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SECOND SUBSTITUTE HOUSE BILL 2844

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State of Washington

55th Legislature

1998 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Constantine, Ballasiotes, Costa, Dickerson, Cody, Radcliff, Sheahan, O'Brien, Butler, Kenney, Wood, Ogden, Cooper, Tokuda, Anderson and Lantz)

Read first time 02/09/98. Referred to Committee on .

1 AN ACT Relating to mental illness; amending RCW 71.05.010,  
2 71.05.020, 71.05.030, 71.05.035, 71.05.050, 71.05.130, 71.05.150,  
3 71.05.160, 71.05.170, 71.05.200, 71.05.210, 71.05.230, 71.05.280,  
4 71.05.290, 71.05.300, 71.05.330, 71.05.340, 71.05.390, 71.05.530,  
5 71.05.560, 10.77.005, 10.77.010, 10.77.020, 10.77.030, 10.77.040,  
6 10.77.060, 10.77.070, 10.77.080, 10.77.090, 10.77.110, 10.77.110,  
7 10.77.140, 10.77.150, 10.77.180, 10.77.190, 10.77.200, 10.77.210, and  
8 10.97.030; adding new sections to chapter 71.05 RCW; adding new  
9 sections to chapter 10.77 RCW; adding a new section to chapter 72.10  
10 RCW; creating new sections; recodifying RCW 10.77.005; repealing RCW  
11 71.05.015 and 71.05.080; making an appropriation; providing effective  
12 dates; and providing an expiration date.

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

14 NEW SECTION. **Sec. 1.** It is the intent of the legislature to: (1)  
15 Clarify that it is the nature of a person's current conduct, current  
16 mental condition, history, and likelihood of committing future acts  
17 that pose a threat to public safety or himself or herself, rather than  
18 simple categorization of offenses, that should determine treatment  
19 procedures and level; (2) improve and clarify the sharing of

1 information between the mental health and criminal justice systems; and  
2 (3) provide additional opportunities for mental health treatment for  
3 persons whose conduct threatens himself or herself or threatens public  
4 safety and has led to contact with the criminal justice system.

5 The legislature recognizes that a person can be incompetent to  
6 stand trial, but may not be gravely disabled or may not present a  
7 likelihood of serious harm. The legislature does not intend to create  
8 a presumption that a person who is found incompetent to stand trial is  
9 gravely disabled or presents a likelihood of serious harm requiring  
10 civil commitment.

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

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

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

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

19 (3) To safeguard individual rights;

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

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

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

27 (7) To protect the public safety.

28 **Sec. 3.** RCW 71.05.020 and 1997 c 112 s 3 are each amended to read  
29 as follows:

30 For the purposes of this chapter:

31 (1) "Antipsychotic medications," also referred to as  
32 "neuroleptics," means that class of drugs primarily used to treat  
33 serious manifestations of mental illness associated with thought  
34 disorders and ~~((currently))~~ includes phenothiazines, thioxanthenes,  
35 butyrophenone, dihydroindolone, and dibenzoxazipine;

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

4 (3) "County designated mental health professional" means a mental  
5 health professional appointed by the county to perform the duties  
6 specified in this chapter;

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

11 (~~(4)~~) (5) "Department" means the department of social and health  
12 services;

13 (~~(5)~~) (6) "Developmental disabilities professional" means a  
14 person who has specialized training and three years of experience in  
15 directly treating or working with persons with developmental  
16 disabilities and is a psychiatrist, psychologist, or social worker, and  
17 such other developmental disabilities professionals as may be defined  
18 by rules adopted by the secretary;

19 (~~(6)~~) (7) "Developmental disability" means that condition defined  
20 in RCW 71A.10.020(2);

21 (~~(7)~~) (8) "Evaluation and treatment facility" means any facility  
22 which can provide directly, or by direct arrangement with other public  
23 or private agencies, emergency evaluation and treatment, outpatient  
24 care, and timely and appropriate inpatient care to persons suffering  
25 from a mental disorder, and which is certified as such by the  
26 department. A physically separate and separately operated portion of  
27 a state hospital may be designated as an evaluation and treatment  
28 facility. A facility which is part of, or operated by, the department  
29 or any federal agency will not require certification. No correctional  
30 institution or facility, or jail, shall be an evaluation and treatment  
31 facility within the meaning of this chapter;

32 (~~(8)~~) (9) "Gravely disabled" means a condition in which a person,  
33 as a result of a mental disorder: (a) Is in danger of serious physical  
34 harm resulting from a failure to provide for his or her essential human  
35 needs of health or safety(~~(7)~~); or (b) manifests severe deterioration  
36 in routine functioning evidenced by repeated and escalating loss of  
37 cognitive or volitional control over his or her actions and is not  
38 receiving such care as is essential for his or her health or safety;

1       (~~(9)~~) (10) "Habilitative services" means those services provided  
2 by program personnel to assist persons in acquiring and maintaining  
3 life skills and in raising their levels of physical, mental, social,  
4 and vocational functioning. Habilitative services include education,  
5 training for employment, and therapy. The habilitative process shall  
6 be undertaken with recognition of the risk to the public safety  
7 presented by the individual being assisted as manifested by prior  
8 charged criminal conduct;

9       (~~(10)~~) (11) "History of one or more violent acts" refers to the  
10 period of time ten years prior to the filing of a petition under this  
11 chapter, excluding any time spent, but not any violent acts committed,  
12 in a mental health facility or in confinement as a result of a criminal  
13 conviction;

14       (12) "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 purposes  
21 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 to  
29 less-restrictive settings, criteria for proposed eventual discharge  
30 from involuntary confinement, and a projected possible date for  
31 discharge from involuntary confinement; and

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

34       (~~(11)~~) (13) "Judicial commitment" means a commitment by a court  
35 pursuant to the provisions of this chapter;

36       (~~(12)~~) (14) "Likelihood of serious harm" means:

37       (a) A substantial risk that: (i) Physical harm will be inflicted  
38 by an individual upon his or her own person, as evidenced by threats or  
39 attempts to commit suicide or inflict physical harm on oneself(~~(b)~~)

1 ~~a substantial risk that~~); (ii) physical harm will be inflicted by an  
2 individual upon another, as evidenced by behavior which has caused such  
3 harm or which places another person or persons in reasonable fear of  
4 sustaining such harm(~~, or (c) a substantial risk that~~); or (iii)  
5 physical harm will be inflicted by an individual upon the property of  
6 others, as evidenced by behavior which has caused substantial loss or  
7 damage to the property of others; or  
8 ~~((13))~~ (b) The individual has threatened the physical safety of  
9 another and has a history of one or more violent acts;  
10 (15) "Mental disorder" means any organic, mental, or emotional  
11 impairment which has substantial adverse effects on an individual's  
12 cognitive or volitional functions;  
13 ~~((14))~~ (16) "Mental health professional" means a psychiatrist,  
14 psychologist, psychiatric nurse, or social worker, and such other  
15 mental health professionals as may be defined by rules adopted by the  
16 secretary pursuant to the provisions of this chapter;  
17 ~~((15))~~ (17) "Peace officer" means a law enforcement official of  
18 a public agency or governmental unit, and includes persons specifically  
19 given peace officer powers by any state law, local ordinance, or  
20 judicial order of appointment;  
21 ~~((16))~~ (18) "Private agency" means any person, partnership,  
22 corporation, or association not defined as a public agency, whether or  
23 not financed in whole or in part by public funds, which constitutes an  
24 evaluation and treatment facility or private institution, hospital, or  
25 sanitarium, which is conducted for, or includes a department or ward  
26 conducted for the care and treatment of persons who are mentally ill;  
27 ~~((17))~~ (19) "Professional person" (~~shall~~) means a mental health  
28 professional(~~, as above defined,~~) and shall also mean a physician,  
29 registered nurse, and such others as may be defined by rules adopted by  
30 the secretary pursuant to the provisions of this chapter;  
31 ~~((18))~~ (20) "Psychiatrist" means a person having a license as a  
32 physician and surgeon in this state who has in addition completed three  
33 years of graduate training in psychiatry in a program approved by the  
34 American medical association or the American osteopathic association  
35 and is certified or eligible to be certified by the American board of  
36 psychiatry and neurology;  
37 ~~((19))~~ (21) "Psychologist" means a person who has been licensed  
38 as a psychologist pursuant to chapter 18.83 RCW;

1       (~~(20)~~) (22) "Public agency" means any evaluation and treatment  
2 facility or institution, hospital, or sanitarium which is conducted  
3 for, or includes a department or ward conducted for, the care and  
4 treatment of persons who are mentally ill or deranged, if the agency is  
5 operated directly by, federal, state, county, or municipal government,  
6 or a combination of such governments;

7       (~~(21)~~) (23) "Resource management services" has the meaning given  
8 in chapter 71.24 RCW;

9       (~~(22)~~) (24) "Secretary" means the secretary of the department of  
10 social and health services, or his or her designee;

11       (~~(23)~~) (25) "Social worker" means a person with a master's or  
12 further advanced degree from an accredited school of social work or a  
13 degree deemed equivalent under rules adopted by the secretary;

14       (26) "Violent act" means behavior that resulted in homicide,  
15 attempted suicide, nonfatal injuries, or substantial damage to  
16 property.

17       **Sec. 4.** RCW 71.05.030 and 1985 c 354 s 31 are each amended to read  
18 as follows:

19       Persons suffering from a mental disorder may not be involuntarily  
20 committed for treatment of such disorder except pursuant to provisions  
21 of this chapter, chapter 10.77 RCW (~~or its successor~~), chapter 71.06  
22 RCW, chapter 71.34 RCW, transfer pursuant to RCW 72.68.031 through  
23 72.68.037, or pursuant to court ordered evaluation and treatment not to  
24 exceed ninety days pending a criminal trial or sentencing.

25       **Sec. 5.** RCW 71.05.035 and 1989 c 420 s 2 are each amended to read  
26 as follows:

27       (~~(With respect to chapter 420, Laws of 1989,)~~) The legislature  
28 finds that among those persons who endanger the safety of others by  
29 committing (~~felony~~) crimes are a small number of persons with  
30 developmental disabilities. While their conduct is not typical of the  
31 vast majority of persons with developmental disabilities who are  
32 responsible citizens, for their own welfare and for the safety of  
33 others the state may need to exercise control over those few dangerous  
34 individuals who are developmentally disabled, have been charged with  
35 (~~felony~~) crimes that involve a threat to public safety or security,  
36 and have been found either incompetent to stand trial or not guilty by  
37 reason of insanity. The legislature finds, however, that the use of

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

18 **Sec. 6.** RCW 71.05.050 and 1997 c 112 s 5 are each amended to read  
19 as follows:

20 Nothing in this chapter shall be construed to limit the right of  
21 any person to apply voluntarily to any public or private agency or  
22 practitioner for treatment of a mental disorder, either by direct  
23 application or by referral. Any person voluntarily admitted for  
24 inpatient treatment to any public or private agency shall be released  
25 immediately upon his or her request. Any person voluntarily admitted  
26 for inpatient treatment to any public or private agency shall orally be  
27 advised of the right to immediate release and further advised of such  
28 rights in writing as are secured to them pursuant to this chapter and  
29 their rights of access to attorneys, courts, and other legal redress.  
30 Their condition and status shall be reviewed at least once each one  
31 hundred eighty days for evaluation as to the need for further treatment  
32 and/or possible release, at which time they shall again be advised of  
33 their right to release upon request: PROVIDED HOWEVER, That if the  
34 professional staff of any public or private agency or hospital regards  
35 a person voluntarily admitted who requests release as presenting, as a  
36 result of a mental disorder, an imminent likelihood of serious harm, or  
37 is gravely disabled, they may detain such person for sufficient time to  
38 notify the (~~designated~~) county designated mental health professional

1 of such person's condition to enable (~~such~~) the county designated  
2 mental health professional to authorize such person being further held  
3 in custody or transported to an evaluation and treatment center  
4 pursuant to the provisions of this chapter, which shall in ordinary  
5 circumstances be no later than the next judicial day: PROVIDED  
6 FURTHER, That if a person is brought to the emergency room of a public  
7 or private agency or hospital for observation or treatment, the person  
8 refuses voluntary admission, and the professional staff of the public  
9 or private agency or hospital regard such person as presenting as a  
10 result of a mental disorder an imminent likelihood of serious harm, or  
11 as presenting an imminent danger because of grave disability, they may  
12 detain such person for sufficient time to notify the (~~designated~~)  
13 county designated mental health professional of such person's condition  
14 to enable (~~such~~) the county designated mental health professional to  
15 authorize such person being further held in custody or transported to  
16 an evaluation treatment center pursuant to the conditions in this  
17 chapter, but which time shall be no more than six hours from the time  
18 the professional staff determine that an evaluation by the county  
19 designated mental health professional is necessary.

20 **Sec. 7.** RCW 71.05.130 and 1991 c 105 s 3 are each amended to read  
21 as follows:

22 In any judicial proceeding for involuntary commitment or detention,  
23 or in any proceeding challenging such commitment or detention, the  
24 prosecuting attorney for the county in which the proceeding was  
25 initiated shall represent the individuals or agencies petitioning for  
26 commitment or detention and shall defend all challenges to such  
27 commitment or detention: PROVIDED, That (~~after January 1, 1980,~~) the  
28 attorney general shall represent and provide legal services and advice  
29 to state hospitals or institutions with regard to all provisions of and  
30 proceedings under this chapter except in proceedings initiated by such  
31 hospitals and institutions seeking fourteen day detention.

32 **Sec. 8.** RCW 71.05.150 and 1997 c 112 s 8 are each amended to read  
33 as follows:

34 (1)(a) When a county designated mental health professional  
35 (~~designated by the county~~) receives information alleging that a  
36 person, as a result of a mental disorder: (i) Presents a likelihood of  
37 serious harm(~~(  )~~); or (ii) is gravely disabled; (~~such mental health~~



1 ~~professional~~) the county designated mental health professional may,  
2 after investigation and evaluation of the specific facts alleged((~~7~~))  
3 and of the reliability and credibility of ((~~the~~)) any person ((~~or~~  
4 ~~persons, if any,~~)) providing information to initiate detention,  
5 ((~~may,~~)) if satisfied that the allegations are true and that the person  
6 will not voluntarily seek appropriate treatment, file a petition for  
7 initial detention. Before filing the petition, the county designated  
8 mental health professional must personally interview the person, unless  
9 the person refuses an interview, and determine whether the person will  
10 voluntarily receive appropriate evaluation and treatment at an  
11 evaluation and treatment facility.

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

30 (c) The county designated mental health professional shall then  
31 serve or cause to be served on such person, his or her guardian, and  
32 conservator, if any, a copy of the order to appear together with a  
33 notice of rights and a petition for initial detention. After service  
34 on such person the county designated mental health professional shall  
35 file the return of service in court and provide copies of all papers in  
36 the court file to the evaluation and treatment facility and the  
37 designated attorney. The county designated mental health professional  
38 shall notify the court and the prosecuting attorney that a probable  
39 cause hearing will be held within seventy-two hours of the date and

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

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

30 (2) When a county designated mental health professional  
31 (~~((designated by the county))~~) receives information alleging that a  
32 person, as the result of a mental disorder, presents an imminent  
33 likelihood of serious harm, or is in imminent danger because of being  
34 gravely disabled, after investigation and evaluation of the specific  
35 facts alleged and of the reliability and credibility of the person or  
36 persons providing the information if any, the county designated mental  
37 health professional may take such person, or cause by oral or written  
38 order such person to be taken into emergency custody in an evaluation

1 and treatment facility for not more than seventy-two hours as described  
2 in RCW 71.05.180.

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

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

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

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

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

24 **Sec. 9.** RCW 71.05.160 and 1997 c 112 s 10 are each amended to read  
25 as follows:

26 Any facility receiving a person pursuant to RCW 71.05.150 shall  
27 require a petition for initial detention stating the circumstances  
28 under which the person's condition was made known and stating that such  
29 officer or person has evidence, as a result of his or her personal  
30 observation or investigation, that the actions of the person for which  
31 application is made constitute a likelihood of serious harm, or that he  
32 or she is gravely disabled, and stating the specific facts known to him  
33 or her as a result of his or her personal observation or investigation,  
34 upon which he or she bases the belief that such person should be  
35 detained for the purposes and under the authority of this chapter.

36 If a person is involuntarily placed in an evaluation and treatment  
37 facility pursuant to RCW 71.05.150, on the next judicial day following  
38 the initial detention, the county designated mental health professional

1 ((~~designated by the county~~)) shall file with the court and serve the  
2 designated attorney of the detained person the petition or supplemental  
3 petition for initial detention, proof of service of notice, and a copy  
4 of a notice of emergency detention.

5 **Sec. 10.** RCW 71.05.170 and 1997 c 112 s 11 are each amended to  
6 read as follows:

7 Whenever the ((~~designated~~)) county designated mental health  
8 professional petitions for detention of a person whose actions  
9 constitute a likelihood of serious harm, or who is gravely disabled,  
10 the facility providing seventy-two hour evaluation and treatment must  
11 immediately accept on a provisional basis the petition and the person.  
12 The facility shall then evaluate the person's condition and admit or  
13 release such person in accordance with RCW 71.05.210. The facility  
14 shall notify in writing the court and the ((~~designated~~)) county  
15 designated mental health professional of the date and time of the  
16 initial detention of each person involuntarily detained in order that  
17 a probable cause hearing shall be held no later than seventy-two hours  
18 after detention.

19 The duty of a state hospital to accept persons for evaluation and  
20 treatment under this section shall be limited by chapter 71.24 RCW.

21 **Sec. 11.** RCW 71.05.200 and 1997 c 112 s 14 are each amended to  
22 read as follows:

23 (1) Whenever any person is detained for evaluation and treatment  
24 pursuant to this chapter, both the person and, if possible, a  
25 responsible member of his or her immediate family, guardian, or  
26 conservator, if any, shall be advised as soon as possible in writing or  
27 orally, by the officer or person taking him or her into custody or by  
28 personnel of the evaluation and treatment facility where the person is  
29 detained that unless the person is released or voluntarily admits  
30 himself or herself for treatment within seventy-two hours of the  
31 initial detention:

32 (a) That a judicial hearing in a superior court, either by a judge  
33 or court commissioner thereof, shall be held not more than seventy-two  
34 hours after the initial detention to determine whether there is  
35 probable cause to detain the person after the seventy-two hours have  
36 expired for up to an additional fourteen days without further automatic  
37 hearing for the reason that the person is a mentally ill person whose

1 mental disorder presents a likelihood of serious harm or that the  
2 person is gravely disabled;

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

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

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

13 (e) That the person has the right to refuse psychiatric  
14 medications, including antipsychotic medication beginning twenty-four  
15 hours prior to the probable cause hearing.

16 (2) When proceedings are initiated under RCW 71.05.150 (2), (3), or  
17 (4)(b), no later than twelve hours after such person is admitted to the  
18 evaluation and treatment facility the personnel of the evaluation and  
19 treatment facility or the county designated mental health professional  
20 shall serve on such person a copy of the petition for initial detention  
21 and the name, business address, and phone number of the designated  
22 attorney and shall forthwith commence service of a copy of the petition  
23 for initial detention on the designated attorney.

24 (3) The judicial hearing described in subsection (1) of this  
25 section is hereby authorized, and shall be held according to the  
26 provisions of subsection (1) of this section and rules promulgated by  
27 the supreme court.

28 **Sec. 12.** RCW 71.05.210 and 1997 c 112 s 15 are each amended to  
29 read as follows:

30 Each person involuntarily admitted to an evaluation and treatment  
31 facility shall, within twenty-four hours of his or her admission, be  
32 examined and evaluated by a licensed physician who may be assisted by  
33 a physician assistant according to chapter 18.71A RCW or an advanced  
34 registered nurse practitioner according to chapter 18.79 RCW and a  
35 mental health professional (~~(as defined in this chapter)~~), and shall  
36 receive such treatment and care as his or her condition requires  
37 including treatment on an outpatient basis for the period that he or  
38 she is detained, except that, beginning twenty-four hours prior to a

1 (~~court proceeding~~) trial or hearing pursuant to RCW 71.05.215,  
2 71.05.240, 71.05.310, 71.05.320, 71.05.340, or 71.05.370, the  
3 individual may refuse (~~all but emergency life saving treatment~~)  
4 psychiatric medications, but may not refuse: (1) Any other medication  
5 prescribed by a person licensed under Title 18 RCW; or (2) emergency  
6 lifesaving treatment, and the individual shall be informed at an  
7 appropriate time of his or her right (~~to~~) of such refusal (~~of~~  
8 ~~treatment~~). (~~Such~~) The person shall be detained up to seventy-two  
9 hours, if, in the opinion of the professional person in charge of the  
10 facility, or his or her professional designee, the person presents a  
11 likelihood of serious harm, or is gravely disabled. A person who has  
12 been detained for seventy-two hours shall no later than the end of such  
13 period be released, unless referred for further care on a voluntary  
14 basis, or detained pursuant to court order for further treatment as  
15 provided in this chapter.

16 If, after examination and evaluation, the licensed physician and  
17 mental health professional determine that the initial needs of the  
18 person would be better served by placement in a chemical dependency  
19 treatment facility, then the person shall be referred to an approved  
20 treatment program defined under RCW 70.96A.020.

21 An evaluation and treatment center admitting any person pursuant to  
22 this chapter whose physical condition reveals the need for  
23 hospitalization shall assure that such person is transferred to an  
24 appropriate hospital for treatment. Notice of such fact shall be given  
25 to the court, the designated attorney, and the (~~designated~~) county  
26 designated mental health professional and the court shall order such  
27 continuance in proceedings under this chapter as may be necessary, but  
28 in no event may this continuance be more than fourteen days.

29 **Sec. 13.** RCW 71.05.230 and 1997 c 112 s 18 are each amended to  
30 read as follows:

31 A person detained for seventy-two hour evaluation and treatment may  
32 be detained for not more than fourteen additional days of involuntary  
33 intensive treatment or ninety additional days of a less restrictive  
34 alternative to involuntary intensive treatment if the following  
35 conditions are met:

36 (1) The professional staff of the agency or facility providing  
37 evaluation services has analyzed the person's condition and finds that  
38 the condition is caused by mental disorder and either results in a

1 likelihood of serious harm, or results in the detained person being  
2 gravely disabled and are prepared to testify those conditions are met;  
3 and

4 (2) The person has been advised of the need for voluntary treatment  
5 and the professional staff of the facility has evidence that he or she  
6 has not in good faith volunteered; and

7 (3) The facility providing intensive treatment is certified to  
8 provide such treatment by the department; and

9 (4) The professional staff of the agency or facility or the county  
10 designated mental health professional (~~((designated by the county))~~) has  
11 filed a petition for fourteen day involuntary detention or a ninety day  
12 less restrictive alternative with the court. The petition must be  
13 signed either by two physicians or by one physician and a mental health  
14 professional who have examined the person. If involuntary detention is  
15 sought the petition shall state facts that support the finding that  
16 such person, as a result of mental disorder, presents a likelihood of  
17 serious harm, or is gravely disabled and that there are no less  
18 restrictive alternatives to detention in the best interest of such  
19 person or others. The petition shall state specifically that less  
20 restrictive alternative treatment was considered and specify why  
21 treatment less restrictive than detention is not appropriate. If an  
22 involuntary less restrictive alternative is sought, the petition shall  
23 state facts that support the finding that such person, as a result of  
24 mental disorder, presents a likelihood of serious harm, or is gravely  
25 disabled and shall set forth the less restrictive alternative proposed  
26 by the facility; and

27 (5) A copy of the petition has been served on the detained person,  
28 his or her attorney and his or her guardian or conservator, if any,  
29 prior to the probable cause hearing; and

30 (6) The court at the time the petition was filed and before the  
31 probable cause hearing has appointed counsel to represent such person  
32 if no other counsel has appeared; and

33 (7) The court has ordered a fourteen day involuntary intensive  
34 treatment or a ninety day less restrictive alternative treatment after  
35 a probable cause hearing has been held pursuant to RCW 71.05.240; and

36 (8) At the conclusion of the initial commitment period, the  
37 professional staff of the agency or facility or the county designated  
38 mental health professional (~~((designated by the county))~~) may petition  
39 for an additional period of either ninety days of less restrictive

1 alternative treatment or ninety days of involuntary intensive treatment  
2 as provided in RCW 71.05.290; and

3 (9) If the hospital or facility designated to provide outpatient  
4 treatment is other than the facility providing involuntary treatment,  
5 the outpatient facility so designated has agreed to assume such  
6 responsibility.

7 NEW SECTION. **Sec. 14.** A new section is added to chapter 71.05 RCW  
8 to read as follows:

9 In making a determination of whether there is a likelihood of  
10 serious harm in a hearing conducted under RCW 71.05.240 or 71.05.320,  
11 the court shall give great weight to whether the person has: (1) A  
12 recent history of one or more violent acts; or (2) a recent history of  
13 one or more commitments under this chapter or its equivalent provisions  
14 under the laws of another state which were based on a likelihood of  
15 serious harm. The existence of prior violent acts or commitments under  
16 this chapter or its equivalent shall not be the sole basis for  
17 determining whether a person presents a likelihood of serious harm.

18 For the purposes of this section "recent" refers to the period of  
19 time not exceeding three years prior to the current hearing.

20 **Sec. 15.** RCW 71.05.280 and 1997 c 112 s 22 are each amended to  
21 read as follows:

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

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

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

35 (3) Such person has been determined to be incompetent and criminal  
36 charges have been dismissed pursuant to RCW 10.77.090(~~(+3)~~) (4), and  
37 has committed acts constituting a (~~(felony)~~) crime that is a threat to



1 public safety or security, and as a result of a mental disorder,  
2 presents a substantial likelihood of repeating similar acts. In any  
3 proceeding pursuant to this subsection it shall not be necessary to  
4 show intent, willfulness, or state of mind as an element of the  
5 ((felony)) crime; or

6 (4) Such person is gravely disabled.

7 **Sec. 16.** RCW 71.05.290 and 1997 c 112 s 24 are each amended to  
8 read as follows:

9 (1) At any time during a person's fourteen day intensive treatment  
10 period, the professional person in charge of a treatment facility or  
11 his or her professional designee or the ((designated)) county  
12 designated mental health professional may petition the superior court  
13 for an order requiring such person to undergo an additional period of  
14 treatment. Such petition must be based on one or more of the grounds  
15 set forth in RCW 71.05.280.

16 (2) The petition shall summarize the facts which support the need  
17 for further confinement and shall be supported by affidavits signed by  
18 two examining physicians, or by one examining physician and examining  
19 mental health professional. The affidavits shall describe in detail  
20 the behavior of the detained person which supports the petition and  
21 shall explain what, if any, less restrictive treatments which are  
22 alternatives to detention are available to such person, and shall state  
23 the willingness of the affiant to testify to such facts in subsequent  
24 judicial proceedings under this chapter.

25 (3) If a person has been determined to be incompetent pursuant to  
26 RCW 10.77.090((+3)) (4), then the professional person in charge of the  
27 treatment facility or his or her professional designee or the county  
28 designated mental health professional may directly file a petition for  
29 one hundred eighty day treatment under RCW 71.05.280(3). No petition  
30 for initial detention or fourteen day detention is required before such  
31 a petition may be filed.

32 **Sec. 17.** RCW 71.05.300 and 1997 c 112 s 25 are each amended to  
33 read as follows:

34 The petition for ninety day treatment shall be filed with the clerk  
35 of the superior court at least three days before expiration of the  
36 fourteen-day period of intensive treatment. At the time of filing such  
37 petition, the clerk shall set a time for the person to come before the

1 court on the next judicial day after the day of filing unless such  
2 appearance is waived by the person's attorney, and the clerk shall  
3 notify the ((designated)) county designated mental health professional.  
4 The ((designated)) county designated mental health professional shall  
5 immediately notify the person detained, his or her attorney, if any,  
6 and his or her guardian or conservator, if any, and the prosecuting  
7 attorney, and provide a copy of the petition to such persons as soon as  
8 possible.

9 At the time set for appearance the detained person shall be brought  
10 before the court, unless such appearance has been waived and the court  
11 shall advise him or her of his or her right to be represented by an  
12 attorney and of his or her right to a jury trial. If the detained  
13 person is not represented by an attorney, or is indigent or is  
14 unwilling to retain an attorney, the court shall immediately appoint an  
15 attorney to represent him or her. The court shall, if requested,  
16 appoint a reasonably available licensed physician, psychologist, or  
17 psychiatrist, designated by the detained person to examine and testify  
18 on behalf of the detained person.

19 The court may, if requested, also appoint a professional person as  
20 defined in RCW 71.05.020 to seek less restrictive alternative courses  
21 of treatment and to testify on behalf of the detained person. In the  
22 case of a developmentally disabled person who has been determined to be  
23 incompetent pursuant to RCW 10.77.090(~~(+3)~~) (4), then the appointed  
24 professional person under this section shall be a developmental  
25 disabilities professional.

26 The court shall also set a date for a full hearing on the petition  
27 as provided in RCW 71.05.310.

28 NEW SECTION. Sec. 18. A new section is added to chapter 71.05 RCW  
29 to read as follows:

30 (1) If an individual is referred to a county designated mental  
31 health professional under RCW 10.77.090(1)(d)(iii)(A), the county  
32 designated mental health professional shall examine the individual  
33 within forty-eight hours. If the county designated mental health  
34 professional determines it is not appropriate to detain the individual  
35 or petition for a ninety-day less restrictive alternative under RCW  
36 71.05.230(4), that decision shall be immediately presented to the  
37 superior court for hearing. The court shall hold a hearing to consider  
38 the decision of the county designated mental health professional not

1 later than the next judicial day. At the hearing the superior court  
2 shall review the determination of the county designated mental health  
3 professional and determine whether an order should be entered requiring  
4 the person to be evaluated at an evaluation and treatment facility. No  
5 person referred to an evaluation and treatment facility may be held at  
6 the facility longer than seventy-two hours.

7 (2) If an individual is placed in an evaluation and treatment  
8 facility under RCW 10.77.090(1)(d)(iii)(B), a professional person shall  
9 evaluate the individual for purposes of determining whether to file a  
10 ninety-day inpatient or outpatient petition under chapter 71.05 RCW.  
11 Immediately following completion of the evaluation, the professional  
12 person shall file a petition or, if the recommendation of the  
13 professional person is to release the individual, present his or her  
14 recommendation to the court. The superior court shall review the  
15 recommendation not later than the next judicial day. For an individual  
16 subject to this subsection, the professional person may directly file  
17 a petition for ninety-day inpatient or outpatient treatment and no  
18 petition for initial detention or fourteen-day detention is required  
19 before such a petition may be filed.

20 (3) If the professional person and prosecuting attorney or attorney  
21 general, as appropriate, stipulates that the individual does not  
22 present a likelihood of serious harm and is not gravely disabled, the  
23 hearing under this section is not required and the individual, if in  
24 custody, shall be released.

25 (4) The individual shall have the rights specified in RCW  
26 71.05.250.

27 NEW SECTION. **Sec. 19.** A new section is added to chapter 71.05 RCW  
28 to read as follows:

29 Whenever a county designated mental health professional or  
30 professional person is conducting an evaluation under this chapter,  
31 consideration shall include all reasonably available information and  
32 records regarding: (1) Prior recommendations for evaluation of the  
33 need for civil commitments when the recommendation is made pursuant to  
34 an evaluation conducted under chapter 10.77 RCW; (2) history of one or  
35 more violent acts; (3) prior determinations of incompetency or insanity  
36 under chapter 10.77 RCW; and (4) prior commitments under this chapter.

1       **Sec. 20.** RCW 71.05.330 and 1997 c 112 s 27 are each amended to  
2 read as follows:

3       (1) Nothing in this chapter shall prohibit the superintendent or  
4 professional person in charge of the hospital or facility in which the  
5 person is being involuntarily treated from releasing him or her prior  
6 to the expiration of the commitment period when, in the opinion of the  
7 superintendent or professional person in charge, the person being  
8 involuntarily treated no longer presents a likelihood of serious harm.

9       Whenever the superintendent or professional person in charge of a  
10 hospital or facility providing involuntary treatment pursuant to this  
11 chapter releases a person prior to the expiration of the period of  
12 commitment, the superintendent or professional person in charge shall  
13 in writing notify the court which committed the person for treatment.

14       (2) Before a person committed under grounds set forth in RCW  
15 71.05.280(3) or 71.05.320(2)(c) is released under this section, the  
16 superintendent or professional person in charge shall in writing notify  
17 the prosecuting attorney of the county in which the criminal charges  
18 against the committed person were dismissed, of the release date.  
19 Notice shall be provided at least thirty days before the release date.  
20 Within twenty days after receiving notice, the prosecuting attorney may  
21 petition the court in the county in which the person is being  
22 involuntarily treated for a hearing to determine whether the person is  
23 to be released. The prosecuting attorney shall provide a copy of the  
24 petition to the superintendent or professional person in charge of the  
25 hospital or facility providing involuntary treatment, the attorney, if  
26 any, and the guardian or conservator of the committed person. The  
27 court shall conduct a hearing on the petition within ten days of filing  
28 the petition. The committed person shall have the same rights with  
29 respect to notice, hearing, and counsel as for an involuntary treatment  
30 proceeding, except as set forth in this subsection and except that  
31 there shall be no right to jury trial. The issue to be determined at  
32 the hearing is whether or not the person may be released without  
33 substantial danger to other persons, or substantial likelihood of  
34 committing ((felonious)) criminal acts jeopardizing public safety or  
35 security. If the court disapproves of the release, it may do so only  
36 on the basis of substantial evidence. Pursuant to the determination of  
37 the court upon the hearing, the committed person shall be released or  
38 shall be returned for involuntary treatment subject to release at the

1 end of the period for which he or she was committed, or otherwise in  
2 accordance with the provisions of this chapter.

3 **Sec. 21.** RCW 71.05.340 and 1997 c 112 s 28 are each amended to  
4 read as follows:

5 (1)(a) When, in the opinion of the superintendent or the  
6 professional person in charge of the hospital or facility providing  
7 involuntary treatment, the committed person can be appropriately served  
8 by outpatient treatment prior to or at the expiration of the period of  
9 commitment, then such outpatient care may be required as a condition  
10 for early release for a period which, when added to the inpatient  
11 treatment period, shall not exceed the period of commitment. If the  
12 hospital or facility designated to provide outpatient treatment is  
13 other than the facility providing involuntary treatment, the outpatient  
14 facility so designated must agree in writing to assume such  
15 responsibility. A copy of the conditions for early release shall be  
16 given to the patient, the ((designated)) county designated mental  
17 health professional in the county in which the patient is to receive  
18 outpatient treatment, and to the court of original commitment.

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

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

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

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

26 (i)(A) A conditionally released person is failing to adhere to the  
27 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 reversed  
32 by further inpatient treatment, or ~~((there is))~~ a gravely disabled  
33 person poses a likelihood of serious harm(~~((,))~~); then, upon notification  
34 by the hospital or facility designated to provide outpatient care, or  
35 on his or her own motion, the ~~((designated))~~ county designated mental  
36 health professional or the secretary may order that the conditionally  
37 released person be apprehended and taken into custody and temporarily  
38 detained in an evaluation and treatment facility in or near the county  
39 in which he or she is receiving outpatient treatment.

1       (~~The~~) (b) When a conditionally released person fails to adhere to  
2 terms and conditions of his or her release or experiences substantial  
3 deterioration in his or her condition and, as a result, presents an  
4 increased likelihood of serious harm, the county designated mental  
5 health professional, the hospital or facility designated to provide  
6 outpatient treatment, or secretary shall order the person apprehended  
7 and temporarily detained in an evaluation and treatment facility in or  
8 near the county in which he or she is receiving outpatient treatment.

9       (c) A person (~~shall be~~) detained under this subsection (3) shall  
10 be held until such time, not exceeding five days, as a hearing can be  
11 scheduled to determine whether or not the person should be returned to  
12 the hospital or facility from which he or she had been conditionally  
13 released.       The (~~designated~~) county designated mental health  
14 professional or the secretary may modify or rescind such order at any  
15 time prior to commencement of the court hearing.

16       (~~(b)~~) (d) The court that originally ordered commitment shall be  
17 notified within two judicial days of a person's detention under the  
18 provisions of this section, and the (~~designated~~) county designated  
19 mental health professional or the secretary shall file his or her  
20 petition and order of apprehension and detention with the court and  
21 serve them upon the person detained. His or her attorney, if any, and  
22 his or her guardian or conservator, if any, shall receive a copy of  
23 such papers as soon as possible. Such person shall have the same  
24 rights with respect to notice, hearing, and counsel as for an  
25 involuntary treatment proceeding, except as specifically set forth in  
26 this section and except that there shall be no right to jury trial.  
27 The issues to be determined shall be: (i) Whether the conditionally  
28 released person did or did not adhere to the terms and conditions of  
29 his or her release; (ii) that substantial deterioration in the person's  
30 functioning has occurred; (iii) there is evidence of substantial  
31 decompensation with a (~~high~~) reasonable probability that the  
32 decompensation can be reversed by further inpatient treatment; or (iv)  
33 there is a likelihood of serious harm; and, if any of the conditions  
34 listed in this subsection (3)(~~(b)~~) (d) have occurred, whether the  
35 conditions of release should be modified or the person should be  
36 returned to the facility.

37       (~~(e)~~) (e) Pursuant to the determination of the court upon such  
38 hearing, the conditionally released person shall either continue to be  
39 conditionally released on the same or modified conditions or shall be

1 returned for involuntary treatment on an inpatient basis subject to  
2 release at the end of the period for which he or she was committed for  
3 involuntary treatment, or otherwise in accordance with the provisions  
4 of this chapter. Such hearing may be waived by the person and his or  
5 her counsel and his or her guardian or conservator, if any, but shall  
6 not be waivable unless all such persons agree to waive, and upon such  
7 waiver the person may be returned for involuntary treatment or  
8 continued on conditional release on the same or modified conditions.

9 (4) The proceedings set forth in subsection (3) of this section may  
10 be initiated by the (~~designated~~) county designated mental health  
11 professional or the secretary on the same basis set forth therein  
12 without requiring or ordering the apprehension and detention of the  
13 conditionally released person, in which case the court hearing shall  
14 take place in not less than five days from the date of service of the  
15 petition upon the conditionally released person.

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

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

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

25 **Sec. 22.** RCW 71.05.390 and 1993 c 448 s 6 are each amended to read  
26 as follows:

27 Except as provided in this section, the fact of admission and all  
28 information and records compiled, obtained, or maintained in the course  
29 of providing services to either voluntary or involuntary recipients of  
30 services at public or private agencies shall be confidential.

31 Information and records may be disclosed only:

32 (1) In communications between qualified professional persons to  
33 meet the requirements of this chapter, in the provision of services or  
34 appropriate referrals, or in the course of guardianship proceedings.  
35 The consent of the patient, or his or her guardian, shall be obtained  
36 before information or records may be disclosed by a professional person  
37 employed by a facility unless provided to a professional person(~~(~~  
38 ~~not))~~: (a) Employed by the facility(~~(, who does not have the))~~; (b)



1 who has medical responsibility for the patient's care ((or who is  
2 not)); (c) who is a ((designated)) county designated mental health  
3 professional ((or who is not involved in)); (d) who is providing  
4 services under ((the community mental health services act,)) chapter  
5 71.24 RCW; or (e) who is employed by a state or local correctional  
6 facility where the person is confined.

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

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

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

18 (5) For either program evaluation or research, or both: PROVIDED,  
19 That the secretary of social and health services adopts rules for the  
20 conduct of the evaluation or research, or both. Such rules shall  
21 include, but need not be limited to, the requirement that all  
22 evaluators and researchers must sign an oath of confidentiality  
23 substantially as follows:

24 "As a condition of conducting evaluation or research concerning  
25 persons who have received services from (fill in the facility, agency,  
26 or person) I, . . . . ., agree not to divulge, publish, or  
27 otherwise make known to unauthorized persons or the public any  
28 information obtained in the course of such evaluation or research  
29 regarding persons who have received services such that the person who  
30 received such services is identifiable.

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

33 /s/ . . . . . "

34 (6) To the courts as necessary to the administration of this  
35 chapter.

36 (7) To law enforcement officers, public health officers, or  
37 personnel of the department of corrections or the indeterminate  
38 sentence review board for persons who are the subject of the records

1 and who are committed to the custody of the department of corrections  
2 or indeterminate sentence review board which information or records are  
3 necessary to carry out the responsibilities of their office. Except  
4 for dissemination of information released pursuant to RCW 71.05.425 and  
5 4.24.550, regarding persons committed under this chapter under RCW  
6 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as  
7 defined in RCW 9.94A.030, the extent of information that may be  
8 released is limited as follows:

9 (a) Only the fact, place, and date of involuntary admission, the  
10 fact and date of discharge, and the last known address shall be  
11 disclosed upon request; and

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

16 (c) Additional information shall be disclosed only after giving  
17 notice to said person and his or her counsel and upon a showing of  
18 clear, cogent and convincing evidence that such information is  
19 necessary and that appropriate safeguards for strict confidentiality  
20 are and will be maintained. However, in the event the said person has  
21 escaped from custody, said notice prior to disclosure is not necessary  
22 and that the facility from which the person escaped shall include an  
23 evaluation as to whether the person is of danger to persons or property  
24 and has a propensity toward violence.

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

26 (9) To the prosecuting attorney as necessary to carry out the  
27 responsibilities of the office under RCW 71.05.330(2) and  
28 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access  
29 to records regarding the committed person's treatment and prognosis,  
30 medication, behavior problems, and other records relevant to the issue  
31 of whether treatment less restrictive than inpatient treatment is in  
32 the best interest of the committed person or others. Information shall  
33 be disclosed only after giving notice to the committed person and the  
34 person's counsel.

35 (10) To appropriate law enforcement agencies and to a person, when  
36 the identity of the person is known to the public or private agency,  
37 whose health and safety has been threatened, or who is known to have  
38 been repeatedly harassed, by the patient. The person may designate a  
39 representative to receive the disclosure. The disclosure shall be made

1 by the professional person in charge of the public or private agency or  
2 his or her designee and shall include the dates of admission,  
3 discharge, authorized or unauthorized absence from the agency's  
4 facility, and only such other information that is pertinent to the  
5 threat or harassment. The decision to disclose or not shall not result  
6 in civil liability for the agency or its employees so long as the  
7 decision was reached in good faith and without gross negligence.

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

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

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

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

21 The fact of admission, as well as all records, files, evidence,  
22 findings, or orders made, prepared, collected, or maintained pursuant  
23 to this chapter shall not be admissible as evidence in any legal  
24 proceeding outside this chapter without the written consent of the  
25 person who was the subject of the proceeding except in a subsequent  
26 criminal prosecution of a person committed pursuant to RCW 71.05.280(3)  
27 or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter  
28 10.77 RCW due to incompetency to stand trial or in a civil commitment  
29 proceeding pursuant to chapter 71.09 RCW. The records and files  
30 maintained in any court proceeding pursuant to this chapter shall be  
31 confidential and available subsequent to such proceedings only to the  
32 person who was the subject of the proceeding or his or her attorney.  
33 In addition, the court may order the subsequent release or use of such  
34 records or files only upon good cause shown if the court finds that  
35 appropriate safeguards for strict confidentiality are and will be  
36 maintained.

37 **Sec. 23.** RCW 71.05.530 and 1973 1st ex.s. c 142 s 58 are each  
38 amended to read as follows:

1 Evaluation and treatment facilities authorized pursuant to this  
2 chapter may be part of the comprehensive community mental health  
3 services program conducted in counties pursuant to (~~the Community~~  
4 ~~Mental Health Services Act,~~) chapter 71.24 RCW, and may receive  
5 funding pursuant to the provisions thereof.

6 **Sec. 24.** RCW 71.05.560 and 1973 1st ex.s. c 142 s 61 are each  
7 amended to read as follows:

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

16 NEW SECTION. **Sec. 25.** A new section is added to chapter 71.05 RCW  
17 to read as follows:

18 In any judicial proceeding in which a professional person has made  
19 a recommendation regarding whether an individual should be committed  
20 for treatment under this chapter, and the court does not follow the  
21 recommendation, the court shall enter findings that state with  
22 particularity its reasoning, including a finding whether the state met  
23 its burden of proof in showing whether the person presents a likelihood  
24 of serious harm.

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

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

34 The initial protocols shall be developed not later than September  
35 1, 1999. The department shall develop and update the protocols in  
36 consultation with representatives of county designated mental health

1 professionals, local government, law enforcement, county and city  
2 prosecutors, public defenders, and groups concerned with mental  
3 illness. The protocols shall be submitted to the governor and  
4 legislature upon adoption by the department.

5 **Sec. 27.** RCW 10.77.005 and 1989 c 420 s 1 are each amended to read  
6 as follows:

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

35 **Sec. 28.** RCW 10.77.010 and 1993 c 31 s 4 are each amended to read  
36 as follows:

37 As used in this chapter:

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

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

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

12 (4) "Department" means the state department of social and health  
13 services.

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

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

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

21 ~~((8))~~ "Furlough" means an authorized leave of absence for a  
22 resident of a state institution operated by the department designated  
23 for the custody, care, and treatment of the criminally insane,  
24 consistent with an order of conditional release from the court under  
25 this chapter, without any requirement that the resident be accompanied  
26 by, or be in the custody of, any law enforcement or institutional  
27 staff, while on such unescorted leave.

28 ~~((9))~~ (8) "Developmental disability" means the condition defined  
29 in RCW 71A.10.020(2).

30 ~~((10))~~ (9) "Developmental disabilities professional" means a  
31 person who has specialized training and three years of experience in  
32 directly treating or working with persons with developmental  
33 disabilities and is a psychiatrist or psychologist, or a social worker,  
34 and such other developmental disabilities professionals as may be  
35 defined by rules adopted by the secretary.

36 ~~((11))~~ (10) "Habilitative services" means those services provided  
37 by program personnel to assist persons in acquiring and maintaining  
38 life skills and in raising their levels of physical, mental, social,  
39 and vocational functioning. Habilitative services include education,

1 training for employment, and therapy. The habilitative process shall  
2 be undertaken with recognition of the risk to the public safety  
3 presented by the individual being assisted as manifested by prior  
4 charged criminal conduct.

5 ~~((12) "Psychiatrist" means a person having a license))~~ (11)  
6 "Expert or professional person" means:

7 (a) A psychiatrist licensed as a physician and surgeon in this  
8 state who has, in addition, completed three years of graduate training  
9 in psychiatry in a program approved by the American medical association  
10 or the American osteopathic association and is certified or eligible to  
11 be certified by the American board of psychiatry and neurology((-

12 ~~(13) "Psychologist" means a person who has been))i~~

13 (b) A psychologist licensed as a psychologist pursuant to chapter  
14 18.83 RCW((-

15 ~~(14) "Social worker" means a person))i or~~

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

19 ~~((15))~~ (12) "Individualized service plan" means a plan prepared  
20 by a developmental disabilities professional with other professionals  
21 as a team, for an individual with developmental disabilities, which  
22 shall state:

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

25 (b) The conditions and strategies necessary to achieve the purposes  
26 of habilitation;

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

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

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

32 (f) Where relevant in light of past criminal behavior and due  
33 consideration for public safety, the criteria for proposed movement to  
34 less-restrictive settings, criteria for proposed eventual discharge  
35 from involuntary confinement, and a projected possible date for  
36 discharge from involuntary confinement; and

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

1       (13) "Violent act" means behavior that: (a) Resulted in; (b) if  
2 completed as intended would have resulted in; or (c) was threatened to  
3 be carried out by a person who had the intent and opportunity to carry  
4 out the threat and would have resulted in, homicide, nonfatal injuries,  
5 or substantial damage to property.

6       (14) "County designated mental health professional" has the same  
7 meaning as provided in RCW 71.05.020.

8       (15) "History of one or more violent acts" refers to the period of  
9 time ten years prior to the filing of a petition under this chapter,  
10 excluding any time spent, but not any violent acts committed, in a  
11 mental health facility or in confinement as a result of a criminal  
12 conviction.

13       **Sec. 29.** RCW 10.77.020 and 1993 c 31 s 5 are each amended to read  
14 as follows:

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

- 24       (a) The nature of the charges;
- 25       (b) The statutory offense included within them;
- 26       (c) The range of allowable punishments thereunder;
- 27       (d) Possible defenses to the charges and circumstances in  
28 mitigation thereof; and
- 29       (e) All other facts essential to a broad understanding of the whole  
30 matter.

31       (2) Whenever any person is subjected to an examination pursuant to  
32 any provision of this chapter, he or she may retain an expert or  
33 professional person to perform an examination in his or her behalf. In  
34 the case of a person who is indigent, the court shall upon his or her  
35 request assist the person in obtaining an expert or professional person  
36 to perform an examination or participate in the hearing on his or her  
37 behalf. An expert or professional person obtained by an indigent  
38 person pursuant to the provisions of this chapter shall be compensated



1 for his or her services out of funds of the department, in an amount  
2 determined by ~~((it))~~ the secretary to be fair and reasonable.

3 ~~(3) ((Whenever any person has been committed under any provision of  
4 this chapter, or ordered to undergo alternative treatment following his  
5 or her acquittal of a crime charged by reason of insanity, such  
6 commitment or treatment cannot exceed the maximum possible penal  
7 sentence for any offense charged for which the person was acquitted by  
8 reason of insanity. If at the end of that period the person has not  
9 been finally discharged and is still in need of commitment or  
10 treatment, civil commitment proceedings may be instituted, if  
11 appropriate.~~

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

18 NEW SECTION. Sec. 30. A new section is added to chapter 10.77 RCW  
19 to read as follows:

20 (1) Whenever any person has been: (a) Committed to a correctional  
21 facility or inpatient treatment under any provision of this chapter; or  
22 (b) ordered to undergo alternative treatment following his or her  
23 acquittal by reason of insanity of a crime charged, such commitment or  
24 treatment cannot exceed the maximum possible penal sentence for any  
25 offense charged for which the person was committed, or was acquitted by  
26 reason of insanity.

27 (2) Whenever any person committed under any provision of this  
28 chapter has not been finally discharged within seven days of the  
29 maximum possible penal sentence under subsection (1) of this section,  
30 and the professional person in charge of the facility believes it more  
31 likely than not that the person will not be finally discharged, the  
32 professional person shall, prior to the person's release from the  
33 facility, notify the appropriate county designated mental health  
34 professional of the impending release and provide a copy of all  
35 relevant information regarding the person, including the likely release  
36 date and shall indicate why final discharge was not made.

37 (3) A county designated mental health professional who receives  
38 notice and records under subsection (2) of this section shall, prior to

1 the date of probable release, determine whether to initiate proceedings  
2 under chapter 71.05 RCW.

3 **Sec. 31.** RCW 10.77.030 and 1974 ex.s. c 198 s 3 are each amended  
4 to read as follows:

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

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

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

13 **Sec. 32.** RCW 10.77.040 and 1974 ex.s. c 198 s 4 are each amended  
14 to read as follows:

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

- |    | answer    |
|----|-----------|
|    | yes or no |
| 18 |           |
| 19 |           |
| 20 |           |
| 21 |           |
| 22 |           |
| 23 |           |
| 24 |           |
| 25 |           |
| 26 |           |
| 27 |           |
| 28 |           |
| 29 |           |
| 30 |           |
| 31 |           |
| 32 |           |
| 33 |           |
| 34 |           |
| 35 |           |
| 36 |           |
1. Did the defendant commit the act charged? . . . . .
2. If your answer to number 1 is yes, do you acquit  
him or her 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? . . . . .
4. If your answer to number 2 is yes, does the  
defendant present a substantial likelihood of  
committing ((~~felonious~~)) criminal acts  
jeopardizing public safety or security unless  
kept under further control by the court or other  
persons or institutions? . . . . .
5. If your answers to either number 3 or number 4  
is yes, is it in the best interests of the  
defendant and others that the defendant be

1 placed in treatment that is less restrictive  
2 than detention in a state mental hospital? . . . . .

3 **Sec. 33.** RCW 10.77.060 and 1989 c 420 s 4 are each amended to read  
4 as follows:

5 (1)(a) Whenever a defendant has pleaded not guilty by reason of  
6 insanity, or there is reason to doubt his or her competency, the court  
7 on its own motion or on the motion of any party shall either appoint or  
8 request the secretary to designate at least two qualified experts or  
9 professional persons, one of whom shall be approved by the prosecuting  
10 attorney, to examine and report upon the mental condition of the  
11 defendant. At least one of the experts or professional persons  
12 appointed shall be a developmental disabilities professional if the  
13 court is advised by any party that the defendant may be developmentally  
14 disabled. For purposes of the examination, the court may order the  
15 defendant committed to a hospital or other (~~suitable~~) suitably secure  
16 public or private facility for a period of time necessary to complete  
17 the examination, but not to exceed fifteen days from the time of  
18 admission to the facility.

19 (b) When a defendant is ordered to be committed for inpatient  
20 examination under this subsection (1), the court may delay granting  
21 bail until the defendant has been evaluated for competency or sanity  
22 and appears before the court. Following the evaluation, in determining  
23 bail the court shall consider: (i) Recommendations of the expert or  
24 professional persons regarding the defendant's competency, sanity, or  
25 diminished capacity; (ii) whether the defendant has a recent history of  
26 one or more violent acts; (iii) whether the defendant has previously  
27 been acquitted by reason of insanity or found incompetent; (iv) whether  
28 it is reasonably likely the defendant will fail to appear for a future  
29 court hearing; and (v) whether the defendant is a threat to public  
30 safety.

31 (2) The court may direct that a qualified expert or professional  
32 person retained by or appointed for the defendant be permitted to  
33 witness the examination authorized by subsection (1) of this section,  
34 and that the defendant shall have access to all information obtained by  
35 the court appointed experts or professional persons. The defendant's  
36 expert or professional person shall have the right to file his or her  
37 own report following the guidelines of subsection (3) of this section.  
38 If the defendant is indigent, the court shall upon the request of the

1 defendant assist him or her in obtaining an expert or professional  
2 person.

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

4 (a) A description of the nature of the examination;

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

6 (c) If the defendant suffers from a mental disease or defect, or is  
7 developmentally disabled, an opinion as to competency;

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

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

14 (f) An opinion as to whether the defendant is a substantial danger  
15 to other persons, or presents a substantial likelihood of committing  
16 (~~felonious~~) criminal acts jeopardizing public safety or security,  
17 unless kept under further control by the court or other persons or  
18 institutions.

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

21 NEW SECTION. Sec. 34. A new section is added to chapter 10.77 RCW  
22 to read as follows:

23 (1) Whenever a defendant is evaluated under this chapter, a copy of  
24 the order requiring the evaluation shall be transmitted to the county  
25 designated mental health professional of the county in which the  
26 defendant was charged.

27 (2)(a) When a defendant is evaluated under RCW 10.77.060, the  
28 professional person shall make a recommendation to the court whether  
29 the defendant should be examined by a county designated mental health  
30 professional for purposes of filing a petition under chapter 71.05 RCW  
31 whenever the court determines, and enters a finding that, the defendant  
32 is charged with: (i) A felony; or (ii) a nonfelony crime and: (A) Is  
33 charged with, or has a history of, one or more violent acts; (B) is a  
34 threat to public safety; (C) has previously been acquitted by reason of  
35 insanity; or (D) has previously been found incompetent pursuant to this  
36 chapter.

37 (b) The facility conducting the evaluation shall provide its report  
38 and recommendation to the court in which the criminal proceeding is

1 pending. A copy of the report and recommendation shall be provided to  
2 the county designated mental health professional, the prosecuting  
3 attorney, the defense attorney, and the professional person at the  
4 local correctional facility where the defendant is being held. Upon  
5 request, the facility shall also provide copies of any source documents  
6 relevant to the evaluation to the county designated mental health  
7 professional. The report and recommendation shall be provided not less  
8 than twenty-four hours preceding the transfer of the defendant to the  
9 correctional facility in the county in which the criminal proceeding is  
10 pending.

11 (c) If the facility concludes there is a likelihood of serious harm  
12 or the person is gravely disabled, an evaluation shall be conducted of  
13 such person under chapter 71.05 RCW. The court shall order an  
14 evaluation be conducted by the appropriate county designated mental  
15 health professional: (i) Prior to release from confinement for such  
16 person who is convicted, if sentenced to confinement for twenty-four  
17 months or less; or (ii) for any person who is acquitted.

18 (4) The county designated mental health professional shall provide  
19 written notification within twenty-four hours of the results of the  
20 determination whether to commence proceedings under chapter 71.05 RCW.  
21 The notification shall be provided to the persons identified in  
22 subsection (2)(b) of this section.

23 (5) The prosecuting attorney shall provide a copy of the results of  
24 any proceedings commenced by the county designated mental health  
25 professional under subsection (4) of this section to the facility  
26 conducting the evaluation under this chapter.

27 **Sec. 35.** RCW 10.77.070 and 1973 1st ex.s. c 117 s 7 are each  
28 amended to read as follows:

29 When the defendant wishes to be examined by a qualified expert or  
30 professional person of his or her own choice such examiner shall be  
31 permitted to have reasonable access to the defendant for the purpose of  
32 such examination, as well as to all relevant medical and psychological  
33 records and reports.

34 **Sec. 36.** RCW 10.77.080 and 1974 ex.s. c 198 s 7 are each amended  
35 to read as follows:

36 The defendant may move the court for a judgment of acquittal on the  
37 grounds of insanity: PROVIDED, That a defendant so acquitted may not

1 later contest the validity of his or her detention on the grounds that  
2 he or she did not commit the acts charged. At the hearing upon  
3 (~~said~~) the motion the defendant shall have the burden of proving by  
4 a preponderance of the evidence that he or she was insane at the time  
5 of the offense or offenses with which he or she is charged. If the  
6 court finds that the defendant should be acquitted by reason of  
7 insanity, it shall enter specific findings in substantially the same  
8 form as set forth in RCW 10.77.040 (~~as now or hereafter amended~~). If  
9 the motion is denied, the question may be submitted to the trier of  
10 fact in the same manner as other issues of fact.

11 **Sec. 37.** RCW 10.77.090 and 1989 c 420 s 5 are each amended to read  
12 as follows:

13 (1)(a) If at any time during the pendency of an action and prior to  
14 judgment(~~)~~ the court finds, following a report as provided in RCW  
15 10.77.060, (~~as now or hereafter amended, that the~~) a defendant is  
16 incompetent(~~)~~ the court shall order the proceedings against the  
17 defendant be stayed(~~)~~ except as provided in subsection (~~(5)~~) (7)  
18 of this section( ~~and~~).

19 (b) If the defendant is charged with a felony, (~~may~~) the court  
20 shall commit the defendant to the custody of the secretary, who shall  
21 place such defendant in an appropriate facility (~~of the department~~)  
22 for evaluation and treatment( ~~or the court may alternatively order~~  
23 ~~the defendant to undergo evaluation and treatment at some other~~  
24 ~~facility~~) or under the guidance and control of (~~some other~~) a  
25 professional person, until he or she has regained the competency  
26 necessary to understand the proceedings against him or her and assist  
27 in his or her own defense, but in any event, for no longer than a  
28 period of ninety days.

29 (c) A defendant found incompetent shall be evaluated at the  
30 direction of the secretary and a determination made whether the  
31 defendant is developmentally disabled. Such evaluation and  
32 determination shall be accomplished as soon as possible following the  
33 court's placement of the defendant in the custody of the secretary.  
34 When appropriate, and subject to available funds, if the defendant is  
35 determined to be developmentally disabled, he or she may be placed in  
36 a program specifically reserved for the treatment and training of  
37 persons with developmental disabilities where the defendant shall have  
38 the right to habilitation according to an individualized service plan

1 specifically developed for the particular needs of the defendant. The  
2 program shall be separate from programs serving persons involved in any  
3 other treatment or habilitation program. The program shall be  
4 appropriately secure under the circumstances and shall be administered  
5 by developmental disabilities professionals who shall direct the  
6 habilitation efforts. The program shall provide an environment  
7 affording security appropriate with the charged criminal behavior and  
8 necessary to protect the public safety. The department may limit  
9 admissions of such persons to this specialized program in order to  
10 ensure that expenditures for services do not exceed amounts  
11 appropriated by the legislature and allocated by the department for  
12 such services. The department may establish admission priorities in  
13 the event that the number of eligible persons exceeds the limits set by  
14 the department. A copy of the report shall be sent to the facility.

15 (d)(i) If the defendant is:

16 (A) Charged with a nonfelony crime and has: (I) A history of one  
17 or more violent acts, or a pending charge of one or more violent acts;  
18 or (II) been previously acquitted by reason of insanity or been  
19 previously found incompetent under this chapter with regard to an  
20 offense involving actual, threatened, or attempted physical harm to a  
21 person; and

22 (B) Found by the court to be not competent; then

23 (C) The court shall order the secretary to place the defendant:  
24 (I) In the custody of the department or an agency designated by the  
25 department for mental health treatment and restoration of competency.  
26 The placement shall not exceed fourteen days in addition to any unused  
27 time of the evaluation under RCW 10.77.060. The fourteen-day period  
28 shall be considered to include only the time the defendant is actually  
29 at the facility and shall be in addition to reasonable time for  
30 transport to or from the facility; (II) on conditional release for up  
31 to ninety days for mental health treatment and restoration of  
32 competency; or (III) any combination of (d)(i)(C)(I) and (II) of this  
33 subsection.

34 (ii) At the end of the mental health treatment and restoration  
35 period in (d)(i) of this subsection, or at any time a professional  
36 person determines competency has been, or is unlikely to be, restored  
37 the defendant shall be returned to court for a hearing. If, after  
38 notice and hearing, competency has been restored, the stay entered  
39 under RCW 10.77.060 shall be lifted. If competency has not been

1 restored, the proceedings shall be dismissed. If the court concludes  
2 that competency has not been restored, but that further treatment  
3 within the time limits established by (d)(i) of this subsection is  
4 likely to restore competency, the court may order that treatment for  
5 purposes of competency restoration be continued. Such treatment may  
6 not extend beyond the combination of time provided for in (d)(i)(C)(I)  
7 and (II) of this subsection.

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

14 (B) If the defendant was in custody and not on conditional release  
15 at the time of dismissal, the defendant shall be sent to an evaluation  
16 and treatment facility for up to seventy-two hours for evaluation for  
17 purposes of filing a petition under chapter 71.05 RCW.

18 (iv) If at any time during the proceeding the court finds,  
19 following notice and hearing, a defendant is not likely to regain  
20 competency, the proceedings shall be dismissed and the court shall  
21 order the defendant be placed in an evaluation and treatment facility  
22 for a seventy-two-hour evaluation under chapter 71.05 RCW.

23 (e) If the defendant is charged with a crime that is not a felony  
24 and the defendant does not meet the criteria under (d) of this  
25 subsection, the court may stay or dismiss proceedings and detain the  
26 defendant for sufficient time to allow the county designated mental  
27 health professional to evaluate the defendant and commence proceedings  
28 under chapter 71.05 RCW. The court must give notice to all parties at  
29 least twenty-four hours before the dismissal of any proceeding under  
30 this subsection (1)(e), and provide an opportunity for a hearing on  
31 whether to dismiss the proceedings.

32 (2) On or before expiration of the initial ninety-day period of  
33 commitment under subsection (1) of this section the court shall conduct  
34 a hearing, at which it shall determine whether or not the defendant is  
35 incompetent. ((If the defendant is charged with a crime which is not  
36 a felony, the court may stay or dismiss proceedings and detain the  
37 defendant for sufficient time to allow the county mental health  
38 professional to evaluate the defendant and commence proceedings under  
39 chapter 71.05 RCW if appropriate; and subsections (2) and (3) of this



1 ~~section shall not be applicable: PROVIDED, That, upon order of the~~  
2 ~~court, the prosecutor may directly petition for fourteen days of~~  
3 ~~involuntary treatment under chapter 71.05 RCW.~~

4 ~~(2))~~ (3) If the court finds by a preponderance of the evidence  
5 that ~~((the))~~ a defendant charged with a felony is incompetent, the  
6 court shall have the option of extending the order of commitment or  
7 alternative treatment for an additional ninety-day period, but it must  
8 at the time of extension set a date for a prompt hearing to determine  
9 the defendant's competency before the expiration of the second ninety-  
10 day period. The defendant, the defendant's attorney, or the  
11 prosecutor ~~((, or the judge))~~ shall have the right to demand that the  
12 hearing ~~((on or before the expiration of the second ninety day period))~~  
13 be before a jury. No extension shall be ordered for a second ninety-  
14 day period, nor for any subsequent period as provided in subsection  
15 ~~((+3))~~ (4) of this section if the defendant's incompetence has been  
16 determined by the secretary to be solely the result of a developmental  
17 disability which is such that competence is not reasonably likely to be  
18 regained during an extension. ~~((If no demand is made, the hearing~~  
19 ~~shall be before the court. The court or jury shall determine whether~~  
20 ~~or not the defendant has become competent.~~

21 ~~(3))~~ (4) For persons charged with a felony, at the hearing upon  
22 the expiration of the second ninety-day period or at the end of the  
23 first ninety-day period, in the case of a developmentally disabled  
24 defendant, if the jury or court ~~((, as the case may be,))~~ finds that the  
25 defendant is incompetent, the charges shall be dismissed without  
26 prejudice, and either civil commitment proceedings shall be  
27 instituted ~~((, if appropriate,))~~ or the court shall order the release of  
28 the defendant: PROVIDED, That the criminal charges shall not be  
29 dismissed if ~~((at the end of the second ninety day period, or at the~~  
30 ~~end of the first ninety day period, in the case of a developmentally~~  
31 ~~disabled defendant,))~~ the court or jury finds that: (a) The defendant  
32 (i) is a substantial danger to other persons ~~((,))~~ i or (ii) presents a  
33 substantial likelihood of committing ~~((felonious))~~ criminal acts  
34 jeopardizing public safety or security ~~((,))~~ i and ~~((that))~~ (b) there is  
35 a substantial probability that the defendant will regain competency  
36 within a reasonable period of time. In the event that the court or  
37 jury makes such a finding, the court may extend the period of  
38 commitment for an additional six months. At the end of ~~((said))~~ the  
39 six-month period, if the defendant remains incompetent, the charges

1 shall be dismissed without prejudice and either civil commitment  
2 proceedings shall be instituted(~~(, if appropriate,)~~) or the court shall  
3 order release of the defendant.

4 ~~((+4))~~ (5) If the defendant is referred to the county designated  
5 mental health professional for consideration of commitment proceedings  
6 under chapter 71.05 RCW pursuant to this chapter, the county designated  
7 mental health professional shall provide prompt written notification of  
8 the results of the determination whether to commence proceedings under  
9 chapter 71.05 RCW, and the results of any commitment proceedings. The  
10 notification shall be provided to the court in which the criminal  
11 action was pending, the prosecutor, the defense attorney in the  
12 criminal action, and the facility that evaluated the defendant.

13 (6) The fact that the defendant is unfit to proceed does not  
14 preclude any pretrial proceedings which do not require the personal  
15 participation of the defendant.

16 ~~((+5))~~ (7) A defendant receiving medication for either physical or  
17 mental problems shall not be prohibited from standing trial, if the  
18 medication either enables the defendant to understand the proceedings  
19 against him or her and to assist in his or her own defense, or does not  
20 disable him or her from so understanding and assisting in his or her  
21 own defense.

22 ~~((+6))~~ (8) At or before the conclusion of any commitment period  
23 provided for by this section, the facility providing evaluation and  
24 treatment shall provide to the court a written report of examination  
25 which meets the requirements of RCW 10.77.060(3).

26 **Sec. 38.** RCW 10.77.110 and 1989 c 420 s 6 are each amended to read  
27 as follows:

28 (1) If a defendant is acquitted of a (~~(felony)~~) crime by reason of  
29 insanity, and it is found that he or she is not a substantial danger to  
30 other persons, and does not present a substantial likelihood of  
31 committing (~~(felonious)~~) criminal acts jeopardizing public safety or  
32 security, unless kept under further control by the court or other  
33 persons or institutions, the court shall direct the defendant's final  
34 discharge. If it is found that such defendant is a substantial danger  
35 to other persons, or presents a substantial likelihood of committing  
36 (~~(felonious)~~) criminal acts jeopardizing public safety or security,  
37 unless kept under further control by the court or other persons or  
38 institutions, the court shall order his or her hospitalization, or any

1 appropriate alternative treatment less restrictive than detention in a  
2 state mental hospital, pursuant to the terms of this chapter.

3 (2) If the defendant has been found not guilty by reason of  
4 insanity and a substantial danger, or presents a substantial likelihood  
5 of committing ((~~felonious~~)) criminal acts jeopardizing public safety or  
6 security, so as to require treatment then the secretary shall  
7 immediately cause the defendant to be evaluated to ascertain if the  
8 defendant is developmentally disabled. When appropriate, and subject  
9 to available funds, the defendant may be committed to a program  
10 specifically reserved for the treatment and training of developmentally  
11 disabled persons. A person so committed shall receive habilitation  
12 services according to an individualized service plan specifically  
13 developed to treat the behavior which was the subject of the criminal  
14 proceedings. The treatment program shall be administered by  
15 developmental disabilities professionals and others trained  
16 specifically in the needs of developmentally disabled persons. The  
17 treatment program shall provide physical security to a degree  
18 consistent with the finding that the defendant is dangerous and may  
19 incorporate varying conditions of security and alternative sites when  
20 the dangerousness of any particular defendant makes this necessary.  
21 The department may limit admissions to this specialized program in  
22 order to ensure that expenditures for services do not exceed amounts  
23 appropriated by the legislature and allocated by the department for  
24 such services. The department may establish admission priorities in  
25 the event that the number of eligible persons exceeds the limits set by  
26 the department.

27 (3) If it is found that such defendant is not a substantial danger  
28 to other persons, and does not present a substantial likelihood of  
29 committing ((~~felonious~~)) criminal acts jeopardizing public safety or  
30 security, but that he or she is in need of control by the court or  
31 other persons or institutions, the court shall direct the defendant's  
32 conditional release. If the defendant is acquitted by reason of  
33 insanity of a crime which is not a felony, the court shall order the  
34 defendant's release or order the defendant's continued custody only for  
35 a reasonable time to allow the county-designated mental-health  
36 professional to evaluate the individual and to proceed with civil  
37 commitment pursuant to chapter 71.05 RCW, if considered appropriate.

1       **Sec. 39.** RCW 10.77.110 and 1989 c 420 s 6 are each amended to read  
2 as follows:

3       (1) If a defendant is acquitted of a (~~felony~~) crime by reason of  
4 insanity, and it is found that he or she is not a substantial danger to  
5 other persons, and does not present a substantial likelihood of  
6 committing (~~felonious~~) criminal acts jeopardizing public safety or  
7 security, unless kept under further control by the court or other  
8 persons or institutions, the court shall direct the defendant's final  
9 discharge. If it is found that such defendant is a substantial danger  
10 to other persons, or presents a substantial likelihood of committing  
11 (~~felonious~~) criminal acts jeopardizing public safety or security,  
12 unless kept under further control by the court or other persons or  
13 institutions, the court shall order his or her hospitalization, or any  
14 appropriate alternative treatment less restrictive than detention in a  
15 state mental hospital, pursuant to the terms of this chapter.

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

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

12 **Sec. 40.** RCW 10.77.140 and 1989 c 420 s 8 are each amended to read  
13 as follows:

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

27 **Sec. 41.** RCW 10.77.150 and 1993 c 31 s 6 are each amended to read  
28 as follows:

29 (1) Persons examined pursuant to RCW 10.77.140((, as now or  
30 hereafter amended,)) may make application to the secretary for  
31 conditional release. The secretary shall, after considering the  
32 reports of experts or professional persons conducting the examination  
33 pursuant to RCW 10.77.140, forward to the court of the county which  
34 ordered the person's commitment the person's application for  
35 conditional release as well as the secretary's recommendations  
36 concerning the application and any proposed terms and conditions upon  
37 which the secretary reasonably believes the person can be conditionally

1 released. Conditional release may also contemplate partial release for  
2 work, training, or educational purposes.

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

34 (3) If the court determines that receiving regular or periodic  
35 medication or other medical treatment shall be a condition of the  
36 committed person's release, then the court shall require him or her to  
37 report to a physician or other medical or mental health practitioner  
38 for the medication or treatment. In addition to submitting any report  
39 required by RCW 10.77.160, the physician or other medical or mental

1 health practitioner shall immediately upon the released person's  
2 failure to appear for the medication or treatment report the failure to  
3 the court, to the prosecuting attorney of the county in which the  
4 released person was committed, and to the supervising community  
5 corrections officer.

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

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

11 Each person conditionally released pursuant to RCW 10.77.150(~~(, as~~  
12 ~~now or hereafter amended,)~~) shall have his or her case reviewed by the  
13 court which conditionally released him or her no later than one year  
14 after such release and no later than every two years thereafter, such  
15 time to be scheduled by the court. Review may occur in a shorter time  
16 or more frequently, if the court, in its discretion, on its own motion,  
17 or on motion of the person, the secretary of social and health  
18 services, the secretary of corrections, medical or mental health  
19 practitioner, or the prosecuting attorney, so determines. The sole  
20 question to be determined by the court is whether the person shall  
21 continue to be conditionally released. The court in making its  
22 determination shall be aided by the periodic reports filed pursuant to  
23 RCW 10.77.140(~~(, as now or hereafter amended,)~~) and ((RCW)) 10.77.160,  
24 and the opinions of the secretary (~~(of social and health services)~~) and  
25 other experts or professional persons.

26 **Sec. 43.** RCW 10.77.190 and 1993 c 31 s 10 are each amended to read  
27 as follows:

28 (1) Any person submitting reports pursuant to RCW 10.77.160, the  
29 secretary, or the prosecuting attorney may petition the court to, or  
30 the court on its own motion may schedule an immediate hearing for the  
31 purpose of modifying the terms of conditional release if the petitioner  
32 or the court believes the released person is failing to adhere to the  
33 terms and conditions of his or her conditional release or is in need of  
34 additional care and treatment.

35 (2) If the prosecuting attorney, the secretary of social and health  
36 services, the secretary of corrections, or the court, after examining  
37 the report filed with them pursuant to RCW 10.77.160, or based on other

1 information received by them, reasonably believes that a conditionally  
2 released person is failing to adhere to the terms and conditions of his  
3 or her conditional release the court or secretary of social and health  
4 services or the secretary of corrections may order that the  
5 conditionally released person be apprehended and taken into custody  
6 until such time as a hearing can be scheduled to determine the facts  
7 and whether or not the person's conditional release should be revoked  
8 or modified. The court shall be notified before the close of the next  
9 judicial day of the apprehension. Both the prosecuting attorney and  
10 the conditionally released person shall have the right to request an  
11 immediate mental examination of the conditionally released person. If  
12 the conditionally released person is indigent, the court or secretary  
13 of social and health services or the secretary of corrections or their  
14 designees shall, upon request, assist him or her in obtaining a  
15 qualified expert or professional person to conduct the examination.

16 (3) If the hospital or facility designated to provide outpatient  
17 care determines that a conditionally released person presents a threat  
18 to public safety, the hospital or facility shall immediately notify the  
19 secretary of social and health services or the secretary of corrections  
20 or their designees. The secretary shall order that the conditionally  
21 released person be apprehended and taken into custody.

22 (4) The court, upon receiving notification of the apprehension,  
23 shall promptly schedule a hearing. The issue to be determined is  
24 whether the conditionally released person did or did not adhere to the  
25 terms and conditions of his or her release, or whether the person  
26 presents a threat to public safety. Pursuant to the determination of  
27 the court upon such hearing, the conditionally released person shall  
28 either continue to be conditionally released on the same or modified  
29 conditions or his or her conditional release shall be revoked and he or  
30 she shall be committed subject to release only in accordance with  
31 provisions of this chapter.

32 **Sec. 44.** RCW 10.77.200 and 1993 c 31 s 11 are each amended to read  
33 as follows:

34 (1) Upon application by the committed or conditionally released  
35 person, the secretary shall determine whether or not reasonable grounds  
36 exist for final discharge. In making this determination, the secretary  
37 may consider the reports filed under RCW 10.77.060, 10.77.110,  
38 10.77.140, and 10.77.160, and other reports and evaluations provided by



1 professionals familiar with the case. If the secretary approves the  
2 final discharge he or she then shall authorize (~~(said)~~) the person to  
3 petition the court.

4 (2) The petition shall be served upon the court and the prosecuting  
5 attorney. The court, upon receipt of the petition for final discharge,  
6 shall within forty-five days order a hearing. Continuance of the  
7 hearing date shall only be allowed for good cause shown. The  
8 prosecuting attorney shall represent the state, and shall have the  
9 right to have the petitioner examined by an expert or professional  
10 person of the prosecuting attorney's choice. If the petitioner is  
11 indigent, and the person so requests, the court shall appoint a  
12 qualified expert or professional person to examine him or her. If the  
13 petitioner is developmentally disabled, the examination shall be  
14 performed by a developmental disabilities professional. The hearing  
15 shall be before a jury if demanded by either the petitioner or the  
16 prosecuting attorney. The burden of proof shall be upon the petitioner  
17 to show by a preponderance of the evidence that the petitioner no  
18 longer presents, as a result of a mental disease or defect, a  
19 substantial danger to other persons, or a substantial likelihood of  
20 committing (~~(felonious)~~) criminal acts jeopardizing public safety or  
21 security, unless kept under further control by the court or other  
22 persons or institutions.

23 (3) Nothing contained in this chapter shall prohibit the patient  
24 from petitioning the court for final discharge or conditional release  
25 from the institution in which he or she is committed. The issue to be  
26 determined on such proceeding is whether the petitioner, as a result of  
27 a mental disease or defect, is a substantial danger to other persons,  
28 or presents a substantial likelihood of committing (~~(felonious)~~)  
29 criminal acts jeopardizing public safety or security, unless kept under  
30 further control by the court or other persons or institutions.

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

33 **Sec. 45.** RCW 10.77.210 and 1993 c 31 s 12 are each amended to read  
34 as follows:

35 (1) Any person involuntarily detained, hospitalized, or committed  
36 pursuant to the provisions of this chapter shall have the right to  
37 adequate care and individualized treatment. The person who has custody  
38 of the patient or is in charge of treatment shall keep records

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

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

24 NEW SECTION. Sec. 46. In developing rules under RCW 10.77.210(2),  
25 the department shall implement the following legislative intent:  
26 Increasing public safety; and making decisions based on a person's  
27 current conduct and mental condition rather than the classification of  
28 the charges.

29 NEW SECTION. Sec. 47. A new section is added to chapter 10.77 RCW  
30 to read as follows:

31 A copy of relevant records and reports as defined by the  
32 department, in consultation with the department of corrections, made  
33 pursuant to this chapter, and including relevant information necessary  
34 to meet the requirements of section 34(2) of this act and RCW  
35 10.77.090, shall accompany the defendant upon transfer to a mental  
36 health facility or a correctional institution or facility.

1        NEW SECTION.    **Sec. 48.**    A new section is added to chapter 72.10 RCW  
2 to read as follows:

3        The secretary shall, for any person committed to a state  
4 correctional facility after the effective date of this section, inquire  
5 at the time of commitment whether the person had received outpatient  
6 mental health treatment within the two years preceding confinement and  
7 the name of the person providing the treatment.

8        The secretary shall inquire of the treatment provider if he or she  
9 wishes to be notified of the release of the person from confinement,  
10 for purposes of offering treatment upon the inmate's release. If the  
11 treatment provider wishes to be notified of the inmate's release, the  
12 secretary shall attempt to provide such notice at least seven days  
13 prior to release.

14        At the time of an inmate's release if the secretary is unable to  
15 locate the treatment provider, the secretary shall notify the regional  
16 support network in the county the inmate will most likely reside  
17 following release.

18        If the secretary has, prior to the release from the facility,  
19 evaluated the inmate and determined he or she requires postrelease  
20 mental health treatment, a copy of relevant records and reports  
21 relating to the inmate's mental health treatment or status shall be  
22 promptly made available to the offender's present or future treatment  
23 provider. The secretary shall determine which records and reports are  
24 relevant and may provide a summary in lieu of copies of the records.

25        **Sec. 49.**    RCW 10.97.030 and 1990 c 3 s 128 are each amended to read  
26 as follows:

27        For purposes of this chapter, the definitions of terms in this  
28 section shall apply.

29        (1) "Criminal history record information" means information  
30 contained in records collected by criminal justice agencies, other than  
31 courts, on individuals, consisting of identifiable descriptions and  
32 notations of arrests, detentions, indictments, informations, or other  
33 formal criminal charges, and any disposition arising therefrom,  
34 including acquittals by reason of insanity, dismissals based on lack of  
35 competency, sentences, correctional supervision, and release.

36        The term includes information contained in records maintained by or  
37 obtained from criminal justice agencies, other than courts, which  
38 records provide individual identification of a person together with any

1 portion of the individual's record of involvement in the criminal  
2 justice system as an alleged or convicted offender, except:

3 (a) Posters, announcements, or lists for identifying or  
4 apprehending fugitives or wanted persons;

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

8 (c) Court indices and records of public judicial proceedings, court  
9 decisions, and opinions, and information disclosed during public  
10 judicial proceedings;

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

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

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

21 (g) Announcements of executive clemency.

22 (2) "Nonconviction data" consists of all criminal history record  
23 information relating to an incident which has not led to a conviction  
24 or other disposition adverse to the subject, and for which proceedings  
25 are no longer actively pending. There shall be a rebuttable  
26 presumption that proceedings are no longer actively pending if more  
27 than one year has elapsed since arrest, citation, or service of warrant  
28 and no disposition has been entered.

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

32 (4) "Conviction or other disposition adverse to the subject" means  
33 any disposition of charges (~~except~~) other than: (a) A decision not  
34 to prosecute(()); (b) a dismissal(()); or (c) acquittal ((~~except when~~  
35 the)); with the following exceptions, which shall be considered  
36 dispositions adverse to the subject: An acquittal ((~~is~~)) due to a  
37 finding of not guilty by reason of insanity and a dismissal by reason  
38 of incompetency, pursuant to chapter 10.77 RCW((~~and the person was~~  
39 committed pursuant to chapter 10.77 RCW: PROVIDED, HOWEVER, That));

1 and a dismissal entered after a period of probation, suspension, or  
2 deferral of sentence (~~(shall be considered a disposition adverse to the~~  
3 ~~subject)~~)).

4 (5) "Criminal justice agency" means: (a) A court; or (b) a  
5 government agency which performs the administration of criminal justice  
6 pursuant to a statute or executive order and which allocates a  
7 substantial part of its annual budget to the administration of criminal  
8 justice.

9 (6) "The administration of criminal justice" means performance of  
10 any of the following activities: Detection, apprehension, detention,  
11 pretrial release, post-trial release, prosecution, adjudication,  
12 correctional supervision, or rehabilitation of accused persons or  
13 criminal offenders. The term also includes criminal identification  
14 activities and the collection, storage, dissemination of criminal  
15 history record information, and the compensation of victims of crime.

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

18 (8) "Dissemination" means disclosing criminal history record  
19 information or disclosing the absence of criminal history record  
20 information to any person or agency outside the agency possessing the  
21 information, subject to the following exceptions:

22 (a) When criminal justice agencies jointly participate in the  
23 maintenance of a single record keeping department as an alternative to  
24 maintaining separate records, the furnishing of information by that  
25 department to personnel of any participating agency is not a  
26 dissemination;

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

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

33 NEW SECTION. **Sec. 50.** The code reviser shall alphabetize the  
34 definitions in RCW 10.77.010 and correct any references.

35 NEW SECTION. **Sec. 51.** The following acts or parts of acts are  
36 each repealed:

37 (1) RCW 71.05.015 and 1979 ex.s. c 215 s 1; and

1 (2) RCW 71.05.080 and 1973 1st ex.s. c 142 s 13.

2 NEW SECTION. **Sec. 52.** This act takes effect July 1, 1998, except  
3 for sections 18, 34, 37, and 39, which take effect March 1, 1999.

4 NEW SECTION. **Sec. 53.** Section 38 of this act expires March 1,  
5 1999.

6 NEW SECTION. **Sec. 54.** (1) The Washington state institute for  
7 public policy shall conduct an evaluation of this act to determine:

8 (a) Whether there has been a reduction in recidivism for mentally  
9 ill offenders who are felons or who meet the criteria specified in RCW  
10 10.77.090(1)(d) and received mental health services as a result of the  
11 provisions of chapters 10.77 and 71.05 RCW.

12 (b) The number of nonfelony offenders who have been referred to  
13 competency restoration under RCW 10.77.090(1)(d)(i)(C) and the  
14 percentage of such offenders who have been restored to competency  
15 within the allotted time for felons, nonfelony offenders meeting the  
16 criteria under RCW 10.77.090(1)(d), and the nonfelony offenders who do  
17 not meet this criteria.

18 (c) Whether the information-sharing provisions of this act are  
19 adequate to provide necessary information to the affected parties. The  
20 analysis shall include findings as to whether the flow of information  
21 is resulting in the efficient usage of the information and whether  
22 there are revisions in the flow which would better allow the courts,  
23 professional persons, and parties to proceedings to make better use of  
24 the information.

25 (2) The evaluation shall be presented to the legislature on or  
26 before November 15, 2003.

27 NEW SECTION. **Sec. 55.** The sum of one hundred thousand dollars, or  
28 as much thereof as may be necessary, is appropriated for the biennium  
29 ending June 30, 1999, from the general fund to the Washington state  
30 institute for public policy for the purposes of implementing the study  
31 ordered by section 54 of this act.

32 NEW SECTION. **Sec. 56.** RCW 10.77.005 is recodified within chapter  
33 10.77 RCW after RCW 10.77.090.

1        NEW SECTION.    **Sec. 57.**    If specific funding for the purposes of  
2 this act, referencing this act by bill or chapter number, is not  
3 provided by June 30, 1998, in the omnibus appropriations act, this act  
4 is null and void.

5        NEW SECTION.    **Sec. 58.**    If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

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