

---

**SUBSTITUTE HOUSE BILL 1578**

---

**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** House Committee on (originally sponsored by Representatives L. Johnson, Morris, G. Cole, Padden, Riley, Edmondson, Mastin, Johanson, Jones, Basich, King, Valle, Campbell, Long, Shin, Springer, Karahalios, Roland, Rayburn, Conway, Kremen, Ogden, Cothorn and H. Myers; by request of Department of Corrections)

Read first time 03/03/93.

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.

--- END ---