

2 **2SSB 6214** - H COMM AMD **ADOPTED 3-6-98**

3 By Committee on Criminal Justice & Corrections

4

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))~~);

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

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

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

25 ~~((+4))~~ (5) "Department" means the department of social and health  
26 services;

27 ~~((+5))~~ (6) "Developmental disabilities professional" means a  
28 person who has specialized training and three years of experience in  
29 directly treating or working with persons with developmental  
30 disabilities and is a psychiatrist, psychologist, or social worker, and  
31 such other developmental disabilities professionals as may be defined  
32 by rules adopted by the secretary;

33 ~~((+6))~~ (7) "Developmental disability" means that condition defined  
34 in RCW 71A.10.020(2);

35 ~~((+7))~~ (8) "Evaluation and treatment facility" means any facility  
36 which can provide directly, or by direct arrangement with other public  
37 or private agencies, emergency evaluation and treatment, outpatient  
38 care, and timely and appropriate inpatient care to persons suffering

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

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

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

23 ~~((+10+))~~ (11) "History of one or more violent acts" refers to the  
24 period of time ten years prior to the filing of a petition under this  
25 chapter, excluding any time spent, but not any violent acts committed,  
26 in a mental health facility or in confinement as a result of a criminal  
27 conviction;

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

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

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

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

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

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

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

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

9 ~~((11))~~ (13) "Judicial commitment" means a commitment by a court  
10 pursuant to the provisions of this chapter;

11 ~~((12))~~ (14) "Likelihood of serious harm" means:

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

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

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

27 ~~((14))~~ (16) "Mental health professional" means a psychiatrist,  
28 psychologist, psychiatric nurse, or social worker, and such other  
29 mental health professionals as may be defined by rules adopted by the  
30 secretary pursuant to the provisions of this chapter;

31 ~~((15))~~ (17) "Peace officer" means a law enforcement official of  
32 a public agency or governmental unit, and includes persons specifically  
33 given peace officer powers by any state law, local ordinance, or  
34 judicial order of appointment;

35 ~~((16))~~ (18) "Private agency" means any person, partnership,  
36 corporation, or association not defined as a public agency, whether or  
37 not financed in whole or in part by public funds, which constitutes an  
38 evaluation and treatment facility or private institution, hospital, or

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

3 ~~((17))~~ (19) "Professional person" ~~((shall))~~ means a mental health  
4 professional ~~((, as above defined,))~~ and shall also mean a physician,  
5 registered nurse, and such others as may be defined by rules adopted by  
6 the secretary pursuant to the provisions of this chapter;

7 ~~((18))~~ (20) "Psychiatrist" means a person having a license as a  
8 physician and surgeon in this state who has in addition completed three  
9 years of graduate training in psychiatry in a program approved by the  
10 American medical association or the American osteopathic association  
11 and is certified or eligible to be certified by the American board of  
12 psychiatry and neurology;

13 ~~((19))~~ (21) "Psychologist" means a person who has been licensed  
14 as a psychologist pursuant to chapter 18.83 RCW;

15 ~~((20))~~ (22) "Public agency" means any evaluation and treatment  
16 facility or institution, hospital, or sanitarium which is conducted  
17 for, or includes a department or ward conducted for, the care and  
18 treatment of persons who are mentally ill or deranged, if the agency is  
19 operated directly by, federal, state, county, or municipal government,  
20 or a combination of such governments;

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

23 ~~((22))~~ (24) "Secretary" means the secretary of the department of  
24 social and health services, or his or her designee;

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

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

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

33 Persons suffering from a mental disorder may not be involuntarily  
34 committed for treatment of such disorder except pursuant to provisions  
35 of this chapter, chapter 10.77 RCW ~~((or its successor))~~, chapter 71.06  
36 RCW, chapter 71.34 RCW, transfer pursuant to RCW 72.68.031 through  
37 72.68.037, or pursuant to court ordered evaluation and treatment not to  
38 exceed ninety days pending a criminal trial or sentencing.

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

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

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

33       Nothing in this chapter shall be construed to limit the right of  
34 any person to apply voluntarily to any public or private agency or  
35 practitioner for treatment of a mental disorder, either by direct  
36 application or by referral. Any person voluntarily admitted for  
37 inpatient treatment to any public or private agency shall be released  
38 immediately upon his or her request. Any person voluntarily admitted

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

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

35 In any judicial proceeding for involuntary commitment or detention,  
36 or in any proceeding challenging such commitment or detention, the  
37 prosecuting attorney for the county in which the proceeding was  
38 initiated shall represent the individuals or agencies petitioning for

1 commitment or detention and shall defend all challenges to such  
2 commitment or detention: PROVIDED, That (~~after January 1, 1980,~~) the  
3 attorney general shall represent and provide legal services and advice  
4 to state hospitals or institutions with regard to all provisions of and  
5 proceedings under this chapter except in proceedings initiated by such  
6 hospitals and institutions seeking fourteen day detention.

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

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

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



1 order shall also designate retained counsel or, if counsel is appointed  
2 from a list provided by the court, the name, business address, and  
3 telephone number of the attorney appointed to represent the person.

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

26 (d) If the person ordered to appear does appear on or before the  
27 date and time specified, the evaluation and treatment facility may  
28 admit such person as required by RCW 71.05.170 or may provide treatment  
29 on an outpatient basis. If the person ordered to appear fails to  
30 appear on or before the date and time specified, the evaluation and  
31 treatment facility shall immediately notify the county designated  
32 mental health professional (~~((designated by the county))~~) who may notify  
33 a peace officer to take such person or cause such person to be taken  
34 into custody and placed in an evaluation and treatment facility.  
35 Should the county designated mental health professional notify a peace  
36 officer authorizing him or her to take a person into custody under the  
37 provisions of this subsection, he or she shall file with the court a  
38 copy of such authorization and a notice of detention. At the time such  
39 person is taken into custody there shall commence to be served on such

1 person, his or her guardian, and conservator, if any, a copy of the  
2 original order together with a notice of detention, a notice of rights,  
3 and a petition for initial detention.

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (1) Whenever any person is detained for evaluation and treatment  
37 pursuant to this chapter, both the person and, if possible, a

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

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

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

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

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

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

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

37 (3) The judicial hearing described in subsection (1) of this  
38 section is hereby authorized, and shall be held according to the

1 provisions of subsection (1) of this section and rules promulgated by  
2 the supreme court.

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

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

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

34 An evaluation and treatment center admitting any person pursuant to  
35 this chapter whose physical condition reveals the need for  
36 hospitalization shall assure that such person is transferred to an  
37 appropriate hospital for treatment. Notice of such fact shall be given  
38 to the court, the designated attorney, and the (~~((designated))~~) county

1 designated mental health professional and the court shall order such  
2 continuance in proceedings under this chapter as may be necessary, but  
3 in no event may this continuance be more than fourteen days.

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

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

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

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

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

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

1 disabled and shall set forth the less restrictive alternative proposed  
2 by the facility; and

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

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

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

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

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

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

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

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

35 **Sec. 15.** RCW 71.05.280 and 1997 c 112 s 22 are each amended to  
36 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 ~~((high))~~ 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       **Sec. 27.**    RCW 10.77.005 and 1989 c 420 s 1 are each amended to read  
27 as follows:

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

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

19 **Sec. 28.** RCW 10.77.010 and 1993 c 31 s 4 are each amended to read  
20 as follows:

21 As used in this chapter:

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

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

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

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

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

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

4 ~~((No condition of mind proximately induced by the voluntary act  
5 of a person charged with a crime shall constitute "insanity".~~

6 ~~(8))~~ (8) "Furlough" means an authorized leave of absence for a  
7 resident of a state institution operated by the department designated  
8 for the custody, care, and treatment of the criminally insane,  
9 consistent with an order of conditional release from the court under  
10 this chapter, without any requirement that the resident be accompanied  
11 by, or be in the custody of, any law enforcement or institutional  
12 staff, while on such unescorted leave.

13 ~~((9))~~ (8) "Developmental disability" means the condition defined  
14 in RCW 71A.10.020(2).

15 ~~((10))~~ (9) "Developmental disabilities professional" means a  
16 person who has specialized training and three years of experience in  
17 directly treating or working with persons with developmental  
18 disabilities and is a psychiatrist or psychologist, or a social worker,  
19 and such other developmental disabilities professionals as may be  
20 defined by rules adopted by the secretary.

21 ~~((11))~~ (10) "Habilitative services" means those services provided  
22 by program personnel to assist persons in acquiring and maintaining  
23 life skills and in raising their levels of physical, mental, social,  
24 and vocational functioning. Habilitative services include education,  
25 training for employment, and therapy. The habilitative process shall  
26 be undertaken with recognition of the risk to the public safety  
27 presented by the individual being assisted as manifested by prior  
28 charged criminal conduct.

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

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

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

37 (b) A psychologist licensed as a psychologist pursuant to chapter  
38 18.83 RCW(~~(-~~

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

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

4       (~~(15)~~) (12) "Individualized service plan" means a plan prepared  
5 by a developmental disabilities professional with other professionals  
6 as a team, for an individual with developmental disabilities, which  
7 shall state:

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

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

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

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

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

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

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

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

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

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

1       **Sec. 29.** RCW 10.77.020 and 1993 c 31 s 5 are each amended to read  
2 as follows:

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

12       (a) The nature of the charges;

13       (b) The statutory offense included within them;

14       (c) The range of allowable punishments thereunder;

15       (d) Possible defenses to the charges and circumstances in  
16 mitigation thereof; and

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

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

29       (3) ~~((Whenever any person has been committed under any provision of  
30 this chapter, or ordered to undergo alternative treatment following his  
31 or her acquittal of a crime charged by reason of insanity, such  
32 commitment or treatment cannot exceed the maximum possible penal  
33 sentence for any offense charged for which the person was acquitted by  
34 reason of insanity. If at the end of that period the person has not  
35 been finally discharged and is still in need of commitment or  
36 treatment, civil commitment proceedings may be instituted, if  
37 appropriate.~~

38       (4)) Any time the defendant is being examined by court appointed  
39 experts or professional persons pursuant to the provisions of this



1 chapter, the defendant shall be entitled to have his or her attorney  
2 present. The defendant may refuse to answer any question if he or she  
3 believes his or her answers may tend to incriminate him or her or form  
4 links leading to evidence of an incriminating nature.

5 NEW SECTION. **Sec. 30.** A new section is added to chapter 10.77 RCW  
6 to read as follows:

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

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

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

28 **Sec. 31.** RCW 10.77.030 and 1974 ex.s. c 198 s 3 are each amended  
29 to read as follows:

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

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

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

1       **Sec. 32.** RCW 10.77.040 and 1974 ex.s. c 198 s 4 are each amended  
2 to read as follows:

3       Whenever the issue of insanity is submitted to the jury, the court  
4 shall instruct the jury to return a special verdict in substantially  
5 the following form:

- |    | answer    |
|----|-----------|
|    | yes or no |
| 6  |           |
| 7  |           |
| 8  |           |
| 9  |           |
| 10 |           |
| 11 |           |
| 12 |           |
| 13 |           |
| 14 |           |
| 15 |           |
| 16 |           |
| 17 |           |
| 18 |           |
| 19 |           |
| 20 |           |
| 21 |           |
| 22 |           |
| 23 |           |
| 24 |           |
| 25 |           |
| 26 |           |
1. Did the defendant commit the act charged? . . . . .
  2. If your answer to number 1 is yes, do you acquit  
him or her 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~~)) criminal 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? . . . . .

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

29       (1)(a) Whenever a defendant has pleaded not guilty by reason of  
30 insanity, or there is reason to doubt his or her competency, the court  
31 on its own motion or on the motion of any party shall either appoint or  
32 request the secretary to designate at least two qualified experts or  
33 professional persons, one of whom shall be approved by the prosecuting  
34 attorney, to examine and report upon the mental condition of the  
35 defendant. At least one of the experts or professional persons  
36 appointed shall be a developmental disabilities professional if the  
37 court is advised by any party that the defendant may be developmentally  
38 disabled. For purposes of the examination, the court may order the

1 defendant committed to a hospital or other (~~suitable~~) suitably secure  
2 public or private mental health facility for a period of time necessary  
3 to complete the examination, but not to exceed fifteen days from the  
4 time of admission to the facility.

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

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

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

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

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

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

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

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

38 (f) An opinion as to whether the defendant is a substantial danger  
39 to other persons, or presents a substantial likelihood of committing

1 ((felonious)) criminal acts jeopardizing public safety or security,  
2 unless kept under further control by the court or other persons or  
3 institutions.

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

6 NEW SECTION. Sec. 34. A new section is added to chapter 10.77 RCW  
7 to read as follows:

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

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

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

34 (c) If the facility concludes, under RCW 10.77.060(3)(f), the  
35 person should be kept under further control, an evaluation shall be  
36 conducted of such person under chapter 71.05 RCW. The court shall  
37 order an evaluation be conducted by the appropriate county designated  
38 mental health professional: (i) Prior to release from confinement for

1 such person who is convicted, if sentenced to confinement for twenty-  
2 four months or less; (ii) for any person who is acquitted; or (iii) for  
3 any person whose charges are dismissed pursuant to RCW 10.77.090(4).

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

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

13 **Sec. 35.** RCW 10.77.070 and 1973 1st ex.s. c 117 s 7 are each  
14 amended to read as follows:

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

20 **Sec. 36.** RCW 10.77.080 and 1974 ex.s. c 198 s 7 are each amended  
21 to read as follows:

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

34 **Sec. 37.** RCW 10.77.090 and 1989 c 420 s 5 are each amended to read  
35 as follows:

1 (1)(a) If at any time during the pendency of an action and prior to  
2 judgment((~~7~~)) the court finds, following a report as provided in RCW  
3 10.77.060, ((~~as now or hereafter amended, that the~~)) a defendant is  
4 incompetent((~~7~~)) the court shall order the proceedings against the  
5 defendant be stayed((~~7~~)) except as provided in subsection ((~~+5~~)) (7)  
6 of this section((~~7~~ and ~~7~~)).

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

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

1 the event that the number of eligible persons exceeds the limits set by  
2 the department. A copy of the report shall be sent to the facility.

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

4 (A) Charged with a nonfelony crime and has: (I) A history of one  
5 or more violent acts, or a pending charge of one or more violent acts;  
6 or (II) been previously acquitted by reason of insanity or been  
7 previously found incompetent under this chapter with regard to an  
8 alleged offense involving actual, threatened, or attempted physical  
9 harm to a person; and

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

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

12 (I) At a secure mental health facility in the custody of the department  
13 or an agency designated by the department for mental health treatment  
14 and restoration of competency. The placement shall not exceed fourteen  
15 days in addition to any unused time of the evaluation under RCW  
16 10.77.060. The fourteen-day period shall be considered to include only  
17 the time the defendant is actually at the facility and shall be in  
18 addition to reasonable time for transport to or from the facility; (II)  
19 on conditional release for up to ninety days for mental health  
20 treatment and restoration of competency; or (III) any combination of  
21 (d)(i)(C)(I) and (II) of this subsection.

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

35 (iii)(A) If the proceedings are dismissed under (d)(ii) of this  
36 subsection and the defendant was on conditional release at the time of  
37 dismissal, the court shall order the county designated mental health  
38 professional within that county to evaluate the defendant pursuant to

1 chapter 71.05 RCW. The evaluation may be conducted in any location  
2 chosen by the professional.

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

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

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

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

31 (2)) (3) If the court finds by a preponderance of the evidence  
32 that ((the)) a defendant charged with a felony is incompetent, the  
33 court shall have the option of extending the order of commitment or  
34 alternative treatment for an additional ninety-day period, but it must  
35 at the time of extension set a date for a prompt hearing to determine  
36 the defendant's competency before the expiration of the second ninety-  
37 day period. The defendant, the defendant's attorney, or the  
38 prosecutor((, or the judge)) shall have the right to demand that the  
39 hearing ((on or before the expiration of the second ninety day period))



1 be before a jury. No extension shall be ordered for a second ninety-  
2 day period, nor for any subsequent period as provided in subsection  
3 ~~((+3))~~ (4) of this section if the defendant's incompetence has been  
4 determined by the secretary to be solely the result of a developmental  
5 disability which is such that competence is not reasonably likely to be  
6 regained during an extension. ~~((If no demand is made, the hearing  
7 shall be before the court. The court or jury shall determine whether  
8 or not the defendant has become competent.~~

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

31 ~~((+4))~~ (5) If the defendant is referred to the county designated  
32 mental health professional for consideration of initial detention  
33 proceedings under chapter 71.05 RCW pursuant to this chapter, the  
34 county designated mental health professional shall provide prompt  
35 written notification of the results of the determination whether to  
36 commence initial detention proceedings under chapter 71.05 RCW, and  
37 whether the person was detained. The notification shall be provided to  
38 the court in which the criminal action was pending, the prosecutor, the

1 defense attorney in the criminal action, and the facility that  
2 evaluated the defendant for competency.

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

6 ((+5)) (7) A defendant receiving medication for either physical or  
7 mental problems shall not be prohibited from standing trial, if the  
8 medication either enables the defendant to understand the proceedings  
9 against him or her and to assist in his or her own defense, or does not  
10 disable him or her from so understanding and assisting in his or her  
11 own defense.

12 ((+6)) (8) At or before the conclusion of any commitment period  
13 provided for by this section, the facility providing evaluation and  
14 treatment shall provide to the court a written report of examination  
15 which meets the requirements of RCW 10.77.060(3).

16 **Sec. 38.** RCW 10.77.110 and 1989 c 420 s 6 are each amended to read  
17 as follows:

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

31 (2) If the defendant has been found not guilty by reason of  
32 insanity and a substantial danger, or presents a substantial likelihood  
33 of committing ((felonious)) criminal acts jeopardizing public safety or  
34 security, so as to require treatment then the secretary shall  
35 immediately cause the defendant to be evaluated to ascertain if the  
36 defendant is developmentally disabled. When appropriate, and subject  
37 to available funds, the defendant may be committed to a program  
38 specifically reserved for the treatment and training of developmentally

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

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

28 **Sec. 39.** RCW 10.77.140 and 1989 c 420 s 8 are each amended to read  
29 as follows:

30 Each person committed to a hospital or other facility or  
31 conditionally released pursuant to this chapter shall have a current  
32 examination of his or her mental condition made by one or more experts  
33 or professional persons at least once every six months. ~~((Said))~~ The  
34 person may retain, or if the person is indigent and so requests, the  
35 court may appoint a qualified expert or professional person to examine  
36 him or her, and such expert or professional person shall have access to  
37 all hospital records concerning the person. In the case of a committed  
38 or conditionally released person who is developmentally disabled, the

1 expert shall be a developmental disabilities professional. The  
2 secretary, upon receipt of the periodic report, shall provide written  
3 notice to the court of commitment of compliance with the requirements  
4 of this section.

5 **Sec. 40.** RCW 10.77.150 and 1993 c 31 s 6 are each amended to read  
6 as follows:

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

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

1 remitted to the custody of the secretary. If the order of conditional  
2 release includes a requirement for the committed person to report to a  
3 community corrections officer, the order shall also specify that the  
4 conditionally released person shall be under the supervision of the  
5 secretary of corrections or such person as the secretary of corrections  
6 may designate and shall follow explicitly the instructions of the  
7 secretary of corrections including reporting as directed to a community  
8 corrections officer, remaining within prescribed geographical  
9 boundaries, and notifying the community corrections officer prior to  
10 making any change in the offender's address or employment.

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

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

25 **Sec. 41.** RCW 10.77.180 and 1993 c 31 s 9 are each amended to read  
26 as follows:

27 Each person conditionally released pursuant to RCW 10.77.150(~~(, as~~  
28 ~~now or hereafter amended,)~~) shall have his or her case reviewed by the  
29 court which conditionally released him or her no later than one year  
30 after such release and no later than every two years thereafter, such  
31 time to be scheduled by the court. Review may occur in a shorter time  
32 or more frequently, if the court, in its discretion, on its own motion,  
33 or on motion of the person, the secretary of social and health  
34 services, the secretary of corrections, medical or mental health  
35 practitioner, or the prosecuting attorney, so determines. The sole  
36 question to be determined by the court is whether the person shall  
37 continue to be conditionally released. The court in making its  
38 determination shall be aided by the periodic reports filed pursuant to

1 RCW 10.77.140(~~(, as now or hereafter amended,)~~) and ((RCW)) 10.77.160,  
2 and the opinions of the secretary (~~(of social and health services)~~) and  
3 other experts or professional persons.

4 **Sec. 42.** RCW 10.77.190 and 1993 c 31 s 10 are each amended to read  
5 as follows:

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

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

31 (3) If the hospital or facility designated to provide outpatient  
32 care determines that a conditionally released person presents a threat  
33 to public safety, the hospital or facility shall immediately notify the  
34 secretary of social and health services or the secretary of corrections  
35 or their designees. The secretary shall order that the conditionally  
36 released person be apprehended and taken into custody.

37 (4) The court, upon receiving notification of the apprehension,  
38 shall promptly schedule a hearing. The issue to be determined is

1 whether the conditionally released person did or did not adhere to the  
2 terms and conditions of his or her release, or whether the person  
3 presents a threat to public safety. Pursuant to the determination of  
4 the court upon such hearing, the conditionally released person shall  
5 either continue to be conditionally released on the same or modified  
6 conditions or his or her conditional release shall be revoked and he or  
7 she shall be committed subject to release only in accordance with  
8 provisions of this chapter.

9       **Sec. 43.** RCW 10.77.200 and 1993 c 31 s 11 are each amended to read  
10 as follows:

11       (1) Upon application by the committed or conditionally released  
12 person, the secretary shall determine whether or not reasonable grounds  
13 exist for final discharge. In making this determination, the secretary  
14 may consider the reports filed under RCW 10.77.060, 10.77.110,  
15 10.77.140, and 10.77.160, and other reports and evaluations provided by  
16 professionals familiar with the case. If the secretary approves the  
17 final discharge he or she then shall authorize (~~said~~) the person to  
18 petition the court.

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

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

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

11 **Sec. 44.** RCW 10.77.210 and 1993 c 31 s 12 are each amended to read  
12 as follows:

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



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

4       NEW SECTION. Sec. 45. In developing rules under RCW 10.77.210(2),  
5 the department shall implement the following legislative intent:  
6 Increasing public safety; and making decisions based on a person's  
7 current conduct and mental condition rather than the classification of  
8 the charges.

9       NEW SECTION. Sec. 46. A new section is added to chapter 10.77 RCW  
10 to read as follows:

11       A copy of relevant records and reports as defined by the  
12 department, in consultation with the department of corrections, made  
13 pursuant to this chapter, and including relevant information necessary  
14 to meet the requirements of section 34(2) of this act and RCW  
15 10.77.090, shall accompany the defendant upon transfer to a mental  
16 health facility or a correctional institution or facility.

17       NEW SECTION. Sec. 47. A new section is added to chapter 72.10 RCW  
18 to read as follows:

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

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

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

34       If the secretary has, prior to the release from the facility,  
35 evaluated the inmate and determined he or she requires postrelease  
36 mental health treatment, a copy of relevant records and reports

1 relating to the inmate's mental health treatment or status shall be  
2 promptly made available to the offender's present or future treatment  
3 provider. The secretary shall determine which records and reports are  
4 relevant and may provide a summary in lieu of copies of the records.

5 **Sec. 48.** RCW 10.97.030 and 1990 c 3 s 128 are each amended to read  
6 as follows:

7 For purposes of this chapter, the definitions of terms in this  
8 section shall apply.

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

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

21 (a) Posters, announcements, or lists for identifying or  
22 apprehending fugitives or wanted persons;

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

26 (c) Court indices and records of public judicial proceedings, court  
27 decisions, and opinions, and information disclosed during public  
28 judicial proceedings;

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

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

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

1 (g) Announcements of executive clemency.

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

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

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

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

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

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

37 (8) "Dissemination" means disclosing criminal history record  
38 information or disclosing the absence of criminal history record

1 information to any person or agency outside the agency possessing the  
2 information, subject to the following exceptions:

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

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

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

14 NEW SECTION. **Sec. 49.** The code reviser shall alphabetize the  
15 definitions in RCW 10.77.010 and correct any references.

16 NEW SECTION. **Sec. 50.** The following acts or parts of acts are  
17 each repealed:

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

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

20 NEW SECTION. **Sec. 51.** This act takes effect July 1, 1998, except  
21 for sections 18, 34, 37, and 38 of this act, which take effect March 1,  
22 1999.

23 NEW SECTION. **Sec. 52.** (1) The Washington state institute for  
24 public policy shall conduct an evaluation of this act to determine:

25 (a) Whether there has been a reduction in recidivism for mentally  
26 ill offenders who are felons or who meet the criteria specified in RCW  
27 10.77.090(1)(d) and received mental health services as a result of the  
28 provisions of chapters 10.77 and 71.05 RCW.

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

1 (c) Whether the information-sharing provisions of this act are  
2 adequate to provide necessary information to the affected parties. The  
3 analysis shall include findings as to whether the flow of information  
4 is resulting in the efficient usage of the information and whether  
5 there are revisions in the flow which would better allow the courts,  
6 professional persons, and parties to proceedings to make better use of  
7 the information.

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

10 NEW SECTION. **Sec. 53.** RCW 10.77.005 is recodified within chapter  
11 10.77 RCW after RCW 10.77.090.

12 NEW SECTION. **Sec. 54.** If any provision of this act or its  
13 application to any person or circumstance is held invalid, the  
14 remainder of the act or the application of the provision to other  
15 persons or circumstances is not affected."

16 Correct the title.

--- END ---