
HOUSE BILL 1038

State of Washington

67th Legislature

2021 Regular Session

By Representatives Walen, Leavitt, Ortiz-Self, Wylie, Valdez, Hackney, and Macri

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1 AN ACT Relating to prohibiting the possession of firearms by
2 persons convicted of certain criminal offenses; and amending RCW
3 9.41.040, 9.41.042, 13.40.0357, 13.40.160, 13.40.193, 13.40.265,
4 70.02.230, and 70.02.240.

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

6 **Sec. 1.** RCW 9.41.040 and 2020 c 29 s 4 are each amended to read
7 as follows:

8 (1)(a) A person, whether an adult or juvenile, is guilty of the
9 crime of unlawful possession of a firearm in the first degree, if the
10 person owns, has in his or her possession, or has in his or her
11 control any firearm after having previously been convicted or found
12 not guilty by reason of insanity in this state or elsewhere of any
13 serious offense as defined in this chapter.

14 (b) Unlawful possession of a firearm in the first degree is a
15 class B felony punishable according to chapter 9A.20 RCW.

16 (2)(a) A person, whether an adult or juvenile, is guilty of the
17 crime of unlawful possession of a firearm in the second degree, if
18 the person does not qualify under subsection (1) of this section for
19 the crime of unlawful possession of a firearm in the first degree and
20 the person owns, has in his or her possession, or has in his or her
21 control any firearm:

1 (i) After having previously been convicted or found not guilty by
2 reason of insanity in this state or elsewhere of any felony not
3 specifically listed as prohibiting firearm possession under
4 subsection (1) of this section, or any of the following crimes when
5 committed by one family or household member against another or by one
6 intimate partner against another, committed on or after July 1, 1993:
7 Assault in the fourth degree, coercion, stalking, reckless
8 endangerment, criminal trespass in the first degree, or violation of
9 the provisions of a protection order or no-contact order restraining
10 the person or excluding the person from a residence (RCW 26.50.060,
11 26.50.070, 26.50.130, or 10.99.040);

12 (ii) After having previously been convicted or found not guilty
13 by reason of insanity in this state or elsewhere of harassment when
14 committed by one family or household member against another or by one
15 intimate partner against another, committed on or after June 7, 2018;

16 (iii) After having previously been convicted or found not guilty
17 by reason of insanity in this state or elsewhere of the following
18 crimes, committed on or after the effective date of this section:
19 Unlawful aiming or discharge of a firearm or dangerous weapon (RCW
20 9.41.230); or animal cruelty in the second degree (RCW 16.52.207);

21 (iv) During any period of time that the person is subject to a
22 court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99,
23 26.09, 26.10, 26.26A, 26.26B, or 26.50 RCW that:

24 (A) Was issued after a hearing of which the person received
25 actual notice, and at which the person had an opportunity to
26 participate;

27 (B) Restrains the person from harassing, stalking, or threatening
28 the person protected under the order or child of the person or
29 protected person, or engaging in other conduct that would place the
30 protected person in reasonable fear of bodily injury to the protected
31 person or child; and

32 (C) (I) Includes a finding that the person represents a credible
33 threat to the physical safety of the protected person or child and by
34 its terms explicitly prohibits the use, attempted use, or threatened
35 use of physical force against the protected person or child that
36 would reasonably be expected to cause bodily injury; or

37 (II) Includes an order under RCW 9.41.800 requiring the person to
38 surrender all firearms and prohibiting the person from accessing,
39 obtaining, or possessing firearms;

1 (~~(iv)~~) (v) After having previously been involuntarily committed
2 for mental health treatment or behavioral health treatment under RCW
3 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or
4 equivalent statutes of another jurisdiction, unless his or her right
5 to possess a firearm has been restored as provided in RCW 9.41.047;

6 (~~(v)~~) (vi) After dismissal of criminal charges based on
7 incompetency to stand trial under RCW 10.77.088 when the court has
8 made a finding indicating that the defendant has a history of one or
9 more violent acts, unless his or her right to possess a firearm has
10 been restored as provided in RCW 9.41.047;

11 (~~(vi)~~) (vii) If the person is under eighteen years of age,
12 except as provided in RCW 9.41.042; and/or

13 (~~(vii)~~) (viii) If the person is free on bond or personal
14 recognizance pending trial, appeal, or sentencing for a serious
15 offense as defined in RCW 9.41.010.

16 (b) (a) (~~(iii)~~) (iv) of this subsection does not apply to a
17 sexual assault protection order under chapter 7.90 RCW if the order
18 has been modified pursuant to RCW 7.90.170 to remove any restrictions
19 on firearm purchase, transfer, or possession.

20 (c) Unlawful possession of a firearm in the second degree is a
21 class C felony punishable according to chapter 9A.20 RCW.

22 (3) Notwithstanding RCW 9.41.047 or any other provisions of law,
23 as used in this chapter, a person has been "convicted", whether in an
24 adult court or adjudicated in a juvenile court, at such time as a
25 plea of guilty has been accepted or a verdict of guilty has been
26 filed, notwithstanding the pendency of any future proceedings
27 including, but not limited to, sentencing or disposition, post-trial
28 or post-fact-finding motions, and appeals. Conviction includes a
29 dismissal entered after a period of probation, suspension, or
30 deferral of sentence, and also includes equivalent dispositions by
31 courts in jurisdictions other than Washington state. A person shall
32 not be precluded from possession of a firearm if the conviction has
33 been the subject of a pardon, annulment, certificate of
34 rehabilitation, or other equivalent procedure based on a finding of
35 the rehabilitation of the person convicted or the conviction or
36 disposition has been the subject of a pardon, annulment, or other
37 equivalent procedure based on a finding of innocence. Where no record
38 of the court's disposition of the charges can be found, there shall
39 be a rebuttable presumption that the person was not convicted of the
40 charge.

1 (4) (a) Notwithstanding subsection (1) or (2) of this section, a
2 person convicted or found not guilty by reason of insanity of an
3 offense prohibiting the possession of a firearm under this section
4 other than murder, manslaughter, robbery, rape, indecent liberties,
5 arson, assault, kidnapping, extortion, burglary, or violations with
6 respect to controlled substances under RCW 69.50.401 and 69.50.410,
7 who received a probationary sentence under RCW 9.95.200, and who
8 received a dismissal of the charge under RCW 9.95.240, shall not be
9 precluded from possession of a firearm as a result of the conviction
10 or finding of not guilty by reason of insanity. Notwithstanding any
11 other provisions of this section, if a person is prohibited from
12 possession of a firearm under subsection (1) or (2) of this section
13 and has not previously been convicted or found not guilty by reason
14 of insanity of a sex offense prohibiting firearm ownership under
15 subsection (1) or (2) of this section and/or any felony defined under
16 any law as a class A felony or with a maximum sentence of at least
17 twenty years, or both, the individual may petition a court of record
18 to have his or her right to possess a firearm restored:

19 (i) Under RCW 9.41.047; and/or

20 (ii) (A) If the conviction or finding of not guilty by reason of
21 insanity was for a felony offense, after five or more consecutive
22 years in the community without being convicted or found not guilty by
23 reason of insanity or currently charged with any felony, gross
24 misdemeanor, or misdemeanor crimes, if the individual has no prior
25 felony convictions that prohibit the possession of a firearm counted
26 as part of the offender score under RCW 9.94A.525; or

27 (B) If the conviction or finding of not guilty by reason of
28 insanity was for a nonfelony offense, after three or more consecutive
29 years in the community without being convicted or found not guilty by
30 reason of insanity or currently charged with any felony, gross
31 misdemeanor, or misdemeanor crimes, if the individual has no prior
32 felony convictions that prohibit the possession of a firearm counted
33 as part of the offender score under RCW 9.94A.525 and the individual
34 has completed all conditions of the sentence.

35 (b) An individual may petition a court of record to have his or
36 her right to possess a firearm restored under (a) of this subsection
37 only at:

38 (i) The court of record that ordered the petitioner's prohibition
39 on possession of a firearm; or

1 (ii) The superior court in the county in which the petitioner
2 resides.

3 (5) In addition to any other penalty provided for by law, if a
4 person under the age of eighteen years is found by a court to have
5 possessed a firearm in a vehicle in violation of subsection (1) or
6 (2) of this section or to have committed an offense while armed with
7 a firearm during which offense a motor vehicle served an integral
8 function, the court shall notify the department of licensing within
9 twenty-four hours and the person's privilege to drive shall be
10 revoked under RCW 46.20.265, unless the offense is the juvenile's
11 first offense in violation of this section and has not committed an
12 offense while armed with a firearm, an unlawful possession of a
13 firearm offense, or an offense in violation of chapter 66.44, 69.52,
14 69.41, or 69.50 RCW.

15 (6) Nothing in chapter 129, Laws of 1995 shall ever be construed
16 or interpreted as preventing an offender from being charged and
17 subsequently convicted for the separate felony crimes of theft of a
18 firearm or possession of a stolen firearm, or both, in addition to
19 being charged and subsequently convicted under this section for
20 unlawful possession of a firearm in the first or second degree.
21 Notwithstanding any other law, if the offender is convicted under
22 this section for unlawful possession of a firearm in the first or
23 second degree and for the felony crimes of theft of a firearm or
24 possession of a stolen firearm, or both, then the offender shall
25 serve consecutive sentences for each of the felony crimes of
26 conviction listed in this subsection.

27 (7) Each firearm unlawfully possessed under this section shall be
28 a separate offense.

29 TECHNICAL AMENDMENTS TO CORRECT CITATIONS

30 **Sec. 2.** RCW 9.41.042 and 2020 c 18 s 6 are each amended to read
31 as follows:

32 RCW 9.41.040(2)(a) (~~(vi)~~) (vii) shall not apply to any person
33 under the age of eighteen years who is:

34 (1) In attendance at a hunter's safety course or a firearms
35 safety course;

36 (2) Engaging in practice in the use of a firearm or target
37 shooting at an established range authorized by the governing body of

1 the jurisdiction in which such range is located or any other area
2 where the discharge of a firearm is not prohibited;

3 (3) Engaging in an organized competition involving the use of a
4 firearm, or participating in or practicing for a performance by an
5 organized group that uses firearms as a part of the performance;

6 (4) Hunting or trapping under a valid license issued to the
7 person under Title 77 RCW;

8 (5) In an area where the discharge of a firearm is permitted, is
9 not trespassing, and the person either: (a) Is at least fourteen
10 years of age, has been issued a hunter safety certificate, and is
11 using a lawful firearm other than a pistol; or (b) is under the
12 supervision of a parent, guardian, or other adult approved for the
13 purpose by the parent or guardian;

14 (6) Traveling with any unloaded firearm in the person's
15 possession to or from any activity described in subsection (1), (2),
16 (3), (4), or (5) of this section;

17 (7) On real property under the control of his or her parent,
18 other relative, or legal guardian and who has the permission of the
19 parent or legal guardian to possess a firearm;

20 (8) At his or her residence and who, with the permission of his
21 or her parent or legal guardian, possesses a firearm for the purpose
22 of exercising the rights specified in RCW 9A.16.020(3); or

23 (9) Is a member of the armed forces of the United States,
24 national guard, or organized reserves, when on duty.

25 **Sec. 3.** RCW 13.40.0357 and 2020 c 18 s 8 are each amended to
26 read as follows:

27 **DESCRIPTION AND OFFENSE CATEGORY**

| | | JUVENILE DISPOSITION |
|-------------|----------------------------|----------------------|
| JUVENILE | | CATEGORY FOR |
| DISPOSITION | | ATTEMPT, BAILJUMP, |
| OFFENSE | | CONSPIRACY, OR |
| CATEGORY | DESCRIPTION (RCW CITATION) | SOLICITATION |

33 **Arson and Malicious Mischief**

| | | | |
|----|---|--------------------------------|----|
| 34 | A | Arson 1 (9A.48.020) | B+ |
| 35 | B | Arson 2 (9A.48.030) | C |
| 36 | C | Reckless Burning 1 (9A.48.040) | D |
| 37 | D | Reckless Burning 2 (9A.48.050) | E |

| | | | |
|----|-----|-------------------------------------------|----|
| 1 | B | Malicious Mischief 1 (9A.48.070) | C |
| 2 | C | Malicious Mischief 2 (9A.48.080) | D |
| 3 | D | Malicious Mischief 3 (9A.48.090) | E |
| 4 | E | Tampering with Fire Alarm Apparatus | E |
| 5 | | (9.40.100) | |
| 6 | E | Tampering with Fire Alarm Apparatus | E |
| 7 | | with Intent to Commit Arson (9.40.105) | |
| 8 | A | Possession of Incendiary Device | B+ |
| 9 | | (9.40.120) | |
| 10 | | Assault and Other Crimes Involving | |
| 11 | | Physical Harm | |
| 12 | A | Assault 1 (9A.36.011) | B+ |
| 13 | B+ | Assault 2 (9A.36.021) | C+ |
| 14 | C+ | Assault 3 (9A.36.031) | D+ |
| 15 | D+ | Assault 4 (9A.36.041) | E |
| 16 | B+ | Drive-By Shooting (9A.36.045) | C+ |
| 17 | | committed at age 15 or under | |
| 18 | A++ | Drive-By Shooting (9A.36.045) | A |
| 19 | | committed at age 16 or 17 | |
| 20 | D+ | Reckless Endangerment (9A.36.050) | E |
| 21 | C+ | Promoting Suicide Attempt (9A.36.060) | D+ |
| 22 | D+ | Coercion (9A.36.070) | E |
| 23 | C+ | Custodial Assault (9A.36.100) | D+ |
| 24 | | Burglary and Trespass | |
| 25 | B+ | Burglary 1 (9A.52.020) committed at | C+ |
| 26 | | age 15 or under | |
| 27 | A- | Burglary 1 (9A.52.020) committed at | B+ |
| 28 | | age 16 or 17 | |
| 29 | B | Residential Burglary (9A.52.025) | C |
| 30 | B | Burglary 2 (9A.52.030) | C |
| 31 | D | Burglary Tools (Possession of) | E |
| 32 | | (9A.52.060) | |
| 33 | D | Criminal Trespass 1 (9A.52.070) | E |
| 34 | E | Criminal Trespass 2 (9A.52.080) | E |
| 35 | C | Mineral Trespass (78.44.330) | C |
| 36 | C | Vehicle Prowling 1 (9A.52.095) | D |

| | | | |
|----|----|---------------------------------------------|----|
| 1 | D | Vehicle Prowling 2 (9A.52.100) | E |
| 2 | | Drugs | |
| 3 | E | Possession/Consumption of Alcohol | E |
| 4 | | (66.44.270) | |
| 5 | C | Illegally Obtaining Legend Drug | D |
| 6 | | (69.41.020) | |
| 7 | C+ | Sale, Delivery, Possession of Legend | D+ |
| 8 | | Drug with Intent to Sell (69.41.030(2)(a)) | |
| 9 | E | Possession of Legend | E |
| 10 | | Drug (69.41.030(2)(b)) | |
| 11 | B+ | Violation of Uniform Controlled | B+ |
| 12 | | Substances Act - Narcotic, | |
| 13 | | Methamphetamine, or Flunitrazepam | |
| 14 | | Sale (69.50.401(2) (a) or (b)) | |
| 15 | C | Violation of Uniform Controlled | C |
| 16 | | Substances Act - Nonnarcotic Sale | |
| 17 | | (69.50.401(2)(c)) | |
| 18 | E | Possession of Marihuana <40 grams | E |
| 19 | | (69.50.4014) | |
| 20 | C | Fraudulently Obtaining Controlled | C |
| 21 | | Substance (69.50.403) | |
| 22 | C+ | Sale of Controlled Substance for Profit | C+ |
| 23 | | (69.50.410) | |
| 24 | E | Unlawful Inhalation (9.47A.020) | E |
| 25 | B | Violation of Uniform Controlled | B |
| 26 | | Substances Act - Narcotic, | |
| 27 | | Methamphetamine, or Flunitrazepam | |
| 28 | | Counterfeit Substances (69.50.4011(2) | |
| 29 | | (a) or (b)) | |
| 30 | C | Violation of Uniform Controlled | C |
| 31 | | Substances Act - Nonnarcotic Counterfeit | |
| 32 | | Substances (69.50.4011(2) (c), (d), or (e)) | |
| 33 | C | Violation of Uniform Controlled | C |
| 34 | | Substances Act - Possession of a | |
| 35 | | Controlled Substance (69.50.4013) | |
| 36 | C | Violation of Uniform Controlled | C |
| 37 | | Substances Act - Possession of a | |
| 38 | | Controlled Substance (69.50.4012) | |

| | | | |
|----|----|--------------------------------------------|----|
| 1 | | Firearms and Weapons | |
| 2 | B | Theft of Firearm (9A.56.300) | C |
| 3 | B | Possession of Stolen Firearm | C |
| 4 | | (9A.56.310) | |
| 5 | E | Carrying Loaded Pistol Without Permit | E |
| 6 | | (9.41.050) | |
| 7 | C | Possession of Firearms by Minor (<18) | C |
| 8 | | (9.41.040(2)(a) ((vi)) (vii)) | |
| 9 | D+ | Possession of Dangerous Weapon | E |
| 10 | | (9.41.250) | |
| 11 | D | Intimidating Another Person by use of | E |
| 12 | | Weapon (9.41.270) | |
| 13 | | Homicide | |
| 14 | A+ | Murder 1 (9A.32.030) | A |
| 15 | A+ | Murder 2 (9A.32.050) | B+ |
| 16 | B+ | Manslaughter 1 (9A.32.060) | C+ |
| 17 | C+ | Manslaughter 2 (9A.32.070) | D+ |
| 18 | B+ | Vehicular Homicide (46.61.520) | C+ |
| 19 | | Kidnapping | |
| 20 | A | Kidnap 1 (9A.40.020) | B+ |
| 21 | B+ | Kidnap 2 (9A.40.030) | C+ |
| 22 | C+ | Unlawful Imprisonment (9A.40.040) | D+ |
| 23 | | Obstructing Governmental Operation | |
| 24 | D | Obstructing a Law Enforcement Officer | E |
| 25 | | (9A.76.020) | |
| 26 | E | Resisting Arrest (9A.76.040) | E |
| 27 | B | Introducing Contraband 1 (9A.76.140) | C |
| 28 | C | Introducing Contraband 2 (9A.76.150) | D |
| 29 | E | Introducing Contraband 3 (9A.76.160) | E |
| 30 | B+ | Intimidating a Public Servant | C+ |
| 31 | | (9A.76.180) | |
| 32 | B+ | Intimidating a Witness (9A.72.110) | C+ |
| 33 | | Public Disturbance | |
| 34 | C+ | Criminal Mischief with Weapon | D+ |
| 35 | | (9A.84.010(2)(b)) | |

| | | | |
|----|-----|----------------------------------------|----|
| 1 | D+ | Criminal Mischief Without Weapon | E |
| 2 | | (9A.84.010(2)(a)) | |
| 3 | E | Failure to Disperse (9A.84.020) | E |
| 4 | E | Disorderly Conduct (9A.84.030) | E |
| 5 | | Sex Crimes | |
| 6 | A | Rape 1 (9A.44.040) | B+ |
| 7 | B++ | Rape 2 (9A.44.050) committed at age 14 | B+ |
| 8 | | or under | |
| 9 | A- | Rape 2 (9A.44.050) committed at age 15 | B+ |
| 10 | | through age 17 | |
| 11 | C+ | Rape 3 (9A.44.060) | D+ |
| 12 | B++ | Rape of a Child 1 (9A.44.073) | B+ |
| 13 | | committed at age 14 or under | |
| 14 | A- | Rape of a Child 1 (9A.44.073) | B+ |
| 15 | | committed at age 15 | |
| 16 | B+ | Rape of a Child 2 (9A.44.076) | C+ |
| 17 | B | Incest 1 (9A.64.020(1)) | C |
| 18 | C | Incest 2 (9A.64.020(2)) | D |
| 19 | D+ | Indecent Exposure (Victim <14) | E |
| 20 | | (9A.88.010) | |
| 21 | E | Indecent Exposure (Victim 14 or over) | E |
| 22 | | (9A.88.010) | |
| 23 | B+ | Promoting Prostitution 1 (9A.88.070) | C+ |
| 24 | C+ | Promoting Prostitution 2 (9A.88.080) | D+ |
| 25 | E | O & A (Prostitution) (9A.88.030) | E |
| 26 | B+ | Indecent Liberties (9A.44.100) | C+ |
| 27 | B++ | Child Molestation 1 (9A.44.083) | B+ |
| 28 | | committed at age 14 or under | |
| 29 | A- | Child Molestation 1 (9A.44.083) | B+ |
| 30 | | committed at age 15 through age 17 | |
| 31 | B | Child Molestation 2 (9A.44.086) | C+ |
| 32 | C | Failure to Register as a Sex Offender | D |
| 33 | | (9A.44.132) | |
| 34 | | Theft, Robbery, Extortion, and | |
| 35 | | Forgery | |
| 36 | B | Theft 1 (9A.56.030) | C |

| | | | |
|----|-----|----------------------------------------|----|
| 1 | C | Theft 2 (9A.56.040) | D |
| 2 | D | Theft 3 (9A.56.050) | E |
| 3 | B | Theft of Livestock 1 and 2 (9A.56.080 | C |
| 4 | | and 9A.56.083) | |
| 5 | C | Forgery (9A.60.020) | D |
| 6 | A | Robbery 1 (9A.56.200) committed at | B+ |
| 7 | | age 15 or under | |
| 8 | A++ | Robbery 1 (9A.56.200) committed at | A |
| 9 | | age 16 or 17 | |
| 10 | B+ | Robbery 2 (9A.56.210) | C+ |
| 11 | B+ | Extortion 1 (9A.56.120) | C+ |
| 12 | C+ | Extortion 2 (9A.56.130) | D+ |
| 13 | C | Identity Theft 1 (9.35.020(2)) | D |
| 14 | D | Identity Theft 2 (9.35.020(3)) | E |
| 15 | D | Improperly Obtaining Financial | E |
| 16 | | Information (9.35.010) | |
| 17 | B | Possession of a Stolen Vehicle | C |
| 18 | | (9A.56.068) | |
| 19 | B | Possession of Stolen Property 1 | C |
| 20 | | (9A.56.150) | |
| 21 | C | Possession of Stolen Property 2 | D |
| 22 | | (9A.56.160) | |
| 23 | D | Possession of Stolen Property 3 | E |
| 24 | | (9A.56.170) | |
| 25 | B | Taking Motor Vehicle Without | C |
| 26 | | Permission 1 (9A.56.070) | |
| 27 | C | Taking Motor Vehicle Without | D |
| 28 | | Permission 2 (9A.56.075) | |
| 29 | B | Theft of a Motor Vehicle (9A.56.065) | C |
| 30 | | Motor Vehicle Related Crimes | |
| 31 | E | Driving Without a License (46.20.005) | E |
| 32 | B+ | Hit and Run - Death (46.52.020(4)(a)) | C+ |
| 33 | C | Hit and Run - Injury (46.52.020(4)(b)) | D |
| 34 | D | Hit and Run-Attended (46.52.020(5)) | E |
| 35 | E | Hit and Run-Unattended (46.52.010) | E |
| 36 | C | Vehicular Assault (46.61.522) | D |

| | | | |
|----|----|------------------------------------------|----|
| 1 | C | Attempting to Elude Pursuing Police | D |
| 2 | | Vehicle (46.61.024) | |
| 3 | E | Reckless Driving (46.61.500) | E |
| 4 | D | Driving While Under the Influence | E |
| 5 | | (46.61.502 and 46.61.504) | |
| 6 | B+ | Felony Driving While Under the | B |
| 7 | | Influence (46.61.502(6)) | |
| 8 | B+ | Felony Physical Control of a Vehicle | B |
| 9 | | While Under the Influence (46.61.504(6)) | |
| 10 | | Other | |
| 11 | B | Animal Cruelty 1 (16.52.205) | C |
| 12 | B | Bomb Threat (9.61.160) | C |
| 13 | C | Escape 1 ¹ (9A.76.110) | C |
| 14 | C | Escape 2 ¹ (9A.76.120) | C |
| 15 | D | Escape 3 (9A.76.130) | E |
| 16 | E | Obscene, Harassing, Etc., Phone Calls | E |
| 17 | | (9.61.230) | |
| 18 | A | Other Offense Equivalent to an Adult | B+ |
| 19 | | Class A Felony | |
| 20 | B | Other Offense Equivalent to an Adult | C |
| 21 | | Class B Felony | |
| 22 | C | Other Offense Equivalent to an Adult | D |
| 23 | | Class C Felony | |
| 24 | D | Other Offense Equivalent to an Adult | E |
| 25 | | Gross Misdemeanor | |
| 26 | E | Other Offense Equivalent to an Adult | E |
| 27 | | Misdemeanor | |
| 28 | V | Violation of Order of Restitution, | V |
| 29 | | Community Supervision, or Confinement | |
| 30 | | (13.40.200) ² | |

31 ¹Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses
32 and the standard range is established as follows:

33 1st escape or attempted escape during 12-month period - 28 days
34 confinement

35 2nd escape or attempted escape during 12-month period - 8 weeks
36 confinement

1 3rd and subsequent escape or attempted escape during 12-month
2 period - 12 weeks confinement

3 ²If the court finds that a respondent has violated terms of an order,
4 it may impose a penalty of up to 30 days of confinement.

5 **JUVENILE SENTENCING STANDARDS**

6 This schedule must be used for juvenile offenders. The court may
7 select sentencing option A, B, C, or D.

8 **OPTION A**

9 **JUVENILE OFFENDER SENTENCING GRID**

10 **STANDARD RANGE**

| | | | | | | | |
|----|---------------|--------------------------------------------------|-------------|--------------|---------------|---------------|---------------|
| 11 | A++ | 129 to 260 weeks for all category A++ offenses | | | | | |
| 12 | A+ | 180 weeks to age 21 for all category A+ offenses | | | | | |
| 13 | A | 103-129 weeks for all category A offenses | | | | | |
| 14 | A- | 30-40 weeks | 52-65 weeks | 80-100 weeks | 103-129 weeks | 103-129 weeks | |
| 15 | B++ | 15-36 weeks | 52-65 weeks | 80-100 weeks | 103-129 weeks | 103-129 weeks | |
| 16 | CURRENT | B+ | 15-36 weeks | 15-36 weeks | 52-65 weeks | 80-100 weeks | 103-129 weeks |
| 17 | OFFENSE | B | LS | LS | 15-36 weeks | 15-36 weeks | 52-65 weeks |
| 18 | CATEGORY | C+ | LS | LS | LS | 15-36 weeks | 15-36 weeks |
| 19 | | C | LS | LS | LS | LS | 15-36 weeks |
| 20 | | D+ | LS | LS | LS | LS | LS |
| 21 | | D | LS | LS | LS | LS | LS |
| 22 | | E | LS | LS | LS | LS | LS |
| 23 | PRIOR | | 0 | 1 | 2 | 3 | 4 or more |
| 24 | ADJUDICATIONS | | | | | | |

25 NOTE: References in the grid to days or weeks mean periods of
26 confinement. "LS" means "local sanctions" as defined in RCW
27 13.40.020.

28 (1) The vertical axis of the grid is the current offense
29 category. The current offense category is determined by the offense
30 of adjudication.

31 (2) The horizontal axis of the grid is the number of prior
32 adjudications included in the juvenile's criminal history. Each prior
33 felony adjudication shall count as one point. Each prior violation,

1 misdemeanor, and gross misdemeanor adjudication shall count as 1/4
2 point. Fractional points shall be rounded down.

3 (3) The standard range disposition for each offense is determined
4 by the intersection of the column defined by the prior adjudications
5 and the row defined by the current offense category.

6 (4) RCW 13.40.180 applies if the offender is being sentenced for
7 more than one offense.

8 (5) A current offense that is a violation is equivalent to an
9 offense category of E. However, a disposition for a violation shall
10 not include confinement.

11 **OR**
12 **OPTION B**
13 **SUSPENDED DISPOSITION ALTERNATIVE**

14 (1) If the offender is subject to a standard range disposition
15 involving confinement by the department, the court may impose the
16 standard range and suspend the disposition on condition that the
17 offender comply with one or more local sanctions and any educational
18 or treatment requirement. The treatment programs provided to the
19 offender must be either research-based best practice programs as
20 identified by the Washington state institute for public policy or the
21 joint legislative audit and review committee, or for chemical
22 dependency treatment programs or services, they must be evidence-
23 based or research-based best practice programs. For the purposes of
24 this subsection:

25 (a) "Evidence-based" means a program or practice that has had
26 multiple site random controlled trials across heterogeneous
27 populations demonstrating that the program or practice is effective
28 for the population; and

29 (b) "Research-based" means a program or practice that has some
30 research demonstrating effectiveness, but that does not yet meet the
31 standard of evidence-based practices.

32 (2) If the offender fails to comply with the suspended
33 disposition, the court may impose sanctions pursuant to RCW 13.40.200
34 or may revoke the suspended disposition and order the disposition's
35 execution.

36 (3) An offender is ineligible for the suspended disposition
37 option under this section if the offender:

38 (a) Is adjudicated of an A+ or A++ offense;

1 (b) Is fourteen years of age or older and is adjudicated of one
2 or more of the following offenses:

3 (i) A class A offense, or an attempt, conspiracy, or solicitation
4 to commit a class A offense;

5 (ii) Manslaughter in the first degree (RCW 9A.32.060);

6 (iii) Assault in the second degree (RCW 9A.36.021), extortion in
7 the first degree (RCW 9A.56.120), kidnapping in the second degree
8 (RCW 9A.40.030), drive-by shooting (RCW 9A.36.045), vehicular
9 homicide (RCW 46.61.520), hit and run death (RCW 46.52.020(4)(a)), or
10 manslaughter 2 (RCW 9A.32.070); or

11 (iv) Violation of the uniform controlled substances act (RCW
12 69.50.401(2) (a) and (b)), when the offense includes infliction of
13 bodily harm upon another or when during the commission or immediate
14 withdrawal from the offense the respondent was armed with a deadly
15 weapon;

16 (c) Is ordered to serve a disposition for a firearm violation
17 under RCW 13.40.193;

18 (d) Is adjudicated of a sex offense as defined in RCW 9.94A.030;
19 or

20 (e) Has a prior option B disposition.

21 **OR**

22 **OPTION C**

23 **CHEMICAL DEPENDENCY/MENTAL HEALTH DISPOSITION ALTERNATIVE**

24 If the juvenile offender is subject to a standard range
25 disposition of local sanctions or 15 to 36 weeks of confinement and
26 has not committed a B++ or B+ offense, the court may impose a
27 disposition under RCW 13.40.160(4) and 13.40.165.

28 **OR**

29 **OPTION D**

30 **MANIFEST INJUSTICE**

31 If the court determines that a disposition under option A, B, or C
32 would effectuate a manifest injustice, the court shall impose a
33 disposition outside the standard range under RCW 13.40.160(2).

34 **Sec. 4.** RCW 13.40.160 and 2020 c 18 s 9 are each amended to read
35 as follows:

36 (1) The standard range disposition for a juvenile adjudicated of
37 an offense is determined according to RCW 13.40.0357.

1 (a) When the court sentences an offender to a local sanction as
2 provided in RCW 13.40.0357 option A, the court shall impose a
3 determinate disposition within the standard ranges, except as
4 provided in subsection (2), (3), (4), (5), or (6) of this section.
5 The disposition may be comprised of one or more local sanctions.

6 (b) When the court sentences an offender to a standard range as
7 provided in RCW 13.40.0357 option A that includes a term of
8 confinement exceeding thirty days, commitment shall be to the
9 department for the standard range of confinement, except as provided
10 in subsection (2), (3), (4), (5), or (6) of this section.

11 (2) If the court concludes, and enters reasons for its
12 conclusion, that disposition within the standard range would
13 effectuate a manifest injustice the court shall impose a disposition
14 outside the standard range, as indicated in option D of RCW
15 13.40.0357. The court's finding of manifest injustice shall be
16 supported by clear and convincing evidence.

17 A disposition outside the standard range shall be determinate and
18 shall be comprised of confinement or community supervision, or a
19 combination thereof. When a judge finds a manifest injustice and
20 imposes a sentence of confinement exceeding thirty days, the court
21 shall sentence the juvenile to a maximum term, and the provisions of
22 RCW 13.40.030(2) shall be used to determine the range. A disposition
23 outside the standard range is appealable under RCW 13.40.230 by the
24 state or the respondent. A disposition within the standard range is
25 not appealable under RCW 13.40.230.

26 (3) If a juvenile offender is found to have committed a sex
27 offense, other than a sex offense that is also a serious violent
28 offense as defined by RCW 9.94A.030, and has no history of a prior
29 sex offense, the court may impose the special sex offender
30 disposition alternative under RCW 13.40.162.

31 (4) If the juvenile offender is subject to a standard range
32 disposition of local sanctions or 15 to 36 weeks of confinement and
33 has not committed an A- or B+ offense, the court may impose the
34 disposition alternative under RCW 13.40.165.

35 (5) If a juvenile is subject to a commitment of 15 to 65 weeks of
36 confinement, the court may impose the disposition alternative under
37 RCW 13.40.167.

38 (6) When the offender is subject to a standard range commitment
39 of 15 to 36 weeks and is ineligible for a suspended disposition
40 alternative, a manifest injustice disposition below the standard

1 range, special sex offender disposition alternative, chemical
2 dependency disposition alternative, or mental health disposition
3 alternative, the court in a county with a pilot program under RCW
4 13.40.169 may impose the disposition alternative under RCW 13.40.169.

5 (7) RCW 13.40.193 shall govern the disposition of any juvenile
6 adjudicated of possessing a firearm in violation of RCW
7 9.41.040(2)(a) (~~(vi)~~) (vii) or any crime in which a special finding
8 is entered that the juvenile was armed with a firearm.

9 (8) RCW 13.40.308 shall govern the disposition of any juvenile
10 adjudicated of theft of a motor vehicle as defined under RCW
11 9A.56.065, possession of a stolen motor vehicle as defined under RCW
12 9A.56.068, taking a motor vehicle without permission in the first
13 degree under RCW 9A.56.070, and taking a motor vehicle without
14 permission in the second degree under RCW 9A.56.075.

15 (9) Whenever a juvenile offender is entitled to credit for time
16 spent in detention prior to a dispositional order, the dispositional
17 order shall specifically state the number of days of credit for time
18 served.

19 (10) Except as provided under subsection (3), (4), (5), or (6) of
20 this section, or option B of RCW 13.40.0357, or RCW 13.40.127, the
21 court shall not suspend or defer the imposition or the execution of
22 the disposition.

23 (11) In no case shall the term of confinement imposed by the
24 court at disposition exceed that to which an adult could be subjected
25 for the same offense.

26 **Sec. 5.** RCW 13.40.193 and 2020 c 18 s 10 are each amended to
27 read as follows:

28 (1) If a respondent is found to have been in possession of a
29 firearm in violation of RCW 9.41.040(2)(a) (~~(vi)~~) (vii), the court
30 shall impose a minimum disposition of ten days of confinement. If the
31 offender's standard range of disposition for the offense as indicated
32 in RCW 13.40.0357 is more than thirty days of confinement, the court
33 shall commit the offender to the department for the standard range
34 disposition. The offender shall not be released until the offender
35 has served a minimum of ten days in confinement.

36 (2)(a) If a respondent is found to have been in possession of a
37 firearm in violation of RCW 9.41.040, the disposition must include a
38 requirement that the respondent participate in a qualifying program
39 as described in (b) of this subsection, when available, unless the

1 court makes a written finding based on the outcome of the juvenile
2 court risk assessment that participation in a qualifying program
3 would not be appropriate.

4 (b) For purposes of this section, "qualifying program" means an
5 aggression replacement training program, a functional family therapy
6 program, or another program applicable to the juvenile firearm
7 offender population that has been identified as evidence-based or
8 research-based and cost-beneficial in the current list prepared at
9 the direction of the legislature by the Washington state institute
10 for public policy.

11 (3) If the court finds that the respondent or an accomplice was
12 armed with a firearm, the court shall determine the standard range
13 disposition for the offense pursuant to RCW 13.40.160. If the
14 offender or an accomplice was armed with a firearm when the offender
15 committed any felony other than possession of a machine gun or bump-
16 fire stock, possession of a stolen firearm, drive-by shooting, theft
17 of a firearm, unlawful possession of a firearm in the first and
18 second degree, or use of a machine gun or bump-fire stock in a
19 felony, the following periods of total confinement must be added to
20 the sentence: (a) Except for (b) of this subsection, for a class A
21 felony, six months; for a class B felony, four months; and for a
22 class C felony, two months; (b) for any violent offense as defined in
23 RCW 9.94A.030, committed by a respondent who is sixteen or seventeen
24 years old at the time of the offense, a period of twelve months. The
25 additional time shall be imposed regardless of the offense's juvenile
26 disposition offense category as designated in RCW 13.40.0357.

27 (4) (a) If the court finds that the respondent who is sixteen or
28 seventeen years old and committed the offense of robbery in the first
29 degree, drive-by shooting, rape of a child in the first degree,
30 burglary in the first degree, or any violent offense as defined in
31 RCW 9.94A.030 and was armed with a firearm, and the court finds that
32 the respondent's participation was related to membership in a
33 criminal street gang or advancing the benefit, aggrandizement, gain,
34 profit, or other advantage for a criminal street gang, a period of
35 three months total confinement must be added to the sentence. The
36 additional time must be imposed regardless of the offense's juvenile
37 disposition offense category as designated in RCW 13.40.0357 and must
38 be served consecutively with any other sentencing enhancement.

39 (b) For the purposes of this section, "criminal street gang"
40 means any ongoing organization, association, or group of three or

1 more persons, whether formal or informal, having a common name or
2 common identifying sign or symbol, having as one of its primary
3 activities the commission of criminal acts, and whose members or
4 associates individually or collectively engage in or have engaged in
5 a pattern of criminal street gang activity. This definition does not
6 apply to employees engaged in concerted activities for their mutual
7 aid and protection, or to the activities of labor and bona fide
8 nonprofit organizations or their members or agents.

9 (5) When a disposition under this section would effectuate a
10 manifest injustice, the court may impose another disposition. When a
11 judge finds a manifest injustice and imposes a disposition of
12 confinement exceeding thirty days, the court shall commit the
13 juvenile to a maximum term, and the provisions of RCW 13.40.030(2)
14 shall be used to determine the range. When a judge finds a manifest
15 injustice and imposes a disposition of confinement less than thirty
16 days, the disposition shall be comprised of confinement or community
17 supervision or both.

18 (6) Any term of confinement ordered pursuant to this section
19 shall run consecutively to any term of confinement imposed in the
20 same disposition for other offenses.

21 **Sec. 6.** RCW 13.40.265 and 2020 c 18 s 11 are each amended to
22 read as follows:

23 (1) If a juvenile thirteen years of age or older is found by
24 juvenile court to have committed an offense while armed with a
25 firearm or an offense that is a violation of RCW 9.41.040(2)(a)
26 (~~(vi)~~) (vii) or chapter 66.44, 69.41, 69.50, or 69.52 RCW, the
27 court shall notify the department of licensing within twenty-four
28 hours after entry of the judgment, unless the offense is the
29 juvenile's first offense while armed with a firearm, first unlawful
30 possession of a firearm offense, or first offense in violation of
31 chapter 66.44, 69.41, 69.50, or 69.52 RCW.

32 (2) Except as otherwise provided in subsection (3) of this
33 section, upon petition of a juvenile who has been found by the court
34 to have committed an offense that is a violation of chapter 66.44,
35 69.41, 69.50, or 69.52 RCW, the court may at any time the court deems
36 appropriate notify the department of licensing that the juvenile's
37 driving privileges should be reinstated.

38 (3) If the offense is the juvenile's second or subsequent
39 violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile

1 may not petition the court for reinstatement of the juvenile's
2 privilege to drive revoked pursuant to RCW 46.20.265 until the date
3 the juvenile turns seventeen or one year after the date judgment was
4 entered, whichever is later.

5 **Sec. 7.** RCW 70.02.230 and 2020 c 256 s 402 are each amended to
6 read as follows:

7 (1) Except as provided in this section, RCW 70.02.050, 71.05.445,
8 74.09.295, 70.02.210, 70.02.240, 70.02.250, 70.02.260, and 70.02.265,
9 or pursuant to a valid authorization under RCW 70.02.030, the fact of
10 admission to a provider for mental health services and all
11 information and records compiled, obtained, or maintained in the
12 course of providing mental health services to either voluntary or
13 involuntary recipients of services at public or private agencies must
14 be confidential.

15 (2) Information and records related to mental health services,
16 other than those obtained through treatment under chapter 71.34 RCW,
17 may be disclosed only:

18 (a) In communications between qualified professional persons to
19 meet the requirements of chapter 71.05 RCW, including Indian health
20 care providers, in the provision of services or appropriate
21 referrals, or in the course of guardianship proceedings if provided
22 to a professional person:

- 23 (i) Employed by the facility;
24 (ii) Who has medical responsibility for the patient's care;
25 (iii) Who is a designated crisis responder;
26 (iv) Who is providing services under chapter 71.24 RCW;
27 (v) Who is employed by a state or local correctional facility
28 where the person is confined or supervised; or
29 (vi) Who is providing evaluation, treatment, or follow-up
30 services under chapter 10.77 RCW;

31 (b) When the communications regard the special needs of a patient
32 and the necessary circumstances giving rise to such needs and the
33 disclosure is made by a facility providing services to the operator
34 of a facility in which the patient resides or will reside;

35 (c) (i) When the person receiving services, or his or her
36 guardian, designates persons to whom information or records may be
37 released, or if the person is a minor, when his or her parents make
38 such a designation;

1 (ii) A public or private agency shall release to a person's next
2 of kin, attorney, personal representative, guardian, or conservator,
3 if any:

4 (A) The information that the person is presently a patient in the
5 facility or that the person is seriously physically ill;

6 (B) A statement evaluating the mental and physical condition of
7 the patient, and a statement of the probable duration of the
8 patient's confinement, if such information is requested by the next
9 of kin, attorney, personal representative, guardian, or conservator;
10 and

11 (iii) Other information requested by the next of kin or attorney
12 as may be necessary to decide whether or not proceedings should be
13 instituted to appoint a guardian or conservator;

14 (d)(i) To the courts, including tribal courts, as necessary to
15 the administration of chapter 71.05 RCW or to a court ordering an
16 evaluation or treatment under chapter 10.77 RCW solely for the
17 purpose of preventing the entry of any evaluation or treatment order
18 that is inconsistent with any order entered under chapter 71.05 RCW.

19 (ii) To a court or its designee in which a motion under chapter
20 10.77 RCW has been made for involuntary medication of a defendant for
21 the purpose of competency restoration.

22 (iii) Disclosure under this subsection is mandatory for the
23 purpose of the federal health insurance portability and
24 accountability act;

25 (e)(i) When a mental health professional or designated crisis
26 responder is requested by a representative of a law enforcement or
27 corrections agency, including a police officer, sheriff, community
28 corrections officer, a municipal attorney, or prosecuting attorney to
29 undertake an investigation or provide treatment under RCW 71.05.150,
30 10.31.110, or 71.05.153, the mental health professional or designated
31 crisis responder shall, if requested to do so, advise the
32 representative in writing of the results of the investigation
33 including a statement of reasons for the decision to detain or
34 release the person investigated. The written report must be submitted
35 within seventy-two hours of the completion of the investigation or
36 the request from the law enforcement or corrections representative,
37 whichever occurs later.

38 (ii) Disclosure under this subsection is mandatory for the
39 purposes of the federal health insurance portability and
40 accountability act;

1 (f) To the attorney of the detained person;

2 (g) To the prosecuting attorney as necessary to carry out the
3 responsibilities of the office under RCW 71.05.330(2),
4 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided
5 access to records regarding the committed person's treatment and
6 prognosis, medication, behavior problems, and other records relevant
7 to the issue of whether treatment less restrictive than inpatient
8 treatment is in the best interest of the committed person or others.
9 Information must be disclosed only after giving notice to the
10 committed person and the person's counsel;

11 (h)(i) To appropriate law enforcement agencies and to a person,
12 when the identity of the person is known to the public or private
13 agency, whose health and safety has been threatened, or who is known
14 to have been repeatedly harassed, by the patient. The person may
15 designate a representative to receive the disclosure. The disclosure
16 must be made by the professional person in charge of the public or
17 private agency or his or her designee and must include the dates of
18 commitment, admission, discharge, or release, authorized or
19 unauthorized absence from the agency's facility, and only any other
20 information that is pertinent to the threat or harassment. The agency
21 or its employees are not civilly liable for the decision to disclose
22 or not, so long as the decision was reached in good faith and without
23 gross negligence.

24 (ii) Disclosure under this subsection is mandatory for the
25 purposes of the federal health insurance portability and
26 accountability act;

27 (i)(i) To appropriate corrections and law enforcement agencies
28 all necessary and relevant information in the event of a crisis or
29 emergent situation that poses a significant and imminent risk to the
30 public. The mental health service agency or its employees are not
31 civilly liable for the decision to disclose or not so long as the
32 decision was reached in good faith and without gross negligence.

33 (ii) Disclosure under this subsection is mandatory for the
34 purposes of the health insurance portability and accountability act;

35 (j) To the persons designated in RCW 71.05.425 for the purposes
36 described in those sections;

37 (k) Upon the death of a person. The person's next of kin,
38 personal representative, guardian, or conservator, if any, must be
39 notified. Next of kin who are of legal age and competent must be
40 notified under this section in the following order: Spouse, parents,

1 children, brothers and sisters, and other relatives according to the
2 degree of relation. Access to all records and information compiled,
3 obtained, or maintained in the course of providing services to a
4 deceased patient are governed by RCW 70.02.140;

5 (l) To mark headstones or otherwise memorialize patients interred
6 at state hospital cemeteries. The department of social and health
7 services shall make available the name, date of birth, and date of
8 death of patients buried in state hospital cemeteries fifty years
9 after the death of a patient;

10 (m) To law enforcement officers and to prosecuting attorneys as
11 are necessary to enforce RCW 9.41.040(2)(a)(~~(iv)~~) (v). The extent
12 of information that may be released is limited as follows:

13 (i) Only the fact, place, and date of involuntary commitment, an
14 official copy of any order or orders of commitment, and an official
15 copy of any written or oral notice of ineligibility to possess a
16 firearm that was provided to the person pursuant to RCW 9.41.047(1),
17 must be disclosed upon request;

18 (ii) The law enforcement and prosecuting attorneys may only
19 release the information obtained to the person's attorney as required
20 by court rule and to a jury or judge, if a jury is waived, that
21 presides over any trial at which the person is charged with violating
22 RCW 9.41.040(2)(a)(~~(iv)~~) (v);

23 (iii) Disclosure under this subsection is mandatory for the
24 purposes of the federal health insurance portability and
25 accountability act;

26 (n) When a patient would otherwise be subject to the provisions
27 of this section and disclosure is necessary for the protection of the
28 patient or others due to his or her unauthorized disappearance from
29 the facility, and his or her whereabouts is unknown, notice of the
30 disappearance, along with relevant information, may be made to
31 relatives, the department of corrections when the person is under the
32 supervision of the department, and governmental law enforcement
33 agencies designated by the physician or psychiatric advanced
34 registered nurse practitioner in charge of the patient or the
35 professional person in charge of the facility, or his or her
36 professional designee;

37 (o) Pursuant to lawful order of a court, including a tribal
38 court;

39 (p) To qualified staff members of the department, to the
40 authority, to behavioral health administrative services

1 organizations, to managed care organizations, to resource management
2 services responsible for serving a patient, or to service providers
3 designated by resource management services as necessary to determine
4 the progress and adequacy of treatment and to determine whether the
5 person should be transferred to a less restrictive or more
6 appropriate treatment modality or facility;

7 (q) Within the mental health service agency or Indian health care
8 provider facility where the patient is receiving treatment,
9 confidential information may be disclosed to persons employed,
10 serving in bona fide training programs, or participating in
11 supervised volunteer programs, at the facility when it is necessary
12 to perform their duties;

13 (r) Within the department and the authority as necessary to
14 coordinate treatment for mental illness, developmental disabilities,
15 alcoholism, or substance use disorder of persons who are under the
16 supervision of the department;

17 (s) Between the department of social and health services, the
18 department of children, youth, and families, and the health care
19 authority as necessary to coordinate treatment for mental illness,
20 developmental disabilities, alcoholism, or drug abuse of persons who
21 are under the supervision of the department of social and health
22 services or the department of children, youth, and families;

23 (t) To a licensed physician or psychiatric advanced registered
24 nurse practitioner who has determined that the life or health of the
25 person is in danger and that treatment without the information and
26 records related to mental health services could be injurious to the
27 patient's health. Disclosure must be limited to the portions of the
28 records necessary to meet the medical emergency;

29 (u)(i) Consistent with the requirements of the federal health
30 insurance portability and accountability act, to:

31 (A) A health care provider, including an Indian health care
32 provider, who is providing care to a patient, or to whom a patient
33 has been referred for evaluation or treatment; or

34 (B) Any other person who is working in a care coordinator role
35 for a health care facility, health care provider, or Indian health
36 care provider, or is under an agreement pursuant to the federal
37 health insurance portability and accountability act with a health
38 care facility or a health care provider and requires the information
39 and records to assure coordinated care and treatment of that patient.

1 (ii) A person authorized to use or disclose information and
2 records related to mental health services under this subsection
3 (2)(u) must take appropriate steps to protect the information and
4 records relating to mental health services.

5 (iii) Psychotherapy notes may not be released without
6 authorization of the patient who is the subject of the request for
7 release of information;

8 (v) To administrative and office support staff designated to
9 obtain medical records for those licensed professionals listed in (u)
10 of this subsection;

11 (w) To a facility that is to receive a person who is
12 involuntarily committed under chapter 71.05 RCW, or upon transfer of
13 the person from one evaluation and treatment facility to another. The
14 release of records under this subsection is limited to the
15 information and records related to mental health services required by
16 law, a record or summary of all somatic treatments, and a discharge
17 summary. The discharge summary may include a statement of the
18 patient's problem, the treatment goals, the type of treatment which
19 has been provided, and recommendation for future treatment, but may
20 not include the patient's complete treatment record;

21 (x) To the person's counsel or guardian ad litem, without
22 modification, at any time in order to prepare for involuntary
23 commitment or recommitment proceedings, reexaminations, appeals, or
24 other actions relating to detention, admission, commitment, or
25 patient's rights under chapter 71.05 RCW;

26 (y) To staff members of the protection and advocacy agency or to
27 staff members of a private, nonprofit corporation for the purpose of
28 protecting and advocating the rights of persons with mental disorders
29 or developmental disabilities. Resource management services may limit
30 the release of information to the name, birthdate, and county of
31 residence of the patient, information regarding whether the patient
32 was voluntarily admitted, or involuntarily committed, the date and
33 place of admission, placement, or commitment, the name and address of
34 a guardian of the patient, and the date and place of the guardian's
35 appointment. Any staff member who wishes to obtain additional
36 information must notify the patient's resource management services in
37 writing of the request and of the resource management services' right
38 to object. The staff member shall send the notice by mail to the
39 guardian's address. If the guardian does not object in writing within
40 fifteen days after the notice is mailed, the staff member may obtain

1 the additional information. If the guardian objects in writing within
2 fifteen days after the notice is mailed, the staff member may not
3 obtain the additional information;

4 (z) To all current treating providers, including Indian health
5 care providers, of the patient with prescriptive authority who have
6 written a prescription for the patient within the last twelve months.
7 For purposes of coordinating health care, the department or the
8 authority may release without written authorization of the patient,
9 information acquired for billing and collection purposes as described
10 in RCW 70.02.050(1)(d). The department, or the authority, if
11 applicable, shall notify the patient that billing and collection
12 information has been released to named providers, and provide the
13 substance of the information released and the dates of such release.
14 Neither the department nor the authority may release counseling,
15 inpatient psychiatric hospitalization, or drug and alcohol treatment
16 information without a signed written release from the client;

17 (aa)(i) To the secretary of social and health services and the
18 director of the health care authority for either program evaluation
19 or research, or both so long as the secretary or director, where
20 applicable, adopts rules for the conduct of the evaluation or
21 research, or both. Such rules must include, but need not be limited
22 to, the requirement that all evaluators and researchers sign an oath
23 of confidentiality substantially as follows:

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

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

33 /s/"

34 (ii) Nothing in this chapter may be construed to prohibit the
35 compilation and publication of statistical data for use by government
36 or researchers under standards, including standards to assure
37 maintenance of confidentiality, set forth by the secretary, or
38 director, where applicable;

39 (bb) To any person if the conditions in RCW 70.02.205 are met;

1 (cc) To the secretary of health for the purposes of the maternal
2 mortality review panel established in RCW 70.54.450;

3 (dd) To a tribe or Indian health care provider to carry out the
4 requirements of RCW 71.05.150(7).

5 (3) Whenever federal law or federal regulations restrict the
6 release of information contained in the information and records
7 related to mental health services of any patient who receives
8 treatment for a substance use disorder, the department or the
9 authority may restrict the release of the information as necessary to
10 comply with federal law and regulations.

11 (4) Civil liability and immunity for the release of information
12 about a particular person who is committed to the department of
13 social and health services or the authority under RCW 71.05.280(3)
14 and 71.05.320(4)(c) after dismissal of a sex offense as defined in
15 RCW 9.94A.030, is governed by RCW 4.24.550.

16 (5) The fact of admission to a provider of mental health
17 services, as well as all records, files, evidence, findings, or
18 orders made, prepared, collected, or maintained pursuant to chapter
19 71.05 RCW are not admissible as evidence in any legal proceeding
20 outside that chapter without the written authorization of the person
21 who was the subject of the proceeding except as provided in RCW
22 70.02.260, in a subsequent criminal prosecution of a person committed
23 pursuant to RCW 71.05.280(3) or 71.05.320(4)(c) on charges that were
24 dismissed pursuant to chapter 10.77 RCW due to incompetency to stand
25 trial, in a civil commitment proceeding pursuant to chapter 71.09
26 RCW, or, in the case of a minor, a guardianship or dependency
27 proceeding. The records and files maintained in any court proceeding
28 pursuant to chapter 71.05 RCW must be confidential and available
29 subsequent to such proceedings only to the person who was the subject
30 of the proceeding or his or her attorney. In addition, the court may
31 order the subsequent release or use of such records or files only
32 upon good cause shown if the court finds that appropriate safeguards
33 for strict confidentiality are and will be maintained.

34 (6)(a) Except as provided in RCW 4.24.550, any person may bring
35 an action against an individual who has willfully released
36 confidential information or records concerning him or her in
37 violation of the provisions of this section, for the greater of the
38 following amounts:

39 (i) One thousand dollars; or

40 (ii) Three times the amount of actual damages sustained, if any.

1 (b) It is not a prerequisite to recovery under this subsection
2 that the plaintiff suffered or was threatened with special, as
3 contrasted with general, damages.

4 (c) Any person may bring an action to enjoin the release of
5 confidential information or records concerning him or her or his or
6 her ward, in violation of the provisions of this section, and may in
7 the same action seek damages as provided in this subsection.

8 (d) The court may award to the plaintiff, should he or she
9 prevail in any action authorized by this subsection, reasonable
10 attorney fees in addition to those otherwise provided by law.

11 (e) If an action is brought under this subsection, no action may
12 be brought under RCW 70.02.170.

13 **Sec. 8.** RCW 70.02.240 and 2019 c 381 s 20 are each amended to
14 read as follows:

15 The fact of admission and all information and records related to
16 mental health services obtained through inpatient or outpatient
17 treatment of a minor under chapter 71.34 RCW must be kept
18 confidential, except as authorized by this section or under RCW
19 70.02.050, 70.02.210, 70.02.230, 70.02.250, 70.02.260, and 70.02.265.
20 Confidential information under this section may be disclosed only:

21 (1) In communications between mental health professionals to meet
22 the requirements of chapter 71.34 RCW, in the provision of services
23 to the minor, or in making appropriate referrals;

24 (2) In the course of guardianship or dependency proceedings;

25 (3) To the minor, the minor's parent, including those acting as a
26 parent as defined in RCW 71.34.020 for purposes of family-initiated
27 treatment, and the minor's attorney, subject to RCW 13.50.100;

28 (4) To the courts as necessary to administer chapter 71.34 RCW;

29 (5) To law enforcement officers or public health officers as
30 necessary to carry out the responsibilities of their office. However,
31 only the fact and date of admission, and the date of discharge, the
32 name and address of the treatment provider, if any, and the last
33 known address must be disclosed upon request;

34 (6) To law enforcement officers, public health officers,
35 relatives, and other governmental law enforcement agencies, if a
36 minor has escaped from custody, disappeared from an evaluation and
37 treatment facility, violated conditions of a less restrictive
38 treatment order, or failed to return from an authorized leave, and
39 then only such information as may be necessary to provide for public

1 safety or to assist in the apprehension of the minor. The officers
2 are obligated to keep the information confidential in accordance with
3 this chapter;

4 (7) To the secretary of social and health services and the
5 director of the health care authority for assistance in data
6 collection and program evaluation or research so long as the
7 secretary or director, where applicable, adopts rules for the conduct
8 of such evaluation and research. The rules must include, but need not
9 be limited to, the requirement that all evaluators and researchers
10 sign an oath of confidentiality substantially as follows:

11 "As a condition of conducting evaluation or research concerning
12 persons who have received services from (fill in the facility,
13 agency, or person) I,, agree not to divulge, publish, or
14 otherwise make known to unauthorized persons or the public any
15 information obtained in the course of such evaluation or research
16 regarding minors who have received services in a manner such that the
17 minor is identifiable.

18 I recognize that unauthorized release of confidential information
19 may subject me to civil liability under state law.

20 /s/";

21 (8) To appropriate law enforcement agencies, upon request, all
22 necessary and relevant information in the event of a crisis or
23 emergent situation that poses a significant and imminent risk to the
24 public. The mental health service agency or its employees are not
25 civilly liable for the decision to disclose or not, so long as the
26 decision was reached in good faith and without gross negligence;

27 (9) To appropriate law enforcement agencies and to a person, when
28 the identity of the person is known to the public or private agency,
29 whose health and safety has been threatened, or who is known to have
30 been repeatedly harassed, by the patient. The person may designate a
31 representative to receive the disclosure. The disclosure must be made
32 by the professional person in charge of the public or private agency
33 or his or her designee and must include the dates of admission,
34 discharge, authorized or unauthorized absence from the agency's
35 facility, and only any other information that is pertinent to the
36 threat or harassment. The agency or its employees are not civilly
37 liable for the decision to disclose or not, so long as the decision
38 was reached in good faith and without gross negligence;

1 (10) To a minor's next of kin, attorney, guardian, or
2 conservator, if any, the information that the minor is presently in
3 the facility or that the minor is seriously physically ill and a
4 statement evaluating the mental and physical condition of the minor
5 as well as a statement of the probable duration of the minor's
6 confinement;

7 (11) Upon the death of a minor, to the minor's next of kin;

8 (12) To a facility in which the minor resides or will reside;

9 (13) To law enforcement officers and to prosecuting attorneys as
10 are necessary to enforce RCW 9.41.040(2)(a)(~~(iv)~~) (v). The extent
11 of information that may be released is limited as follows:

12 (a) Only the fact, place, and date of involuntary commitment, an
13 official copy of any order or orders of commitment, and an official
14 copy of any written or oral notice of ineligibility to possess a
15 firearm that was provided to the person pursuant to RCW 9.41.047(1),
16 must be disclosed upon request;

17 (b) The law enforcement and prosecuting attorneys may only
18 release the information obtained to the person's attorney as required
19 by court rule and to a jury or judge, if a jury is waived, that
20 presides over any trial at which the person is charged with violating
21 RCW 9.41.040(2)(a)(~~(iv)~~) (v);

22 (c) Disclosure under this subsection is mandatory for the
23 purposes of the federal health insurance portability and
24 accountability act;

25 (14) This section may not be construed to prohibit the
26 compilation and publication of statistical data for use by government
27 or researchers under standards, including standards to assure
28 maintenance of confidentiality, set forth by the director of the
29 health care authority or the secretary of the department of social
30 and health services, where applicable. The fact of admission and all
31 information obtained pursuant to chapter 71.34 RCW are not admissible
32 as evidence in any legal proceeding outside chapter 71.34 RCW, except
33 guardianship or dependency, without the written consent of the minor
34 or the minor's parent;

35 (15) For the purpose of a correctional facility participating in
36 the postinstitutional medical assistance system supporting the
37 expedited medical determinations and medical suspensions as provided
38 in RCW 74.09.555 and 74.09.295;

1 (16) Pursuant to a lawful order of a court.

--- **END** ---