
SUBSTITUTE SENATE BILL 5652

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Hargrove, A. Smith and Nelson; by request of Department of Corrections)

Read first time 02/22/93.

1 AN ACT Relating to the clarification of responsibility to monitor
2 criminally insane offenders, track sentences, clarify tolling
3 provisions, and charge offenders for special services; amending RCW
4 10.98.110, 9.94A.170, 10.77.010, 10.77.020, 10.77.150, 10.77.160,
5 10.77.165, 10.77.180, 10.77.190, 10.77.200, and 10.77.210; reenacting
6 and amending RCW 9.94A.120; and prescribing penalties.

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

8 **Sec. 1.** RCW 10.98.110 and 1987 c 462 s 2 are each amended to read
9 as follows:

10 (1) The department shall maintain records to track felony cases
11 (~~following convictions in Washington state~~) for convicted felons
12 sentenced either to a term of confinement exceeding one year or ordered
13 under the supervision of the department and felony cases under the
14 jurisdiction of (~~Washington state~~) the department pursuant to
15 interstate compact agreements.

16 (2) Tracking shall begin at the time the department receives a
17 (~~disposition~~) judgment and sentence form from a prosecuting attorney
18 and shall include the collection and updating of felons' criminal

1 records from ~~((conviction))~~ the time of sentencing through ~~((completion~~
2 ~~of sentence))~~ discharge.

3 (3) The department of corrections shall collect information for
4 tracking felons from its offices and from information provided by
5 county clerks, the Washington state patrol identification and criminal
6 history section, the office of financial management, and any other
7 public or private agency that provides services to help individuals
8 complete their felony sentences.

9 **Sec. 2.** RCW 9.94A.170 and 1988 c 153 s 9 are each amended to read
10 as follows:

11 (1) A term of confinement, including community custody, ordered in
12 a sentence pursuant to this chapter shall be tolled by any period of
13 time during which the offender has absented him or herself from
14 confinement without the prior approval of the entity in whose custody
15 the offender has been placed. A term of partial confinement shall be
16 tolled during any period of time spent in total confinement pursuant to
17 a new conviction or pursuant to sanctions for violation of sentence
18 conditions on a separate felony conviction.

19 (2) A term of supervision, including postrelease supervision
20 ordered in a sentence pursuant to this chapter shall be tolled by any
21 period of time during which the offender has absented himself or
22 herself from supervision without prior approval of the entity under
23 whose supervision the offender has been placed.

24 (3) Any period of supervision shall be tolled during any period of
25 time the offender is in confinement for any reason. However, if an
26 offender is detained pursuant to RCW 9.94A.207 or 9.94A.195 and is
27 later found not to have violated a condition or requirement of
28 supervision, time spent in confinement due to such detention shall not
29 toll to period of supervision.

30 (4) For confinement or supervision sentences, the date for the
31 tolling of the sentence shall be established by the entity responsible
32 for the confinement or supervision. ~~((For sentences involving~~
33 ~~supervision, the date for the tolling of the sentence shall be~~
34 ~~established by the court, based on reports from the entity responsible~~
35 ~~for the supervision.))~~

36 **Sec. 3.** RCW 9.94A.120 and 1992 c 145 s 7, 1992 c 75 s 2, and 1992
37 c 45 s 5 are each reenacted and amended to read as follows:

1 When a person is convicted of a felony, the court shall impose
2 punishment as provided in this section.

3 (1) Except as authorized in subsections (2), (5), and (7) of this
4 section, the court shall impose a sentence within the sentence range
5 for the offense.

6 (2) The court may impose a sentence outside the standard sentence
7 range for that offense if it finds, considering the purpose of this
8 chapter, that there are substantial and compelling reasons justifying
9 an exceptional sentence.

10 (3) Whenever a sentence outside the standard range is imposed, the
11 court shall set forth the reasons for its decision in written findings
12 of fact and conclusions of law. A sentence outside the standard range
13 shall be a determinate sentence.

14 (4) An offender convicted of the crime of murder in the first
15 degree shall be sentenced to a term of total confinement not less than
16 twenty years. An offender convicted of the crime of assault in the
17 first degree or assault of a child in the first degree where the
18 offender used force or means likely to result in death or intended to
19 kill the victim shall be sentenced to a term of total confinement not
20 less than five years. An offender convicted of the crime of rape in
21 the first degree shall be sentenced to a term of total confinement not
22 less than five years, and shall not be eligible for furlough, work
23 release or other authorized leave of absence from the correctional
24 facility during such minimum five-year term except for the purpose of
25 commitment to an inpatient treatment facility. The foregoing minimum
26 terms of total confinement are mandatory and shall not be varied or
27 modified as provided in subsection (2) of this section.

28 (5) In sentencing a first-time offender the court may waive the
29 imposition of a sentence within the sentence range and impose a
30 sentence which may include up to ninety days of confinement in a
31 facility operated or utilized under contract by the county and a
32 requirement that the offender refrain from committing new offenses.
33 The sentence may also include up to two years of community supervision,
34 which, in addition to crime-related prohibitions, may include
35 requirements that the offender perform any one or more of the
36 following:

37 (a) Devote time to a specific employment or occupation;

1 (b) Undergo available outpatient treatment for up to two years, or
2 inpatient treatment not to exceed the standard range of confinement for
3 that offense;

4 (c) Pursue a prescribed, secular course of study or vocational
5 training;

6 (d) Remain within prescribed geographical boundaries and notify the
7 court or the community corrections officer prior to any change in the
8 offender's address or employment;

9 (e) Report as directed to the court and a community corrections
10 officer; or

11 (f) Pay all court-ordered legal financial obligations as provided
12 in RCW 9.94A.030 and/or perform community service work.

13 (6) If a sentence range has not been established for the
14 defendant's crime, the court shall impose a determinate sentence which
15 may include not more than one year of confinement, community service
16 work, a term of community supervision not to exceed one year, and/or
17 other legal financial obligations. The court may impose a sentence
18 which provides more than one year of confinement if the court finds,
19 considering the purpose of this chapter, that there are substantial and
20 compelling reasons justifying an exceptional sentence.

21 (7)(a)(i) When an offender is convicted of a sex offense other than
22 a violation of RCW 9A.44.050 or a sex offense that is also a serious
23 violent offense and has no prior convictions for a sex offense or any
24 other felony sex offenses in this or any other state, the sentencing
25 court, on its own motion or the motion of the state or the defendant,
26 may order an examination to determine whether the defendant is amenable
27 to treatment.

28 The report of the examination shall include at a minimum the
29 following: The defendant's version of the facts and the official
30 version of the facts, the defendant's offense history, an assessment of
31 problems in addition to alleged deviant behaviors, the offender's
32 social and employment situation, and other evaluation measures used.
33 The report shall set forth the sources of the evaluator's information.

34 The examiner shall assess and report regarding the defendant's
35 amenability to treatment and relative risk to the community. A
36 proposed treatment plan shall be provided and shall include, at a
37 minimum:

38 (A) Frequency and type of contact between offender and therapist;

1 (B) Specific issues to be addressed in the treatment and
2 description of planned treatment modalities;

3 (C) Monitoring plans, including any requirements regarding living
4 conditions, lifestyle requirements, and monitoring by family members
5 and others;

6 (D) Anticipated length of treatment; and

7 (E) Recommended crime-related prohibitions.

8 The court on its own motion may order, or on a motion by the state
9 shall order, a second examination regarding the offender's amenability
10 to treatment. The evaluator shall be selected by the party making the
11 motion. The defendant shall pay the cost of any second examination
12 ordered unless the court finds the defendant to be indigent in which
13 case the state shall pay the cost.

14 (ii) After receipt of the reports, the court shall consider whether
15 the offender and the community will benefit from use of this special
16 sexual offender sentencing alternative and consider the victim's
17 opinion whether the offender should receive a treatment disposition
18 under this subsection. If the court determines that this special sex
19 offender sentencing alternative is appropriate, the court shall then
20 impose a sentence within the sentence range. If this sentence is less
21 than eight years of confinement, the court may suspend the execution of
22 the sentence and impose the following conditions of suspension:

23 (A) The court shall place the defendant on community supervision
24 for the length of the suspended sentence or three years, whichever is
25 greater; and

26 (B) The court shall order treatment for any period up to three
27 years in duration. The court in its discretion shall order outpatient
28 sex offender treatment or inpatient sex offender treatment, if
29 available. A community mental health center may not be used for such
30 treatment unless it has an appropriate program designed for sex
31 offender treatment. The offender shall not change sex offender
32 treatment providers or treatment conditions without first notifying the
33 prosecutor, the community corrections officer, and the court, and shall
34 not change providers without court approval after a hearing if the
35 prosecutor or community corrections officer object to the change. In
36 addition, as conditions of the suspended sentence, the court may impose
37 other sentence conditions including up to six months of confinement,
38 not to exceed the sentence range of confinement for that offense,

1 crime-related prohibitions, and requirements that the offender perform
2 any one or more of the following:

3 (I) Devote time to a specific employment or occupation;

4 (II) Remain within prescribed geographical boundaries and notify
5 the court or the community corrections officer prior to any change in
6 the offender's address or employment;

7 (III) Report as directed to the court and a community corrections
8 officer;

9 (IV) Pay all court-ordered legal financial obligations as provided
10 in RCW 9.94A.030, perform community service work, or any combination
11 thereof; or

12 (V) Make recoupment to the victim for the cost of any counseling
13 required as a result of the offender's crime.

14 (iii) The sex offender therapist shall submit quarterly reports on
15 the defendant's progress in treatment to the court and the parties.
16 The report shall reference the treatment plan and include at a minimum
17 the following: Dates of attendance, defendant's compliance with
18 requirements, treatment activities, the defendant's relative progress
19 in treatment, and any other material as specified by the court at
20 sentencing.

21 (iv) At the time of sentencing, the court shall set a treatment
22 termination hearing for three months prior to the anticipated date for
23 completion of treatment. Prior to the treatment termination hearing,
24 the treatment professional and community corrections officer shall
25 submit written reports to the court and parties regarding the
26 defendant's compliance with treatment and monitoring requirements, and
27 recommendations regarding termination from treatment, including
28 proposed community supervision conditions. Either party may request
29 and the court may order another evaluation regarding the advisability
30 of termination from treatment. The defendant shall pay the cost of any
31 additional evaluation ordered unless the court finds the defendant to
32 be indigent in which case the state shall pay the cost. At the
33 treatment termination hearing the court may: (A) Modify conditions of
34 community supervision, and either (B) terminate treatment, or (C)
35 extend treatment for up to the remaining period of community
36 supervision.

37 (v) The court may revoke the suspended sentence at any time during
38 the period of community supervision and order execution of the sentence
39 if: (A) The defendant violates the conditions of the suspended

1 sentence, or (B) the court finds that the defendant is failing to make
2 satisfactory progress in treatment. All confinement time served during
3 the period of community supervision shall be credited to the offender
4 if the suspended sentence is revoked.

5 (vi) Except as provided in (a)(vii) of this subsection, after July
6 1, 1991, examinations and treatment ordered pursuant to this subsection
7 shall only be conducted by sex offender treatment providers certified
8 by the department of health pursuant to chapter 18.155 RCW.

9 (vii) A sex offender therapist who examines or treats a sex
10 offender pursuant to this subsection (7) does not have to be certified
11 by the department of health pursuant to chapter 18.155 RCW if the court
12 finds that: (A) The offender has already moved to another state or
13 plans to move to another state for reasons other than circumventing the
14 certification requirements; (B) no certified providers are available
15 for treatment within a reasonable geographical distance of the
16 offender's home; and (C) the evaluation and treatment plan comply with
17 this subsection (7) and the rules adopted by the department of health.

18 For purposes of this subsection, "victim" means any person who has
19 sustained emotional, psychological, physical, or financial injury to
20 person or property as a result of the crime charged. "Victim" also
21 means a parent or guardian of a victim who is a minor child unless the
22 parent or guardian is the perpetrator of the offense.

23 (b) When an offender is convicted of any felony sex offense
24 committed before July 1, 1987, and is sentenced to a term of
25 confinement of more than one year but less than six years, the
26 sentencing court may, on its own motion or on the motion of the
27 offender or the state, order the offender committed for up to thirty
28 days to the custody of the secretary of social and health services for
29 evaluation and report to the court on the offender's amenability to
30 treatment at these facilities. If the secretary of social and health
31 services cannot begin the evaluation within thirty days of the court's
32 order of commitment, the offender shall be transferred to the state for
33 confinement pending an opportunity to be evaluated at the appropriate
34 facility. The court shall review the reports and may order that the
35 term of confinement imposed be served in the sexual offender treatment
36 program at the location determined by the secretary of social and
37 health services or the secretary's designee, only if the report
38 indicates that the offender is amenable to the treatment program
39 provided at these facilities. The offender shall be transferred to the

1 state pending placement in the treatment program. Any offender who has
2 escaped from the treatment program shall be referred back to the
3 sentencing court.

4 If the offender does not comply with the conditions of the
5 treatment program, the secretary of social and health services may
6 refer the matter to the sentencing court. The sentencing court shall
7 commit the offender to the department of corrections to serve the
8 balance of the term of confinement.

9 If the offender successfully completes the treatment program before
10 the expiration of the term of confinement, the court may convert the
11 balance of confinement to community supervision and may place
12 conditions on the offender including crime-related prohibitions and
13 requirements that the offender perform any one or more of the
14 following:

- 15 (i) Devote time to a specific employment or occupation;
- 16 (ii) Remain within prescribed geographical boundaries and notify
17 the court or the community corrections officer prior to any change in
18 the offender's address or employment;
- 19 (iii) Report as directed to the court and a community corrections
20 officer;
- 21 (iv) Undergo available outpatient treatment.

22 If the offender violates any of the terms of community supervision,
23 the court may order the offender to serve out the balance of the
24 community supervision term in confinement in the custody of the
25 department of corrections.

26 After June 30, 1993, this subsection (b) shall cease to have
27 effect.

28 (c) When an offender commits any felony sex offense on or after
29 July 1, 1987, and is sentenced to a term of confinement of more than
30 one year but less than six years, the sentencing court may, on its own
31 motion or on the motion of the offender or the state, request the
32 department of corrections to evaluate whether the offender is amenable
33 to treatment and the department may place the offender in a treatment
34 program within a correctional facility operated by the department.

35 Except for an offender who has been convicted of a violation of RCW
36 9A.44.040 or 9A.44.050, if the offender completes the treatment program
37 before the expiration of his or her term of confinement, the department
38 of corrections may request the court to convert the balance of
39 confinement to community supervision and to place conditions on the

1 offender including crime-related prohibitions and requirements that the
2 offender perform any one or more of the following:

3 (i) Devote time to a specific employment or occupation;

4 (ii) Remain within prescribed geographical boundaries and notify
5 the court or the community corrections officer prior to any change in
6 the offender's address or employment;

7 (iii) Report as directed to the court and a community corrections
8 officer;

9 (iv) Undergo available outpatient treatment.

10 If the offender violates any of the terms of his or her community
11 supervision, the court may order the offender to serve out the balance
12 of his or her community supervision term in confinement in the custody
13 of the department of corrections.

14 Nothing in (c) of this subsection shall confer eligibility for such
15 programs for offenders convicted and sentenced for a sex offense
16 committed prior to July 1, 1987. This subsection (c) does not apply to
17 any crime committed after July 1, 1990.

18 (d) Offenders convicted and sentenced for a sex offense committed
19 prior to July 1, 1987, may, subject to available funds, request an
20 evaluation by the department of corrections to determine whether they
21 are amenable to treatment. If the offender is determined to be
22 amenable to treatment, the offender may request placement in a
23 treatment program within a correctional facility operated by the
24 department. Placement in such treatment program is subject to
25 available funds.

26 (8)(a) When a court sentences a person to a term of total
27 confinement to the custody of the department of corrections for an
28 offense categorized as a sex offense or a serious violent offense
29 committed after July 1, 1988, but before July 1, 1990, assault in the
30 second degree, assault of a child in the second degree, any crime
31 against a person where it is determined in accordance with RCW
32 9.94A.125 that the defendant or an accomplice was armed with a deadly
33 weapon at the time of commission, or any felony offense under chapter
34 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall
35 in addition to the other terms of the sentence, sentence the offender
36 to a one-year term of community placement beginning either upon
37 completion of the term of confinement or at such time as the offender
38 is transferred to community custody in lieu of earned early release in
39 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an

1 offender under this subsection to the statutory maximum period of
2 confinement then the community placement portion of the sentence shall
3 consist entirely of such community custody to which the offender may
4 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any
5 period of community custody actually served shall be credited against
6 the community placement portion of the sentence.

7 (b) When a court sentences a person to a term of total confinement
8 to the custody of the department of corrections for an offense
9 categorized as a sex offense or serious violent offense committed on or
10 after July 1, 1990, the court shall in addition to other terms of the
11 sentence, sentence the offender to community placement for two years or
12 up to the period of earned early release awarded pursuant to RCW
13 9.94A.150 (1) and (2), whichever is longer. The community placement
14 shall begin either upon completion of the term of confinement or at
15 such time as the offender is transferred to community custody in lieu
16 of earned early release in accordance with RCW 9.94A.150 (1) and (2).
17 When the court sentences an offender under this subsection to the
18 statutory maximum period of confinement then the community placement
19 portion of the sentence shall consist entirely of the community custody
20 to which the offender may become eligible, in accordance with RCW
21 9.94A.150 (1) and (2). Any period of community custody actually served
22 shall be credited against the community placement portion of the
23 sentence. Unless a condition is waived by the court, the terms of
24 community placement for offenders sentenced pursuant to this section
25 shall include the following conditions:

26 (i) The offender shall report to and be available for contact with
27 the assigned community corrections officer as directed;

28 (ii) The offender shall work at department of corrections-approved
29 education, employment, and/or community service;

30 (iii) The offender shall not consume controlled substances except
31 pursuant to lawfully issued prescriptions;

32 (iv) An offender in community custody shall not unlawfully possess
33 controlled substances;

34 (v) The offender shall pay supervision fees as determined by the
35 department of corrections; and

36 (vi) The residence location and living arrangements are subject to
37 the prior approval of the department of corrections during the period
38 of community placement.

1 (c) The court may also order any of the following special
2 conditions:

3 (i) The offender shall remain within, or outside of, a specified
4 geographical boundary;

5 (ii) The offender shall not have direct or indirect contact with
6 the victim of the crime or a specified class of individuals;

7 (iii) The offender shall participate in crime-related treatment or
8 counseling services;

9 (iv) The offender shall not consume alcohol; or

10 (v) The offender shall comply with any crime-related prohibitions.

11 (d) Prior to transfer to, or during, community placement, any
12 conditions of community placement may be removed or modified so as not
13 to be more restrictive by the sentencing court, upon recommendation of
14 the department of corrections.

15 (9) If the court imposes a sentence requiring confinement of thirty
16 days or less, the court may, in its discretion, specify that the
17 sentence be served on consecutive or intermittent days. A sentence
18 requiring more than thirty days of confinement shall be served on
19 consecutive days. Local jail administrators may schedule court-ordered
20 intermittent sentences as space permits.

21 (10) If a sentence imposed includes payment of a legal financial
22 obligation, the sentence shall specify the total amount of the legal
23 financial obligation owed, and shall require the offender to pay a
24 specified monthly sum toward that legal financial obligation.
25 Restitution to victims shall be paid prior to any other payments of
26 monetary obligations. Any legal financial obligation that is imposed
27 by the court may be collected by the department, which shall deliver
28 the amount paid to the county clerk for credit. The offender's
29 compliance with payment of legal financial obligations shall be
30 supervised by the department. All monetary payments ordered shall be
31 paid no later than ten years after the last date of release from
32 confinement pursuant to a felony conviction or the date the sentence
33 was entered. Independent of the department, the party or entity to
34 whom the legal financial obligation is owed shall have the authority to
35 utilize any other remedies available to the party or entity to collect
36 the legal financial obligation. Nothing in this section makes the
37 department, the state, or any of its employees, agents, or other
38 persons acting on their behalf liable under any circumstances for the
39 payment of these legal financial obligations. If an order includes

1 restitution as one of the monetary assessments, the county clerk shall
2 make disbursements to victims named in the order.

3 (11) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a
4 court may not impose a sentence providing for a term of confinement or
5 community supervision or community placement which exceeds the
6 statutory maximum for the crime as provided in chapter 9A.20 RCW.

7 (12) All offenders sentenced to terms involving community
8 supervision, community service, community placement, or legal financial
9 obligation shall be under the supervision of the secretary of the
10 department of corrections or such person as the secretary may designate
11 and shall follow explicitly the instructions of the secretary including
12 reporting as directed to a community corrections officer, remaining
13 within prescribed geographical boundaries, notifying the community
14 corrections officer of any change in the offender's address or
15 employment, and paying the supervision fee assessment. The department
16 may require offenders to pay for special services rendered on or after
17 the effective date of this act, including electronic monitoring, day
18 reporting, and telephone reporting, dependent upon the offender's
19 ability to pay. The department may pay for these services for
20 offenders who are not able to pay.

21 (13) All offenders sentenced to terms involving community
22 supervision, community service, or community placement under the
23 supervision of the department of corrections shall not own, use, or
24 possess firearms or ammunition. Offenders who own, use, or are found
25 to be in actual or constructive possession of firearms or ammunition
26 shall be subject to the appropriate violation process and sanctions.
27 "Constructive possession" as used in this subsection means the power
28 and intent to control the firearm or ammunition. "Firearm" as used in
29 this subsection means a weapon or device from which a projectile may be
30 fired by an explosive such as gunpowder.

31 (14) The sentencing court shall give the offender credit for all
32 confinement time served before the sentencing if that confinement was
33 solely in regard to the offense for which the offender is being
34 sentenced.

35 (15) A departure from the standards in RCW 9.94A.400 (1) and (2)
36 governing whether sentences are to be served consecutively or
37 concurrently is an exceptional sentence subject to the limitations in
38 subsections (2) and (3) of this section, and may be appealed by the
39 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

1 (16) The court shall order restitution whenever the offender is
2 convicted of a felony that results in injury to any person or damage to
3 or loss of property, whether the offender is sentenced to confinement
4 or placed under community supervision, unless extraordinary
5 circumstances exist that make restitution inappropriate in the court's
6 judgment. The court shall set forth the extraordinary circumstances in
7 the record if it does not order restitution.

8 (17) As a part of any sentence, the court may impose and enforce an
9 order that relates directly to the circumstances of the crime for which
10 the offender has been convicted, prohibiting the offender from having
11 any contact with other specified individuals or a specific class of
12 individuals for a period not to exceed the maximum allowable sentence
13 for the crime, regardless of the expiration of the offender's term of
14 community supervision or community placement.

15 (18) In any sentence of partial confinement, the court may require
16 the defendant to serve the partial confinement in work release, in a
17 program of home detention, on work crew, or in a combined program of
18 work crew and home detention.

19 (19) All court-ordered legal financial obligations collected by the
20 department and remitted to the county clerk shall be credited and paid
21 where restitution is ordered. Restitution shall be paid prior to any
22 other payments of monetary obligations.

23 **Sec. 4.** RCW 10.77.010 and 1989 c 420 s 3 are each amended to read
24 as follows:

25 As used in this chapter:

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

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

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

37 (4) "Department" means the state department of social and health
38 services.

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

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

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

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

15 (9) "Developmental disability" means the condition defined in RCW
16 71A.10.020(2).

17 (10) "Developmental disabilities professional" means a person who
18 has specialized training and three years of experience in directly
19 treating or working with persons with developmental disabilities and is
20 a psychiatrist or psychologist, or a social worker, and such other
21 developmental disabilities professionals as may be defined by rules
22 adopted by the secretary.

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

31 (12) "Psychiatrist" means a person having a license as a physician
32 and surgeon in this state who has, in addition, completed three years
33 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 (13) "Psychologist" means a person who has been licensed as a
38 psychologist pursuant to chapter 18.83 RCW.

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

4 (15) "Individualized service plan" means a plan prepared by a
5 developmental disabilities professional with other professionals as a
6 team, for an individual with developmental disabilities, which shall
7 state:

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

10 (b) The conditions and strategies necessary to achieve the purposes
11 of habilitation;

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

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

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

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

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

24 **Sec. 5.** RCW 10.77.020 and 1974 ex.s. c 198 s 2 are each amended to
25 read as follows:

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

35 (a) The nature of the charges;

36 (b) The statutory offense included within them;

37 (c) The range of allowable punishments thereunder;

1 (d) Possible defenses to the charges and circumstances in
2 mitigation thereof; and

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

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

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

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

30 **Sec. 6.** RCW 10.77.150 and 1982 c 112 s 1 are each amended to read
31 as follows:

32 (1) Persons examined pursuant to RCW 10.77.140, as now or hereafter
33 amended, may make application to the secretary for conditional release.
34 The secretary shall, after considering the reports of experts or
35 professional persons conducting the examination pursuant to RCW
36 10.77.140, forward to the court of the county which ordered ((his)) the
37 person's commitment the person's application for conditional release as
38 well as ((his)) the secretary's recommendations concerning the

1 application and any proposed terms and conditions upon which ((he)) the
2 secretary reasonably believes the person can be conditionally released.
3 Conditional release may also contemplate partial release for work,
4 training, or educational purposes.

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

36 (3) If the court determines that receiving regular or periodic
37 medication or other medical treatment shall be a condition of the
38 committed person's release, then the court shall require him or her to
39 report to a physician or other ((person)) medical or mental health

1 practitioner for the medication or treatment. In addition to
2 submitting any report required by RCW 10.77.160, the physician or other
3 (~~person~~) medical or mental health practitioner shall immediately upon
4 the released person's failure to appear for the medication or treatment
5 report the failure to the court (~~and~~), to the prosecuting attorney of
6 the county in which the released person was committed, and to the
7 supervising community corrections officer.

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

11 **Sec. 7.** RCW 10.77.160 and 1973 1st ex.s. c 117 s 16 are each
12 amended to read as follows:

13 When a conditionally released person is required by the terms of
14 his or her conditional release to report to a physician, (~~probation~~
15 ~~officer, or other such person~~) department of corrections community
16 corrections officer, or medical or mental health practitioner on a
17 regular or periodic basis, the (~~doctor, probation~~) physician,
18 department of corrections community corrections officer, medical or
19 mental health practitioner, or other such person shall monthly, for the
20 first six months after release and semiannually thereafter, or as
21 otherwise directed by the court, submit to the court, the secretary,
22 the institution from which released, and to the prosecuting attorney of
23 the county in which the person was committed, a report stating whether
24 the person is adhering to the terms and conditions of his or her
25 conditional release.

26 **Sec. 8.** RCW 10.77.165 and 1990 c 3 s 107 are each amended to read
27 as follows:

28 In the event of an escape by a person committed under this chapter
29 from a state institution or the disappearance of such a person on
30 conditional release to the department of social and health services,
31 the superintendent, or in the event of a disappearance of such a person
32 on conditional release to the department of corrections, the community
33 corrections officer shall (~~notify~~), as appropriate, notify local law
34 enforcement officers, other governmental agencies, the person's
35 relatives, and any other appropriate persons about information
36 necessary for the public safety or to assist in the apprehension of the

1 person. The notice provisions of this section are in addition to those
2 provided in RCW 10.77.205.

3 **Sec. 9.** RCW 10.77.180 and 1974 ex.s. c 198 s 14 are each amended
4 to read as follows:

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

20 **Sec. 10.** RCW 10.77.190 and 1982 c 112 s 2 are each amended to read
21 as follows:

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

29 (2) If the prosecuting attorney, the secretary of social and health
30 services, the secretary of corrections, or the court, after examining
31 the report filed with them pursuant to RCW 10.77.160, or based on other
32 information received by them, reasonably believes that a conditionally
33 released person is failing to adhere to the terms and conditions of his
34 or her conditional release the court or secretary of social and health
35 services or the secretary of corrections may order that the
36 conditionally released person be apprehended and taken into custody
37 until such time as a hearing can be scheduled to determine the facts

1 and whether or not the person's conditional release should be revoked
2 or modified. The court shall be notified before the close of the next
3 judicial day of the apprehension. Both the prosecuting attorney and
4 the conditionally released person shall have the right to request an
5 immediate mental examination of the conditionally released person. If
6 the conditionally released person is indigent, the court or secretary
7 of social and health services or the secretary of corrections shall,
8 upon request, assist him or her in obtaining a qualified expert or
9 professional person to conduct the examination.

10 (3) The court, upon receiving notification of the apprehension,
11 shall promptly schedule a hearing. The issue to be determined is
12 whether the conditionally released person did or did not adhere to the
13 terms and conditions of his or her release. Pursuant to the
14 determination of the court upon such hearing, the conditionally
15 released person shall either continue to be conditionally released on
16 the same or modified conditions or his or her conditional release shall
17 be revoked and he or she shall be committed subject to release only in
18 accordance with provisions of this chapter.

19 **Sec. 11.** RCW 10.77.200 and 1989 c 420 s 11 are each amended to
20 read as follows:

21 (1) Upon application by the committed or conditionally released
22 person, the secretary shall determine whether or not reasonable grounds
23 exist for final discharge. In making this determination, the secretary
24 may consider the reports filed under RCW 10.77.060, 10.77.110,
25 10.77.140, and 10.77.160, and other reports and evaluations provided by
26 professionals familiar with the case. If the secretary approves the
27 final discharge he or she then shall authorize said person to petition
28 the court.

29 (2) The petition shall be served upon the court and the prosecuting
30 attorney. The court, upon receipt of the petition for final discharge,
31 shall within forty-five days order a hearing. Continuance of the
32 hearing date shall only be allowed for good cause shown. The
33 prosecuting attorney shall represent the state, and shall have the
34 right to have the petitioner examined by an expert or professional
35 person of ((his)) the prosecuting attorney's choice. If the petitioner
36 is indigent, and the person so requests, the court shall appoint a
37 qualified expert or professional person to examine him or her. If the
38 petitioner is developmentally disabled, the examination shall be

1 performed by a developmental disabilities professional. The hearing
2 shall be before a jury if demanded by either the petitioner or the
3 prosecuting attorney. The burden of proof shall be upon the petitioner
4 to show by a preponderance of the evidence that the petitioner (~~may be~~
5 ~~finally discharged without substantial danger to other persons, and~~
6 ~~without presenting~~) no longer presents, as a result of a mental
7 disease or defect, a substantial danger to other persons, or a
8 substantial likelihood of committing felonious acts jeopardizing public
9 safety or security, unless kept under further control by the court or
10 other persons or institutions.

11 (3) Nothing contained in this chapter shall prohibit the patient
12 from petitioning the court for final discharge or conditional release
13 from the institution in which he or she is committed. The issue to be
14 determined on such proceeding is whether the petitioner, as a result of
15 a mental disease or defect, is a substantial danger to other persons,
16 or presents a substantial likelihood of committing felonious acts
17 jeopardizing public safety or security, unless kept under further
18 control by the court or other persons or institutions.

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

21 **Sec. 12.** RCW 10.77.210 and 1990 c 3 s 108 are each amended to read
22 as follows:

23 Any person involuntarily detained, hospitalized, or committed
24 pursuant to the provisions of this chapter shall have the right to
25 adequate care and individualized treatment. The person who has custody
26 of the patient or is in charge of treatment shall keep records
27 detailing all medical, expert, and professional care and treatment
28 received by a committed person, and shall keep copies of all reports of
29 periodic examinations of the patient that have been filed with the
30 secretary pursuant to this chapter. Except as provided in RCW
31 10.77.205 and 4.24.550 regarding the release of information concerning
32 insane offenders who are acquitted of sex offenses and subsequently
33 committed pursuant to this chapter, all records and reports made
34 pursuant to this chapter, shall be made available only upon request, to
35 the committed person, to his or her attorney, to his or her personal
36 physician, to the supervising community corrections officer, to the
37 prosecuting attorney, to the court, to the protection and advocacy
38 agency, or other expert or professional persons who, upon proper

1 showing, demonstrates a need for access to such records. All records
2 and reports made pursuant to this chapter shall also be made available,
3 upon request, to the department of corrections or the indeterminate
4 sentence review board if the person was on parole (~~(or)~~), probation, or
5 community supervision at the time of detention, hospitalization, or
6 commitment or the person is subsequently convicted for the crime for
7 which he or she was detained, hospitalized, or committed pursuant to
8 this chapter.

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