

2 **2SSB 6214** - H COMM AMD

3 By Committee on Criminal Justice & Corrections

4 ADOPTED AS AMENDED 3/6/98

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** It is the intent of the legislature to:
8 (1) Clarify that it is the nature of a person's current conduct,
9 current mental condition, history, and likelihood of committing future
10 acts that pose a threat to public safety or himself or herself, rather
11 than simple categorization of offenses, that should determine treatment
12 procedures and level; (2) improve and clarify the sharing of
13 information between the mental health and criminal justice systems; and
14 (3) provide additional opportunities for mental health treatment for
15 persons whose conduct threatens himself or herself or threatens public
16 safety and has led to contact with the criminal justice system.

17 The legislature recognizes that a person can be incompetent to
18 stand trial, but may not be gravely disabled or may not present a
19 likelihood of serious harm. The legislature does not intend to create
20 a presumption that a person who is found incompetent to stand trial is
21 gravely disabled or presents a likelihood of serious harm requiring
22 civil commitment.

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

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

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

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

31 (3) To safeguard individual rights;

32 (4) To provide continuity of care for persons with serious mental
33 disorders;

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

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

6 (7) To protect the public safety.

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

9 For the purposes of this chapter:

10 (1) "Antipsychotic medications(~~(, "also referred to as~~
11 ~~"neuroleptics,~~)" means that class of drugs primarily used to treat
12 serious manifestations of mental illness associated with thought
13 disorders ~~((and currently includes phenothiazines, thioxanthenes,~~
14 ~~butyrophenone, dihydroindolone, and dibenzoxazipine)), which includes,~~
15 but is not limited to atypical antipsychotic medications;

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

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

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

26 ~~((4))~~ (5) "Department" means the department of social and health
27 services;

28 ~~((5))~~ (6) "Developmental disabilities professional" means a
29 person who has specialized training and three years of experience in
30 directly treating or working with persons with developmental
31 disabilities and is a psychiatrist, psychologist, or social worker, and
32 such other developmental disabilities professionals as may be defined
33 by rules adopted by the secretary;

34 ~~((6))~~ (7) "Developmental disability" means that condition defined
35 in RCW 71A.10.020(2);

36 ~~((7))~~ (8) "Evaluation and treatment facility" means any facility
37 which can provide directly, or by direct arrangement with other public
38 or private agencies, emergency evaluation and treatment, outpatient

1 care, and timely and appropriate inpatient care to persons suffering
2 from a mental disorder, and which is certified as such by the
3 department. A physically separate and separately operated portion of
4 a state hospital may be designated as an evaluation and treatment
5 facility. A facility which is part of, or operated by, the department
6 or any federal agency will not require certification. No correctional
7 institution or facility, or jail, shall be an evaluation and treatment
8 facility within the meaning of this chapter;

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

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

24 ~~((+10))~~ (11) "History of one or more violent acts" refers to the
25 period of time ten years prior to the filing of a petition under this
26 chapter, excluding any time spent, but not any violent acts committed,
27 in a mental health facility or in confinement as a result of a criminal
28 conviction;

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

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

35 (b) The conditions and strategies necessary to achieve the purposes
36 of habilitation;

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

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

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

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

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

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

13 ~~((12))~~ (14) "Likelihood of serious harm" means:

14 (a) A substantial risk that: (i) Physical harm will be inflicted
15 by an individual upon his or her own person, as evidenced by threats or
16 attempts to commit suicide or inflict physical harm on oneself(~~(, (b)~~
17 ~~a substantial risk that~~)); (ii) physical harm will be inflicted by an
18 individual upon another, as evidenced by behavior which has caused such
19 harm or which places another person or persons in reasonable fear of
20 sustaining such harm(~~(, or (c) a substantial risk that~~)); or (iii)
21 physical harm will be inflicted by an individual upon the property of
22 others, as evidenced by behavior which has caused substantial loss or
23 damage to the property of others; or

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

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

29 ~~((14))~~ (16) "Mental health professional" means a psychiatrist,
30 psychologist, psychiatric nurse, or social worker, and such other
31 mental health professionals as may be defined by rules adopted by the
32 secretary pursuant to the provisions of this chapter;

33 ~~((15))~~ (17) "Peace officer" means a law enforcement official of
34 a public agency or governmental unit, and includes persons specifically
35 given peace officer powers by any state law, local ordinance, or
36 judicial order of appointment;

37 ~~((16))~~ (18) "Private agency" means any person, partnership,
38 corporation, or association not defined as a public agency, whether or
39 not financed in whole or in part by public funds, which constitutes an

1 evaluation and treatment facility or private institution, hospital, or
2 sanitarium, which is conducted for, or includes a department or ward
3 conducted for the care and treatment of persons who are mentally ill;

4 ~~((+17+))~~ (19) "Professional person" ~~((shall))~~ means a mental health
5 professional ~~((, as above defined,))~~ and shall also mean a physician,
6 registered nurse, and such others as may be defined by rules adopted by
7 the secretary pursuant to the provisions of this chapter;

8 ~~((+18+))~~ (20) "Psychiatrist" means a person having a license as a
9 physician and surgeon in this state who has in addition completed three
10 years of graduate training in psychiatry in a program approved by the
11 American medical association or the American osteopathic association
12 and is certified or eligible to be certified by the American board of
13 psychiatry and neurology;

14 ~~((+19+))~~ (21) "Psychologist" means a person who has been licensed
15 as a psychologist pursuant to chapter 18.83 RCW;

16 ~~((+20+))~~ (22) "Public agency" means any evaluation and treatment
17 facility or institution, hospital, or sanitarium which is conducted
18 for, or includes a department or ward conducted for, the care and
19 treatment of persons who are mentally ill or deranged, if the agency is
20 operated directly by, federal, state, county, or municipal government,
21 or a combination of such governments;

22 ~~((+21+))~~ (23) "Resource management services" has the meaning given
23 in chapter 71.24 RCW;

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

26 ~~((+23+))~~ (25) "Social worker" means a person with a master's or
27 further advanced degree from an accredited school of social work or a
28 degree deemed equivalent under rules adopted by the secretary;

29 (26) "Violent act" means behavior that resulted in homicide,
30 attempted suicide, nonfatal injuries, or substantial damage to
31 property.

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

34 Persons suffering from a mental disorder may not be involuntarily
35 committed for treatment of such disorder except pursuant to provisions
36 of this chapter, chapter 10.77 RCW ~~((or its successor))~~, chapter 71.06
37 RCW, chapter 71.34 RCW, transfer pursuant to RCW 72.68.031 through

1 72.68.037, or pursuant to court ordered evaluation and treatment not to
2 exceed ninety days pending a criminal trial or sentencing.

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

5 (~~With respect to chapter 420, Laws of 1989,~~) The legislature
6 finds that among those persons who endanger the safety of others by
7 committing (~~felony~~) crimes are a small number of persons with
8 developmental disabilities. While their conduct is not typical of the
9 vast majority of persons with developmental disabilities who are
10 responsible citizens, for their own welfare and for the safety of
11 others the state may need to exercise control over those few dangerous
12 individuals who are developmentally disabled, have been charged with
13 (~~felony~~) crimes that involve a threat to public safety or security,
14 and have been found either incompetent to stand trial or not guilty by
15 reason of insanity. The legislature finds, however, that the use of
16 civil commitment procedures under chapter 71.05 RCW to effect state
17 control over dangerous developmentally disabled persons has resulted in
18 their commitment to institutions for the mentally ill. The legislature
19 finds that existing programs in mental institutions may be
20 inappropriate for persons who are developmentally disabled because the
21 services provided in mental institutions are oriented to persons with
22 mental illness, a condition not necessarily associated with
23 developmental disabilities. Therefore, the legislature believes that,
24 where appropriate, and subject to available funds, persons with
25 developmental disabilities who have been charged with (~~felony~~) crimes
26 that involve a threat to public safety or security and have been found
27 incompetent to stand trial or not guilty by reason of insanity should
28 receive state services addressing their needs, that such services must
29 be provided in conformance with an individual habilitation plan, and
30 that their initial treatment should be separate and discrete from
31 treatment for persons involved in any other treatment or habilitation
32 program in a manner consistent with the needs of public safety.

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

35 Nothing in this chapter shall be construed to limit the right of
36 any person to apply voluntarily to any public or private agency or
37 practitioner for treatment of a mental disorder, either by direct

1 application or by referral. Any person voluntarily admitted for
2 inpatient treatment to any public or private agency shall be released
3 immediately upon his or her request. Any person voluntarily admitted
4 for inpatient treatment to any public or private agency shall orally be
5 advised of the right to immediate release and further advised of such
6 rights in writing as are secured to them pursuant to this chapter and
7 their rights of access to attorneys, courts, and other legal redress.
8 Their condition and status shall be reviewed at least once each one
9 hundred eighty days for evaluation as to the need for further treatment
10 and/or possible release, at which time they shall again be advised of
11 their right to release upon request: PROVIDED HOWEVER, That if the
12 professional staff of any public or private agency or hospital regards
13 a person voluntarily admitted who requests release as presenting, as a
14 result of a mental disorder, an imminent likelihood of serious harm, or
15 is gravely disabled, they may detain such person for sufficient time to
16 notify the ((designated)) county designated mental health professional
17 of such person's condition to enable ((such)) the county designated
18 mental health professional to authorize such person being further held
19 in custody or transported to an evaluation and treatment center
20 pursuant to the provisions of this chapter, which shall in ordinary
21 circumstances be no later than the next judicial day: PROVIDED
22 FURTHER, That if a person is brought to the emergency room of a public
23 or private agency or hospital for observation or treatment, the person
24 refuses voluntary admission, and the professional staff of the public
25 or private agency or hospital regard such person as presenting as a
26 result of a mental disorder an imminent likelihood of serious harm, or
27 as presenting an imminent danger because of grave disability, they may
28 detain such person for sufficient time to notify the ((designated))
29 county designated mental health professional of such person's condition
30 to enable ((such)) the county designated mental health professional to
31 authorize such person being further held in custody or transported to
32 an evaluation treatment center pursuant to the conditions in this
33 chapter, but which time shall be no more than six hours from the time
34 the professional staff determine that an evaluation by the county
35 designated mental health professional is necessary.

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

1 In any judicial proceeding for involuntary commitment or detention,
2 or in any proceeding challenging such commitment or detention, the
3 prosecuting attorney for the county in which the proceeding was
4 initiated shall represent the individuals or agencies petitioning for
5 commitment or detention and shall defend all challenges to such
6 commitment or detention: PROVIDED, That (~~after January 1, 1980,~~) the
7 attorney general shall represent and provide legal services and advice
8 to state hospitals or institutions with regard to all provisions of and
9 proceedings under this chapter except in proceedings initiated by such
10 hospitals and institutions seeking fourteen day detention.

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

13 (1)(a) When a county designated mental health professional
14 (~~designated by the county~~) receives information alleging that a
15 person, as a result of a mental disorder: (i) Presents a likelihood of
16 serious harm(~~;~~); or (ii) is gravely disabled; (~~such mental health~~
17 ~~professional~~) the county designated mental health professional may,
18 after investigation and evaluation of the specific facts alleged(~~;~~)
19 and of the reliability and credibility of (~~the~~) any person (~~or~~
20 ~~persons, if any,~~) providing information to initiate detention,
21 (~~may,~~) if satisfied that the allegations are true and that the person
22 will not voluntarily seek appropriate treatment, file a petition for
23 initial detention. Before filing the petition, the county designated
24 mental health professional must personally interview the person, unless
25 the person refuses an interview, and determine whether the person will
26 voluntarily receive appropriate evaluation and treatment at an
27 evaluation and treatment facility.

28 (b) Whenever it appears, by petition for initial detention, to the
29 satisfaction of a judge of the superior court that a person presents,
30 as a result of a mental disorder, a likelihood of serious harm, or is
31 gravely disabled, and that the person has refused or failed to accept
32 appropriate evaluation and treatment voluntarily, the judge may issue
33 an order requiring the person to appear within twenty-four hours after
34 service of the order at a designated evaluation and treatment facility
35 for not more than a seventy-two hour evaluation and treatment period.
36 The order shall state the address of the evaluation and treatment
37 facility to which the person is to report and whether the required
38 seventy-two hour evaluation and treatment services may be delivered on

1 an outpatient or inpatient basis and that if the person named in the
2 order fails to appear at the evaluation and treatment facility at or
3 before the date and time stated in the order, such person may be
4 involuntarily taken into custody for evaluation and treatment. The
5 order shall also designate retained counsel or, if counsel is appointed
6 from a list provided by the court, the name, business address, and
7 telephone number of the attorney appointed to represent the person.

8 (c) The county designated mental health professional shall then
9 serve or cause to be served on such person, his or her guardian, and
10 conservator, if any, a copy of the order to appear together with a
11 notice of rights and a petition for initial detention. After service
12 on such person the county designated mental health professional shall
13 file the return of service in court and provide copies of all papers in
14 the court file to the evaluation and treatment facility and the
15 designated attorney. The county designated mental health professional
16 shall notify the court and the prosecuting attorney that a probable
17 cause hearing will be held within seventy-two hours of the date and
18 time of outpatient evaluation or admission to the evaluation and
19 treatment facility. The person shall be permitted to remain in his or
20 her home or other place of his or her choosing prior to the time of
21 evaluation and shall be permitted to be accompanied by one or more of
22 his or her relatives, friends, an attorney, a personal physician, or
23 other professional or religious advisor to the place of evaluation. An
24 attorney accompanying the person to the place of evaluation shall be
25 permitted to be present during the admission evaluation. Any other
26 individual accompanying the person may be present during the admission
27 evaluation. The facility may exclude the individual if his or her
28 presence would present a safety risk, delay the proceedings, or
29 otherwise interfere with the evaluation.

30 (d) If the person ordered to appear does appear on or before the
31 date and time specified, the evaluation and treatment facility may
32 admit such person as required by RCW 71.05.170 or may provide treatment
33 on an outpatient basis. If the person ordered to appear fails to
34 appear on or before the date and time specified, the evaluation and
35 treatment facility shall immediately notify the county designated
36 mental health professional (~~((designated by the county))~~) who may notify
37 a peace officer to take such person or cause such person to be taken
38 into custody and placed in an evaluation and treatment facility.
39 Should the county designated mental health professional notify a peace

1 officer authorizing him or her to take a person into custody under the
2 provisions of this subsection, he or she shall file with the court a
3 copy of such authorization and a notice of detention. At the time such
4 person is taken into custody there shall commence to be served on such
5 person, his or her guardian, and conservator, if any, a copy of the
6 original order together with a notice of detention, a notice of rights,
7 and a petition for initial detention.

8 (2) When a county designated mental health professional
9 (~~((designated by the county))~~) receives information alleging that a
10 person, as the result of a mental disorder, presents an imminent
11 likelihood of serious harm, or is in imminent danger because of being
12 gravely disabled, after investigation and evaluation of the specific
13 facts alleged and of the reliability and credibility of the person or
14 persons providing the information if any, the county designated mental
15 health professional may take such person, or cause by oral or written
16 order such person to be taken into emergency custody in an evaluation
17 and treatment facility for not more than seventy-two hours as described
18 in RCW 71.05.180.

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

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

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

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

32 (5) Persons delivered to evaluation and treatment facilities by
33 peace officers pursuant to subsection (4)(b) of this section may be
34 held by the facility for a period of up to twelve hours: PROVIDED,
35 That they are examined by a mental health professional within three
36 hours of their arrival. Within twelve hours of their arrival, the
37 (~~((designated))~~) county designated mental health professional must file
38 a supplemental petition for detention, and commence service on the
39 designated attorney for the detained person.

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

3 Any facility receiving a person pursuant to RCW 71.05.150 shall
4 require a petition for initial detention stating the circumstances
5 under which the person's condition was made known and stating that such
6 officer or person has evidence, as a result of his or her personal
7 observation or investigation, that the actions of the person for which
8 application is made constitute a likelihood of serious harm, or that he
9 or she is gravely disabled, and stating the specific facts known to him
10 or her as a result of his or her personal observation or investigation,
11 upon which he or she bases the belief that such person should be
12 detained for the purposes and under the authority of this chapter.

13 If a person is involuntarily placed in an evaluation and treatment
14 facility pursuant to RCW 71.05.150, on the next judicial day following
15 the initial detention, the county designated mental health professional
16 (~~designated by the county~~) shall file with the court and serve the
17 designated attorney of the detained person the petition or supplemental
18 petition for initial detention, proof of service of notice, and a copy
19 of a notice of emergency detention.

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

22 Whenever the (~~designated~~) county designated mental health
23 professional petitions for detention of a person whose actions
24 constitute a likelihood of serious harm, or who is gravely disabled,
25 the facility providing seventy-two hour evaluation and treatment must
26 immediately accept on a provisional basis the petition and the person.
27 The facility shall then evaluate the person's condition and admit or
28 release such person in accordance with RCW 71.05.210. The facility
29 shall notify in writing the court and the (~~designated~~) county
30 designated mental health professional of the date and time of the
31 initial detention of each person involuntarily detained in order that
32 a probable cause hearing shall be held no later than seventy-two hours
33 after detention.

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

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

1 (1) Whenever any person is detained for evaluation and treatment
2 pursuant to this chapter, both the person and, if possible, a
3 responsible member of his or her immediate family, guardian, or
4 conservator, if any, shall be advised as soon as possible in writing or
5 orally, by the officer or person taking him or her into custody or by
6 personnel of the evaluation and treatment facility where the person is
7 detained that unless the person is released or voluntarily admits
8 himself or herself for treatment within seventy-two hours of the
9 initial detention:

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

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

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

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

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

31 (2) When proceedings are initiated under RCW 71.05.150 (2), (3), or
32 (4)(b), no later than twelve hours after such person is admitted to the
33 evaluation and treatment facility the personnel of the evaluation and
34 treatment facility or the county designated mental health professional
35 shall serve on such person a copy of the petition for initial detention
36 and the name, business address, and phone number of the designated
37 attorney and shall forthwith commence service of a copy of the petition
38 for initial detention on the designated attorney.

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

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

7 Each person involuntarily admitted to an evaluation and treatment
8 facility shall, within twenty-four hours of his or her admission, be
9 examined and evaluated by a licensed physician who may be assisted by
10 a physician assistant according to chapter 18.71A RCW or an advanced
11 registered nurse practitioner according to chapter 18.79 RCW and a
12 mental health professional (~~((as defined in this chapter))~~), and shall
13 receive such treatment and care as his or her condition requires
14 including treatment on an outpatient basis for the period that he or
15 she is detained, except that, beginning twenty-four hours prior to a
16 (~~((court proceeding))~~) trial or hearing pursuant to RCW 71.05.215,
17 71.05.240, 71.05.310, 71.05.320, 71.05.340, or 71.05.370, the
18 individual may refuse (~~((all but emergency life saving treatment))~~)
19 psychiatric medications, but may not refuse: (1) Any other medication
20 previously prescribed by a person licensed under Title 18 RCW; or (2)
21 emergency lifesaving treatment, and the individual shall be informed at
22 an appropriate time of his or her right (~~((to))~~) of such refusal (~~((of~~
23 ~~treatment))~~). (~~((Such))~~) The person shall be detained up to seventy-two
24 hours, if, in the opinion of the professional person in charge of the
25 facility, or his or her professional designee, the person presents a
26 likelihood of serious harm, or is gravely disabled. A person who has
27 been detained for seventy-two hours shall no later than the end of such
28 period be released, unless referred for further care on a voluntary
29 basis, or detained pursuant to court order for further treatment as
30 provided in this chapter.

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

36 An evaluation and treatment center admitting any person pursuant to
37 this chapter whose physical condition reveals the need for
38 hospitalization shall assure that such person is transferred to an

1 appropriate hospital for treatment. Notice of such fact shall be given
2 to the court, the designated attorney, and the ((designated)) county
3 designated mental health professional and the court shall order such
4 continuance in proceedings under this chapter as may be necessary, but
5 in no event may this continuance be more than fourteen days.

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

8 A person detained for seventy-two hour evaluation and treatment may
9 be detained for not more than fourteen additional days of involuntary
10 intensive treatment or ninety additional days of a less restrictive
11 alternative to involuntary intensive treatment if the following
12 conditions are met:

13 (1) The professional staff of the agency or facility providing
14 evaluation services has analyzed the person's condition and finds that
15 the condition is caused by mental disorder and either results in a
16 likelihood of serious harm, or results in the detained person being
17 gravely disabled and are prepared to testify those conditions are met;
18 and

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

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

24 (4) The professional staff of the agency or facility or the county
25 designated mental health professional ((~~designated by the county~~)) has
26 filed a petition for fourteen day involuntary detention or a ninety day
27 less restrictive alternative with the court. The petition must be
28 signed either by two physicians or by one physician and a mental health
29 professional who have examined the person. If involuntary detention is
30 sought the petition shall state facts that support the finding that
31 such person, as a result of mental disorder, presents a likelihood of
32 serious harm, or is gravely disabled and that there are no less
33 restrictive alternatives to detention in the best interest of such
34 person or others. The petition shall state specifically that less
35 restrictive alternative treatment was considered and specify why
36 treatment less restrictive than detention is not appropriate. If an
37 involuntary less restrictive alternative is sought, the petition shall
38 state facts that support the finding that such person, as a result of

1 mental disorder, presents a likelihood of serious harm, or is gravely
2 disabled and shall set forth the less restrictive alternative proposed
3 by the facility; and

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

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

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

13 (8) At the conclusion of the initial commitment period, the
14 professional staff of the agency or facility or the county designated
15 mental health professional (~~(designated by the county)~~) may petition
16 for an additional period of either ninety days of less restrictive
17 alternative treatment or ninety days of involuntary intensive treatment
18 as provided in RCW 71.05.290; and

19 (9) If the hospital or facility designated to provide outpatient
20 treatment is other than the facility providing involuntary treatment,
21 the outpatient facility so designated has agreed to assume such
22 responsibility.

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

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

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

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

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

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

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

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

21 (4) Such person is gravely disabled.

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

24 (1) At any time during a person's fourteen day intensive treatment
25 period, the professional person in charge of a treatment facility or
26 his or her professional designee or the (~~designated~~) county
27 designated mental health professional may petition the superior court
28 for an order requiring such person to undergo an additional period of
29 treatment. Such petition must be based on one or more of the grounds
30 set forth in RCW 71.05.280.

31 (2) The petition shall summarize the facts which support the need
32 for further confinement and shall be supported by affidavits signed by
33 two examining physicians, or by one examining physician and examining
34 mental health professional. The affidavits shall describe in detail
35 the behavior of the detained person which supports the petition and
36 shall explain what, if any, less restrictive treatments which are
37 alternatives to detention are available to such person, and shall state

1 the willingness of the affiant to testify to such facts in subsequent
2 judicial proceedings under this chapter.

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

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

12 The petition for ninety day treatment shall be filed with the clerk
13 of the superior court at least three days before expiration of the
14 fourteen-day period of intensive treatment. At the time of filing such
15 petition, the clerk shall set a time for the person to come before the
16 court on the next judicial day after the day of filing unless such
17 appearance is waived by the person's attorney, and the clerk shall
18 notify the (~~designated~~) county designated mental health professional.
19 The (~~designated~~) county designated mental health professional shall
20 immediately notify the person detained, his or her attorney, if any,
21 and his or her guardian or conservator, if any, and the prosecuting
22 attorney, and provide a copy of the petition to such persons as soon as
23 possible.

24 At the time set for appearance the detained person shall be brought
25 before the court, unless such appearance has been waived and the court
26 shall advise him or her of his or her right to be represented by an
27 attorney and of his or her right to a jury trial. If the detained
28 person is not represented by an attorney, or is indigent or is
29 unwilling to retain an attorney, the court shall immediately appoint an
30 attorney to represent him or her. The court shall, if requested,
31 appoint a reasonably available licensed physician, psychologist, or
32 psychiatrist, designated by the detained person to examine and testify
33 on behalf of the detained person.

34 The court may, if requested, also appoint a professional person as
35 defined in RCW 71.05.020 to seek less restrictive alternative courses
36 of treatment and to testify on behalf of the detained person. In the
37 case of a developmentally disabled person who has been determined to be
38 incompetent pursuant to RCW 10.77.090(~~(+3)~~) (4), then the appointed

1 professional person under this section shall be a developmental
2 disabilities professional.

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

5 NEW SECTION. **Sec. 18.** A new section is added to chapter 71.05 RCW
6 to read as follows:

7 (1) If an individual is referred to a county designated mental
8 health professional under RCW 10.77.090(1)(d)(iii)(A), the county
9 designated mental health professional shall examine the individual
10 within forty-eight hours. If the county designated mental health
11 professional determines it is not appropriate to detain the individual
12 or petition for a ninety-day less restrictive alternative under RCW
13 71.05.230(4), that decision shall be immediately presented to the
14 superior court for hearing. The court shall hold a hearing to consider
15 the decision of the county designated mental health professional not
16 later than the next judicial day. At the hearing the superior court
17 shall review the determination of the county designated mental health
18 professional and determine whether an order should be entered requiring
19 the person to be evaluated at an evaluation and treatment facility. No
20 person referred to an evaluation and treatment facility may be held at
21 the facility longer than seventy-two hours.

22 (2) If an individual is placed in an evaluation and treatment
23 facility under RCW 10.77.090(1)(d)(iii)(B), a professional person shall
24 evaluate the individual for purposes of determining whether to file a
25 ninety-day inpatient or outpatient petition under chapter 71.05 RCW.
26 Immediately following completion of the evaluation, the professional
27 person shall file a petition or, if the recommendation of the
28 professional person is to release the individual, present his or her
29 recommendation to the court. The superior court shall review the
30 recommendation not later than the next judicial day. For an individual
31 subject to this subsection, the professional person may directly file
32 a petition for ninety-day inpatient or outpatient treatment and no
33 petition for initial detention or fourteen-day detention is required
34 before such a petition may be filed.

35 (3) If a county designated mental health professional or the
36 professional person and prosecuting attorney or attorney general, as
37 appropriate, stipulate that the individual does not present a
38 likelihood of serious harm or is not gravely disabled, the hearing

1 under this section is not required and the individual, if in custody,
2 shall be released.

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

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

7 Whenever a county designated mental health professional or
8 professional person is conducting an evaluation under this chapter,
9 consideration shall include all reasonably available information and
10 records regarding: (1) Prior recommendations for evaluation of the
11 need for civil commitments when the recommendation is made pursuant to
12 an evaluation conducted under chapter 10.77 RCW; (2) history of one or
13 more violent acts; (3) prior determinations of incompetency or insanity
14 under chapter 10.77 RCW; and (4) prior commitments under this chapter.

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

17 (1) Nothing in this chapter shall prohibit the superintendent or
18 professional person in charge of the hospital or facility in which the
19 person is being involuntarily treated from releasing him or her prior
20 to the expiration of the commitment period when, in the opinion of the
21 superintendent or professional person in charge, the person being
22 involuntarily treated no longer presents a likelihood of serious harm.

23 Whenever the superintendent or professional person in charge of a
24 hospital or facility providing involuntary treatment pursuant to this
25 chapter releases a person prior to the expiration of the period of
26 commitment, the superintendent or professional person in charge shall
27 in writing notify the court which committed the person for treatment.

28 (2) Before a person committed under grounds set forth in RCW
29 71.05.280(3) or 71.05.320(2)(c) is released under this section, the
30 superintendent or professional person in charge shall in writing notify
31 the prosecuting attorney of the county in which the criminal charges
32 against the committed person were dismissed, of the release date.
33 Notice shall be provided at least thirty days before the release date.
34 Within twenty days after receiving notice, the prosecuting attorney may
35 petition the court in the county in which the person is being
36 involuntarily treated for a hearing to determine whether the person is
37 to be released. The prosecuting attorney shall provide a copy of the

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

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

20 (1)(a) When, in the opinion of the superintendent or the
21 professional person in charge of the hospital or facility providing
22 involuntary treatment, the committed person can be appropriately served
23 by outpatient treatment prior to or at the expiration of the period of
24 commitment, then such outpatient care may be required as a condition
25 for early release for a period which, when added to the inpatient
26 treatment period, shall not exceed the period of commitment. If the
27 hospital or facility designated to provide outpatient treatment is
28 other than the facility providing involuntary treatment, the outpatient
29 facility so designated must agree in writing to assume such
30 responsibility. A copy of the conditions for early release shall be
31 given to the patient, the ((designated)) county designated mental
32 health professional in the county in which the patient is to receive
33 outpatient treatment, and to the court of original commitment.

34 (b) Before a person committed under grounds set forth in RCW
35 71.05.280(3) or 71.05.320(2)(c) is conditionally released under (a) of
36 this subsection, the superintendent or professional person in charge of
37 the hospital or facility providing involuntary treatment shall in
38 writing notify the prosecuting attorney of the county in which the

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

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

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

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

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

8 (iii) There is evidence of substantial decompensation with a
9 reasonable probability that the decompensation can be reversed
10 by further inpatient treatment~~((,))~~ or ~~((there is))~~

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

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

18 ~~((The))~~ (b) The hospital or facility designated to provide
19 outpatient treatment shall notify the secretary or county designated
20 mental health professional when a conditionally released person fails
21 to adhere to terms and conditions of his or her release or experiences
22 substantial deterioration in his or her condition and, as a result,
23 presents an increased likelihood of serious harm. The county
24 designated mental health professional or secretary shall order the
25 person apprehended and temporarily detained in an evaluation and
26 treatment facility in or near the county in which he or she is
27 receiving outpatient treatment.

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

35 ~~((b))~~ (d) The court that originally ordered commitment shall be
36 notified within two judicial days of a person's detention under the
37 provisions of this section, and the ~~((designated))~~ county designated
38 mental health professional or the secretary shall file his or her
39 petition and order of apprehension and detention with the court and

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

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

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

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

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

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

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

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

13 Information and records may be disclosed only:

14 (1) In communications between qualified professional persons to
15 meet the requirements of this chapter, in the provision of services or
16 appropriate referrals, or in the course of guardianship proceedings.
17 The consent of the patient, or his or her guardian, shall be obtained
18 before information or records may be disclosed by a professional person
19 employed by a facility unless provided to a professional person~~((
20 not))~~: (a) Employed by the facility~~((, who does not have the))~~; (b)
21 who has medical responsibility for the patient's care ~~((or who is~~
22 ~~not))~~; (c) who is a ~~((designated))~~ county designated mental health
23 professional ~~((or who is not involved in))~~; (d) who is providing
24 services under ~~((the community mental health services act,))~~ chapter
25 71.24 RCW; or (e) who is employed by a state or local correctional
26 facility where the person is confined.

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

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

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

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

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

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

16 /s/ "

17 (6) To the courts as necessary to the administration of this
18 chapter.

19 (7) To law enforcement officers, public health officers, or
20 personnel of the department of corrections or the indeterminate
21 sentence review board for persons who are the subject of the records
22 and who are committed to the custody of the department of corrections
23 or indeterminate sentence review board which information or records are
24 necessary to carry out the responsibilities of their office. Except
25 for dissemination of information released pursuant to RCW 71.05.425 and
26 4.24.550, regarding persons committed under this chapter under RCW
27 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
28 defined in RCW 9.94A.030, the extent of information that may be
29 released is limited as follows:

30 (a) Only the fact, place, and date of involuntary admission, the
31 fact and date of discharge, and the last known address shall be
32 disclosed upon request; and

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

37 (c) Additional information shall be disclosed only after giving
38 notice to said person and his or her counsel and upon a showing of

1 clear, cogent and convincing evidence that such information is
2 necessary and that appropriate safeguards for strict confidentiality
3 are and will be maintained. However, in the event the said person has
4 escaped from custody, said notice prior to disclosure is not necessary
5 and that the facility from which the person escaped shall include an
6 evaluation as to whether the person is of danger to persons or property
7 and has a propensity toward violence.

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

9 (9) To the prosecuting attorney as necessary to carry out the
10 responsibilities of the office under RCW 71.05.330(2) and
11 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access
12 to records regarding the committed person's treatment and prognosis,
13 medication, behavior problems, and other records relevant to the issue
14 of whether treatment less restrictive than inpatient treatment is in
15 the best interest of the committed person or others. Information shall
16 be disclosed only after giving notice to the committed person and the
17 person's counsel.

18 (10) To appropriate law enforcement agencies and to a person, when
19 the identity of the person is known to the public or private agency,
20 whose health and safety has been threatened, or who is known to have
21 been repeatedly harassed, by the patient. The person may designate a
22 representative to receive the disclosure. The disclosure shall be made
23 by the professional person in charge of the public or private agency or
24 his or her designee and shall include the dates of admission,
25 discharge, authorized or unauthorized absence from the agency's
26 facility, and only such other information that is pertinent to the
27 threat or harassment. The decision to disclose or not shall not result
28 in civil liability for the agency or its employees so long as the
29 decision was reached in good faith and without gross negligence.

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

32 (12) Civil liability and immunity for the release of information
33 about a particular person who is committed to the department under RCW
34 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
35 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

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

38 (14) To the department of health for the purposes of determining
39 compliance with state or federal licensure, certification, or

1 registration rules or laws. However, the information and records
2 obtained under this subsection are exempt from public inspection and
3 copying pursuant to chapter 42.17 RCW.

4 The fact of admission, as well as all records, files, evidence,
5 findings, or orders made, prepared, collected, or maintained pursuant
6 to this chapter shall not be admissible as evidence in any legal
7 proceeding outside this chapter without the written consent of the
8 person who was the subject of the proceeding except in a subsequent
9 criminal prosecution of a person committed pursuant to RCW 71.05.280(3)
10 or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter
11 10.77 RCW due to incompetency to stand trial or in a civil commitment
12 proceeding pursuant to chapter 71.09 RCW. The records and files
13 maintained in any court proceeding pursuant to this chapter shall be
14 confidential and available subsequent to such proceedings only to the
15 person who was the subject of the proceeding or his or her attorney.
16 In addition, the court may order the subsequent release or use of such
17 records or files only upon good cause shown if the court finds that
18 appropriate safeguards for strict confidentiality are and will be
19 maintained.

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

22 Evaluation and treatment facilities authorized pursuant to this
23 chapter may be part of the comprehensive community mental health
24 services program conducted in counties pursuant to (~~the Community~~
25 ~~Mental Health Services Act,~~) chapter 71.24 RCW, and may receive
26 funding pursuant to the provisions thereof.

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

29 The department (~~of social and health services~~) shall adopt such
30 rules (~~and regulations~~) as may be necessary to effectuate the intent
31 and purposes of this chapter, which shall include but not be limited to
32 evaluation of the quality of the program and facilities operating
33 pursuant to this chapter, evaluation of the effectiveness and cost
34 effectiveness of such programs and facilities, and procedures and
35 standards for certification and other action relevant to evaluation and
36 treatment facilities.

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

3 In any judicial proceeding in which a professional person has made
4 a recommendation regarding whether an individual should be committed
5 for treatment under this chapter, and the court does not follow the
6 recommendation, the court shall enter findings that state with
7 particularity its reasoning, including a finding whether the state met
8 its burden of proof in showing whether the person presents a likelihood
9 of serious harm.

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

12 The department shall develop state-wide protocols to be utilized by
13 professional persons and county designated mental health professionals
14 in administration of this chapter and chapter 10.77 RCW. The protocols
15 shall be updated at least every three years. The protocols shall
16 provide uniform development and application of criteria in evaluation
17 and commitment recommendations, of persons who have, or are alleged to
18 have, mental disorders and are subject to this chapter.

19 The initial protocols shall be developed not later than September
20 1, 1999. The department shall develop and update the protocols in
21 consultation with representatives of county designated mental health
22 professionals, local government, law enforcement, county and city
23 prosecutors, public defenders, and groups concerned with mental
24 illness. The protocols shall be submitted to the governor and
25 legislature upon adoption by the department.

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

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

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

34 (~~With respect to this act,~~) The legislature finds that among
35 those persons who endanger the safety of others by committing
36 (~~felony~~) crimes are a small number of persons with developmental

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

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

28 As used in this chapter:

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

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

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

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

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

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

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

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

19 ~~((9))~~ (9) "Developmental disability" means the condition defined
20 in RCW 71A.10.020(2).

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

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

35 ~~((12) "Psychiatrist" means a person having a license))~~ (12)
36 "Expert or professional person" means:

37 (a) A psychiatrist licensed as a physician and surgeon in this
38 state who has, in addition, completed three years of graduate training
39 in psychiatry in a program approved by the American medical association

1 or the American osteopathic association and is certified or eligible to
2 be certified by the American board of psychiatry and neurology(~~(-~~
3 ~~(13) "Psychologist" means a person who has been~~);
4 (b) A psychologist licensed as a psychologist pursuant to chapter
5 18.83 RCW(~~(-~~
6 ~~(14) "Social worker" means a person~~); or
7 (c) A social worker with a master's or further advanced degree from
8 an accredited school of social work or a degree deemed equivalent under
9 rules adopted by the secretary.

10 ~~((15))~~ (12) "Individualized service plan" means a plan prepared
11 by a developmental disabilities professional with other professionals
12 as a team, for an individual with developmental disabilities, which
13 shall state:

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

16 (b) The conditions and strategies necessary to achieve the purposes
17 of habilitation;

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

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

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

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

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

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

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

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

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

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

- 17 (a) The nature of the charges;
18 (b) The statutory offense included within them;
19 (c) The range of allowable punishments thereunder;
20 (d) Possible defenses to the charges and circumstances in
21 mitigation thereof; and
22 (e) All other facts essential to a broad understanding of the whole
23 matter.

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

34 ~~(3) ((Whenever any person has been committed under any provision of~~
35 ~~this chapter, or ordered to undergo alternative treatment following his~~
36 ~~or her acquittal of a crime charged by reason of insanity, such~~
37 ~~commitment or treatment cannot exceed the maximum possible penal~~
38 ~~sentence for any offense charged for which the person was acquitted by~~

1 ~~reason of insanity. If at the end of that period the person has not~~
2 ~~been finally discharged and is still in need of commitment or~~
3 ~~treatment, civil commitment proceedings may be instituted, if~~
4 ~~appropriate.~~

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

11 NEW SECTION. **Sec. 31.** A new section is added to chapter 10.77 RCW
12 to read as follows:

13 (1) Whenever any person has been: (a) Committed to a correctional
14 facility or inpatient treatment under any provision of this chapter; or
15 (b) ordered to undergo alternative treatment following his or her
16 acquittal by reason of insanity of a crime charged, such commitment or
17 treatment cannot exceed the maximum possible penal sentence for any
18 offense charged for which the person was committed, or was acquitted by
19 reason of insanity.

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

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

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

36 (1) Evidence of insanity is not admissible unless the defendant, at
37 the time of arraignment or within ten days thereafter or at such later

1 time as the court may for good cause permit, files a written notice of
2 his or her intent to rely on such a defense.

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

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

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

9 Whenever the issue of insanity is submitted to the jury, the court
10 shall instruct the jury to return a special verdict in substantially
11 the following form:

	answer
	yes or no
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1. Did the defendant commit the act charged?
2. If your answer to number 1 is yes, do you acquit him <u>or her</u> because of insanity existing at the time of the act charged?
3. If your answer to number 2 is yes, is the defendant a substantial danger to other persons unless kept under further control by the court or other persons or institutions?
4. If your answer to number 2 is yes, does the defendant present a substantial likelihood of committing ((felonious)) <u>criminal</u> acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions?
5. If your answers to either number 3 or number 4 is yes, is it in the best interests of the defendant and others that the defendant be placed in treatment that is less restrictive than detention in a state mental hospital?

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

35 (1)(a) Whenever a defendant has pleaded not guilty by reason of
36 insanity, or there is reason to doubt his or her competency, the court
37 on its own motion or on the motion of any party shall either appoint or

1 request the secretary to designate at least two qualified experts or
2 professional persons, one of whom shall be approved by the prosecuting
3 attorney, to examine and report upon the mental condition of the
4 defendant. At least one of the experts or professional persons
5 appointed shall be a developmental disabilities professional if the
6 court is advised by any party that the defendant may be developmentally
7 disabled. For purposes of the examination, the court may order the
8 defendant committed to a hospital or other (~~suitable~~) suitably secure
9 public or private mental health facility for a period of time necessary
10 to complete the examination, but not to exceed fifteen days from the
11 time of admission to the facility.

12 (b) When a defendant is ordered to be committed for inpatient
13 examination under this subsection (1), the court may delay granting
14 bail until the defendant has been evaluated for competency or sanity
15 and appears before the court. Following the evaluation, in determining
16 bail the court shall consider: (i) Recommendations of the expert or
17 professional persons regarding the defendant's competency, sanity, or
18 diminished capacity; (ii) whether the defendant has a recent history of
19 one or more violent acts; (iii) whether the defendant has previously
20 been acquitted by reason of insanity or found incompetent; (iv) whether
21 it is reasonably likely the defendant will fail to appear for a future
22 court hearing; and (v) whether the defendant is a threat to public
23 safety.

24 (2) The court may direct that a qualified expert or professional
25 person retained by or appointed for the defendant be permitted to
26 witness the examination authorized by subsection (1) of this section,
27 and that the defendant shall have access to all information obtained by
28 the court appointed experts or professional persons. The defendant's
29 expert or professional person shall have the right to file his or her
30 own report following the guidelines of subsection (3) of this section.
31 If the defendant is indigent, the court shall upon the request of the
32 defendant assist him or her in obtaining an expert or professional
33 person.

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

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

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

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

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

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

7 (f) An opinion as to whether the defendant is a substantial danger
8 to other persons, or presents a substantial likelihood of committing
9 (~~felonious~~) criminal acts jeopardizing public safety or security,
10 unless kept under further control by the court or other persons or
11 institutions.

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

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

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

20 (2)(a) When a defendant is evaluated under RCW 10.77.060, the
21 professional person shall make a recommendation to the court whether
22 the defendant should be examined by a county designated mental health
23 professional for purposes of filing a petition under chapter 71.05 RCW
24 whenever the court determines, and enters a finding that, the defendant
25 is charged with: (i) A felony; or (ii) a nonfelony crime and: (A) Is
26 charged with, or has a history of, one or more violent acts; (B) is a
27 threat to public safety; (C) has previously been acquitted by reason of
28 insanity; or (D) has previously been found incompetent pursuant to this
29 chapter.

30 (b) The facility conducting the evaluation shall provide its report
31 and recommendation to the court in which the criminal proceeding is
32 pending. A copy of the report and recommendation shall be provided to
33 the county designated mental health professional, the prosecuting
34 attorney, the defense attorney, and the professional person at the
35 local correctional facility where the defendant is being held. Upon
36 request, the facility shall also provide copies of any source documents
37 relevant to the evaluation to the county designated mental health
38 professional. The report and recommendation shall be provided not less

1 than twenty-four hours preceding the transfer of the defendant to the
2 correctional facility in the county in which the criminal proceeding is
3 pending.

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

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

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

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

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

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

30 The defendant may move the court for a judgment of acquittal on the
31 grounds of insanity: PROVIDED, That a defendant so acquitted may not
32 later contest the validity of his or her detention on the grounds that
33 he or she did not commit the acts charged. At the hearing upon
34 (~~said~~) the motion the defendant shall have the burden of proving by
35 a preponderance of the evidence that he or she was insane at the time
36 of the offense or offenses with which he or she is charged. If the
37 court finds that the defendant should be acquitted by reason of

1 insanity, it shall enter specific findings in substantially the same
2 form as set forth in RCW 10.77.040 (~~as now or hereafter amended~~). If
3 the motion is denied, the question may be submitted to the trier of
4 fact in the same manner as other issues of fact.

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

7 (1)(a) If at any time during the pendency of an action and prior to
8 judgment(~~(7)~~) the court finds, following a report as provided in RCW
9 10.77.060, (~~as now or hereafter amended, that the~~) a defendant is
10 incompetent(~~(7)~~) the court shall order the proceedings against the
11 defendant be stayed(~~(7)~~) except as provided in subsection (~~(+5)~~) (7)
12 of this section(~~(7 and 7)~~).

13 (b) If the defendant is charged with a felony and determined to be
14 incompetent, (~~may~~) the court shall commit the defendant to the
15 custody of the secretary, who shall place such defendant in an
16 appropriate facility of the department for evaluation and treatment, or
17 the court may alternatively order the defendant to undergo evaluation
18 and treatment at some other facility as determined by the department,
19 or under the guidance and control of (~~some other~~) a professional
20 person, until he or she has regained the competency necessary to
21 understand the proceedings against him or her and assist in his or her
22 own defense, but in any event, for no longer than a period of ninety
23 days.

24 (c) A defendant found incompetent shall be evaluated at the
25 direction of the secretary and a determination made whether the
26 defendant is developmentally disabled. Such evaluation and
27 determination shall be accomplished as soon as possible following the
28 court's placement of the defendant in the custody of the secretary.
29 When appropriate, and subject to available funds, if the defendant is
30 determined to be developmentally disabled, he or she may be placed in
31 a program specifically reserved for the treatment and training of
32 persons with developmental disabilities where the defendant shall have
33 the right to habilitation according to an individualized service plan
34 specifically developed for the particular needs of the defendant. The
35 program shall be separate from programs serving persons involved in any
36 other treatment or habilitation program. The program shall be
37 appropriately secure under the circumstances and shall be administered
38 by developmental disabilities professionals who shall direct the

1 habilitation efforts. The program shall provide an environment
2 affording security appropriate with the charged criminal behavior and
3 necessary to protect the public safety. The department may limit
4 admissions of such persons to this specialized program in order to
5 ensure that expenditures for services do not exceed amounts
6 appropriated by the legislature and allocated by the department for
7 such services. The department may establish admission priorities in
8 the event that the number of eligible persons exceeds the limits set by
9 the department. A copy of the report shall be sent to the facility.

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

11 (A) Charged with a nonfelony crime and has: (I) A history of one
12 or more violent acts, or a pending charge of one or more violent acts;
13 or (II) been previously acquitted by reason of insanity or been
14 previously found incompetent under this chapter with regard to an
15 alleged offense involving actual, threatened, or attempted physical
16 harm to a person; and

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

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

19 (I) At a secure mental health facility in the custody of the department
20 or an agency designated by the department for mental health treatment
21 and restoration of competency. The placement shall not exceed fourteen
22 days in addition to any unused time of the evaluation under RCW
23 10.77.060. The fourteen-day period shall be considered to include only
24 the time the defendant is actually at the facility and shall be in
25 addition to reasonable time for transport to or from the facility; (II)
26 on conditional release for up to ninety days for mental health
27 treatment and restoration of competency; or (III) any combination of
28 (d)(i)(C)(I) and (II) of this subsection.

29 (ii) At the end of the mental health treatment and restoration
30 period in (d)(i) of this subsection, or at any time a professional
31 person determines competency has been, or is unlikely to be, restored
32 the defendant shall be returned to court for a hearing. If, after
33 notice and hearing, competency has been restored, the stay entered
34 under (a) of this subsection shall be lifted. If competency has not
35 been restored, the proceedings shall be dismissed. If the court
36 concludes that competency has not been restored, but that further
37 treatment within the time limits established by (d)(i) of this
38 subsection is likely to restore competency, the court may order that
39 treatment for purposes of competency restoration be continued. Such

1 treatment may not extend beyond the combination of time provided for in
2 (d)(i)(C)(I) and (II) of this subsection.

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

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

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

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

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

37 (2)) (3) If the court finds by a preponderance of the evidence
38 that ((the)) a defendant charged with a felony is incompetent, the
39 court shall have the option of extending the order of commitment or

1 alternative treatment for an additional ninety-day period, but it must
2 at the time of extension set a date for a prompt hearing to determine
3 the defendant's competency before the expiration of the second ninety-
4 day period. The defendant, the defendant's attorney, or the
5 prosecutor(~~(, or the judge)~~) shall have the right to demand that the
6 hearing (~~(on or before the expiration of the second ninety day period)~~)
7 be before a jury. No extension shall be ordered for a second ninety-
8 day period, nor for any subsequent period as provided in subsection
9 (~~(+3)~~) (4) of this section if the defendant's incompetence has been
10 determined by the secretary to be solely the result of a developmental
11 disability which is such that competence is not reasonably likely to be
12 regained during an extension. (~~(If no demand is made, the hearing~~
13 ~~shall be before the court. The court or jury shall determine whether~~
14 ~~or not the defendant has become competent.~~

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

37 (~~(+4)~~) (5) If the defendant is referred to the county designated
38 mental health professional for consideration of initial detention
39 proceedings under chapter 71.05 RCW pursuant to this chapter, the

1 county designated mental health professional shall provide prompt
2 written notification of the results of the determination whether to
3 commence initial detention proceedings under chapter 71.05 RCW, and
4 whether the person was detained. The notification shall be provided to
5 the court in which the criminal action was pending, the prosecutor, the
6 defense attorney in the criminal action, and the facility that
7 evaluated the defendant for competency.

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

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

17 ~~((6))~~ (8) At or before the conclusion of any commitment period
18 provided for by this section, the facility providing evaluation and
19 treatment shall provide to the court a written report of examination
20 which meets the requirements of RCW 10.77.060(3).

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

23 (1) If a defendant is acquitted of a ~~((felony))~~ crime by reason of
24 insanity, and it is found that he or she is not a substantial danger to
25 other persons, and does not present a substantial likelihood of
26 committing ~~((felonious))~~ criminal acts jeopardizing public safety or
27 security, unless kept under further control by the court or other
28 persons or institutions, the court shall direct the defendant's final
29 discharge. If it is found that such defendant is a substantial danger
30 to other persons, or presents a substantial likelihood of committing
31 ~~((felonious))~~ criminal acts jeopardizing public safety or security,
32 unless kept under further control by the court or other persons or
33 institutions, the court shall order his or her hospitalization, or any
34 appropriate alternative treatment less restrictive than detention in a
35 state mental hospital, pursuant to the terms of this chapter.

36 (2) If the defendant has been found not guilty by reason of
37 insanity and a substantial danger, or presents a substantial likelihood
38 of committing ~~((felonious))~~ criminal acts jeopardizing public safety or

1 security, so as to require treatment then the secretary shall
2 immediately cause the defendant to be evaluated to ascertain if the
3 defendant is developmentally disabled. When appropriate, and subject
4 to available funds, the defendant may be committed to a program
5 specifically reserved for the treatment and training of developmentally
6 disabled persons. A person so committed shall receive habilitation
7 services according to an individualized service plan specifically
8 developed to treat the behavior which was the subject of the criminal
9 proceedings. The treatment program shall be administered by
10 developmental disabilities professionals and others trained
11 specifically in the needs of developmentally disabled persons. The
12 treatment program shall provide physical security to a degree
13 consistent with the finding that the defendant is dangerous and may
14 incorporate varying conditions of security and alternative sites when
15 the dangerousness of any particular defendant makes this necessary.
16 The department may limit admissions to this specialized program in
17 order to ensure that expenditures for services do not exceed amounts
18 appropriated by the legislature and allocated by the department for
19 such services. The department may establish admission priorities in
20 the event that the number of eligible persons exceeds the limits set by
21 the department.

22 (3) If it is found that such defendant is not a substantial danger
23 to other persons, and does not present a substantial likelihood of
24 committing ((felonious)) criminal acts jeopardizing public safety or
25 security, but that he or she is in need of control by the court or
26 other persons or institutions, the court shall direct the defendant's
27 conditional release. ((If the defendant is acquitted by reason of
28 insanity of a crime which is not a felony, the court shall order the
29 defendant's release or order the defendant's continued custody only for
30 a reasonable time to allow the county designated mental health
31 professional to evaluate the individual and to proceed with civil
32 commitment pursuant to chapter 71.05 RCW, if considered appropriate.))

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

35 Each person committed to a hospital or other facility or
36 conditionally released pursuant to this chapter shall have a current
37 examination of his or her mental condition made by one or more experts
38 or professional persons at least once every six months. ((Said)) The

1 person may retain, or if the person is indigent and so requests, the
2 court may appoint a qualified expert or professional person to examine
3 him or her, and such expert or professional person shall have access to
4 all hospital records concerning the person. In the case of a committed
5 or conditionally released person who is developmentally disabled, the
6 expert shall be a developmental disabilities professional. The
7 secretary, upon receipt of the periodic report, shall provide written
8 notice to the court of commitment of compliance with the requirements
9 of this section.

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

12 (1) Persons examined pursuant to RCW 10.77.140(~~(, as now or~~
13 ~~hereafter amended,)~~) may make application to the secretary for
14 conditional release. The secretary shall, after considering the
15 reports of experts or professional persons conducting the examination
16 pursuant to RCW 10.77.140, forward to the court of the county which
17 ordered the person's commitment the person's application for
18 conditional release as well as the secretary's recommendations
19 concerning the application and any proposed terms and conditions upon
20 which the secretary reasonably believes the person can be conditionally
21 released. Conditional release may also contemplate partial release for
22 work, training, or educational purposes.

23 (2) The court of the county which ordered the person's commitment,
24 upon receipt of an application for conditional release with the
25 secretary's recommendation for conditional release, shall within thirty
26 days schedule a hearing. The court may schedule a hearing on
27 applications recommended for disapproval by the secretary. The
28 prosecuting attorney shall represent the state at such hearings and
29 shall have the right to have the patient examined by an expert or
30 professional person of the prosecuting attorney's choice. If the
31 committed person is indigent, and he or she so requests, the court
32 shall appoint a qualified expert or professional person to examine the
33 person on his or her behalf. The issue to be determined at such a
34 hearing is whether or not the person may be released conditionally
35 without substantial danger to other persons, or substantial likelihood
36 of committing (~~felonious~~) criminal acts jeopardizing public safety or
37 security. The court, after the hearing, shall rule on the secretary's
38 recommendations, and if it disapproves of conditional release, may do

1 so only on the basis of substantial evidence. The court may modify the
2 suggested terms and conditions on which the person is to be
3 conditionally released. Pursuant to the determination of the court
4 after hearing, the committed person shall thereupon be released on such
5 conditions as the court determines to be necessary, or shall be
6 remitted to the custody of the secretary. If the order of conditional
7 release includes a requirement for the committed person to report to a
8 community corrections officer, the order shall also specify that the
9 conditionally released person shall be under the supervision of the
10 secretary of corrections or such person as the secretary of corrections
11 may designate and shall follow explicitly the instructions of the
12 secretary of corrections including reporting as directed to a community
13 corrections officer, remaining within prescribed geographical
14 boundaries, and notifying the community corrections officer prior to
15 making any change in the offender's address or employment.

16 (3) If the court determines that receiving regular or periodic
17 medication or other medical treatment shall be a condition of the
18 committed person's release, then the court shall require him or her to
19 report to a physician or other medical or mental health practitioner
20 for the medication or treatment. In addition to submitting any report
21 required by RCW 10.77.160, the physician or other medical or mental
22 health practitioner shall immediately upon the released person's
23 failure to appear for the medication or treatment report the failure to
24 the court, to the prosecuting attorney of the county in which the
25 released person was committed, and to the supervising community
26 corrections officer.

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

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

32 Each person conditionally released pursuant to RCW 10.77.150(~~(as~~
33 ~~now or hereafter amended,~~) shall have his or her case reviewed by the
34 court which conditionally released him or her no later than one year
35 after such release and no later than every two years thereafter, such
36 time to be scheduled by the court. Review may occur in a shorter time
37 or more frequently, if the court, in its discretion, on its own motion,
38 or on motion of the person, the secretary of social and health

1 services, the secretary of corrections, medical or mental health
2 practitioner, or the prosecuting attorney, so determines. The sole
3 question to be determined by the court is whether the person shall
4 continue to be conditionally released. The court in making its
5 determination shall be aided by the periodic reports filed pursuant to
6 RCW 10.77.140(~~(, as now or hereafter amended,)~~) and ((RCW)) 10.77.160,
7 and the opinions of the secretary (~~(of social and health services)~~) and
8 other experts or professional persons.

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

11 (1) Any person submitting reports pursuant to RCW 10.77.160, the
12 secretary, or the prosecuting attorney may petition the court to, or
13 the court on its own motion may schedule an immediate hearing for the
14 purpose of modifying the terms of conditional release if the petitioner
15 or the court believes the released person is failing to adhere to the
16 terms and conditions of his or her conditional release or is in need of
17 additional care and treatment.

18 (2) If the prosecuting attorney, the secretary of social and health
19 services, the secretary of corrections, or the court, after examining
20 the report filed with them pursuant to RCW 10.77.160, or based on other
21 information received by them, reasonably believes that a conditionally
22 released person is failing to adhere to the terms and conditions of his
23 or her conditional release the court or secretary of social and health
24 services or the secretary of corrections may order that the
25 conditionally released person be apprehended and taken into custody
26 until such time as a hearing can be scheduled to determine the facts
27 and whether or not the person's conditional release should be revoked
28 or modified. The court shall be notified before the close of the next
29 judicial day of the apprehension. Both the prosecuting attorney and
30 the conditionally released person shall have the right to request an
31 immediate mental examination of the conditionally released person. If
32 the conditionally released person is indigent, the court or secretary
33 of social and health services or the secretary of corrections or their
34 designees shall, upon request, assist him or her in obtaining a
35 qualified expert or professional person to conduct the examination.

36 (3) If the hospital or facility designated to provide outpatient
37 care determines that a conditionally released person presents a threat
38 to public safety, the hospital or facility shall immediately notify the

1 secretary of social and health services or the secretary of corrections
2 or their designees. The secretary shall order that the conditionally
3 released person be apprehended and taken into custody.

4 (4) The court, upon receiving notification of the apprehension,
5 shall promptly schedule a hearing. The issue to be determined is
6 whether the conditionally released person did or did not adhere to the
7 terms and conditions of his or her release, or whether the person
8 presents a threat to public safety. Pursuant to the determination of
9 the court upon such hearing, the conditionally released person shall
10 either continue to be conditionally released on the same or modified
11 conditions or his or her conditional release shall be revoked and he or
12 she shall be committed subject to release only in accordance with
13 provisions of this chapter.

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

16 (1) Upon application by the committed or conditionally released
17 person, the secretary shall determine whether or not reasonable grounds
18 exist for final discharge. In making this determination, the secretary
19 may consider the reports filed under RCW 10.77.060, 10.77.110,
20 10.77.140, and 10.77.160, and other reports and evaluations provided by
21 professionals familiar with the case. If the secretary approves the
22 final discharge he or she then shall authorize (~~said~~) the person to
23 petition the court.

24 (2) The petition shall be served upon the court and the prosecuting
25 attorney. The court, upon receipt of the petition for final discharge,
26 shall within forty-five days order a hearing. Continuance of the
27 hearing date shall only be allowed for good cause shown. The
28 prosecuting attorney shall represent the state, and shall have the
29 right to have the petitioner examined by an expert or professional
30 person of the prosecuting attorney's choice. If the petitioner is
31 indigent, and the person so requests, the court shall appoint a
32 qualified expert or professional person to examine him or her. If the
33 petitioner is developmentally disabled, the examination shall be
34 performed by a developmental disabilities professional. The hearing
35 shall be before a jury if demanded by either the petitioner or the
36 prosecuting attorney. The burden of proof shall be upon the petitioner
37 to show by a preponderance of the evidence that the petitioner no
38 longer presents, as a result of a mental disease or defect, a

1 substantial danger to other persons, or a substantial likelihood of
2 committing ((felonious)) criminal acts jeopardizing public safety or
3 security, unless kept under further control by the court or other
4 persons or institutions.

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

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

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

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

1 which he or she was detained, hospitalized, or committed pursuant to
2 this chapter.

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

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

11 NEW SECTION. Sec. 47. A new section is added to chapter 10.77 RCW
12 to read as follows:

13 A copy of relevant records and reports as defined by the
14 department, in consultation with the department of corrections, made
15 pursuant to this chapter, and including relevant information necessary
16 to meet the requirements of section 35(2) of this act and RCW
17 10.77.090, shall accompany the defendant upon transfer to a mental
18 health facility or a correctional institution or facility.

19 NEW SECTION. Sec. 48. A new section is added to chapter 72.10 RCW
20 to read as follows:

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

26 The secretary shall inquire of the treatment provider if he or she
27 wishes to be notified of the release of the person from confinement,
28 for purposes of offering treatment upon the inmate's release. If the
29 treatment provider wishes to be notified of the inmate's release, the
30 secretary shall attempt to provide such notice at least seven days
31 prior to release.

32 At the time of an inmate's release if the secretary is unable to
33 locate the treatment provider, the secretary shall notify the regional
34 support network in the county the inmate will most likely reside
35 following release.

1 If the secretary has, prior to the release from the facility,
2 evaluated the inmate and determined he or she requires postrelease
3 mental health treatment, a copy of relevant records and reports
4 relating to the inmate's mental health treatment or status shall be
5 promptly made available to the offender's present or future treatment
6 provider. The secretary shall determine which records and reports are
7 relevant and may provide a summary in lieu of copies of the records.

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

10 For purposes of this chapter, the definitions of terms in this
11 section shall apply.

12 (1) "Criminal history record information" means information
13 contained in records collected by criminal justice agencies, other than
14 courts, on individuals, consisting of identifiable descriptions and
15 notations of arrests, detentions, indictments, informations, or other
16 formal criminal charges, and any disposition arising therefrom,
17 including acquittals by reason of insanity, dismissals based on lack of
18 competency, sentences, correctional supervision, and release.

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

24 (a) Posters, announcements, or lists for identifying or
25 apprehending fugitives or wanted persons;

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

29 (c) Court indices and records of public judicial proceedings, court
30 decisions, and opinions, and information disclosed during public
31 judicial proceedings;

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

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

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

5 (g) Announcements of executive clemency.

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

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

16 (4) "Conviction or other disposition adverse to the subject" means
17 any disposition of charges (~~except~~) other than: (a) A decision not
18 to prosecute(~~()~~); (b) a dismissal(~~()~~); or (c) acquittal (~~except when~~
19 ~~the~~); with the following exceptions, which shall be considered
20 dispositions adverse to the subject: An acquittal (~~is~~) due to a
21 finding of not guilty by reason of insanity and a dismissal by reason
22 of incompetency, pursuant to chapter 10.77 RCW(~~and the person was~~
23 ~~committed pursuant to chapter 10.77 RCW: PROVIDED, HOWEVER, That~~);
24 and a dismissal entered after a period of probation, suspension, or
25 deferral of sentence (~~shall be considered a disposition adverse to the~~
26 ~~subject~~)).

27 (5) "Criminal justice agency" means: (a) A court; or (b) a
28 government agency which performs the administration of criminal justice
29 pursuant to a statute or executive order and which allocates a
30 substantial part of its annual budget to the administration of criminal
31 justice.

32 (6) "The administration of criminal justice" means performance of
33 any of the following activities: Detection, apprehension, detention,
34 pretrial release, post-trial release, prosecution, adjudication,
35 correctional supervision, or rehabilitation of accused persons or
36 criminal offenders. The term also includes criminal identification
37 activities and the collection, storage, dissemination of criminal
38 history record information, and the compensation of victims of crime.

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

3 (8) "Dissemination" means disclosing criminal history record
4 information or disclosing the absence of criminal history record
5 information to any person or agency outside the agency possessing the
6 information, subject to the following exceptions:

7 (a) When criminal justice agencies jointly participate in the
8 maintenance of a single record keeping department as an alternative to
9 maintaining separate records, the furnishing of information by that
10 department to personnel of any participating agency is not a
11 dissemination;

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

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

18 NEW SECTION. Sec. 50. A new section is added to chapter 10.77 RCW
19 to read as follows:

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

24 NEW SECTION. Sec. 51. The code reviser shall alphabetize the
25 definitions in RCW 10.77.010 and correct any references.

26 NEW SECTION. Sec. 52. The following acts or parts of acts are
27 each repealed:

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

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

30 NEW SECTION. Sec. 53. This act takes effect July 1, 1998, except
31 for sections 18, 35, 38, and 39 of this act, which take effect March 1,
32 1999.

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

1 (a) Whether there has been a reduction in recidivism for mentally
2 ill offenders who are felons or who meet the criteria specified in RCW
3 10.77.090(1)(d) and received mental health services as a result of the
4 provisions of chapters 10.77 and 71.05 RCW.

5 (b) The number of nonfelony offenders who have been referred to
6 competency restoration under RCW 10.77.090(1)(d)(i)(C) and the
7 percentage of such offenders who have been restored to competency
8 within the allotted time for felons, nonfelony offenders meeting the
9 criteria under RCW 10.77.090(1)(d), and the nonfelony offenders who do
10 not meet this criteria.

11 (c) Whether the information-sharing provisions of this act are
12 adequate to provide necessary information to the affected parties. The
13 analysis shall include findings as to whether the flow of information
14 is resulting in the efficient usage of the information and whether
15 there are revisions in the flow which would better allow the courts,
16 professional persons, and parties to proceedings to make better use of
17 the information.

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

20 NEW SECTION. **Sec. 55.** The department of corrections shall report
21 to the fiscal committees of the legislature on the efficacy of the
22 regional support networks in implementing the provisions of this act.
23 Such report shall be submitted annually on or before September 30th and
24 shall include information about the administrative expenses of the
25 regional support networks.

26 NEW SECTION. **Sec. 56.** RCW 10.77.005 is recodified within chapter
27 10.77 RCW after RCW 10.77.090.

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

33 NEW SECTION. **Sec. 58.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

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

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

8 NEW SECTION. **Sec. 61.** The joint legislative audit and review
9 committee shall conduct an evaluation of the efficiency and
10 effectiveness of this act in meeting its stated goals. Such an
11 evaluation shall include the operation of the state mental hospitals
12 and the regional support networks, as well as any other appropriate
13 entity. The joint legislative audit and review committee shall prepare
14 an interim report of its findings which shall be delivered to the
15 appropriate legislative committees of the house of representatives and
16 the senate no later than September 1, 2000. In addition, the joint
17 legislative audit and review committee shall prepare a final report of
18 its findings which shall be delivered to the appropriate legislative
19 committees of the house of representatives and the senate no later than
20 January 1, 2001."

21 Correct the title.

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