
HOUSE BILL 2844

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1998 Regular Session

By Representatives Constantine, Ballasiotes, Costa, Dickerson, Cody, Radcliff, Sheahan, O'Brien, Butler, Kenney, Wood, Ogden, Cooper, Tokuda, Anderson and Lantz

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1 AN ACT Relating to mental illness; amending RCW 71.05.010,
2 71.05.020, 71.05.030, 71.05.035, 71.05.130, 71.05.150, 71.05.200,
3 71.05.210, 71.05.250, 71.05.280, 71.05.330, 71.05.340, 71.05.370,
4 71.05.390, 71.05.530, 71.05.560, 10.77.005, 10.77.010, 10.77.020,
5 10.77.030, 10.77.040, 10.77.060, 10.77.070, 10.77.080, 10.77.090,
6 10.77.110, 10.77.140, 10.77.150, 10.77.180, 10.77.190, 10.77.200,
7 10.77.210, 10.77.240, and 10.97.030; adding new sections to chapter
8 71.05 RCW; adding new sections to chapter 10.77 RCW; creating new
9 sections; recodifying RCW 10.77.005; repealing RCW 71.05.015,
10 71.05.080, and 71.05.490; making an appropriation; providing effective
11 dates; and declaring an emergency.

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

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

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

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

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

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

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

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

17 (3) To safeguard individual rights;

18 (4) To provide continuity of care for persons with serious mental
19 disorders;

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

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

25 (7) To protect the public safety.

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

28 For the purposes of this chapter:

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

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

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

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

8 (~~(4)~~) (5) "Department" means the department of social and health
9 services;

10 (~~(5)~~) (6) "Developmental disabilities professional" means a
11 person who has specialized training and three years of experience in
12 directly treating or working with persons with developmental
13 disabilities and is a psychiatrist, psychologist, or social worker, and
14 such other developmental disabilities professionals as may be defined
15 by rules adopted by the secretary;

16 (~~(6)~~) (7) "Developmental disability" means that condition defined
17 in RCW 71A.10.020(2);

18 (~~(7)~~) (8) "Evaluation and treatment facility" means any facility
19 which can provide directly, or by direct arrangement with other public
20 or private agencies, emergency evaluation and treatment, outpatient
21 care, and timely and appropriate inpatient care to persons suffering
22 from a mental disorder, and which is certified as such by the
23 department. A physically separate and separately operated portion of
24 a state hospital may be designated as an evaluation and treatment
25 facility. A facility which is part of, or operated by, the department
26 or any federal agency will not require certification. No correctional
27 institution or facility, or jail, shall be an evaluation and treatment
28 facility within the meaning of this chapter;

29 (~~(8)~~) (9) "Gravely disabled" means: (a) A condition in which a
30 person, as a result of a mental disorder(~~(a)~~) (i) is in danger of
31 serious physical harm resulting from a failure to provide for his or
32 her essential human needs of health or safety(~~(7)~~); or (~~(b)~~) (ii)
33 manifests severe deterioration in routine functioning evidenced by
34 repeated and escalating loss of cognitive or volitional control over
35 his or her actions and is not receiving such care as is essential for
36 his or her health or safety; or (b) a person who has met the criteria
37 set forth in RCW 10.77.090(1)(c);

38 (~~(9)~~) (10) "Habilitative services" means those services provided
39 by program personnel to assist persons in acquiring and maintaining

1 life skills and in raising their levels of physical, mental, social,
2 and vocational functioning. Habilitative services include education,
3 training for employment, and therapy. The habilitative process shall
4 be undertaken with recognition of the risk to the public safety
5 presented by the individual being assisted as manifested by prior
6 charged criminal conduct;

7 ~~((10))~~ (11) "Individualized service plan" means a plan prepared
8 by a developmental disabilities professional with other professionals
9 as a team, for an individual with developmental disabilities, which
10 shall state:

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

13 (b) The conditions and strategies necessary to achieve the purposes
14 of habilitation;

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

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

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

20 (f) Where relevant in light of past criminal behavior and due
21 consideration for public safety, the criteria for proposed movement to
22 less-restrictive settings, criteria for proposed eventual discharge
23 from involuntary confinement, and a projected possible date for
24 discharge from involuntary confinement; and

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

27 ~~((11))~~ (12) "Judicial commitment" means a commitment by a court
28 pursuant to the provisions of this chapter;

29 ~~((12))~~ (13) "Likelihood of serious harm" means:

30 (a) A substantial risk that: (i) Physical harm will be inflicted
31 by an individual upon his or her own person, as evidenced by threats or
32 attempts to commit suicide or inflict physical harm on oneself(~~(, (b)~~
33 ~~a substantial risk that)); (ii) physical harm will be inflicted by an~~
34 individual upon another, as evidenced by behavior which has caused such
35 harm or which places another person or persons in reasonable fear of
36 sustaining such harm(~~(, or (c) a substantial risk that)); or (iii)~~
37 physical harm will be inflicted by an individual upon the property of
38 others, as evidenced by behavior which has caused substantial loss or
39 damage to the property of others; or

1 (~~(13)~~) (b) The individual has threatened the physical safety of
2 another and has a history of one or more violent acts as defined in RCW
3 10.77.010. For the purposes of this subsection "history" refers to the
4 period of time ten years prior to the filing of a petition under this
5 chapter, excluding any time spent in confinement in a mental health
6 facility or as a result of a criminal conviction;

7 (14) "Mental disorder" means any organic, mental, or emotional
8 impairment which has substantial adverse effects on an individual's
9 cognitive or volitional functions;

10 (~~(14)~~) (15) "Mental health professional" means a psychiatrist,
11 psychologist, psychiatric nurse, or social worker, and such other
12 mental health professionals as may be defined by rules adopted by the
13 secretary pursuant to the provisions of this chapter;

14 (~~(15)~~) (16) "Peace officer" means a law enforcement official of
15 a public agency or governmental unit, and includes persons specifically
16 given peace officer powers by any state law, local ordinance, or
17 judicial order of appointment;

18 (~~(16)~~) (17) "Private agency" means any person, partnership,
19 corporation, or association not defined as a public agency, whether or
20 not financed in whole or in part by public funds, which constitutes an
21 evaluation and treatment facility or private institution, hospital, or
22 sanitarium, which is conducted for, or includes a department or ward
23 conducted for the care and treatment of persons who are mentally ill;

24 (~~(17)~~) (18) "Professional person" (~~shall~~) means a mental health
25 professional, as above defined, and shall also mean a physician,
26 registered nurse, and such others as may be defined by rules adopted by
27 the secretary pursuant to the provisions of this chapter;

28 (~~(18)~~) (19) "Psychiatrist" means a person having a license as a
29 physician and surgeon in this state who has in addition completed three
30 years of graduate training in psychiatry in a program approved by the
31 American medical association or the American osteopathic association
32 and is certified or eligible to be certified by the American board of
33 psychiatry and neurology;

34 (~~(19)~~) (20) "Psychologist" means a person who has been licensed
35 as a psychologist pursuant to chapter 18.83 RCW;

36 (~~(20)~~) (21) "Public agency" means any evaluation and treatment
37 facility or institution, hospital, or sanitarium which is conducted
38 for, or includes a department or ward conducted for, the care and
39 treatment of persons who are mentally ill or deranged, if the agency is

1 operated directly by, federal, state, county, or municipal government,
2 or a combination of such governments;

3 ~~((21))~~ (22) "Resource management services" has the meaning given
4 in chapter 71.24 RCW;

5 ~~((22))~~ (23) "Secretary" means the secretary of the department of
6 social and health services, or his or her designee;

7 ~~((23))~~ (24) "Social worker" means a person with a master's or
8 further advanced degree from an accredited school of social work or a
9 degree deemed equivalent under rules adopted by the secretary.

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

12 Persons suffering from a mental disorder may not be involuntarily
13 committed for treatment of such disorder except pursuant to provisions
14 of this chapter, chapter 10.77 RCW (~~or its successor~~), chapter 71.06
15 RCW, chapter 71.34 RCW, transfer pursuant to RCW 72.68.031 through
16 72.68.037, or pursuant to court ordered evaluation and treatment not to
17 exceed ninety days pending a criminal trial or sentencing.

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

20 ~~((With respect to chapter 420, Laws of 1989,))~~ The legislature
21 finds that among those persons who endanger the safety of others by
22 committing ~~((felony))~~ crimes are a small number of persons with
23 developmental disabilities. While their conduct is not typical of the
24 vast majority of persons with developmental disabilities who are
25 responsible citizens, for their own welfare and for the safety of
26 others the state may need to exercise control over those few dangerous
27 individuals who are developmentally disabled, have been charged with
28 ~~((felony))~~ crimes that involve a threat to public safety, and have been
29 found either incompetent to stand trial or not guilty by reason of
30 insanity. The legislature finds, however, that the use of civil
31 commitment procedures under chapter 71.05 RCW to effect state control
32 over dangerous developmentally disabled persons has resulted in their
33 commitment to institutions for the mentally ill. The legislature finds
34 that existing programs in mental institutions may be inappropriate for
35 persons who are developmentally disabled because the services provided
36 in mental institutions are oriented to persons with mental illness, a
37 condition not necessarily associated with developmental disabilities.

1 Therefore, the legislature believes that, where appropriate, and
2 subject to available funds, persons with developmental disabilities who
3 have been charged with ~~((felony))~~ crimes that involve a threat to
4 public safety and have been found incompetent to stand trial or not
5 guilty by reason of insanity should receive state services addressing
6 their needs, that such services must be provided in conformance with an
7 individual habilitation plan, and that their initial treatment should
8 be separate and discrete from treatment for persons involved in any
9 other treatment or habilitation program in a manner consistent with the
10 needs of public safety.

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

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

23 **Sec. 7.** RCW 71.05.150 and 1997 c 112 s 8 are each amended to read
24 as follows:

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

1 voluntarily receive appropriate evaluation and treatment at an
2 evaluation and treatment facility.

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

21 (c) The mental health professional shall then serve or cause to be
22 served on such person, his or her guardian, and conservator, if any, a
23 copy of the order to appear together with a notice of rights and a
24 petition for initial detention. After service on such person the
25 mental health professional shall file the return of service in court
26 and provide copies of all papers in the court file to the evaluation
27 and treatment facility and the designated attorney. The mental health
28 professional shall notify the court and the prosecuting attorney that
29 a probable cause hearing will be held within seventy-two hours of the
30 date and time of outpatient evaluation or admission to the evaluation
31 and treatment facility. The person shall be permitted to remain in his
32 or her home or other place of his or her choosing prior to the time of
33 evaluation and shall be permitted to be accompanied by one or more of
34 his or her relatives, friends, an attorney, a personal physician, or
35 other professional or religious advisor to the place of evaluation. An
36 attorney accompanying the person to the place of evaluation shall be
37 permitted to be present during the admission evaluation. Any other
38 individual accompanying the person may be present during the admission
39 evaluation. The facility may exclude the individual if his or her

1 presence would present a safety risk, delay the proceedings, or
2 otherwise interfere with the evaluation.

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

20 (2) When a mental health professional designated by the county
21 receives information alleging that a person, as the result of a mental
22 disorder, presents an imminent likelihood of serious harm, or is in
23 imminent danger because of being gravely disabled, after investigation
24 and evaluation of the specific facts alleged and of the reliability and
25 credibility of the person or persons providing the information if any,
26 the mental health professional may take such person, or cause by oral
27 or written order such person to be taken into emergency custody in an
28 evaluation and treatment facility for not more than seventy-two hours
29 as described in RCW 71.05.180.

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

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

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

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

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

13 **Sec. 8.** RCW 71.05.200 and 1997 c 112 s 14 are each amended to read
14 as follows:

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

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

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

1 (c)(i) That the person has the right to (~~remain silent~~) refrain
2 from testifying and that any statement he or she makes may be used
3 against him or her;

4 (ii) This subsection shall not prohibit the court from requiring a
5 person who is alleged to be gravely disabled to answer inquiries from
6 the judge or commissioner presiding over the proceeding, when such
7 inquiries are related directly to determining whether the person is
8 gravely disabled. No testimony provided by an individual, as a result
9 of being ordered to do so by the court, may be used against the
10 individual in any subsequent criminal proceeding;

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

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

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

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

29 **Sec. 9.** RCW 71.05.210 and 1997 c 112 s 15 are each amended to read
30 as follows:

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

1 she is detained, except that, beginning twenty-four hours prior to a
2 (~~court proceeding~~) trial or hearing pursuant to RCW 71.05.215,
3 71.05.240, 71.05.310, 71.05.320, 71.05.340, or 71.05.370, the
4 individual may refuse (~~all but emergency life saving treatment~~)
5 psychiatric medications, and the individual shall be informed at an
6 appropriate time of his or her right (~~to~~) of such refusal (~~of~~
7 ~~treatment~~). (~~Such~~) The person shall be detained up to seventy-two
8 hours, if, in the opinion of the professional person in charge of the
9 facility, or his or her professional designee, the person presents a
10 likelihood of serious harm, or is gravely disabled. A person who has
11 been detained for seventy-two hours shall no later than the end of such
12 period be released, unless referred for further care on a voluntary
13 basis, or detained pursuant to court order for further treatment as
14 provided in this chapter.

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

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

28 **Sec. 10.** RCW 71.05.250 and 1989 c 120 s 7 are each amended to read
29 as follows:

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

- 32 (1) To present evidence on his or her behalf;
- 33 (2) To cross-examine witnesses who testify against him or her;
- 34 (3) To be proceeded against by the rules of evidence;
- 35 (4) To (~~remain silent~~) refrain from testifying: PROVIDED, That
36 this subsection shall not prohibit the court from requiring a person
37 who is alleged to be gravely disabled to answer inquiries from the
38 judge or commissioner presiding over the proceeding, when such

1 inquiries are related directly to determining whether the person is
2 gravely disabled. No testimony provided by an individual, as a result
3 of being ordered to do so by the court, may be used against the
4 individual in any subsequent criminal proceeding;

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

6 The physician-patient privilege or the psychologist-client
7 privilege shall be deemed waived in proceedings under this chapter
8 relating to the administration of antipsychotic medications. As to
9 other proceedings under this chapter, the privileges shall be waived
10 when a court of competent jurisdiction in its discretion determines
11 that such waiver is necessary to protect either the detained person or
12 the public.

13 The waiver of a privilege under this section is limited to records
14 or testimony relevant to evaluation of the detained person for purposes
15 of a proceeding under this chapter. Upon motion by the detained person
16 or on its own motion, the court shall examine a record or testimony
17 sought by a petitioner to determine whether it is within the scope of
18 the waiver.

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

25 NEW SECTION. Sec. 11. A new section is added to chapter 71.05 RCW
26 to read as follows:

27 In making a determination of whether there is a likelihood of
28 serious harm in a hearing conducted under RCW 71.05.240 or 71.05.320,
29 the court shall give great weight to whether the person has: (1) A
30 recent history of one or more violent acts, as defined in RCW
31 10.77.010; or (2) a recent history of one or more commitments under
32 this chapter or its equivalent provisions under the laws of another
33 state which were based on a likelihood of serious harm. However, the
34 existence of prior violent acts or commitments under this chapter or
35 its equivalent shall not be the sole basis for determining whether a
36 person presents a likelihood of serious harm.

1 **Sec. 12.** RCW 71.05.280 and 1997 c 112 s 22 are each amended to
2 read as follows:

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

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

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

16 (3) Such person has been determined to be incompetent and criminal
17 charges have been dismissed pursuant to RCW 10.77.090(~~((3))~~) (4), and
18 has committed acts constituting a (~~(felony)~~) crime that is a threat to
19 public safety, and as a result of a mental disorder, presents a
20 substantial likelihood of repeating similar acts. In any proceeding
21 pursuant to this subsection it shall not be necessary to show intent,
22 willfulness, or state of mind as an element of the (~~(felony)~~) crime; or

23 (4) Such person is gravely disabled.

24 **Sec. 13.** RCW 71.05.330 and 1997 c 112 s 27 are each amended to
25 read as follows:

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

32 Whenever the superintendent or professional person in charge of a
33 hospital or facility providing involuntary treatment pursuant to this
34 chapter releases a person prior to the expiration of the period of
35 commitment, the superintendent or professional person in charge shall
36 in writing notify the court which committed the person for treatment.

37 (2) Before a person committed under grounds set forth in RCW
38 71.05.280(3) or 71.05.320(2)(c) is released under this section, the

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

26 **Sec. 14.** RCW 71.05.340 and 1997 c 112 s 28 are each amended to
27 read as follows:

28 (1)(a) When, in the opinion of the superintendent or the
29 professional person in charge of the hospital or facility providing
30 involuntary treatment, the committed person can be appropriately served
31 by outpatient treatment prior to or at the expiration of the period of
32 commitment, then such outpatient care may be required as a condition
33 for early release for a period which, when added to the inpatient
34 treatment period, shall not exceed the period of commitment. If the
35 hospital or facility designated to provide outpatient treatment is
36 other than the facility providing involuntary treatment, the outpatient
37 facility so designated must agree in writing to assume such
38 responsibility. A copy of the conditions for early release shall be

1 given to the patient, the designated county mental health professional
2 in the county in which the patient is to receive outpatient treatment,
3 and to the court of original commitment.

4 (b) Before a person committed under grounds set forth in RCW
5 71.05.280(3) or 71.05.320(2)(c) is conditionally released under (a) of
6 this subsection, the superintendent or professional person in charge of
7 the hospital or facility providing involuntary treatment shall in
8 writing notify the prosecuting attorney of the county in which the
9 criminal charges against the committed person were dismissed, of the
10 decision to conditionally release the person. Notice and a copy of the
11 conditions for early release shall be provided at least thirty days
12 before the person is released from inpatient care. Within twenty days
13 after receiving notice, the prosecuting attorney may petition the court
14 in the county that issued the commitment order to hold a hearing to
15 determine whether the person may be conditionally released and the
16 terms of the conditional release. The prosecuting attorney shall
17 provide a copy of the petition to the superintendent or professional
18 person in charge of the hospital or facility providing involuntary
19 treatment, the attorney, if any, and guardian or conservator of the
20 committed person, and the court of original commitment. If the county
21 in which the committed person is to receive outpatient treatment is the
22 same county in which the criminal charges against the committed person
23 were dismissed, then the court shall, upon the motion of the
24 prosecuting attorney, transfer the proceeding to the court in that
25 county. The court shall conduct a hearing on the petition within ten
26 days of the filing of the petition. The committed person shall have
27 the same rights with respect to notice, hearing, and counsel as for an
28 involuntary treatment proceeding, except as set forth in this
29 subsection and except that there shall be no right to jury trial. The
30 issue to be determined at the hearing is whether or not the person may
31 be conditionally released without substantial danger to other persons,
32 or substantial likelihood of committing ((felonious)) criminal acts
33 jeopardizing public safety or security. If the court disapproves of
34 the conditional release, it may do so only on the basis of substantial
35 evidence. Pursuant to the determination of the court upon the hearing,
36 the conditional release of the person shall be approved by the court on
37 the same or modified conditions or the person shall be returned for
38 involuntary treatment on an inpatient basis 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 (2) The hospital or facility designated to provide outpatient care
4 or the secretary may modify the conditions for continued release when
5 such modification is in the best interest of the person. Notification
6 of such changes shall be sent to all persons receiving a copy of the
7 original conditions.

8 (3)(a) If the hospital or facility designated to provide outpatient
9 care, the designated county mental health professional, or the
10 secretary determines that:

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

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

15 (ii) There is evidence of substantial decompensation with a
16 ((high)) reasonable probability that the decompensation can be reversed
17 by further inpatient treatment(~~(, or there is a likelihood of serious~~
18 harm,))); then, upon notification by the hospital or facility designated
19 to provide outpatient care, or on his or her own motion, the designated
20 county mental health professional or the secretary may order that the
21 conditionally released person be apprehended and taken into custody and
22 temporarily detained in an evaluation and treatment facility in or near
23 the county in which he or she is receiving outpatient treatment.

24 (b) If a conditionally released person presents a likelihood of
25 serious harm, the designated county mental health professional or
26 secretary shall order that the conditionally released person be
27 apprehended and taken into custody. The person shall be detained until
28 such time, not exceeding five days, as a hearing can be scheduled to
29 determine whether or not the person should be returned to the hospital
30 or facility from which he or she had been conditionally released. The
31 designated county mental health professional or the secretary may
32 modify or rescind such order at any time prior to commencement of the
33 court hearing.

34 ~~((b))~~ (c) The court that originally ordered commitment shall be
35 notified within two judicial days of a person's detention under the
36 provisions of this section, and the designated county mental health
37 professional or the secretary shall file his or her petition and order
38 of apprehension and detention with the court and serve them upon the
39 person detained. His or her attorney, if any, and his or her guardian

1 or conservator, if any, shall receive a copy of such papers as soon as
2 possible. Such person shall have the same rights with respect to
3 notice, hearing, and counsel as for an involuntary treatment
4 proceeding, except as specifically set forth in this section and except
5 that there shall be no right to jury trial. The issues to be
6 determined shall be: (i) Whether the conditionally released person did
7 or did not adhere to the terms and conditions of his or her release;
8 (ii) that substantial deterioration in the person's functioning has
9 occurred; (iii) there is evidence of substantial decompensation with a
10 (~~high~~) reasonable probability that the decompensation can be reversed
11 by further inpatient treatment; or (iv) there is a likelihood of
12 serious harm; and, if any of the conditions listed in this subsection
13 (3)(~~(b)~~) (c) have occurred, whether the conditions of release should
14 be modified or the person should be returned to the facility.

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

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

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

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

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

4 **Sec. 15.** RCW 71.05.370 and 1997 c 112 s 31 are each amended to
5 read as follows:

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

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

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

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

20 (4) To have visitors at reasonable times;

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

23 (6) To have ready access to letter writing materials, including
24 stamps, and to send and receive uncensored correspondence through the
25 mails;

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

31 (a) The administration of antipsychotic medication or
32 electroconvulsant therapy shall not be ordered unless the petitioning
33 party proves by clear, cogent, and convincing evidence that there
34 exists a compelling state interest that justifies overriding the
35 patient's lack of consent to the administration of antipsychotic
36 medications or electroconvulsant therapy, that the proposed treatment
37 is necessary and effective, and that medically acceptable alternative

1 forms of treatment are not available, have not been successful, or are
2 not likely to be effective.

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

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

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

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

34 (f) Antipsychotic medication may be administered to a nonconsenting
35 person detained or committed pursuant to this chapter without a court
36 order pursuant to RCW 71.05.215(2) or under the following
37 circumstances:

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

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

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

8 If antipsychotic medications are administered over a person's lack
9 of consent pursuant to this subsection, a petition for an order
10 authorizing the administration of antipsychotic medications shall be
11 filed on the next judicial day. The hearing shall be held within two
12 judicial days. If deemed necessary by the physician with
13 responsibility for the treatment of the person, administration of
14 antipsychotic medications may continue until the hearing is held;

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

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

20 **Sec. 16.** RCW 71.05.390 and 1993 c 448 s 6 are each amended to read
21 as follows:

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

26 Information and records may be disclosed only:

27 (1) In communications between qualified professional persons to
28 meet the requirements of this chapter, in the provision of services or
29 appropriate referrals, or in the course of guardianship proceedings.
30 The consent of the patient, or his or her guardian, shall be obtained
31 before information or records may be disclosed by a professional person
32 employed by a facility unless provided to a professional person(~~(~~
33 ~~not))~~; (a) Employed by the facility(~~(, who does not have the))~~; (b)
34 who has medical responsibility for the patient's care (~~(or who is~~
35 ~~not))~~; (c) who is a designated county mental health professional (~~(or~~
36 ~~who is not involved in))~~; (d) who is providing services under (~~(the~~
37 ~~community mental health services act,~~) chapter 71.24 RCW; or (e) who

1 is employed by a local correctional facility where the person is
2 confined.

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

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

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

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

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

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

29 /s/ "

30 (6) To the courts as necessary to the administration of this
31 chapter.

32 (7) To law enforcement officers, public health officers, or
33 personnel of the department of corrections or the indeterminate
34 sentence review board for persons who are the subject of the records
35 and who are committed to the custody of the department of corrections
36 or indeterminate sentence review board which information or records are
37 necessary to carry out the responsibilities of their office. Except
38 for dissemination of information released pursuant to RCW 71.05.425 and

1 4.24.550, regarding persons committed under this chapter under RCW
2 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
3 defined in RCW 9.94A.030, the extent of information that may be
4 released is limited as follows:

5 (a) Only the fact, place, and date of involuntary admission, the
6 fact and date of discharge, and the last known address shall be
7 disclosed upon request; and

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

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

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

22 (9) To the prosecuting attorney as necessary to carry out the
23 responsibilities of the office under RCW 71.05.330(2) and
24 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access
25 to records regarding the committed person's treatment and prognosis,
26 medication, behavior problems, and other records relevant to the issue
27 of whether treatment less restrictive than inpatient treatment is in
28 the best interest of the committed person or others. Information shall
29 be disclosed only after giving notice to the committed person and the
30 person's counsel.

31 (10) To appropriate law enforcement agencies and to a person, when
32 the identity of the person is known to the public or private agency,
33 whose health and safety has been threatened, or who is known to have
34 been repeatedly harassed, by the patient. The person may designate a
35 representative to receive the disclosure. The disclosure shall be made
36 by the professional person in charge of the public or private agency or
37 his or her designee and shall include the dates of admission,
38 discharge, authorized or unauthorized absence from the agency's
39 facility, and only such other information that is pertinent to the

1 threat or harassment. The decision to disclose or not shall not result
2 in civil liability for the agency or its employees so long as the
3 decision was reached in good faith and without gross negligence.

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

6 (12) Civil liability and immunity for the release of information
7 about a particular person who is committed to the department under RCW
8 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
9 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

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

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

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

33 **Sec. 17.** RCW 71.05.530 and 1973 1st ex.s. c 142 s 58 are each
34 amended to read as follows:

35 Evaluation and treatment facilities authorized pursuant to this
36 chapter may be part of the comprehensive community mental health
37 services program conducted in counties pursuant to (~~the Community~~

1 ~~Mental Health Services Act,~~) chapter 71.24 RCW, and may receive
2 funding pursuant to the provisions thereof.

3 **Sec. 18.** RCW 71.05.560 and 1973 1st ex.s. c 142 s 61 are each
4 amended to read as follows:

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

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

15 In any judicial proceeding in which a professional person has made
16 a recommendation regarding whether an individual should be committed
17 for treatment under this chapter, and the court does not follow the
18 recommendation, the court shall enter findings that state with
19 particularity its reasoning. These findings shall include a finding
20 whether or not the person presents a likelihood of serious harm.

21 NEW SECTION. **Sec. 20.** A new section is added to chapter 71.05 RCW
22 to read as follows:

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

30 The initial protocols shall be developed not later than December 1,
31 1998. The department shall develop the protocols in consultation with
32 representatives of county designated mental health professionals, local
33 government, law enforcement, county and city prosecutors, public
34 defenders, and groups concerned with mental illness. The protocols
35 shall be submitted to the governor and legislature upon adoption by the
36 department.

1 **Sec. 21.** RCW 10.77.005 and 1989 c 420 s 1 are each amended to read
2 as follows:

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

30 **Sec. 22.** RCW 10.77.010 and 1993 c 31 s 4 are each amended to read
31 as follows:

32 As used in this chapter:

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

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

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

6 (4) "Department" means the state department of social and health
7 services.

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

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

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

15 ~~(8))~~ (8) "Furlough" means an authorized leave of absence for a
16 resident of a state institution operated by the department designated
17 for the custody, care, and treatment of the criminally insane,
18 consistent with an order of conditional release from the court under
19 this chapter, without any requirement that the resident be accompanied
20 by, or be in the custody of, any law enforcement or institutional
21 staff, while on such unescorted leave.

22 ~~((9))~~ (9) "Developmental disability" means the condition defined
23 in RCW 71A.10.020(2).

24 ~~((10))~~ (10) "Developmental disabilities professional" means a
25 person who has specialized training and three years of experience in
26 directly treating or working with persons with developmental
27 disabilities and is a psychiatrist or psychologist, or a social worker,
28 and such other developmental disabilities professionals as may be
29 defined by rules adopted by the secretary.

30 ~~((11))~~ (11) "Habilitative services" means those services provided
31 by program personnel to assist persons in acquiring and maintaining
32 life skills and in raising their levels of physical, mental, social,
33 and vocational functioning. Habilitative services include education,
34 training for employment, and therapy. The habilitative process shall
35 be undertaken with recognition of the risk to the public safety
36 presented by the individual being assisted as manifested by prior
37 charged criminal conduct.

38 ~~((12) "Psychiatrist" means a person having a license))~~ (12)
39 "Expert or professional person" means:

1 (a) A psychiatrist licensed as a physician and surgeon in this
2 state who has, in addition, completed three years of graduate training
3 in psychiatry in a program approved by the American medical association
4 or the American osteopathic association and is certified or eligible to
5 be certified by the American board of psychiatry and neurology((~~-~~

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

7 (b) A psychologist licensed as a psychologist pursuant to chapter
8 18.83 RCW((~~-~~

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

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

13 ((~~15~~)) (12) "Individualized service plan" means a plan prepared
14 by a developmental disabilities professional with other professionals
15 as a team, for an individual with developmental disabilities, which
16 shall state:

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

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

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

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

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

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

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

33 (13) "Violent act" means behavior that resulted in homicide,
34 suicide, nonfatal injuries, or substantial damage to property.

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

37 **Sec. 23.** RCW 10.77.020 and 1993 c 31 s 5 are each amended to read
38 as follows:

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

10 (a) The nature of the charges;

11 (b) The statutory offense included within them;

12 (c) The range of allowable punishments thereunder;

13 (d) Possible defenses to the charges and circumstances in
14 mitigation thereof; and

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

17 (2) Whenever any person is subjected to an examination pursuant to
18 any provision of this chapter, he or she may retain an expert or
19 professional person to perform an examination in his or her behalf. In
20 the case of a person who is indigent, the court shall upon his or her
21 request assist the person in obtaining an expert or professional person
22 to perform an examination or participate in the hearing on his or her
23 behalf. An expert or professional person obtained by an indigent
24 person pursuant to the provisions of this chapter shall be compensated
25 for his or her services out of funds of the department, in an amount
26 determined by ~~((it))~~ the secretary to be fair and reasonable.

27 ~~((Whenever any person has been committed under any provision of
28 this chapter, or ordered to undergo alternative treatment following his
29 or her acquittal of a crime charged by reason of insanity, such
30 commitment or treatment cannot exceed the maximum possible penal
31 sentence for any offense charged for which the person was acquitted by
32 reason of insanity. If at the end of that period the person has not
33 been finally discharged and is still in need of commitment or
34 treatment, civil commitment proceedings may be instituted, if
35 appropriate.~~

36 ~~(4))~~ Any time the defendant is being examined by court appointed
37 experts or professional persons pursuant to the provisions of this
38 chapter, the defendant shall be entitled to have his or her attorney
39 present. The defendant may refuse to answer any question if he or she

1 believes his or her answers may tend to incriminate him or her or form
2 links leading to evidence of an incriminating nature.

3 NEW SECTION. **Sec. 24.** A new section is added to chapter 10.77 RCW
4 to read as follows:

5 (1) Whenever any person has been committed under any provision of
6 this chapter, or ordered to undergo alternative treatment following his
7 or her acquittal by reason of insanity of a crime charged, such
8 commitment or treatment cannot exceed the maximum possible penal
9 sentence for any offense charged for which the person was committed, or
10 was acquitted by reason of insanity.

11 (2) Whenever any person committed under any provision of this
12 chapter has not been finally discharged within seven days of the
13 maximum possible penal sentence under subsection (1) of this section,
14 and the professional person in charge of the facility believes it more
15 likely than not that the person will not be finally discharged, the
16 professional person shall, prior to the person's release from the
17 facility, notify the appropriate county designated mental health
18 professional of the impending release and provide a copy of all
19 relevant information regarding the person, including the likely release
20 date and shall indicate why final discharge was not made.

21 (3) A county designated mental health professional who receives
22 notice and records under subsection (2) of this section shall, prior to
23 the date of probable release, determine whether to initiate proceedings
24 under chapter 71.05 RCW.

25 **Sec. 25.** RCW 10.77.030 and 1974 ex.s. c 198 s 3 are each amended
26 to read as follows:

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

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

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

35 **Sec. 26.** RCW 10.77.040 and 1974 ex.s. c 198 s 4 are each amended
36 to read as follows:

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

- | | answer |
|----|-----------|
| | yes or no |
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| 5 | |
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| 21 | |
| 22 | |
| 23 | |
| 24 | |
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
placed in treatment that is less restrictive
than detention in a state mental hospital?

25 **Sec. 27.** RCW 10.77.060 and 1989 c 420 s 4 are each amended to read
26 as follows:

27 (1)(a) Whenever a defendant has pleaded not guilty by reason of
28 insanity, or there is reason to doubt his or her competency, the court
29 on its own motion or on the motion of any party shall either appoint or
30 request the secretary to designate at least two qualified experts or
31 professional persons, one of whom shall be approved by the prosecuting
32 attorney, to examine and report upon the mental condition of the
33 defendant. At least one of the experts or professional persons
34 appointed shall be a developmental disabilities professional if the
35 court is advised by any party that the defendant may be developmentally
36 disabled. For purposes of the examination, the court may order the
37 defendant committed to a hospital or other suitable public or private

1 facility for a period of time necessary to complete the examination,
2 but not to exceed fifteen days.

3 (b) When a defendant is ordered to be committed under this
4 subsection, the court may delay granting bail until the defendant has
5 been evaluated for competency and appears before the court following
6 the evaluation. In determining bail the court shall consider: (i)
7 Recommendations of the expert or professional persons regarding the
8 defendant's competency, sanity, or diminished capacity; (ii) whether
9 the defendant has a recent history of one or more violent acts; (iii)
10 whether the defendant has previously been acquitted by reason of
11 insanity or found incompetent; (iv) whether it is reasonably likely the
12 defendant will fail to appear for a future court hearing; and (v)
13 whether the defendant is a threat to public safety.

14 (2) The court may direct that a qualified expert or professional
15 person retained by or appointed for the defendant be permitted to
16 witness the examination authorized by subsection (1) of this section,
17 and that the defendant shall have access to all information obtained by
18 the court appointed experts or professional persons. The defendant's
19 expert or professional person shall have the right to file his or her
20 own report following the guidelines of subsection (3) of this section.
21 If the defendant is indigent, the court shall upon the request of the
22 defendant assist him or her in obtaining an expert or professional
23 person.

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

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

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

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

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

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

35 (f) An opinion as to whether the defendant is a substantial danger
36 to other persons, or presents a substantial likelihood of committing
37 (~~felonious~~) criminal acts jeopardizing public safety or security,
38 unless kept under further control by the court or other persons or
39 institutions.

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

3 **NEW SECTION. Sec. 28.** A new section is added to chapter 10.77 RCW
4 to read as follows:

5 (1) Whenever a defendant is committed for evaluation under this
6 chapter, a copy of the order shall be transmitted to the county
7 designated mental health professional of the county in which the
8 defendant was charged.

9 (2)(a) When a defendant is committed under RCW 10.77.060, the
10 professional person in charge of the facility shall make a
11 recommendation to the court whether the defendant should be evaluated
12 by a county designated mental health professional for purposes of
13 filing a petition under chapter 71.05 RCW whenever the defendant: (i)
14 Is charged with, or has a history of one or more violent acts; (ii) is
15 a threat to public safety; (iii) has previously been acquitted by
16 reason of insanity; or (iv) has previously been found incompetent
17 pursuant to this chapter.

18 (b) The facility conducting the evaluation shall promptly provide
19 its report and recommendation to the court in which the criminal
20 proceeding is pending. A copy of the report and recommendation shall
21 be provided to the county designated mental health professional, the
22 prosecuting attorney, and the defense attorney. Upon request, the
23 facility shall also provide copies of any source documents relevant to
24 the evaluation to the county designated mental health professional.

25 (3) The report and recommendation shall be provided to the court,
26 prosecuting attorney, and defense attorney not less than twenty-four
27 hours preceding the transfer of the defendant to the correctional
28 facility in the county in which the criminal proceeding is pending.

29 (4) If the facility recommends an evaluation under chapter 71.05
30 RCW, the court shall order an evaluation be conducted prior to release
31 from confinement for a defendant who is: (a) Found to be not
32 competent; (b) acquitted; or (c) convicted if sentenced to confinement
33 for twelve months or less.

34 (5) The county designated mental health professional shall provide
35 written notification within twenty-four hours of the results of the
36 determination whether to commence proceedings under chapter 71.05 RCW.

37 (6) The prosecuting attorney shall provide a copy of the results of
38 any proceedings commenced by the county designated mental health

1 professional under subsection (5) of this section to the facility
2 conducting the evaluation under this chapter.

3 **Sec. 29.** RCW 10.77.070 and 1973 1st ex.s. c 117 s 7 are each
4 amended to read as follows:

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

10 **Sec. 30.** RCW 10.77.080 and 1974 ex.s. c 198 s 7 are each amended
11 to read as follows:

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

24 **Sec. 31.** RCW 10.77.090 and 1989 c 420 s 5 are each amended to read
25 as follows:

26 (1)(a) If at any time during the pendency of an action and prior to
27 judgment~~((,))~~ the court finds following a report as provided in RCW
28 10.77.060~~((, as now or hereafter amended, that the))~~ a defendant is
29 incompetent, the court shall order the proceedings against the
30 defendant be stayed, except as provided in ~~((subsection (5) of))~~ this
31 section~~((, and,))~~ or section 32 of this act.

32 (b) If the defendant is charged with a felony, ~~((may))~~ the court
33 shall commit the defendant to the custody of the secretary, who shall
34 place such defendant in an appropriate facility ~~((of the department))~~
35 for evaluation and treatment~~((, or the court may alternatively order~~
36 ~~the defendant to undergo evaluation and treatment at some other~~

1 facility,)) or under the guidance and control of ((some other)) a
2 professional person, until he or she has regained the competency
3 necessary to understand the proceedings against him or her and assist
4 in his or her own defense, but in any event, for no longer than a
5 period of ninety days. ((A defendant found incompetent shall be
6 evaluated at the direction of the secretary and a determination made
7 whether the defendant is developmentally disabled. Such evaluation and
8 determination shall be accomplished as soon as possible following the
9 court's placement of the defendant in the custody of the secretary.
10 When appropriate, and subject to available funds, if the defendant is
11 determined to be developmentally disabled, he or she may be placed in
12 a program specifically reserved for the treatment and training of
13 persons with developmental disabilities where the defendant shall have
14 the right to habilitation according to an individualized service plan
15 specifically developed for the particular needs of the defendant. The
16 program shall be separate from programs serving persons involved in any
17 other treatment or habilitation program. The program shall be
18 appropriately secure under the circumstances and shall be administered
19 by developmental disabilities professionals who shall direct the
20 habilitation efforts. The program shall provide an environment
21 affording security appropriate with the charged criminal behavior and
22 necessary to protect the public safety. The department may limit
23 admissions of such persons to this specialized program in order to
24 ensure that expenditures for services do not exceed amounts
25 appropriated by the legislature and allocated by the department for
26 such services. The department may establish admission priorities in
27 the event that the number of eligible persons exceeds the limits set by
28 the department. A copy of the report shall be sent to the facility.))

29 (c) If the defendant is charged with a misdemeanor and has: (i) A
30 history of, or pending charges, which involve one or more violent acts;
31 (ii) been previously acquitted by reason of insanity; or (iii) been
32 previously found incompetent under this chapter with regard to an
33 offense involving harm or attempted harm to a person, the proceedings
34 against the defendant shall be stayed, and the defendant transferred to
35 the superior court in the county in which the criminal charge was
36 filed. The superior court shall commit the defendant to the custody of
37 the secretary for a period not to exceed fourteen days for treatment of
38 a mental condition as a gravely disabled person, under chapter 71.05
39 RCW, and for assistance in regaining his or her competency necessary to

1 understand the proceedings against him or her and assist in his or her
2 own defense. If the person does not regain his or her competency at
3 the end of the period, the criminal proceeding shall be dismissed and
4 a petition for up to a ninety-day commitment for involuntary treatment
5 or a one hundred eighty-day less restrictive commitment under chapter
6 71.05 RCW shall be initiated. In no event may the amount of time a
7 person is committed as a result of proceedings initiated under this
8 section exceed the maximum possible penal sentence for any offense
9 charged for which the person was found incompetent. If the person
10 regains his or her competency, the court shall order the defendant
11 returned to the court in which the criminal charge was filed.

12 (d) If the defendant is charged with a crime that is not a felony
13 or a misdemeanor meeting the criteria under (c) of this subsection, the
14 court may stay or dismiss proceedings and detain the defendant for
15 sufficient time to allow the county designated mental health
16 professional to evaluate the defendant and commence proceedings under
17 chapter 71.05 RCW. The court must give notice to all parties at least
18 twenty-four hours before the dismissal of any proceeding under this
19 subsection (1)(d), and provide an opportunity for a hearing on whether
20 to dismiss the proceedings.

21 (2) On or before expiration of the initial ninety-day period of
22 commitment under subsection (1) of this section the court shall conduct
23 a hearing, at which it shall determine whether or not the defendant is
24 incompetent. ((If the defendant is charged with a crime which is not
25 a felony, the court may stay or dismiss proceedings and detain the
26 defendant for sufficient time to allow the county mental health
27 professional to evaluate the defendant and commence proceedings under
28 chapter 71.05 RCW if appropriate; and subsections (2) and (3) of this
29 section shall not be applicable: PROVIDED, That, upon order of the
30 court, the prosecutor may directly petition for fourteen days of
31 involuntary treatment under chapter 71.05 RCW.

32 (2)) (3) If the court finds by a preponderance of the evidence
33 that ((the)) a defendant charged with a felony is incompetent, the
34 court shall have the option of extending the order of commitment or
35 alternative treatment for an additional ninety-day period, but it must
36 at the time of extension set a date for a prompt hearing to determine
37 the defendant's competency before the expiration of the second ninety-
38 day period. The defendant, the defendant's attorney, or the
39 prosecutor((, or the judge shall have the right to)) may demand that

1 the hearing (~~(on or before the expiration of the second ninety-day~~
2 ~~period))~~ be before a jury. No extension shall be ordered for a second
3 ninety-day period, nor for any subsequent period as provided in
4 subsection ~~((3))~~ (4) of this section if the defendant's incompetence
5 has been determined under section 32 of this act by the secretary to be
6 solely the result of a developmental disability which is such that
7 competence is not reasonably likely to be regained during an extension.
8 ~~((If no demand is made, the hearing shall be before the court. The~~
9 ~~court or jury shall determine whether or not the defendant has become~~
10 ~~competent.~~

11 ~~(3))~~ (4) At the hearing upon the expiration of the second ninety-
12 day period or at the end of the first ninety-day period, in the case of
13 a developmentally disabled defendant, if the jury or court ~~((as the~~
14 ~~case may be,))~~ finds that the defendant is incompetent, the charges
15 shall be dismissed without prejudice, and either civil commitment
16 proceedings shall be instituted ~~((if appropriate,))~~ or the court shall
17 order the release of the defendant: PROVIDED, That the criminal
18 charges shall not be dismissed if ~~((at the end of the second ninety-day~~
19 ~~period, or at the end of the first ninety-day period, in the case of a~~
20 ~~developmentally disabled defendant,))~~ the court or jury finds that:
21 (a) The defendant (i) is a substantial danger to other persons ~~((,))~~ i or
22 (ii) presents a substantial likelihood of committing ~~((felonious))~~
23 criminal acts jeopardizing public safety or security ~~((,))~~ i and ~~((that))~~
24 (b) there is a substantial probability that the defendant will regain
25 competency within a reasonable period of time. In the event that the
26 court or jury makes such a finding, the court may extend the period of
27 commitment for an additional six months. At the end of ~~((said))~~ the
28 six-month period, if the defendant remains incompetent, the charges
29 shall be dismissed without prejudice and either civil commitment
30 proceedings shall be instituted ~~((if appropriate,))~~ or the court shall
31 order release of the defendant.

32 ~~((4))~~ (5) If the defendant is referred to the county designated
33 mental health professional for consideration of commitment proceedings
34 under chapter 71.05 RCW pursuant to this chapter, the county designated
35 mental health professional shall provide prompt written notification of
36 the results of the determination whether to commence proceedings under
37 chapter 71.05 RCW, and the results of any commitment proceedings. The
38 notification shall be provided to the court in which the criminal

1 action was pending, the prosecutor, and the defense attorney in the
2 criminal action.

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

6 ((+5)) (7) A defendant receiving medication for either physical or
7 mental problems shall not be prohibited from standing trial, if the
8 medication either enables the defendant to understand the proceedings
9 against him or her and to assist in his or her own defense, or does not
10 disable him or her from so understanding and assisting in his or her
11 own defense.

12 ((+6)) (8) At or before the conclusion of any commitment period
13 provided for by this section, the facility providing evaluation and
14 treatment shall provide to the court a written report of examination
15 which meets the requirements of RCW 10.77.060(3).

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

18 A defendant who is found incompetent shall be referred to the
19 secretary to determine whether he or she is developmentally disabled.
20 The determination shall be accomplished as soon as possible following
21 the court's referral of the defendant to the secretary. When
22 appropriate, and subject to available funds, a defendant determined to
23 be developmentally disabled may be placed in a program reserved for the
24 treatment and training of persons with developmental disabilities. The
25 defendant shall have the right to habilitation according to an
26 individualized service plan specifically developed for his or her
27 particular needs. The program shall be separate from programs serving
28 persons involved in any other treatment or habilitation program.

29 A program in which a developmentally disabled person is placed
30 under this section shall be administered by developmental disabilities
31 professionals and security appropriate with the charged criminal
32 behavior and necessary to protect the public safety. The department
33 may limit and prioritize admissions to the program in order to ensure
34 that admissions and expenditures for services do not exceed amounts
35 appropriated and allocated by the department.

36 **Sec. 33.** RCW 10.77.110 and 1989 c 420 s 6 are each amended to read
37 as follows:

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

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

38 (3) If it is found that such defendant is not a substantial danger
39 to other persons, and does not present a substantial likelihood of

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

10 **Sec. 34.** RCW 10.77.140 and 1989 c 420 s 8 are each amended to read
11 as follows:

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

25 **Sec. 35.** RCW 10.77.150 and 1993 c 31 s 6 are each amended to read
26 as follows:

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

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

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

1 the court, to the prosecuting attorney of the county in which the
2 released person was committed, and to the supervising community
3 corrections officer.

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

7 **Sec. 36.** RCW 10.77.180 and 1993 c 31 s 9 are each amended to read
8 as follows:

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

24 **Sec. 37.** RCW 10.77.190 and 1993 c 31 s 10 are each amended to read
25 as follows:

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

33 (2) If the prosecuting attorney, the secretary of social and health
34 services, the secretary of corrections, or the court, after examining
35 the report filed with them pursuant to RCW 10.77.160, or based on other
36 information received by them, reasonably believes that a conditionally
37 released person is failing to adhere to the terms and conditions of his

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

14 (3) If the hospital or facility designated to provide outpatient
15 care determines that a conditionally released person presents a threat
16 to public safety, the hospital or facility shall immediately notify the
17 county designated mental health professional or the secretary, who
18 shall order that the conditionally released person be apprehended and
19 taken into custody.

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

30 **Sec. 38.** RCW 10.77.200 and 1993 c 31 s 11 are each amended to read
31 as follows:

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

1 final discharge he or she then shall authorize (~~said~~) the person to
2 petition the court.

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

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

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

32 **Sec. 39.** RCW 10.77.210 and 1993 c 31 s 12 are each amended to read
33 as follows:

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

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

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

23 NEW SECTION. Sec. 40. In developing rules under RCW 10.77.210(2),
24 the department shall implement the following legislative intent:
25 Increasing public safety; and making decisions based on a person's
26 current conduct and mental condition rather than the classification of
27 the charges.

28 **Sec. 41.** RCW 10.77.240 and 1973 1st ex.s. c 117 s 24 are each
29 amended to read as follows:

30 Nothing in this chapter shall prohibit a person presently committed
31 from exercising a right presently available to him or her for obtaining
32 release from confinement, including the right to petition for a writ of
33 habeas corpus.

34 NEW SECTION. Sec. 42. A new section is added to chapter 10.77 RCW
35 to read as follows:

1 A copy of relevant records and reports as defined by the
2 department, in consultation with the department of corrections, made
3 pursuant to this chapter shall accompany the defendant upon transfer to
4 a mental health facility or a correctional institution or facility.

5 NEW SECTION. **Sec. 43.** A new section is added to chapter 10.77 RCW
6 to read as follows:

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

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

18 If, at the time of release, the secretary is unable to locate the
19 treatment provider, the secretary shall notify the regional support
20 network in the county most likely to be the county in which the inmate
21 will initially reside following release.

22 A copy of relevant records and reports, as determined by the
23 department of corrections, relating to the offender's mental health
24 treatment or status shall be promptly made available to the offender's
25 present or future treatment provider.

26 **Sec. 44.** RCW 10.97.030 and 1990 c 3 s 128 are each amended to read
27 as follows:

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

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

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

6 (a) Posters, announcements, or lists for identifying or
7 apprehending fugitives or wanted persons;

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

11 (c) Court indices and records of public judicial proceedings, court
12 decisions, and opinions, and information disclosed during public
13 judicial proceedings;

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

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

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

24 (g) Announcements of executive clemency.

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

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

35 (4) "Conviction or other disposition adverse to the subject" means
36 any disposition of charges (~~(7-except)~~) other than: (a) A decision not
37 to prosecute((7)); (b) a dismissal((7)); or (c) acquittal ((except when
38 the)); with the following exceptions, which shall be considered
39 dispositions adverse to the subject: An acquittal ((is)) due to a

1 finding of not guilty by reason of insanity and a dismissal by reason
2 of incompetency, pursuant to chapter 10.77 RCW (~~and~~) when the person
3 was committed pursuant to chapter 10.77 RCW(~~PROVIDED, HOWEVER,~~
4 ~~That~~); and a dismissal entered after a period of probation,
5 suspension, or deferral of sentence (~~shall be considered a disposition~~
6 ~~adverse to the subject~~)).

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

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

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

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

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

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

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

36 NEW SECTION. Sec. 45. The code reviser shall alphabetize the
37 definitions in RCW 10.77.010 and correct any references.

1 NEW SECTION. **Sec. 46.** The following acts or parts of acts are
2 each repealed:

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

6 NEW SECTION. **Sec. 47.** This act takes effect July 1, 1998, except
7 section 46 of this act is necessary for the immediate preservation of
8 the public peace, health, or safety, or support of the state government
9 and its existing public institutions, and takes effect March 31, 1998.

10 NEW SECTION. **Sec. 48.** The sum of dollars, or as much
11 thereof as may be necessary, is appropriated for the biennium ending
12 June 30, 1999, from the general fund to the department of social and
13 health services for the purposes of implementing this act.

14 NEW SECTION. **Sec. 49.** RCW 10.77.005 is recodified within chapter
15 10.77 RCW after RCW 10.77.090.

16 NEW SECTION. **Sec. 50.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

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