42 shall state:

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

45 (b) The conditions and strategies necessary to achieve the  
46 purposes of habilitation;

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

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

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

2 (f) Where relevant in light of past criminal behavior and due  
3 consideration for public safety, the criteria for proposed movement  
4 to less-restrictive settings, criteria for proposed eventual  
5 discharge from involuntary confinement, and a projected possible date  
6 for discharge from involuntary confinement; and

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

9 (13) "Violent act" means behavior, whether or not a criminal  
10 conviction is obtained, that results in, or a court or an expert or  
11 professional person would reasonably believe is likely to result in,  
12 homicide, suicide, nonfatal injuries, or substantial damage to  
13 property.

14  
15 1. **Sec.** RCW 10.77.020 and 1993 c 31 s 5 are each amended to  
16 read as follows:

17 (1) At any and all stages of the proceedings pursuant to this  
18 chapter, any person subject to the provisions of this chapter shall  
19 be entitled to the assistance of counsel, and if the person is  
20 indigent the court shall appoint counsel to assist him or her. A  
21 person may waive his or her right to counsel; but such waiver shall  
22 only be effective if a court makes a specific finding that he or she  
23 is or was competent to so waive. In making such findings, the court  
24 shall be guided but not limited by the following standards: Whether  
25 the person attempting to waive the assistance of counsel, does so  
26 understanding:

27 (a) The nature of the charges;

28 (b) The statutory offense included within them;

29 (c) The range of allowable punishments thereunder;

30 (d) Possible defenses to the charges and circumstances in  
31 mitigation thereof; and

32 (e) All other facts essential to a broad understanding of the  
33 whole matter.

34 (2) Whenever any person is subjected to an examination pursuant  
35 to any provision of this chapter, he or she may retain an expert or  
36 professional person to perform an examination in his or her behalf.  
37 In the case of a person who is indigent, the court shall upon his or  
38 her request assist the person in obtaining an expert or professional  
39 person to perform an examination or participate in the hearing on his  
40 or her behalf. An expert or professional person obtained by an  
41 indigent person pursuant to the provisions of this chapter shall be  
42 compensated for his or her services out of funds of the department,  
43 in an amount determined by ~~((it))~~ the secretary to be fair and  
44 reasonable.

45 ~~(3) ((Whenever any person has been committed under any provision~~  
46 ~~of this chapter, or ordered to undergo alternative treatment~~  
47 ~~following his or her acquittal of a crime charged by reason of~~  
48 ~~insanity, such commitment or treatment cannot exceed the maximum~~  
49 ~~possible penal sentence for any offense charged for which the person~~  
50 ~~was acquitted by reason of insanity. If at the end of that period~~



~~the person has not been finally discharged and is still in need of commitment or treatment, civil commitment proceedings may be instituted, if appropriate.~~

(4)) Any time the defendant is being examined by court appointed experts or professional persons pursuant to the provisions of this chapter, the defendant shall be entitled to have his or her attorney present. The defendant may refuse to answer any question if he or she believes his or her answers may tend to incriminate him or her or form links leading to evidence of an incriminating nature.

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

Whenever any person has been committed under any provision of this chapter, or ordered to undergo alternative treatment following his or her acquittal by reason of insanity of a crime charged, such commitment or treatment cannot exceed the maximum possible penal sentence for any offense charged for which the person was committed, or was acquitted by reason of insanity. If, at the end of that period the person has not been finally discharged, the person shall be referred to a county designated mental health professional to determine whether to initiate proceedings under chapter 71.05 RCW.

1. **Sec.** RCW 10.77.030 and 1974 ex.s. c 198 s 3 are each amended to read as follows:

(1) Evidence of insanity is not admissible unless the defendant, at the time of arraignment or within ten days thereafter or at such later time as the court may for good cause permit, files a written notice of his or her intent to rely on such a defense.

(2) Insanity is a defense which the defendant must establish by a preponderance of the evidence.

(3) No condition of mind proximately induced by the voluntary act of a person charged with a crime shall constitute "insanity."

1. **Sec.** RCW 10.77.040 and 1974 ex.s. c 198 s 4 are each amended to read as follows:

Whenever the issue of insanity is submitted to the jury, the court shall instruct the jury to return a special verdict in substantially the following form:

	answer
	yes or no
1. Did the defendant commit the act charged?	. . . . .
2. If your answer to number 1 is yes, do you acquit him <u>or her</u> because of insanity existing at the time of the act charged? . . . . .	
3. If your answer to number 2 is yes, is the defendant a substantial danger to other persons unless kept under further control by the court or other persons or institutions? . . . . .	



1 4. If your answer to number 2 is yes, does  
2 the defendant present a substantial likelihood  
3 of committing (~~felonious~~) criminal acts  
4 jeopardizing public safety or security unless  
5 kept under further control by the court or  
6 other persons or institutions? . . . . .

7 5. If your answers to either number 3 or  
8 number 4 is yes, is it in the best interests of  
9 the defendant and others that the defendant be  
10 placed in treatment that is less restrictive  
11 than detention in a state mental hospital?  
12 . . . . .

13  
14 1. **Sec.** RCW 10.77.060 and 1989 c 420 s 4 are each amended  
15 to read as follows:

16 (1)(a) Whenever a defendant has pleaded not guilty by reason of  
17 insanity, or there is reason to doubt his or her competency, the  
18 court on its own motion or on the motion of any party shall either  
19 appoint or request the secretary to designate at least two qualified  
20 experts or professional persons, one of whom shall be approved by the  
21 prosecuting attorney, to examine and report upon the mental condition  
22 of the defendant. At least one of the experts or professional  
23 persons appointed shall be a developmental disabilities professional  
24 if the court is advised by any party that the defendant may be  
25 developmentally disabled. For purposes of the examination, the court  
26 may order the defendant committed to a hospital or other suitable  
27 public or private facility for a period of time necessary to complete  
28 the examination, but not to exceed fifteen days.

29 (b) When a defendant is ordered to be committed under this  
30 subsection, the court may delay granting bail until the defendant has  
31 been evaluated for competency and appears before the court following  
32 the evaluation. In determining bail the court shall consider: (i)  
33 Recommendations of the expert or professional persons regarding the  
34 defendant's competency, sanity, or diminished capacity; (ii) whether  
35 the defendant has a history of one or more violent acts; (iii)  
36 whether the defendant has previously been acquitted by reason of  
37 insanity or found incompetent; (iv) whether it is reasonably likely  
38 the defendant will fail to appear for a future court hearing; and (v)  
39 whether the defendant is a threat to public safety.

40 (2) The court may direct that a qualified expert or professional  
41 person retained by or appointed for the defendant be permitted to  
42 witness the examination authorized by subsection (1) of this section,  
43 and that the defendant shall have access to all information obtained  
44 by the court appointed experts or professional persons. The  
45 defendant's expert or professional person shall have the right to  
46 file his or her own report following the guidelines of subsection (3)  
47 of this section. If the defendant is indigent, the court shall upon  
48 the request of the defendant assist him or her in obtaining an expert  
49 or professional person.

50 (3) The report of the examination shall include the following:

- 1 (a) A description of the nature of the examination;  
2 (b) A diagnosis of the mental condition of the defendant;  
3 (c) If the defendant suffers from a mental disease or defect, or  
4 is developmentally disabled, an opinion as to competency;  
5 (d) If the defendant has indicated his or her intention to rely  
6 on the defense of insanity pursuant to RCW 10.77.030, an opinion as  
7 to the defendant's sanity at the time of the act;  
8 (e) When directed by the court, an opinion as to the capacity of  
9 the defendant to have a particular state of mind which is an element  
10 of the offense charged;  
11 (f) An opinion as to whether the defendant is a substantial  
12 danger to other persons, or presents a substantial likelihood of  
13 committing ((felonious)) criminal acts jeopardizing public safety or  
14 security, unless kept under further control by the court or other  
15 persons or institutions.  
16 (4) The secretary may execute such agreements as appropriate and  
17 necessary to implement this section.

18  
19 1. NEW SECTION. **Sec.** A new section is added to chapter  
20 10.77 RCW to read as follows:

21 (1) When a defendant is committed for evaluation under this  
22 chapter, a copy of the order shall be transferred to the county  
23 designated mental health professional of the county in which the  
24 defendant was charged.

25 (2)(a) When a defendant is committed under RCW 10.77.060, the  
26 person in charge of the facility shall make a referral to a county  
27 designated mental health professional in the county in which the  
28 criminal charges are pending for an evaluation of the defendant to  
29 determine whether to commence proceedings under chapter 71.05 RCW  
30 whenever the defendant is charged with or has a history of one or  
31 more violent acts; is a threat to public safety; has previously been  
32 acquitted by reason of insanity or diminished capacity; or has  
33 previously been found incompetent pursuant to this chapter. The  
34 evaluation shall be conducted by a person who does not examine the  
35 defendant for competency, insanity, or diminished capacity.

36 (b) The facility conducting the evaluation under this chapter  
37 shall promptly provide a copy of its report under RCW 10.77.060 to:  
38 The county designated mental health professional; the court in which  
39 the criminal action is pending; and the prosecutor and defense  
40 attorney in such criminal action. Upon request, such facility also  
41 shall provide to the county designated mental health professional  
42 copies of any source documents relevant to such evaluation.

43 (3) The county designated mental health professional shall  
44 provide prompt written notification of the results of the  
45 determination whether to commence proceedings under chapter 71.05  
46 RCW, and the results of any commitment proceedings to: The facility  
47 conducting the evaluation under this chapter; the court in which the  
48 criminal action is pending; and the prosecutor and defense attorney  
49 in such criminal action.

50

1 1. **Sec.** RCW 10.77.070 and 1973 1st ex.s. c 117 s 7 are each  
2 amended to read as follows:

3 When the defendant wishes to be examined by a qualified expert or  
4 professional person of his or her own choice such examiner shall be  
5 permitted to have reasonable access to the defendant for the purpose  
6 of such examination, as well as to all relevant medical and  
7 psychological records and reports.  
8

9 1. **Sec.** RCW 10.77.080 and 1974 ex.s. c 198 s 7 are each  
10 amended to read as follows:

11 The defendant may move the court for a judgment of acquittal on  
12 the grounds of insanity: PROVIDED, That a defendant so acquitted may  
13 not later contest the validity of his or her detention on the grounds  
14 that he or she did not commit the acts charged. At the hearing upon  
15 (~~said~~) the motion the defendant shall have the burden of proving by  
16 a preponderance of the evidence that he or she was insane at the time  
17 of the offense or offenses with which he or she is charged. If the  
18 court finds that the defendant should be acquitted by reason of  
19 insanity, it shall enter specific findings in substantially the same  
20 form as set forth in RCW 10.77.040 (~~as now or hereafter amended~~).  
21 If the motion is denied, the question may be submitted to the trier  
22 of fact in the same manner as other issues of fact.  
23

24 1. **Sec.** RCW 10.77.090 and 1989 c 420 s 5 are each amended  
25 to read as follows:

26 (1)(a) If at any time during the pendency of an action and prior  
27 to judgment, the court finds following a report as provided in RCW  
28 10.77.060(~~, as now or hereafter amended,~~) that the defendant is  
29 incompetent, the court shall order the proceedings against the  
30 defendant be stayed, except as provided in subsection (5) of this  
31 section, and, if the defendant (~~is charged with a felony~~): Has  
32 previously been acquitted by reason of insanity or diminished  
33 capacity, has a history of or a pending charge which involves one or  
34 more violent acts, or has previously been found incompetent under  
35 this chapter with regard to an offense involving harm or attempted  
36 harm to a person, may (~~commit~~) order the defendant to (~~the custody~~  
37 of the secretary, who shall place such defendant) be placed in an  
38 appropriate facility (~~of the department for evaluation and~~  
39 ~~treatment, or the court may alternatively order the defendant to~~  
40 ~~undergo evaluation and treatment at some other facility, or under the~~  
41 ~~guidance and control of some other person,~~) until he or she has  
42 regained the competency necessary to understand the proceedings  
43 against him or her and assist in his or her own defense(~~, but~~). In  
44 (~~any~~) no event(~~, for no~~) may the defendant be committed under  
45 this subsection for longer than a period of ninety days if the  
46 defendant is charged with a felony or thirty days if the defendant is  
47 charged with a crime other than a felony, or the maximum possible  
48 penal sentence for the offense, whichever is less. A defendant found  
49 incompetent shall be evaluated at the direction of the secretary and  
50 a determination made whether the defendant is developmentally

1 disabled. Such evaluation and determination shall be accomplished as  
2 soon as possible following the court's placement of the defendant in  
3 the custody of the secretary. When appropriate, and subject to  
4 available funds, if the defendant is determined to be developmentally  
5 disabled, he or she may be placed in a program specifically reserved  
6 for the treatment and training of persons with developmental  
7 disabilities where the defendant shall have the right to habilitation  
8 according to an individualized service plan specifically developed  
9 for the particular needs of the defendant. The program shall be  
10 separate from programs serving persons involved in any other  
11 treatment or habilitation program. The program shall be  
12 appropriately secure under the circumstances and shall be  
13 administered by developmental disabilities professionals who shall  
14 direct the habilitation efforts. The program shall provide an  
15 environment affording security appropriate with the charged criminal  
16 behavior and necessary to protect the public safety. The department  
17 may limit admissions of such persons to this specialized program in  
18 order to ensure that expenditures for services do not exceed amounts  
19 appropriated by the legislature and allocated by the department for  
20 such services. The department may establish admission priorities in  
21 the event that the number of eligible persons exceeds the limits set  
22 by the department. A copy of the report shall be sent to the  
23 facility. On or before expiration of the initial ninety day period  
24 of commitment the court shall conduct a hearing, at which it shall  
25 determine whether or not the defendant is incompetent.

26 (b) If the defendant is charged with a crime which is not a  
27 felony and the defendant has not previously been acquitted by reason  
28 of insanity or diminished capacity, does not have a history of or a  
29 pending charge which involves one or more violent acts, or has not  
30 previously been found incompetent under this chapter with regard to  
31 an offense involving harm or attempted harm to a person, the court  
32 may stay or dismiss proceedings and detain the defendant for  
33 sufficient time to allow the county designated mental health  
34 professional to evaluate the defendant and commence proceedings under  
35 chapter 71.05 RCW if appropriate; and subsections (2) and (3) of this  
36 section shall not be applicable(~~(:—PROVIDED, That,)~~). The court  
37 must give notice to all parties at least twenty-four hours before  
38 dismissal of any proceedings under this subsection (1)(b), and  
39 provide an opportunity for a hearing on the question before  
40 dismissal. Upon an order of the court finding that a defendant is  
41 incompetent, the prosecutor may directly petition for fourteen days  
42 of involuntary treatment under chapter 71.05 RCW.

43 (2) If the court finds by a preponderance of the evidence that  
44 (~~the~~) a defendant charged with a felony is incompetent, the court  
45 shall have the option of extending the order of commitment or  
46 alternative treatment for an additional ninety day period, but it  
47 must at the time of extension set a date for a prompt hearing to  
48 determine the defendant's competency before the expiration of the  
49 second ninety day period. The defendant, the defendant's attorney,  
50 the prosecutor, or the judge shall have the right to demand that the

1 hearing on or before the expiration of the second ninety day period  
2 be before a jury. No extension shall be ordered for a second ninety-  
3 day period, nor for any subsequent period as provided in subsection  
4 (3) of this section if the defendant's incompetence has been  
5 determined by the secretary to be solely the result of a  
6 developmental disability which is such that competence is not  
7 reasonably likely to be regained during an extension nor for any  
8 additional period after the initial thirty days for any defendant  
9 charged with a crime other than a felony. If no demand is made, the  
10 hearing shall be before the court. The court or jury shall determine  
11 whether or not the defendant has become competent. In no event may  
12 the order for commitment be extended for a period longer than the  
13 maximum possible penal sentence for any offense charged for which the  
14 person was found incompetent.

15 (3) At the hearing upon the expiration of the second ninety-day  
16 period, or at the end of the first ninety-day period((7)) in the case  
17 of a developmentally disabled defendant, or at the end of the initial  
18 thirty-day period in the case of a defendant charged with a crime  
19 other than a felony, if the jury or court, as the case may be, finds  
20 that the defendant is incompetent, the charges shall be dismissed  
21 without prejudice, and either civil commitment proceedings shall be  
22 instituted, if appropriate, or the court shall order the release of  
23 the defendant: PROVIDED, That the criminal charges shall not be  
24 dismissed if at the end of the second ninety-day period in the case  
25 of a defendant charged with a felony, or at the end of the first  
26 ninety-day period((7)) in the case of a developmentally disabled  
27 defendant, the court or jury finds that the defendant is a  
28 substantial danger to other persons, or presents a substantial  
29 likelihood of committing ((felonious)) criminal acts jeopardizing  
30 public safety or security, and that there is a substantial  
31 probability that the defendant will regain competency within a  
32 reasonable period of time. In the event that the court or jury makes  
33 such a finding, the court may extend the period of commitment for an  
34 additional six months. At the end of ((said)) the six month period,  
35 if the defendant remains incompetent, the charges shall be dismissed  
36 without prejudice and either civil commitment proceedings shall be  
37 instituted, if appropriate, or the court shall order release of the  
38 defendant. If the defendant is referred to the county designated  
39 mental health professional for consideration of commitment  
40 proceedings under chapter 71.05 RCW pursuant to this chapter, the  
41 county designated mental health professional shall provide prompt  
42 written notification of the results of the determination whether to  
43 commence proceedings under chapter 71.05 RCW, and the results of any  
44 commitment proceedings; such notification shall be provided to: The  
45 court in which the criminal action is pending, and the prosecutor and  
46 defense attorney in such criminal action.

47 (4) The fact that the defendant is unfit to proceed does not  
48 preclude any pretrial proceedings which do not require the personal  
49 participation of the defendant.



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

7 (6) At or before the conclusion of any commitment period provided  
8 for by this section, the facility providing evaluation and treatment  
9 shall provide to the court a written report of examination which  
10 meets the requirements of RCW 10.77.060(3).

11  
12 1. **Sec.** RCW 10.77.110 and 1989 c 420 s 6 are each amended  
13 to read as follows:

14 (1) If a defendant is acquitted of a ((felony)) crime by reason  
15 of insanity, and it is found that he or she is not a substantial  
16 danger to other persons, and does not present a substantial  
17 likelihood of committing ((felonious)) criminal acts jeopardizing  
18 public safety or security, unless kept under further control by the  
19 court or other persons or institutions, the court shall direct the  
20 defendant's final discharge. If it is found that such defendant is a  
21 substantial danger to other persons, or presents a substantial  
22 likelihood of committing ((felonious)) criminal acts jeopardizing  
23 public safety or security, unless kept under further control by the  
24 court or other persons or institutions, the court shall order his or  
25 her hospitalization, or any appropriate alternative treatment less  
26 restrictive than detention in a state mental hospital, pursuant to  
27 the terms of this chapter.

28 (2) If the defendant has been found not guilty by reason of  
29 insanity and a substantial danger, or presents a substantial  
30 likelihood of committing ((felonious)) criminal acts jeopardizing  
31 public safety or security, so as to require treatment then the  
32 secretary shall immediately cause the defendant to be evaluated to  
33 ascertain if the defendant is developmentally disabled. When  
34 appropriate, and subject to available funds, the defendant may be  
35 committed to a program specifically reserved for the treatment and  
36 training of developmentally disabled persons. A person so committed  
37 shall receive habilitation services according to an individualized  
38 service plan specifically developed to treat the behavior which was  
39 the subject of the criminal proceedings. The treatment program shall  
40 be administered by developmental disabilities professionals and  
41 others trained specifically in the needs of developmentally disabled  
42 persons. The treatment program shall provide physical security to a  
43 degree consistent with the finding that the defendant is dangerous  
44 and may incorporate varying conditions of security and alternative  
45 sites when the dangerousness of any particular defendant makes this  
46 necessary. The department may limit admissions to this specialized  
47 program in order to ensure that expenditures for services do not  
48 exceed amounts appropriated by the legislature and allocated by the  
49 department for such services. The department may establish admission

1 priorities in the event that the number of eligible persons exceeds  
2 the limits set by the department.

3 (3) If it is found that such defendant is not a substantial  
4 danger to other persons, and does not present a substantial  
5 likelihood of committing (~~(felonious)~~) criminal acts jeopardizing  
6 public safety or security, but that he or she is in need of control  
7 by the court or other persons or institutions, the court shall direct  
8 the defendant's conditional release. (~~(If the defendant is acquitted  
9 by reason of insanity of a crime which is not a felony, the court  
10 shall order the defendant's release or order the defendant's  
11 continued custody only for a reasonable time to allow the county  
12 designated mental health professional to evaluate the individual and  
13 to proceed with civil commitment pursuant to chapter 71.05 RCW, if  
14 considered appropriate.)~~)

15  
16 1. **Sec.** RCW 10.77.140 and 1989 c 420 s 8 are each amended  
17 to read as follows:

18 Each person committed to a hospital or other facility or  
19 conditionally released pursuant to this chapter shall have a current  
20 examination of his or her mental condition made by one or more  
21 experts or professional persons at least once every six months.  
22 (~~(Said)~~) The person may retain, or if the person is indigent and so  
23 requests, the court may appoint a qualified expert or professional  
24 person to examine him or her, and such expert or professional person  
25 shall have access to all hospital records concerning the person. In  
26 the case of a committed or conditionally released person who is  
27 developmentally disabled, the expert shall be a developmental  
28 disabilities professional. The secretary, upon receipt of the  
29 periodic report, shall provide written notice to the court of  
30 commitment of compliance with the requirements of this section.

31  
32 1. **Sec.** RCW 10.77.150 and 1993 c 31 s 6 are each amended to  
33 read as follows:

34 (1) Persons examined pursuant to RCW 10.77.140(~~(, as now or  
35 hereafter amended,)~~) may make application to the secretary for  
36 conditional release. The secretary shall, after considering the  
37 reports of experts or professional persons conducting the examination  
38 pursuant to RCW 10.77.140, forward to the court of the county which  
39 ordered the person's commitment the person's application for  
40 conditional release as well as the secretary's recommendations  
41 concerning the application and any proposed terms and conditions upon  
42 which the secretary reasonably believes the person can be  
43 conditionally released. Conditional release may also contemplate  
44 partial release for work, training, or educational purposes.

45 (2) The court of the county which ordered the person's  
46 commitment, upon receipt of an application for conditional release  
47 with the secretary's recommendation for conditional release, shall  
48 within thirty days schedule a hearing. The court may schedule a  
49 hearing on applications recommended for disapproval by the secretary.  
50 The prosecuting attorney shall represent the state at such hearings

1 and shall have the right to have the patient examined by an expert or  
2 professional person of the prosecuting attorney's choice. If the  
3 committed person is indigent, and he or she so requests, the court  
4 shall appoint a qualified expert or professional person to examine  
5 the person on his or her behalf. The issue to be determined at such  
6 a hearing is whether or not the person may be released conditionally  
7 without substantial danger to other persons, or substantial  
8 likelihood of committing ((~~felonious~~)) criminal acts jeopardizing  
9 public safety or security. The court, after the hearing, shall rule  
10 on the secretary's recommendations, and if it disapproves of  
11 conditional release, may do so only on the basis of substantial  
12 evidence. The court may modify the suggested terms and conditions on  
13 which the person is to be conditionally released. Pursuant to the  
14 determination of the court after hearing, the committed person shall  
15 thereupon be released on such conditions as the court determines to  
16 be necessary, or shall be remitted to the custody of the secretary.  
17 If the order of conditional release includes a requirement for the  
18 committed person to report to a community corrections officer, the  
19 order shall also specify that the conditionally released person shall  
20 be under the supervision of the secretary of corrections or such  
21 person as the secretary of corrections may designate and shall follow  
22 explicitly the instructions of the secretary of corrections including  
23 reporting as directed to a community corrections officer, remaining  
24 within prescribed geographical boundaries, and notifying the  
25 community corrections officer prior to making any change in the  
26 offender's address or employment.

27 (3) If the court determines that receiving regular or periodic  
28 medication or other medical treatment shall be a condition of the  
29 committed person's release, then the court shall require him or her  
30 to report to a physician or other medical or mental health  
31 practitioner for the medication or treatment. In addition to  
32 submitting any report required by RCW 10.77.160, the physician or  
33 other medical or mental health practitioner shall immediately upon  
34 the released person's failure to appear for the medication or  
35 treatment report the failure to the court, to the prosecuting  
36 attorney of the county in which the released person was committed,  
37 and to the supervising community corrections officer.

38 (4) Any person, whose application for conditional release has  
39 been denied, may reapply after a period of six months from the date  
40 of denial.

41  
42 1. **Sec.** RCW 10.77.180 and 1993 c 31 s 9 are each amended to  
43 read as follows:

44 Each person conditionally released pursuant to RCW 10.77.150(~~(~~  
45 ~~as now or hereafter amended,~~) shall have his or her case reviewed by  
46 the court which conditionally released him or her no later than one  
47 year after such release and no later than every two years thereafter,  
48 such time to be scheduled by the court. Review may occur in a  
49 shorter time or more frequently, if the court, in its discretion, on  
50 its own motion, or on motion of the person, the secretary of social



1 and health services, the secretary of corrections, medical or mental  
2 health practitioner, or the prosecuting attorney, so determines. The  
3 sole question to be determined by the court is whether the person  
4 shall continue to be conditionally released. The court in making its  
5 determination shall be aided by the periodic reports filed pursuant  
6 to RCW 10.77.140(~~(, as now or hereafter amended,)~~) and ((RCW))  
7 10.77.160, and the opinions of the secretary of social and health  
8 services and other experts or professional persons.

9  
10 1. **Sec.** RCW 10.77.200 and 1993 c 31 s 11 are each amended  
11 to read as follows:

12 (1) Upon application by the committed or conditionally released  
13 person, the secretary shall determine whether or not reasonable  
14 grounds exist for final discharge. In making this determination, the  
15 secretary may consider the reports filed under RCW 10.77.060,  
16 10.77.110, 10.77.140, and 10.77.160, and other reports and  
17 evaluations provided by professionals familiar with the case. If the  
18 secretary approves the final discharge he or she then shall authorize  
19 ((said)) the person to petition the court.

20 (2) The petition shall be served upon the court and the  
21 prosecuting attorney. The court, upon receipt of the petition for  
22 final discharge, shall within forty-five days order a hearing.  
23 Continuance of the hearing date shall only be allowed for good cause  
24 shown. The prosecuting attorney shall represent the state, and shall  
25 have the right to have the petitioner examined by an expert or  
26 professional person of the prosecuting attorney's choice. If the  
27 petitioner is indigent, and the person so requests, the court shall  
28 appoint a qualified expert or professional person to examine him or  
29 her. If the petitioner is developmentally disabled, the examination  
30 shall be performed by a developmental disabilities professional. The  
31 hearing shall be before a jury if demanded by either the petitioner  
32 or the prosecuting attorney. The burden of proof shall be upon the  
33 petitioner to show by a preponderance of the evidence that the  
34 petitioner no longer presents, as a result of a mental disease or  
35 defect, a substantial danger to other persons, or a substantial  
36 likelihood of committing ((felonious)) criminal acts jeopardizing  
37 public safety or security, unless kept under further control by the  
38 court or other persons or institutions.

39 (3) Nothing contained in this chapter shall prohibit the patient  
40 from petitioning the court for final discharge or conditional release  
41 from the institution in which he or she is committed. The issue to  
42 be determined on such proceeding is whether the petitioner, as a  
43 result of a mental disease or defect, is a substantial danger to  
44 other persons, or presents a substantial likelihood of committing  
45 ((felonious)) criminal acts jeopardizing public safety or security,  
46 unless kept under further control by the court or other persons or  
47 institutions.

48 Nothing contained in this chapter shall prohibit the committed  
49 person from petitioning for release by writ of habeas corpus.

1 1. **Sec.** RCW 10.77.210 and 1993 c 31 s 12 are each amended  
2 to read as follows:

3 (1) Any person involuntarily detained, hospitalized, or committed  
4 pursuant to the provisions of this chapter shall have the right to  
5 adequate care and individualized treatment. The person who has  
6 custody of the patient or is in charge of treatment shall keep  
7 records detailing all medical, expert, and professional care and  
8 treatment received by a committed person, and shall keep copies of  
9 all reports of periodic examinations of the patient that have been  
10 filed with the secretary pursuant to this chapter. Except as  
11 provided in RCW 10.77.205 and 4.24.550 regarding the release of  
12 information concerning insane offenders who are acquitted of sex  
13 offenses and subsequently committed pursuant to this chapter, all  
14 records and reports made pursuant to this chapter, shall be made  
15 available only upon request, to the committed person, to his or her  
16 attorney, to his or her personal physician, to the supervising  
17 community corrections officer, to the prosecuting attorney, to the  
18 court, to the protection and advocacy agency, or other expert or  
19 professional persons who, upon proper showing, demonstrates a need  
20 for access to such records. All records and reports made pursuant to  
21 this chapter shall also be made available, upon request, to the  
22 department of corrections or the indeterminate sentence review board  
23 if the person was on parole, probation, or community supervision at  
24 the time of detention, hospitalization, or commitment or the person  
25 is subsequently convicted for the crime for which he or she was  
26 detained, hospitalized, or committed pursuant to this chapter.

27 (2) All relevant records and reports as defined by the department  
28 in rule shall be made available, upon request, to criminal justice  
29 agencies as defined in RCW 10.97.030.

30  
31 1. NEW SECTION. **Sec.** In developing rules under RCW  
32 10.77.210(2), the department shall implement the following  
33 legislative intent: Increasing public safety; and making decisions  
34 based on a person's current conduct and mental condition rather than  
35 the classification of the charges.

36  
37 1. **Sec.** RCW 10.77.240 and 1973 1st ex.s. c 117 s 24 are  
38 each amended to read as follows:

39 Nothing in this chapter shall prohibit a person presently  
40 committed from exercising a right presently available to him or her  
41 for obtaining release from confinement, including the right to  
42 petition for a writ of habeas corpus.

43  
44 1. NEW SECTION. **Sec.** A new section is added to chapter  
45 10.77 RCW to read as follows:

46 A copy of relevant records and reports as defined by the  
47 department made pursuant to this chapter shall accompany the  
48 defendant upon transfer to a mental health facility or a correctional  
49 institution or facility.

50

1 1. NEW SECTION. **Sec.** A new section is added to chapter  
2 10.77 RCW to read as follows:

3 If an individual is confined to a state or local correctional  
4 facility and was provided outpatient mental health services by an  
5 expert or professional person, the expert or professional person  
6 providing the services shall be notified of the individual's release  
7 within twenty-four hours following the release. Any records or  
8 reports regarding the individual's conduct or evaluation shall be  
9 immediately made available to the expert or professional person upon  
10 request.

11  
12 1. **Sec.** RCW 10.97.030 and 1990 c 3 s 128 are each amended  
13 to read as follows:

14 For purposes of this chapter, the definitions of terms in this  
15 section shall apply.

16 (1) "Criminal history record information" means information  
17 contained in records collected by criminal justice agencies, other  
18 than courts, on individuals, consisting of identifiable descriptions  
19 and notations of arrests, detentions, indictments, informations, or  
20 other formal criminal charges, and any disposition arising therefrom,  
21 including acquittals by reason of insanity or diminished capacity,  
22 dismissals based on lack of competency, sentences, correctional  
23 supervision, and release.

24 The term includes information contained in records maintained by  
25 or obtained from criminal justice agencies, other than courts, which  
26 records provide individual identification of a person together with  
27 any portion of the individual's record of involvement in the criminal  
28 justice system as an alleged or convicted offender, except:

29 (a) Posters, announcements, or lists for identifying or  
30 apprehending fugitives or wanted persons;

31 (b) Original records of entry maintained by criminal justice  
32 agencies to the extent that such records are compiled and maintained  
33 chronologically and are accessible only on a chronological basis;

34 (c) Court indices and records of public judicial proceedings,  
35 court decisions, and opinions, and information disclosed during  
36 public judicial proceedings;

37 (d) Records of traffic violations which are not punishable by a  
38 maximum term of imprisonment of more than ninety days;

39 (e) Records of any traffic offenses as maintained by the  
40 department of licensing for the purpose of regulating the issuance,  
41 suspension, revocation, or renewal of drivers' or other operators'  
42 licenses and pursuant to RCW 46.52.130 (~~(as now existing or hereafter~~  
43 ~~amended)~~);

44 (f) Records of any aviation violations or offenses as maintained  
45 by the department of transportation for the purpose of regulating  
46 pilots or other aviation operators, and pursuant to RCW 47.68.330  
47 (~~(as now existing or hereafter amended)~~);

48 (g) Announcements of executive clemency.

49 (2) "Nonconviction data" consists of all criminal history record  
50 information relating to an incident which has not led to a conviction

1 or other disposition adverse to the subject, and for which  
2 proceedings are no longer actively pending. There shall be a  
3 rebuttable presumption that proceedings are no longer actively  
4 pending if more than one year has elapsed since arrest, citation, or  
5 service of warrant and no disposition has been entered.

6 (3) "Conviction record" means criminal history record information  
7 relating to an incident which has led to a conviction or other  
8 disposition adverse to the subject.

9 (4) "Conviction or other disposition adverse to the subject"  
10 means any disposition of charges (~~(, except)~~) other than: (a) A  
11 decision not to prosecute(,); (b) a dismissal(,); or (c)  
12 acquittal (~~(except when the)~~); with the following exceptions, which  
13 shall be considered dispositions adverse to the subject: An  
14 acquittal (~~(is)~~) due to a finding of not guilty by reason of insanity  
15 or diminished capacity, and a dismissal by reason of incompetency,  
16 pursuant to chapter 10.77 RCW (~~(and)~~) when the person was committed  
17 pursuant to chapter 10.77 RCW(~~(: PROVIDED, HOWEVER, That)~~); and a  
18 dismissal entered after a period of probation, suspension, or  
19 deferral of sentence (~~(shall be considered a disposition adverse to~~  
20 the subject)).

21 (5) "Criminal justice agency" means: (a) A court; or (b) a  
22 government agency which performs the administration of criminal  
23 justice pursuant to a statute or executive order and which allocates  
24 a substantial part of its annual budget to the administration of  
25 criminal justice.

26 (6) "The administration of criminal justice" means performance of  
27 any of the following activities: Detection, apprehension, detention,  
28 pretrial release, post-trial release, prosecution, adjudication,  
29 correctional supervision, or rehabilitation of accused persons or  
30 criminal offenders. The term also includes criminal identification  
31 activities and the collection, storage, dissemination of criminal  
32 history record information, and the compensation of victims of crime.

33 (7) "Disposition" means the formal conclusion of a criminal  
34 proceeding at whatever stage it occurs in the criminal justice  
35 system.

36 (8) "Dissemination" means disclosing criminal history record  
37 information or disclosing the absence of criminal history record  
38 information to any person or agency outside the agency possessing the  
39 information, subject to the following exceptions:

40 (a) When criminal justice agencies jointly participate in the  
41 maintenance of a single record keeping department as an alternative  
42 to maintaining separate records, the furnishing of information by  
43 that department to personnel of any participating agency is not a  
44 dissemination;

45 (b) The furnishing of information by any criminal justice agency  
46 to another for the purpose of processing a matter through the  
47 criminal justice system, such as a police department providing  
48 information to a prosecutor for use in preparing a charge, is not a  
49 dissemination;

1 (c) The reporting of an event to a record keeping agency for the  
2 purpose of maintaining the record is not a dissemination.

3  
4 1. NEW SECTION. **Sec.** The code reviser shall alphabetize  
5 the definitions in RCW 10.77.010 and correct any references.

6  
7 1. NEW SECTION. **Sec.** The following acts or parts of acts  
8 are each repealed:

- 9 (1) RCW 71.05.015 and 1979 ex.s. c 215 s 1;  
10 (2) RCW 71.05.080 and 1973 1st ex.s. c 142 s 13; and  
11 (3) RCW 71.05.490 and 1997 c 112 s 35 & 1973 1st ex.s. c 142  
12 s 54.

13  
14 1. NEW SECTION. **Sec.** This act takes effect July 1, 1998,  
15 except section 43 is necessary for the immediate preservation of the  
16 public peace, health, or safety, or support of the state government  
17 and its existing public institutions, and takes effect March 31,  
18 1998.

19  
20 1. NEW SECTION. **Sec.** The sum of . . . . . dollars, or as  
21 much thereof as may be necessary, is appropriated for the biennium  
22 ending June 30, 1999, from the general fund to the department of  
23 social and health services for the purposes of implementing this act.

24  
25 1. NEW SECTION. **Sec.** RCW 10.77.005 is recodified within  
26 chapter 10.77 RCW after RCW 10.77.090.

27  
28 1. NEW SECTION. **Sec.** If any provision of this act or its  
29 application to any person or circumstance is held invalid, the  
30 remainder of the act or the application of the provision to other  
31 persons or circumstances is not affected.

32  
--- END ---