

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE SENATE BILL 6214

Chapter 297, Laws of 1998

(partial veto)

55th Legislature
1998 Regular Session

COMMITMENT OF MENTALLY ILL PERSONS

EFFECTIVE DATE: 7/1/98 - Except sections 18, 35, 38, and 39 which become effective on 3/1/99.

Passed by the Senate March 9, 1998
YEAS 45 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 6, 1998
YEAS 98 NAYS 0

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved April 2, 1998, with the exception of sections 55 and 60, which are vetoed.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 6214** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O'CONNELL

Secretary

FILED

April 2, 1998 - 2:45 p.m.

**Secretary of State
State of Washington**

SECOND SUBSTITUTE SENATE BILL 6214

AS AMENDED BY THE HOUSE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1998 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Long, Hargrove, McDonald, Deccio, Franklin, Stevens, Strannigan, Wood, Schow, Swecker, Hale, Sellar, Thibaudeau, Haugen, Winsley and Oke)

Read first time 02/10/98.

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

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

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

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

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

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

18 (3) To safeguard individual rights;

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

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

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

26 (7) To protect the public safety.

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

29 For the purposes of this chapter:

30 (1) "~~Antipsychotic medications~~~~((," also referred to as~~
31 ~~"neuroleptics,))"~~ means that class of drugs primarily used to treat
32 serious manifestations of mental illness associated with thought
33 disorders ~~((and currently includes phenothiazines, thioxanthenes,~~
34 ~~butyrophenone, dihydroindolone, and dibenzoxazine)), which includes,~~
35 but is not limited to atypical antipsychotic medications;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~a substantial risk that~~); (ii) physical harm will be inflicted by an
2 individual upon another, as evidenced by behavior which has caused such
3 harm or which places another person or persons in reasonable fear of
4 sustaining such harm(~~, or (c) a substantial risk that~~); or (iii)
5 physical harm will be inflicted by an individual upon the property of
6 others, as evidenced by behavior which has caused substantial loss or
7 damage to the property of others; or

8 ~~((13))~~ (b) The individual has threatened the physical safety of
9 another and has a history of one or more violent acts;

10 (15) "Mental disorder" means any organic, mental, or emotional
11 impairment which has substantial adverse effects on an individual's
12 cognitive or volitional functions;

13 ~~((14))~~ (16) "Mental health professional" means a psychiatrist,
14 psychologist, psychiatric nurse, or social worker, and such other
15 mental health professionals as may be defined by rules adopted by the
16 secretary pursuant to the provisions of this chapter;

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

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

27 ~~((17))~~ (19) "Professional person" ~~((shall))~~ means a mental health
28 professional(~~, as above defined,~~) and shall also mean a physician,
29 registered nurse, and such others as may be defined by rules adopted by
30 the secretary pursuant to the provisions of this chapter;

31 ~~((18))~~ (20) "Psychiatrist" means a person having a license as a
32 physician and surgeon in this state who has in addition completed three
33 years of graduate training in psychiatry in a program approved by the
34 American medical association or the American osteopathic association
35 and is certified or eligible to be certified by the American board of
36 psychiatry and neurology;

37 ~~((19))~~ (21) "Psychologist" means a person who has been licensed
38 as a psychologist pursuant to chapter 18.83 RCW;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (3) Such person has been determined to be incompetent and criminal
36 charges have been dismissed pursuant to RCW 10.77.090(~~((+3))~~) (4), and
37 has committed acts constituting a felony, and as a result of a mental

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

5 (4) Such person is gravely disabled.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (iii) There is evidence of substantial decompensation with a
31 ~~((high))~~ reasonable probability that the decompensation can be reversed
32 by further inpatient treatment~~((,))~~ or ~~((there is))~~

33 (iv) The person poses a likelihood of serious harm~~((, then))~~.

34 Upon notification by the hospital or facility designated to provide
35 outpatient care, or on his or her own motion, the ~~((designated))~~ county
36 designated mental health professional or the secretary may order that
37 the conditionally released person be apprehended and taken into custody
38 and temporarily detained in an evaluation and treatment facility in or
39 near the county in which he or she is receiving outpatient treatment.

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

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

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

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

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

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

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

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

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

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

34 Information and records may be disclosed only:

35 (1) In communications between qualified professional persons to
36 meet the requirements of this chapter, in the provision of services or
37 appropriate referrals, or in the course of guardianship proceedings.
38 The consent of the patient, or his or her guardian, shall be obtained

1 before information or records may be disclosed by a professional person
2 employed by a facility unless provided to a professional person(~~(~~
3 ~~not~~)): (a) Employed by the facility(~~(, who does not have the~~); (b)
4 who has medical responsibility for the patient's care (~~(or who is~~
5 ~~not~~)); (c) who is a ((designated)) county designated mental health
6 professional ((or who is not involved in)); (d) who is providing
7 services under ((the community mental health services act,)) chapter
8 71.24 RCW; or (e) who is employed by a state or local correctional
9 facility where the person is confined.

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

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

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

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

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

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

36 /s/ "

1 (6) To the courts as necessary to the administration of this
2 chapter.

3 (7) To law enforcement officers, public health officers, or
4 personnel of the department of corrections or the indeterminate
5 sentence review board for persons who are the subject of the records
6 and who are committed to the custody of the department of corrections
7 or indeterminate sentence review board which information or records are
8 necessary to carry out the responsibilities of their office. Except
9 for dissemination of information released pursuant to RCW 71.05.425 and
10 4.24.550, regarding persons committed under this chapter under RCW
11 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
12 defined in RCW 9.94A.030, the extent of information that may be
13 released is limited as follows:

14 (a) Only the fact, place, and date of involuntary admission, the
15 fact and date of discharge, and the last known address shall be
16 disclosed upon request; and

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

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

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

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

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

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

15 (12) Civil liability and immunity for the release of information
16 about a particular person who is committed to the department under RCW
17 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
18 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

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

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

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

1 appropriate safeguards for strict confidentiality are and will be
2 maintained.

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

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

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

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

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

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

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

31 The department shall develop state-wide protocols to be utilized by
32 professional persons and county designated mental health professionals
33 in administration of this chapter and chapter 10.77 RCW. The protocols
34 shall be updated at least every three years. The protocols shall
35 provide uniform development and application of criteria in evaluation

1 and commitment recommendations, of persons who have, or are alleged to
2 have, mental disorders and are subject to this chapter.

3 The initial protocols shall be developed not later than September
4 1, 1999. The department shall develop and update the protocols in
5 consultation with representatives of county designated mental health
6 professionals, local government, law enforcement, county and city
7 prosecutors, public defenders, and groups concerned with mental
8 illness. The protocols shall be submitted to the governor and
9 legislature upon adoption by the department.

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

12 Where appropriate, and under the prescription of an authorized
13 professional person, atypical antipsychotic medications may be accessed
14 for use by a regional support network through the fund established in
15 section 57 of this act.

16 **Sec. 28.** RCW 10.77.005 and 1989 c 420 s 1 are each amended to read
17 as follows:

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

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

9 **Sec. 29.** RCW 10.77.010 and 1993 c 31 s 4 are each amended to read
10 as follows:

11 As used in this chapter:

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

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

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

23 (4) "Department" means the state department of social and health
24 services.

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

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

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

32 (8)) "Furlough" means an authorized leave of absence for a
33 resident of a state institution operated by the department designated
34 for the custody, care, and treatment of the criminally insane,
35 consistent with an order of conditional release from the court under
36 this chapter, without any requirement that the resident be accompanied
37 by, or be in the custody of, any law enforcement or institutional
38 staff, while on such unescorted leave.

1 (~~(9)~~) (8) "Developmental disability" means the condition defined
2 in RCW 71A.10.020(2).

3 (~~(10)~~) (9) "Developmental disabilities professional" means a
4 person who has specialized training and three years of experience in
5 directly treating or working with persons with developmental
6 disabilities and is a psychiatrist or psychologist, or a social worker,
7 and such other developmental disabilities professionals as may be
8 defined by rules adopted by the secretary.

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

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

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

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

25 (b) A psychologist licensed as a psychologist pursuant to chapter
26 18.83 RCW(~~(-~~

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

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

31 (~~(15)~~) (12) "Individualized service plan" means a plan prepared
32 by a developmental disabilities professional with other professionals
33 as a team, for an individual with developmental disabilities, which
34 shall state:

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

37 (b) The conditions and strategies necessary to achieve the purposes
38 of habilitation;

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

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

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

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

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

13 (13) "Violent act" means behavior that: (a)(i) Resulted in; (ii)
14 if completed as intended would have resulted in; or (iii) was
15 threatened to be carried out by a person who had the intent and
16 opportunity to carry out the threat and would have resulted in,
17 homicide, nonfatal injuries, or substantial damage to property; or (b)
18 recklessly creates an immediate risk of serious physical injury to
19 another person.

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

22 (15) "History of one or more violent acts" means violent acts
23 committed during: (a) The ten-year period of time prior to the filing
24 of criminal charges; plus (b) the amount of time equal to time spent
25 during the ten-year period in a mental health facility or in
26 confinement as a result of a criminal conviction.

27 **Sec. 30.** RCW 10.77.020 and 1993 c 31 s 5 are each amended to read
28 as follows:

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

38 (a) The nature of the charges;

- 1 (b) The statutory offense included within them;
2 (c) The range of allowable punishments thereunder;
3 (d) Possible defenses to the charges and circumstances in
4 mitigation thereof; and
5 (e) All other facts essential to a broad understanding of the whole
6 matter.

7 (2) Whenever any person is subjected to an examination pursuant to
8 any provision of this chapter, he or she may retain an expert or
9 professional person to perform an examination in his or her behalf. In
10 the case of a person who is indigent, the court shall upon his or her
11 request assist the person in obtaining an expert or professional person
12 to perform an examination or participate in the hearing on his or her
13 behalf. An expert or professional person obtained by an indigent
14 person pursuant to the provisions of this chapter shall be compensated
15 for his or her services out of funds of the department, in an amount
16 determined by ~~((it))~~ the secretary to be fair and reasonable.

17 ~~(3) ((Whenever any person has been committed under any provision of
18 this chapter, or ordered to undergo alternative treatment following his
19 or her acquittal of a crime charged by reason of insanity, such
20 commitment or treatment cannot exceed the maximum possible penal
21 sentence for any offense charged for which the person was acquitted by
22 reason of insanity. If at the end of that period the person has not
23 been finally discharged and is still in need of commitment or
24 treatment, civil commitment proceedings may be instituted, if
25 appropriate.~~

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

32 NEW SECTION. Sec. 31. A new section is added to chapter 10.77 RCW
33 to read as follows:

34 (1) Whenever any person has been: (a) Committed to a correctional
35 facility or inpatient treatment under any provision of this chapter; or
36 (b) ordered to undergo alternative treatment following his or her
37 acquittal by reason of insanity of a crime charged, such commitment or
38 treatment cannot exceed the maximum possible penal sentence for any

1 offense charged for which the person was committed, or was acquitted by
2 reason of insanity.

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

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

17 **Sec. 32.** RCW 10.77.030 and 1974 ex.s. c 198 s 3 are each amended
18 to read as follows:

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

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

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

27 **Sec. 33.** RCW 10.77.040 and 1974 ex.s. c 198 s 4 are each amended
28 to read as follows:

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

32		answer
33		yes or no
34	1. Did the defendant commit the act charged?

- 1 2. If your answer to number 1 is yes, do you acquit
2 him or her because of insanity existing at the
3 time of the act charged?
4 3. If your answer to number 2 is yes, is the
5 defendant a substantial danger to other persons
6 unless kept under further control by the court
7 or other persons or institutions?
8 4. If your answer to number 2 is yes, does the
9 defendant present a substantial likelihood of
10 committing ((~~felonious~~)) criminal acts
11 jeopardizing public safety or security unless
12 kept under further control by the court or other
13 persons or institutions?
14 5. If your answers to either number 3 or number 4
15 is yes, is it in the best interests of the
16 defendant and others that the defendant be
17 placed in treatment that is less restrictive
18 than detention in a state mental hospital?

19 **Sec. 34.** RCW 10.77.060 and 1989 c 420 s 4 are each amended to read
20 as follows:

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

35 (b) When a defendant is ordered to be committed for inpatient
36 examination under this subsection (1), the court may delay granting
37 bail until the defendant has been evaluated for competency or sanity
38 and appears before the court. Following the evaluation, in determining

1 bail the court shall consider: (i) Recommendations of the expert or
2 professional persons regarding the defendant's competency, sanity, or
3 diminished capacity; (ii) whether the defendant has a recent history of
4 one or more violent acts; (iii) whether the defendant has previously
5 been acquitted by reason of insanity or found incompetent; (iv) whether
6 it is reasonably likely the defendant will fail to appear for a future
7 court hearing; and (v) whether the defendant is a threat to public
8 safety.

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

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

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

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

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

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

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

30 (f) An opinion as to whether the defendant is a substantial danger
31 to other persons, or presents a substantial likelihood of committing
32 (~~felonious~~) criminal acts jeopardizing public safety or security,
33 unless kept under further control by the court or other persons or
34 institutions.

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

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

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

5 (2)(a) When a defendant is evaluated under RCW 10.77.060, the
6 professional person shall make a recommendation to the court whether
7 the defendant should be examined by a county designated mental health
8 professional for purposes of filing a petition under chapter 71.05 RCW
9 whenever the court determines, and enters a finding that, the defendant
10 is charged with: (i) A felony; or (ii) a nonfelony crime and: (A) Is
11 charged with, or has a history of, one or more violent acts; (B) is a
12 threat to public safety; (C) has previously been acquitted by reason of
13 insanity; or (D) has previously been found incompetent pursuant to this
14 chapter.

15 (b) The facility conducting the evaluation shall provide its report
16 and recommendation to the court in which the criminal proceeding is
17 pending. A copy of the report and recommendation shall be provided to
18 the county designated mental health professional, the prosecuting
19 attorney, the defense attorney, and the professional person at the
20 local correctional facility where the defendant is being held. Upon
21 request, the facility shall also provide copies of any source documents
22 relevant to the evaluation to the county designated mental health
23 professional. The report and recommendation shall be provided not less
24 than twenty-four hours preceding the transfer of the defendant to the
25 correctional facility in the county in which the criminal proceeding is
26 pending.

27 (c) If the facility concludes, under RCW 10.77.060(3)(f), the
28 person should be kept under further control, an evaluation shall be
29 conducted of such person under chapter 71.05 RCW. The court shall
30 order an evaluation be conducted by the appropriate county designated
31 mental health professional: (i) Prior to release from confinement for
32 such person who is convicted, if sentenced to confinement for twenty-
33 four months or less; (ii) for any person who is acquitted; or (iii) for
34 any person whose charges are dismissed pursuant to RCW 10.77.090(4).

35 (3) The county designated mental health professional shall provide
36 written notification within twenty-four hours of the results of the
37 determination whether to commence proceedings under chapter 71.05 RCW.
38 The notification shall be provided to the persons identified in
39 subsection (2)(b) of this section.

1 (4) The prosecuting attorney shall provide a copy of the results of
2 any proceedings commenced by the county designated mental health
3 professional under subsection (3) of this section to the facility
4 conducting the evaluation under this chapter.

5 **Sec. 36.** RCW 10.77.070 and 1973 1st ex.s. c 117 s 7 are each
6 amended to read as follows:

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

12 **Sec. 37.** RCW 10.77.080 and 1974 ex.s. c 198 s 7 are each amended
13 to read as follows:

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

26 **Sec. 38.** RCW 10.77.090 and 1989 c 420 s 5 are each amended to read
27 as follows:

28 (1)(a) If at any time during the pendency of an action and prior to
29 judgment~~((τ))~~ the court finds, following a report as provided in RCW
30 10.77.060, ~~((as now or hereafter amended, that the))~~ a defendant is
31 incompetent~~((τ))~~ the court shall order the proceedings against the
32 defendant be stayed~~((τ))~~ except as provided in subsection ~~((+5))~~ (7)
33 of this section~~((τ and τ))~~.

34 (b) If the defendant is charged with a felony and determined to be
35 incompetent, ~~((may))~~ the court shall commit the defendant to the
36 custody of the secretary, who shall place such defendant in an

1 appropriate facility of the department for evaluation and treatment, or
2 the court may alternatively order the defendant to undergo evaluation
3 and treatment at some other facility as determined by the department,
4 or under the guidance and control of (~~some other~~) a professional
5 person, until he or she has regained the competency necessary to
6 understand the proceedings against him or her and assist in his or her
7 own defense, but in any event, for no longer than a period of ninety
8 days.

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

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

34 (A) Charged with a nonfelony crime and has: (I) A history of one
35 or more violent acts, or a pending charge of one or more violent acts;
36 or (II) been previously acquitted by reason of insanity or been
37 previously found incompetent under this chapter with regard to an
38 alleged offense involving actual, threatened, or attempted physical
39 harm to a person; and

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

2 (C) The court shall order the secretary to place the defendant:

3 (I) At a secure mental health facility in the custody of the department
4 or an agency designated by the department for mental health treatment
5 and restoration of competency. The placement shall not exceed fourteen
6 days in addition to any unused time of the evaluation under RCW
7 10.77.060. The fourteen-day period shall be considered to include only
8 the time the defendant is actually at the facility and shall be in
9 addition to reasonable time for transport to or from the facility; (II)
10 on conditional release for up to ninety days for mental health
11 treatment and restoration of competency; or (III) any combination of
12 (d)(i)(C)(I) and (II) of this subsection.

13 (ii) At the end of the mental health treatment and restoration
14 period in (d)(i) of this subsection, or at any time a professional
15 person determines competency has been, or is unlikely to be, restored
16 the defendant shall be returned to court for a hearing. If, after
17 notice and hearing, competency has been restored, the stay entered
18 under (a) of this subsection shall be lifted. If competency has not
19 been restored, the proceedings shall be dismissed. If the court
20 concludes that competency has not been restored, but that further
21 treatment within the time limits established by (d)(i) of this
22 subsection is likely to restore competency, the court may order that
23 treatment for purposes of competency restoration be continued. Such
24 treatment may not extend beyond the combination of time provided for in
25 (d)(i)(C)(I) and (II) of this subsection.

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

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

36 (iv) If at any time during the proceeding the court finds,
37 following notice and hearing, a defendant is not likely to regain
38 competency, the proceedings shall be dismissed and the defendant shall
39 be evaluated as provided in (d)(iii) of this subsection.

1 (e) If the defendant is charged with a crime that is not a felony
2 and the defendant does not meet the criteria under (d) of this
3 subsection, the court may stay or dismiss proceedings and detain the
4 defendant for sufficient time to allow the county designated mental
5 health professional to evaluate the defendant and consider initial
6 detention proceedings under chapter 71.05 RCW. The court must give
7 notice to all parties at least twenty-four hours before the dismissal
8 of any proceeding under this subsection (1)(e), and provide an
9 opportunity for a hearing on whether to dismiss the proceedings.

10 (2) On or before expiration of the initial ninety-day period of
11 commitment under subsection (1)(b) of this section the court shall
12 conduct a hearing, at which it shall determine whether or not the
13 defendant is incompetent. ((If the defendant is charged with a crime
14 which is not a felony, the court may stay or dismiss proceedings and
15 detain the defendant for sufficient time to allow the county mental
16 health professional to evaluate the defendant and commence proceedings
17 under chapter 71.05 RCW if appropriate; and subsections (2) and (3) of
18 this section shall not be applicable: PROVIDED, That, upon order of
19 the court, the prosecutor may directly petition for fourteen days of
20 involuntary treatment under chapter 71.05 RCW.

21 ~~(2))~~ (3) If the court finds by a preponderance of the evidence
22 that ((the)) a defendant charged with a felony is incompetent, the
23 court shall have the option of extending the order of commitment or
24 alternative treatment for an additional ninety-day period, but it must
25 at the time of extension set a date for a prompt hearing to determine
26 the defendant's competency before the expiration of the second ninety-
27 day period. The defendant, the defendant's attorney, or the
28 prosecutor((, or the judge)) shall have the right to demand that the
29 hearing ((on or before the expiration of the second ninety day period))
30 be before a jury. No extension shall be ordered for a second ninety-
31 day period, nor for any subsequent period as provided in subsection
32 ~~((+3))~~ (4) of this section if the defendant's incompetence has been
33 determined by the secretary to be solely the result of a developmental
34 disability which is such that competence is not reasonably likely to be
35 regained during an extension. ((If no demand is made, the hearing
36 shall be before the court. The court or jury shall determine whether
37 or not the defendant has become competent.

38 ~~(3))~~ (4) For persons charged with a felony, at the hearing upon
39 the expiration of the second ninety-day period or at the end of the

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

21 (~~((+4))~~) (5) If the defendant is referred to the county designated
22 mental health professional for consideration of initial detention
23 proceedings under chapter 71.05 RCW pursuant to this chapter, the
24 county designated mental health professional shall provide prompt
25 written notification of the results of the determination whether to
26 commence initial detention proceedings under chapter 71.05 RCW, and
27 whether the person was detained. The notification shall be provided to
28 the court in which the criminal action was pending, the prosecutor, the
29 defense attorney in the criminal action, and the facility that
30 evaluated the defendant for competency.

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

34 (~~((+5))~~) (7) A defendant receiving medication for either physical or
35 mental problems shall not be prohibited from standing trial, if the
36 medication either enables the defendant to understand the proceedings
37 against him or her and to assist in his or her own defense, or does not
38 disable him or her from so understanding and assisting in his or her
39 own defense.

1 (~~(6)~~) (8) At or before the conclusion of any commitment period
2 provided for by this section, the facility providing evaluation and
3 treatment shall provide to the court a written report of examination
4 which meets the requirements of RCW 10.77.060(3).

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

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

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

1 order to ensure that expenditures for services do not exceed amounts
2 appropriated by the legislature and allocated by the department for
3 such services. The department may establish admission priorities in
4 the event that the number of eligible persons exceeds the limits set by
5 the department.

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

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

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

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

34 (1) Persons examined pursuant to RCW 10.77.140~~((, as now or
35 hereafter amended,))~~ may make application to the secretary for
36 conditional release. The secretary shall, after considering the
37 reports of experts or professional persons conducting the examination

1 pursuant to RCW 10.77.140, forward to the court of the county which
2 ordered the person's commitment the person's application for
3 conditional release as well as the secretary's recommendations
4 concerning the application and any proposed terms and conditions upon
5 which the secretary reasonably believes the person can be conditionally
6 released. Conditional release may also contemplate partial release for
7 work, training, or educational purposes.

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

1 (3) If the court determines that receiving regular or periodic
2 medication or other medical treatment shall be a condition of the
3 committed person's release, then the court shall require him or her to
4 report to a physician or other medical or mental health practitioner
5 for the medication or treatment. In addition to submitting any report
6 required by RCW 10.77.160, the physician or other medical or mental
7 health practitioner shall immediately upon the released person's
8 failure to appear for the medication or treatment report the failure to
9 the court, to the prosecuting attorney of the county in which the
10 released person was committed, and to the supervising community
11 corrections officer.

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

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

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

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

34 (1) Any person submitting reports pursuant to RCW 10.77.160, the
35 secretary, or the prosecuting attorney may petition the court to, or
36 the court on its own motion may schedule an immediate hearing for the
37 purpose of modifying the terms of conditional release if the petitioner

1 or the court believes the released person is failing to adhere to the
2 terms and conditions of his or her conditional release or is in need of
3 additional care and treatment.

4 (2) If the prosecuting attorney, the secretary of social and health
5 services, the secretary of corrections, or the court, after examining
6 the report filed with them pursuant to RCW 10.77.160, or based on other
7 information received by them, reasonably believes that a conditionally
8 released person is failing to adhere to the terms and conditions of his
9 or her conditional release the court or secretary of social and health
10 services or the secretary of corrections may order that the
11 conditionally released person be apprehended and taken into custody
12 until such time as a hearing can be scheduled to determine the facts
13 and whether or not the person's conditional release should be revoked
14 or modified. The court shall be notified before the close of the next
15 judicial day of the apprehension. Both the prosecuting attorney and
16 the conditionally released person shall have the right to request an
17 immediate mental examination of the conditionally released person. If
18 the conditionally released person is indigent, the court or secretary
19 of social and health services or the secretary of corrections or their
20 designees shall, upon request, assist him or her in obtaining a
21 qualified expert or professional person to conduct the examination.

22 (3) If the hospital or facility designated to provide outpatient
23 care determines that a conditionally released person presents a threat
24 to public safety, the hospital or facility shall immediately notify the
25 secretary of social and health services or the secretary of corrections
26 or their designees. The secretary shall order that the conditionally
27 released person be apprehended and taken into custody.

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

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

3 (1) Upon application by the committed or conditionally released
4 person, the secretary shall determine whether or not reasonable grounds
5 exist for final discharge. In making this determination, the secretary
6 may consider the reports filed under RCW 10.77.060, 10.77.110,
7 10.77.140, and 10.77.160, and other reports and evaluations provided by
8 professionals familiar with the case. If the secretary approves the
9 final discharge he or she then shall authorize (~~said~~) the person to
10 petition the court.

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

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

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

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

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

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

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

35 NEW SECTION. **Sec. 47.** A new section is added to chapter 10.77 RCW
36 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, and including relevant information necessary
4 to meet the requirements of section 35(2) of this act and RCW
5 10.77.090, shall accompany the defendant upon transfer to a mental
6 health facility or a correctional institution or facility.

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

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

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

20 At the time of an inmate's release if the secretary is unable to
21 locate the treatment provider, the secretary shall notify the regional
22 support network in the county the inmate will most likely reside
23 following release.

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

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

33 For purposes of this chapter, the definitions of terms in this
34 section shall apply.

35 (1) "Criminal history record information" means information
36 contained in records collected by criminal justice agencies, other than
37 courts, on individuals, consisting of identifiable descriptions and

1 notations of arrests, detentions, indictments, informations, or other
2 formal criminal charges, and any disposition arising therefrom,
3 including acquittals by reason of insanity, dismissals based on lack of
4 competency, sentences, correctional supervision, and release.

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

10 (a) Posters, announcements, or lists for identifying or
11 apprehending fugitives or wanted persons;

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

15 (c) Court indices and records of public judicial proceedings, court
16 decisions, and opinions, and information disclosed during public
17 judicial proceedings;

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

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

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

28 (g) Announcements of executive clemency.

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

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

1 (4) "Conviction or other disposition adverse to the subject" means
2 any disposition of charges (~~(, except)~~) other than: (a) A decision not
3 to prosecute(,); (b) a dismissal(,); or (c) acquittal ((except when
4 the)); with the following exceptions, which shall be considered
5 dispositions adverse to the subject: An acquittal ((is)) due to a
6 finding of not guilty by reason of insanity and a dismissal by reason
7 of incompetency, pursuant to chapter 10.77 RCW((and the person was
8 committed pursuant to chapter 10.77 RCW: PROVIDED, HOWEVER, That));
9 and a dismissal entered after a period of probation, suspension, or
10 deferral of sentence ((shall be considered a disposition adverse to the
11 subject)).

12 (5) "Criminal justice agency" means: (a) A court; or (b) a
13 government agency which performs the administration of criminal justice
14 pursuant to a statute or executive order and which allocates a
15 substantial part of its annual budget to the administration of criminal
16 justice.

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

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

26 (8) "Dissemination" means disclosing criminal history record
27 information or disclosing the absence of criminal history record
28 information to any person or agency outside the agency possessing the
29 information, subject to the following exceptions:

30 (a) When criminal justice agencies jointly participate in the
31 maintenance of a single record keeping department as an alternative to
32 maintaining separate records, the furnishing of information by that
33 department to personnel of any participating agency is not a
34 dissemination;

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

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

3 NEW SECTION. **Sec. 50.** A new section is added to chapter 10.77 RCW
4 to read as follows:

5 Where appropriate, and under the prescription of an authorized
6 professional person, atypical antipsychotic medications may be accessed
7 for use by a regional support network through the fund established in
8 section 57 of this act.

9 NEW SECTION. **Sec. 51.** The code reviser shall alphabetize the
10 definitions in RCW 10.77.010 and correct any references.

11 NEW SECTION. **Sec. 52.** The following acts or parts of acts are
12 each repealed:

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

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

15 NEW SECTION. **Sec. 53.** This act takes effect July 1, 1998, except
16 for sections 18, 35, 38, and 39 of this act, which take effect March 1,
17 1999.

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

20 (a) Whether there has been a reduction in recidivism for mentally
21 ill offenders who are felons or who meet the criteria specified in RCW
22 10.77.090(1)(d) and received mental health services as a result of the
23 provisions of chapters 10.77 and 71.05 RCW.

24 (b) The number of nonfelony offenders who have been referred to
25 competency restoration under RCW 10.77.090(1)(d)(i)(C) and the
26 percentage of such offenders who have been restored to competency
27 within the allotted time for felons, nonfelony offenders meeting the
28 criteria under RCW 10.77.090(1)(d), and the nonfelony offenders who do
29 not meet this criteria.

30 (c) Whether the information-sharing provisions of this act are
31 adequate to provide necessary information to the affected parties. The
32 analysis shall include findings as to whether the flow of information
33 is resulting in the efficient usage of the information and whether
34 there are revisions in the flow which would better allow the courts,

1 professional persons, and parties to proceedings to make better use of
2 the information.

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

5 ***NEW SECTION.** *Sec. 55. The department of corrections shall report*
6 *to the fiscal committees of the legislature on the efficacy of the*
7 *regional support networks in implementing the provisions of this act.*
8 *Such report shall be submitted annually on or before September 30th and*
9 *shall include information about the administrative expenses of the*
10 *regional support networks.*

11 ***Sec. 55 was vetoed. See message at end of chapter.**

12 **NEW SECTION.** **Sec. 56.** RCW 10.77.005 is recodified within chapter
13 10.77 RCW after RCW 10.77.090.

14 **NEW SECTION.** **Sec. 57.** \$210,000 of the general fund--state
15 appropriation for fiscal year 1999 is provided solely for the
16 establishment of a fund to reimburse regional support networks for the
17 cost of atypical antipsychotic medications. This amount is not subject
18 to the provisions of RCW 71.24.035(17)(d).

19 **NEW SECTION.** **Sec. 58.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

23 **NEW SECTION.** **Sec. 59.** If specific funding for the purposes of
24 this act, referencing this act by bill or chapter number, is not
25 provided by June 30, 1998, in the omnibus appropriations act, this act
26 is null and void.

27 ***NEW SECTION.** **Sec. 60.** *This act shall expire on June 30, 2001.*

28 ***Sec. 60 was vetoed. See message at end of chapter.**

29 **NEW SECTION.** **Sec. 61.** The joint legislative audit and review
30 committee shall conduct an evaluation of the efficiency and
31 effectiveness of this act in meeting its stated goals. Such an
32 evaluation shall include the operation of the state mental hospitals
33 and the regional support networks, as well as any other appropriate

1 entity. The joint legislative audit and review committee shall prepare
2 an interim report of its findings which shall be delivered to the
3 appropriate legislative committees of the house of representatives and
4 the senate no later than September 1, 2000. In addition, the joint
5 legislative audit and review committee shall prepare a final report of
6 its findings which shall be delivered to the appropriate legislative
7 committees of the house of representatives and the senate no later than
8 January 1, 2001.

Passed the Senate March 9, 1998.

Passed the House March 6, 1998.

Approved by the Governor April 2, 1998, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State April 2, 1998.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 55 and
3 60, Second Substitute Senate Bill No. 6214 entitled:

4 "AN ACT Relating to mental illness;"

5 2SSB 6214 broadens the Involuntary Treatment Act (ITA) commitment
6 standards to take greater account of a history of violence. Among
7 other things, it requires greater information sharing between treatment
8 providers and criminal justice agencies, and creates mechanisms to
9 protect public safety in the context of ITA treatment.

10 Section 55 of 2SSB 6214 would require the Department of Corrections
11 to report annually to legislative fiscal committees on the efficacy of
12 the regional support networks in implementing this legislation,
13 including information on their administrative costs. While such
14 reporting has value, DOC has neither the audit authority, the
15 specialized expertise, nor the funding to perform this task. The bill
16 already requires evaluations and reports by the Joint Legislative Audit
17 and Review Committee and the Washington State Institute for Public
18 Policy.

19 Section 60 would cause the entire act to expire on June 30, 2001.
20 "Sunset" provisions can be valuable, but this would be too soon. This
21 complex new law will be difficult to implement and may well require
22 revision in the years to come. The studies required by the Institute
23 for Public Policy and the Joint Legislative Audit and Review Committee
24 can help identify problems and opportunities for improvement.

25 For these reasons, I have vetoed sections 55 and 60 of Second
26 Substitute Senate Bill No. 6214.

27 With the exception of sections 55 and 60, Second Substitute Senate
28 Bill No. 6214 is approved."