
SUBSTITUTE HOUSE BILL 2152

State of Washington

68th Legislature

2024 Regular Session

By House Civil Rights & Judiciary (originally sponsored by Representatives Thai, Mosbrucker, Reed, Ormsby, Taylor, Farivar, Goodman, Paul, Fosse, and Davis)

READ FIRST TIME 01/29/24.

1 AN ACT Relating to updating terminology related to criminal
2 insanity and competency to stand trial; amending RCW 10.77.050,
3 10.77.060, 10.77.065, 10.77.068, 10.77.072, 10.77.084, 10.77.0845,
4 10.77.074, 10.77.075, 10.77.078, 10.77.0885, 10.77.089, 10.77.092,
5 10.77.093, 10.77.0942, 10.77.095, 10.77.145, 10.77.200, 10.77.202,
6 10.77.250, 10.77.255, 10.77.270, 10.77.310, 10.77.320, 10.77.940,
7 4.24.550, 7.68.250, 9.41.098, 9.94B.080, 9.98.010, 9A.12.010,
8 10.01.160, 41.37.010, 70.02.230, 71.05.212, 71.05.212, 71.05.217,
9 71.05.280, 71.05.290, 71.05.300, 71.05.940, 71.09.010, 71.09.025,
10 71.09.030, 71.09.060, and 71A.12.025; reenacting and amending RCW
11 10.77.010, 10.77.086, 10.77.088, 10.97.030, 9.41.040, 9.41.047,
12 70.02.010, 71.05.020, 71.05.020, and 74.13.075; creating a new
13 section; and providing a contingent effective date.

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

15 **Sec. 1.** RCW 10.77.010 and 2023 c 453 s 2 and 2023 c 120 s 5 are
16 each reenacted and amended to read as follows:

17 As used in this chapter:

- 18 (1) "Admission" means acceptance based on medical necessity, of a
19 person as a patient.
- 20 (2) "Authority" means the Washington state health care authority.

1 (3) "Clinical intervention specialist" means a licensed
2 professional with prescribing authority who is employed by or
3 contracted with the department to provide direct services, enhanced
4 oversight and monitoring of the behavioral health status of in-
5 custody defendants who have been referred for evaluation or
6 restoration services related to (~~competency to stand~~) ability to
7 proceed to trial and who coordinate treatment options with forensic
8 navigators, the department, and jail health services.

9 (4) "Commitment" means the determination by a court that a person
10 should be detained for a period of either evaluation or treatment, or
11 both, in an inpatient or a less-restrictive setting.

12 (5) "Community behavioral health agency" has the same meaning as
13 "licensed or certified behavioral health agency" defined in RCW
14 71.24.025.

15 (6) "Conditional release" means modification of a court-ordered
16 commitment, which may be revoked upon violation of any of its terms.

17 (7) A "criminally insane" person means any person who has been
18 acquitted of a crime charged by reason of insanity, and thereupon
19 found to be a substantial danger to other persons or to present a
20 substantial likelihood of committing criminal acts jeopardizing
21 public safety or security unless kept under further control by the
22 court or other persons or institutions.

23 (8) "Department" means the state department of social and health
24 services.

25 (9) "Designated crisis responder" has the same meaning as
26 provided in RCW 71.05.020.

27 (10) "Detention" or "detain" means the lawful confinement of a
28 person, under the provisions of this chapter, pending evaluation.

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

35 (12) "Developmental disability" means the condition as defined in
36 RCW 71A.10.020.

37 (13) "Discharge" means the termination of hospital medical
38 authority. The commitment may remain in place, be terminated, or be
39 amended by court order.

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

8 (15) "Genuine doubt as to (~~competency~~) ability to proceed"
9 means that there is reasonable cause to believe, based upon actual
10 interactions with or observations of the defendant or information
11 provided by counsel, that a defendant is (~~incompetent to stand~~)
12 unable to proceed to trial.

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

21 (17) "History of one or more violent acts" means violent acts
22 committed during: (a) The 10-year period of time prior to the filing
23 of criminal charges; plus (b) the amount of time equal to time spent
24 during the 10-year period in a mental health facility or in
25 confinement as a result of a criminal conviction.

26 (18) "Immediate family member" means a spouse, child, stepchild,
27 parent, stepparent, grandparent, sibling, or domestic partner.

28 (19) (~~"Incompetency"~~) "Inability to proceed" means a person
29 lacks the (~~capacity~~) present ability to understand the nature of
30 the proceedings against him or her or to assist in his or her own
31 defense as a result of (~~mental disease or defect~~) a mental health
32 condition.

33 (20) "Indigent" means any person who is indigent as defined in
34 RCW 10.101.010, or financially unable to obtain counsel or other
35 necessary expert or professional services without causing substantial
36 hardship to the person or his or her family.

37 (21) "Individualized service plan" means a plan prepared by a
38 developmental disabilities professional with other professionals as a
39 team, for an individual with developmental disabilities, which shall
40 state:

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

3 (b) The conditions and strategies necessary to achieve the
4 purposes of habilitation;

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

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

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

10 (f) Where relevant in light of past criminal behavior and due
11 consideration for public safety, the criteria for proposed movement
12 to less-restrictive settings, criteria for proposed eventual release,
13 and a projected possible date for release; and

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

16 (22) "Professional person" means:

17 (a) A psychiatrist licensed as a physician and surgeon in this
18 state who has, in addition, completed three years of graduate
19 training in psychiatry in a program approved by the American medical
20 association or the American osteopathic association and is certified
21 or eligible to be certified by the American board of psychiatry and
22 neurology or the American osteopathic board of neurology and
23 psychiatry;

24 (b) A psychologist licensed as a psychologist pursuant to chapter
25 18.83 RCW;

26 (c) A psychiatric advanced registered nurse practitioner, as
27 defined in RCW 71.05.020; or

28 (d) A social worker with a master's or further advanced degree
29 from a social work educational program accredited and approved as
30 provided in RCW 18.320.010.

31 (23) "Release" means legal termination of the court-ordered
32 commitment under the provisions of this chapter.

33 (24) "Secretary" means the secretary of the department of social
34 and health services or his or her designee.

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

37 (26) "Treatment records" include registration and all other
38 records concerning persons who are receiving or who at any time have
39 received services for mental illness, which are maintained by the
40 department, by behavioral health administrative services

1 organizations and their staffs, by managed care organizations and
2 their staffs, and by treatment facilities. Treatment records do not
3 include notes or records maintained for personal use by a person
4 providing treatment services for the department, behavioral health
5 administrative services organizations, managed care organizations, or
6 a treatment facility if the notes or records are not available to
7 others.

8 (27) "Violent act" means behavior that: (a) (i) Resulted in; (ii)
9 if completed as intended would have resulted in; or (iii) was
10 threatened to be carried out by a person who had the intent and
11 opportunity to carry out the threat and would have resulted in,
12 homicide, nonfatal injuries, or substantial damage to property; or
13 (b) recklessly creates an immediate risk of serious physical injury
14 to another person. As used in this subsection, "nonfatal injuries"
15 means physical pain or injury, illness, or an impairment of physical
16 condition. "Nonfatal injuries" shall be construed to be consistent
17 with the definition of "bodily injury," as defined in RCW 9A.04.110.

18 (28) "Ability to proceed" or "able to proceed" refers to the
19 present ability of a person to understand the nature of the criminal
20 proceedings against him or her or to assist in his or her own
21 defense.

22 (29) "Restoration" or "restoration treatment" means a process by
23 which a defendant adjudicated unable to proceed undergoes court-
24 ordered mental health treatment combined with didactic instruction
25 for the purpose of rendering the defendant amenable to trial.

26 (30) "Unable to proceed" means the same as "inability to
27 proceed."

28 **Sec. 2.** RCW 10.77.050 and 1974 ex.s. c 198 s 5 are each amended
29 to read as follows:

30 No (~~incompetent~~) person who is unable to proceed shall be
31 tried, convicted, or sentenced for the commission of an offense so
32 long as such (~~incapacity~~) inability continues.

33 **Sec. 3.** RCW 10.77.060 and 2023 c 453 s 3 are each amended to
34 read as follows:

35 (1)(a) Whenever a defendant has pleaded not guilty by reason of
36 insanity, the court on its own motion or on the motion of any party
37 shall either appoint or request the secretary to designate a
38 qualified expert or professional person, who shall be approved by the

1 prosecuting attorney, to evaluate and report upon the mental
2 condition of the defendant.

3 (b) (i) Whenever there is a doubt as to (~~competency~~) ability to
4 proceed, the court on its own motion or on the motion of any party
5 shall first review the allegations of (~~incompetency~~) inability to
6 proceed. The court shall make a determination of whether sufficient
7 facts have been provided to form a genuine doubt as to (~~competency~~)
8 ability to proceed based on information provided by counsel, judicial
9 colloquy, or direct observation of the defendant. If a genuine doubt
10 as to (~~competency~~) ability to proceed exists, the court shall
11 either appoint or request the secretary to designate a qualified
12 expert or professional person, who shall be approved by the
13 prosecuting attorney, to evaluate and report upon the mental
14 condition of the defendant.

15 (ii) Nothing in this subsection (1)(b) is intended to require a
16 waiver of attorney-client privilege. Defense counsel may meet the
17 requirements under this subsection (1)(b) by filing a declaration
18 stating that they have reason to believe that (~~a competency~~) an
19 ability to proceed evaluation is necessary, and stating the basis on
20 which the defendant is believed to be (~~incompetent~~) unable to
21 proceed.

22 (c) The signed order of the court shall serve as authority for
23 the evaluator to be given access to all records held by any mental
24 health, medical, long-term services or supports, educational, or
25 correctional facility that relate to the present or past mental,
26 emotional, or physical condition of the defendant. If the court is
27 advised by any party that the defendant may have a developmental
28 disability, the evaluation must be performed by a developmental
29 disabilities professional and the evaluator shall have access to
30 records of the developmental disabilities administration of the
31 department. If the court is advised by any party that the defendant
32 may have dementia or another relevant neurocognitive disorder, the
33 evaluator shall have access to records of the aging and long-term
34 support administration of the department.

35 (d) The evaluator shall assess the defendant in a jail, detention
36 facility, in the community, or in court to determine whether a period
37 of inpatient commitment will be necessary to complete an accurate
38 evaluation. If inpatient commitment is needed, the signed order of
39 the court shall serve as authority for the evaluator to request the
40 jail or detention facility to transport the defendant to a hospital

1 or secure mental health facility for a period of commitment not to
2 exceed fifteen days from the time of admission to the facility.
3 Otherwise, the evaluator shall complete the evaluation.

4 (e) The court may commit the defendant for evaluation to a
5 hospital or secure mental health facility without an assessment if:

6 (i) The defendant is charged with murder in the first or second
7 degree; (ii) the court finds that it is more likely than not that an
8 evaluation in the jail will be inadequate to complete an accurate
9 evaluation; or (iii) the court finds that an evaluation outside the
10 jail setting is necessary for the health, safety, or welfare of the
11 defendant. The court shall not order an initial inpatient evaluation
12 for any purpose other than ~~((a competency))~~ an ability to proceed
13 evaluation.

14 (f) The order shall indicate whether, in the event the defendant
15 is committed to a hospital or secure mental health facility for
16 evaluation, all parties agree to waive the presence of the defendant
17 or to the defendant's remote participation at a subsequent
18 ~~((competency))~~ ability to proceed hearing or presentation of an
19 agreed order if the recommendation of the evaluator is for
20 continuation of the stay of criminal proceedings, or if the opinion
21 of the evaluator is that the defendant remains ~~((incompetent))~~ unable
22 to proceed and there is no remaining restoration period, and the
23 hearing is held prior to the expiration of the authorized commitment
24 period.

25 (g) When a defendant is ordered to be evaluated under this
26 subsection (1), or when a party or the court determines at first
27 appearance that an order for evaluation under this subsection will be
28 requested or ordered if charges are pursued, the court may delay
29 granting bail until the defendant has been evaluated for
30 ~~((competency))~~ ability to proceed or sanity and appears before the
31 court. Following the evaluation, in determining bail the court shall
32 consider: (i) Recommendations of the evaluator regarding the
33 defendant's ~~((competency))~~ ability to proceed, sanity, or diminished
34 capacity; (ii) whether the defendant has a recent history of one or
35 more violent acts; (iii) whether the defendant has previously been
36 acquitted by reason of insanity or found ~~((incompetent))~~ unable to
37 proceed; (iv) whether it is reasonably likely the defendant will fail
38 to appear for a future court hearing; and (v) whether the defendant
39 is a threat to public safety.

1 (h) If the defendant ordered to be evaluated under this
2 subsection (1) is charged with a serious traffic offense under RCW
3 9.94A.030, or a felony version of a serious traffic offense, the
4 prosecutor may make a motion to modify the defendant's conditions of
5 release to include a condition prohibiting the defendant from driving
6 during the pendency of the ~~((competency))~~ ability to proceed
7 evaluation period.

8 (2) The court may direct that a qualified expert or professional
9 person retained by or appointed for the defendant be permitted to
10 witness the evaluation authorized by subsection (1) of this section,
11 and that the defendant shall have access to all information obtained
12 by the court appointed experts or professional persons. The
13 defendant's expert or professional person shall have the right to
14 file his or her own report following the guidelines of subsection (3)
15 of this section. If the defendant is indigent, the court shall upon
16 the request of the defendant assist him or her in obtaining an expert
17 or professional person.

18 (3) The report of the evaluation shall include the following:

19 (a) A description of the nature of the evaluation;

20 (b) A diagnosis or description of the current mental status of
21 the defendant;

22 (c) If the defendant has a mental ~~((disease or defect))~~ health
23 condition, or has a developmental disability, an opinion as to
24 ~~((competency))~~ ability to proceed;

25 (d) If the defendant has indicated his or her intention to rely
26 on the defense of insanity pursuant to RCW 10.77.030, and an
27 evaluation and report by an expert or professional person has been
28 provided concluding that the defendant was criminally insane at the
29 time of the alleged offense, an opinion as to the defendant's sanity
30 at the time of the act, and an opinion as to whether the defendant
31 presents a substantial danger to other persons, or presents a
32 substantial likelihood of committing criminal acts jeopardizing
33 public safety or security, unless kept under further control by the
34 court or other persons or institutions, provided that no opinion
35 shall be rendered under this subsection (3)(d) unless the evaluator
36 or court determines that the defendant is ~~((competent to stand~~
37 ~~trial))~~ able to proceed to trial;

38 (e) When directed by the court, if an evaluation and report by an
39 expert or professional person has been provided concluding that the
40 defendant lacked the capacity at the time of the offense to form the

1 mental state necessary to commit the charged offense, an opinion as
2 to the capacity of the defendant to have a particular state of mind
3 which is an element of the offense charged;

4 (f) An opinion as to whether the defendant should be evaluated by
5 a designated crisis responder under chapter 71.05 RCW.

6 (4) The secretary may execute such agreements as appropriate and
7 necessary to implement this section and may choose to designate more
8 than one evaluator.

9 (5) In the event that a person remains in jail more than 21 days
10 after service on the department of a court order to transport the
11 person to a facility designated by the department for inpatient
12 (~~competency~~) restoration treatment, upon the request of any party
13 and with notice to all parties, the department shall perform (~~a~~
14 ~~competency to stand~~) an ability to proceed trial status check to
15 determine if the circumstances of the person have changed such that
16 the court should authorize an updated (~~competency~~) ability to
17 proceed evaluation. The status update shall be provided to the
18 parties and the court. Status updates may be provided at reasonable
19 intervals.

20 (6) If a finding of the (~~competency~~) ability to proceed
21 evaluation under this section or under RCW 10.77.084 is that the
22 individual is (~~not competent~~) unable to proceed due to an
23 intellectual or developmental disability, dementia, or traumatic
24 brain injury, the evaluator shall notify the department, which shall
25 refer the individual to the developmental disabilities administration
26 or the aging and long-term support administration of the department
27 for review of eligibility for services. The department shall inform
28 the forensic navigator about availability of services.

29 (7) If the expert or professional person appointed to perform (~~a~~
30 ~~competency~~) an ability to proceed evaluation in the community is not
31 able to complete the evaluation after two attempts at scheduling with
32 the defendant, the department shall submit a report to the court and
33 parties and include a date and time for another evaluation which must
34 be at least four weeks later. The court shall provide notice to the
35 defendant of the date and time of the evaluation. If the defendant
36 fails to appear at that appointment, the court shall recall the order
37 for (~~competency~~) ability to proceed evaluation and may issue a
38 warrant for the failure to appear.

1 **Sec. 4.** RCW 10.77.065 and 2023 c 453 s 20 are each amended to
2 read as follows:

3 (1) (a) (i) The expert conducting the evaluation shall provide his
4 or her report and recommendation to the court in which the criminal
5 proceeding is pending. For ~~((a—competency))~~ an ability to proceed
6 evaluation of a defendant who is released from custody, if the
7 evaluation cannot be completed within twenty-one days due to a lack
8 of cooperation by the defendant, the evaluator shall notify the court
9 that he or she is unable to complete the evaluation because of such
10 lack of cooperation.

11 (ii) A copy of the report and recommendation shall be provided to
12 the designated crisis responder, the prosecuting attorney, the
13 defense attorney, and the professional person at the local
14 correctional facility where the defendant is being held, or if there
15 is no professional person, to the person designated under (a) (iv) of
16 this subsection. Upon request, the evaluator shall also provide
17 copies of any source documents relevant to the evaluation to the
18 designated crisis responder.

19 (iii) Any facility providing inpatient services related to
20 ~~((competency))~~ ability to proceed shall discharge the defendant as
21 soon as the facility determines that the defendant is ~~((competent to~~
22 ~~stand trial))~~ able to proceed. Discharge shall not be postponed
23 during the writing and distribution of the evaluation report.
24 Distribution of an evaluation report by a facility providing
25 inpatient services shall ordinarily be accomplished within two
26 working days or less following the final evaluation of the defendant.
27 If the defendant is discharged to the custody of a local correctional
28 facility, the local correctional facility must continue the
29 medication regimen prescribed by the facility, when clinically
30 appropriate, unless the defendant refuses to cooperate with
31 medication and an involuntary medication order by the court has not
32 been entered.

33 (iv) If there is no professional person at the local correctional
34 facility, the local correctional facility shall designate a
35 professional person as defined in RCW 71.05.020 or, in cooperation
36 with the behavioral health administrative services organization, a
37 professional person at the behavioral health administrative services
38 organization to receive the report and recommendation.

39 (v) Upon commencement of a defendant's evaluation in the local
40 correctional facility, the local correctional facility must notify

1 the evaluator of the name of the professional person, or person
2 designated under (a)(iv) of this subsection, to receive the report
3 and recommendation.

4 (b) If the evaluator concludes, under RCW 10.77.060(3)(f), the
5 person should be evaluated by a designated crisis responder under
6 chapter 71.05 RCW, the court shall order such evaluation be conducted
7 prior to release from confinement when the person is acquitted or
8 convicted and sentenced to confinement for twenty-four months or
9 less, or when charges are dismissed pursuant to a finding of
10 (~~incompetent to stand~~) unable to proceed to trial.

11 (2) The designated crisis responder shall provide written
12 notification within twenty-four hours of the results of the
13 determination whether to commence proceedings under chapter 71.05
14 RCW. The notification shall be provided to the persons identified in
15 subsection (1)(a) of this section.

16 (3) The prosecuting attorney shall provide a copy of the results
17 of any proceedings commenced by the designated crisis responder under
18 subsection (2) of this section to the secretary.

19 (4) A facility conducting a civil commitment evaluation under RCW
20 10.77.086(7) or 10.77.088(6)(b) that makes a determination to release
21 the person instead of filing a civil commitment petition must provide
22 written notice to the prosecutor and defense attorney at least
23 twenty-four hours prior to release. The notice may be given by email,
24 facsimile, or other means reasonably likely to communicate the
25 information immediately.

26 (5) The fact of admission and all information and records
27 compiled, obtained, or maintained in the course of providing services
28 under this chapter may also be disclosed to the courts solely to
29 prevent the entry of any evaluation or treatment order that is
30 inconsistent with any order entered under chapter 71.05 RCW.

31 **Sec. 5.** RCW 10.77.068 and 2023 c 453 s 4 are each amended to
32 read as follows:

33 (1)(a) The legislature establishes a performance target of seven
34 days or fewer to extend an offer of admission to a defendant in
35 pretrial custody for inpatient (~~competency~~) ability to proceed
36 evaluation or inpatient (~~competency~~) restoration services, when
37 access to the services is legally authorized.

38 (b) The legislature establishes a performance target of 14 days
39 or fewer for the following services related to (~~competency to stand~~)

1 ~~trial~~) ability to proceed, when access to the services is legally
2 authorized:

3 (i) To complete (~~(a—competency)~~) an ability to proceed evaluation
4 in jail and distribute the evaluation report; and

5 (ii) To extend an offer of admission to a defendant ordered to be
6 committed to the department for placement in a facility operated by
7 or contracted by the department following dismissal of charges based
8 on (~~(incompetency to stand)~~) inability to proceed to trial under RCW
9 10.77.086.

10 (c) The legislature establishes a performance target of 21 days
11 or fewer to complete (~~(a—competency)~~) an ability to proceed
12 evaluation in the community and distribute the evaluation report.

13 (2)(a) A maximum time limit of seven days as measured from the
14 department's receipt of the court order, or a maximum time limit of
15 14 days as measured from signature of the court order, whichever is
16 shorter, is established to complete the services specified in
17 subsection (1)(a) of this section, subject to the limitations under
18 subsection (9) of this section.

19 (b) A maximum time limit of 14 days as measured from the
20 department's receipt of the court order, or a maximum time limit of
21 21 days as measured from signature of the court order, whichever is
22 shorter, is established to complete the services specified in
23 subsection (1)(b) of this section, subject to the limitations under
24 subsection (9) of this section.

25 (3) The legislature recognizes that these targets may not be
26 achievable in all cases, but intends for the department to manage,
27 allocate, and request appropriations for resources in order to meet
28 these targets whenever possible without sacrificing the accuracy and
29 quality of (~~(competency)~~) ability to proceed services.

30 (4) It shall be a defense to an allegation that the department
31 has exceeded the maximum time limits for completion of (~~(competency)~~)
32 ability to proceed services described in subsection (2) of this
33 section if the department can demonstrate by a preponderance of the
34 evidence that the reason for exceeding the maximum time limits was
35 outside of the department's control including, but not limited to,
36 the following circumstances:

37 (a) Despite a timely request, the department has not received
38 necessary medical information regarding the current medical status of
39 a defendant;

1 (b) The individual circumstances of the defendant make accurate
2 completion of an evaluation of (~~competency to stand~~) ability to
3 proceed to trial dependent upon review of mental health, substance
4 use disorder, or medical history information which is in the custody
5 of a third party and cannot be immediately obtained by the
6 department, provided that completion shall not be postponed for
7 procurement of information which is merely supplementary;

8 (c) Additional time is needed for the defendant to no longer show
9 active signs and symptoms of impairment related to substance use so
10 that an accurate evaluation may be completed;

11 (d) The defendant is medically unavailable for (~~competency~~)
12 ability to proceed evaluation or admission to a facility for
13 (~~competency~~) restoration treatment;

14 (e) Completion of the referral requires additional time to
15 accommodate the availability or participation of counsel, court
16 personnel, interpreters, or the defendant;

17 (f) The defendant asserts legal rights that result in a delay in
18 the provision of (~~competency~~) ability to proceed services; or

19 (g) An unusual spike in the receipt of evaluation referrals or in
20 the number of defendants requiring restoration services has occurred,
21 causing temporary delays until the unexpected excess demand for
22 (~~competency~~) ability to proceed services can be resolved.

23 (5) The department shall provide written notice to the court when
24 it will not be able to meet the maximum time limits under subsection
25 (2) of this section and identify the reasons for the delay and
26 provide a reasonable estimate of the time necessary to complete the
27 (~~competency~~) ability to proceed service. Good cause for an
28 extension for the additional time estimated by the department shall
29 be presumed absent a written response from the court or a party
30 received by the department within seven days.

31 (6) The department shall:

32 (a) Develop, document, and implement procedures to monitor the
33 clinical status of defendants admitted to a state hospital for
34 (~~competency~~) ability to proceed services that allow the state
35 hospital to accomplish early discharge for defendants for whom
36 clinical objectives have been achieved or may be achieved before
37 expiration of the commitment period;

38 (b) Investigate the extent to which patients admitted to a state
39 hospital under this chapter overstay time periods authorized by law

1 and take reasonable steps to limit the time of commitment to
2 authorized periods; and

3 (c) Establish written standards for the productivity of forensic
4 evaluators and utilize these standards to internally review the
5 performance of forensic evaluators.

6 (7) Following any quarter in which a state hospital has failed to
7 meet one or more of the performance targets or maximum time limits
8 under subsection (1) or (2) of this section, the department shall
9 report to the executive and the legislature the extent of this
10 deviation and describe any corrective action being taken to improve
11 performance. This report shall be made publicly available. An average
12 may be used to determine timeliness under this subsection.

13 (8) The department shall report annually to the legislature and
14 the executive on the timeliness of services related to (~~competency~~
15 ~~to stand~~) ability to proceed to trial and the timeliness with which
16 court referrals accompanied by charging documents, discovery, and
17 criminal history information are provided to the department relative
18 to the signature date of the court order. The report must be in a
19 form that is accessible to the public and that breaks down
20 performance by county.

21 (9) This section does not create any new entitlement or cause of
22 action related to the timeliness of (~~competency to stand~~) ability
23 to proceed to trial services, nor can it form the basis for contempt
24 sanctions under chapter 7.21 RCW or a motion to dismiss criminal
25 charges.

26 **Sec. 6.** RCW 10.77.072 and 2023 c 453 s 10 are each amended to
27 read as follows:

28 (1) In counties with a forensic navigator program, a forensic
29 navigator shall:

30 (a) Meet, interview, and observe all defendants charged with a
31 nonfelony, or a class C felony other than assault in the third degree
32 under RCW 9A.36.031(1) (d) or (f), felony physical control of a
33 vehicle under RCW 46.61.504(6), felony hit and run resulting in
34 injury under RCW 46.52.020(4)(b), a hate crime offense under RCW
35 9A.36.080, a class C felony with a domestic violence designation, a
36 class C felony sex offense as defined in RCW 9.94A.030, or a class C
37 felony with a sexual motivation allegation, who have had two or more
38 cases dismissed due to a finding of (~~incompetency to stand~~)
39 inability to proceed to trial in the preceding 24 months and who are

1 at risk for a finding of (~~incompetency~~) inability to proceed under
2 their current charge. The forensic navigator shall determine the
3 defendants' willingness to engage with services under this section;
4 and

5 (b) Provide a diversion program plan to the parties in each case
6 that includes a recommendation for a diversion program to defense
7 counsel and the prosecuting attorney. Services under a diversion
8 program may include a referral for assisted outpatient treatment
9 under chapter 71.05 RCW.

10 (2) The court shall dismiss the criminal charges upon agreement
11 of the parties that the defendant has been accepted into the
12 diversion program recommended by the forensic navigator.

13 (3) (a) For defendants charged with a nonfelony, the court may
14 order the defendant to a diversion program if recommended by the
15 forensic navigator. Upon engagement with the diversion program, the
16 defense may move to dismiss the charges without prejudice. The court
17 shall hold a hearing on this motion within 10 days. The court shall
18 grant the defense motion if it finds by a preponderance of the
19 evidence that the defendant is amenable to the services described in
20 the diversion program and can safely receive services in the
21 community.

22 (b) For defendants charged with a class C felony other than
23 assault in the third degree under RCW 9A.36.031(1) (d) or (f), felony
24 physical control of a vehicle under RCW 46.61.504(6), felony hit and
25 run resulting in injury under RCW 46.52.020(4)(b), a hate crime
26 offense under RCW 9A.36.080, a class C felony with a domestic
27 violence designation, a class C felony sex offense as defined in RCW
28 9.94A.030, or a class C felony with a sexual motivation allegation,
29 the defense may move for dismissal of the charges without prejudice
30 if the defendant is currently subject to a civil commitment order
31 under chapter 71.05 RCW. The court shall grant the defense motion
32 upon confirmation of an available treatment plan under chapter 71.05
33 RCW.

34 (4) Individuals who are referred to a diversion program described
35 in this section shall have a forensic navigator assigned to assist
36 them for up to six months while engaging in the services described in
37 the diversion program.

38 (5) Forensic navigators shall collaborate with available
39 *Trueblood* settlement diversion programs if they are accessible in the
40 geographic location where criminal charges are currently filed.

1 **Sec. 7.** RCW 10.77.084 and 2023 c 453 s 6 are each amended to
2 read as follows:

3 (1)(a) If at any time during the pendency of an action and prior
4 to judgment the court finds, following a report as provided in RCW
5 10.77.060, a defendant is (~~incompetent~~) unable to proceed, the
6 court shall order the proceedings against the defendant be stayed
7 except as provided in subsection (4) of this section. Beginning
8 October 1, 2023, if the defendant is charged with a serious traffic
9 offense under RCW 9.94A.030, or a felony version of a serious traffic
10 offense, the court may order the clerk to transmit an order to the
11 department of licensing for revocation of the defendant's driver's
12 license for a period of one year.

13 (b) The court may order a defendant who has been found to be
14 (~~incompetent~~) unable to proceed to undergo (~~competency~~)
15 restoration treatment at a facility designated by the department if
16 the defendant is eligible under RCW 10.77.086 or 10.77.088. At the
17 end of each (~~competency~~) restoration period or at any time a
18 professional person determines (~~competency~~) ability to proceed has
19 been, or is unlikely to be, restored, the defendant shall be returned
20 to court for a hearing, except that if the opinion of the
21 professional person is that the defendant remains (~~incompetent~~)
22 unable to proceed and the hearing is held before the expiration of
23 the current (~~competency~~) restoration period, the parties may agree
24 to waive the defendant's presence, to remote participation by the
25 defendant at a hearing, or to presentation of an agreed order in lieu
26 of a hearing. The facility shall promptly notify the court and all
27 parties of the date on which the (~~competency~~) restoration period
28 commences and expires so that a timely hearing date may be scheduled.

29 (c) If, following notice and hearing or entry of an agreed order
30 under (b) of this subsection, the court finds that (~~competency~~)
31 ability to proceed has been restored, the court shall lift the stay
32 entered under (a) of this subsection. If the court finds that
33 (~~competency~~) ability to proceed has not been restored, the court
34 shall dismiss the proceedings without prejudice, except that the
35 court may order a further period of (~~competency~~) restoration
36 treatment if it finds that further treatment within the time limits
37 established by RCW 10.77.086 or 10.77.088 is likely to restore
38 (~~competency~~) ability to proceed, and a further period of treatment
39 is allowed under RCW 10.77.086 or 10.77.088.

1 (d) If at any time during the proceeding the court finds,
2 following notice and hearing, a defendant is not likely to regain
3 (~~competency~~) ability to proceed, the court shall dismiss the
4 proceedings without prejudice and refer the defendant for civil
5 commitment evaluation or proceedings if appropriate under RCW
6 10.77.065, 10.77.086, or 10.77.088.

7 (e) Beginning October 1, 2023, if the court issues an order
8 directing revocation of the defendant's driver's license under (a) of
9 this subsection, and the court subsequently finds that the
10 defendant's (~~competency~~) ability to proceed has been restored, the
11 court shall order the clerk to transmit an order to the department of
12 licensing for reinstatement of the defendant's driver's license. The
13 court may direct the clerk to transmit an order reinstating the
14 defendant's driver's license before the end of one year for good
15 cause upon the petition of the defendant.

16 (2) If the defendant is referred for evaluation by a designated
17 crisis responder under this chapter, the designated crisis responder
18 shall provide prompt written notification of the results of the
19 evaluation and whether the person was detained. The notification
20 shall be provided to the court in which the criminal action was
21 pending, the prosecutor, the defense attorney in the criminal action,
22 and the facility that evaluated the defendant for (~~competency~~)
23 ability to proceed.

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

27 (4) A defendant receiving medication for either physical or
28 mental problems shall not be prohibited from standing trial, if the
29 medication either enables the defendant to understand the proceedings
30 against him or her and to assist in his or her own defense, or does
31 not disable him or her from so understanding and assisting in his or
32 her own defense.

33 (5) At or before the conclusion of any commitment period provided
34 for by this section, the facility providing evaluation and treatment
35 shall provide to the court a written report of evaluation which meets
36 the requirements of RCW 10.77.060(3). For defendants charged with a
37 felony, the report following the second (~~competency~~) restoration
38 period or first (~~competency~~) restoration period if the defendant's
39 (~~incompetence~~) inability to proceed is determined to be solely due
40 to a developmental disability or the evaluator concludes that the

1 defendant is not likely to regain (~~competency~~) ability to proceed
2 must include an assessment of the defendant's future dangerousness
3 which is evidence-based regarding predictive validity.

4 **Sec. 8.** RCW 10.77.0845 and 2012 c 256 s 7 are each amended to
5 read as follows:

6 (1) A defendant found (~~incompetent~~) unable to proceed by the
7 court under RCW 10.77.084 must be evaluated at the direction of the
8 secretary and a determination made whether the defendant is an
9 individual with a developmental disability. Such evaluation and
10 determination must be accomplished as soon as possible following the
11 court's placement of the defendant in the custody of the secretary.

12 (2) When appropriate, and subject to available funds, if the
13 defendant is determined to be an individual with a developmental
14 disability, he or she may be placed in a program specifically
15 reserved for the treatment and training of persons with developmental
16 disabilities where the defendant has the right to habilitation
17 according to an individualized service plan specifically developed
18 for the particular needs of the defendant. A copy of the evaluation
19 must be sent to the program.

20 (a) The program must be separate from programs serving persons
21 involved in any other treatment or habilitation program.

22 (b) The program must be appropriately secure under the
23 circumstances and must be administered by developmental disabilities
24 professionals who shall direct the habilitation efforts.

25 (c) The program must provide an environment affording security
26 appropriate with the charged criminal behavior and necessary to
27 protect the public safety.

28 (3) The department may limit admissions of such persons to this
29 specialized program in order to ensure that expenditures for services
30 do not exceed amounts appropriated by the legislature and allocated
31 by the department for such services.

32 (4) The department may establish admission priorities in the
33 event that the number of eligible persons exceeds the limits set by
34 the department.

35 **Sec. 9.** RCW 10.77.086 and 2023 c 453 s 8 and 2023 c 433 s 18 are
36 each reenacted and amended to read as follows:

37 (1)(a) Except as otherwise provided in this section, if the
38 defendant is charged with a felony and determined to be

1 ((incompetent)) unable to proceed, until he or she has regained the
2 ((competency)) ability to proceed necessary to understand the
3 proceedings against him or her and assist in his or her own defense,
4 but in any event for a period of no longer than 90 days, the court
5 shall commit the defendant to the custody of the secretary for
6 inpatient ((competency)) restoration, or may alternatively order the
7 defendant to receive outpatient ((competency)) restoration based on a
8 recommendation from a forensic navigator and input from the parties.

9 (b) For a defendant who is determined to be ((incompetent))
10 unable to proceed and whose highest charge is a class C felony other
11 than assault in the third degree under RCW 9A.36.031(1) (d) or (f),
12 felony physical control of a vehicle under RCW 46.61.504(6), felony
13 hit and run resulting in injury under RCW 46.52.020(4)(b), a hate
14 crime offense under RCW 9A.36.080, a class C felony with a domestic
15 violence designation, a class C felony sex offense as defined in RCW
16 9.94A.030, or a class C felony with a sexual motivation allegation,
17 the court shall first consider all available and appropriate
18 alternatives to inpatient ((competency)) restoration. The court shall
19 dismiss the proceedings without prejudice upon agreement of the
20 parties if the forensic navigator has found an appropriate and
21 available diversion program willing to accept the defendant.

22 (2)(a) To be eligible for an order for outpatient ((competency))
23 restoration, a defendant must be clinically appropriate and be
24 willing to:

25 (i) Adhere to medications or receive prescribed intramuscular
26 medication;

27 (ii) Abstain from alcohol and unprescribed drugs; and

28 (iii) Comply with urinalysis or breathalyzer monitoring if
29 needed.

30 (b) If the court orders inpatient ((competency)) restoration, the
31 department shall place the defendant in an appropriate facility of
32 the department for ((competency)) restoration.

33 (c) If the court orders outpatient ((competency)) restoration,
34 the court shall modify conditions of release as needed to authorize
35 the department to place the person in approved housing, which may
36 include access to supported housing, affiliated with a contracted
37 outpatient ((competency)) restoration program. The department, in
38 conjunction with the health care authority, must establish rules for
39 conditions of participation in the outpatient ((competency))
40 restoration program, which must include the defendant being subject

1 to medication management. The court may order regular urinalysis
2 testing. The outpatient ((competency)) restoration program shall
3 monitor the defendant during the defendant's placement in the program
4 and report any noncompliance or significant changes with respect to
5 the defendant to the department and, if applicable, the forensic
6 navigator.

7 (d) If a defendant fails to comply with the restrictions of the
8 outpatient restoration program such that restoration is no longer
9 appropriate in that setting or the defendant is no longer clinically
10 appropriate for outpatient ((competency)) restoration, the director
11 of the outpatient ((competency)) restoration program shall notify the
12 authority and the department of the need to terminate the outpatient
13 ((competency)) restoration placement and intent to request placement
14 for the defendant in an appropriate facility of the department for
15 inpatient ((competency)) restoration. The outpatient ((competency))
16 restoration program shall coordinate with the authority, the
17 department, and any law enforcement personnel under (d)(i) of this
18 subsection to ensure that the time period between termination and
19 admission into the inpatient facility is as minimal as possible. The
20 time period for inpatient ((competency)) restoration shall be reduced
21 by the time period spent in active treatment within the outpatient
22 ((competency)) restoration program, excluding time periods in which
23 the defendant was absent from the program and all time from notice of
24 termination of the outpatient ((competency)) restoration period
25 through the defendant's admission to the facility. The department
26 shall obtain a placement for the defendant within seven days of the
27 notice of intent to terminate the outpatient ((competency))
28 restoration placement.

29 (i) The department may authorize a peace officer to detain the
30 defendant into emergency custody for transport to the designated
31 inpatient ((competency)) restoration facility. If medical clearance
32 is required by the designated ((competency)) restoration facility
33 before admission, the peace officer must transport the defendant to a
34 crisis stabilization unit, evaluation and treatment facility, or
35 emergency department of a local hospital for medical clearance once a
36 bed is available at the designated inpatient ((competency))
37 restoration facility. The signed outpatient ((competency))
38 restoration order of the court shall serve as authority for the
39 detention of the defendant under this subsection. This subsection
40 does not preclude voluntary transportation of the defendant to a

1 facility for inpatient ((competency)) restoration or for medical
2 clearance, or authorize admission of the defendant into jail.

3 (ii) The department shall notify the court and parties of the
4 defendant's admission for inpatient ((competency)) restoration before
5 the close of the next judicial day. The court shall schedule a
6 hearing within five days to review the conditions of release of the
7 defendant and anticipated release from treatment and issue
8 appropriate orders.

9 (e) The court may not issue an order for outpatient
10 ((competency)) restoration unless the department certifies that there
11 is an available appropriate outpatient ((competency)) restoration
12 program that has adequate space for the person at the time the order
13 is issued or the court places the defendant under the guidance and
14 control of a professional person identified in the court order.

15 (3) For a defendant whose highest charge is a class C felony, or
16 a class B felony that is not classified as violent under RCW
17 9.94A.030, the maximum time allowed for the initial ((competency))
18 restoration period is 45 days if the defendant is referred for
19 inpatient ((competency)) restoration, or 90 days if the defendant is
20 referred for outpatient ((competency)) restoration, provided that if
21 the outpatient ((competency)) restoration placement is terminated and
22 the defendant is subsequently admitted to an inpatient facility, the
23 period of inpatient treatment during the first ((competency))
24 restoration period under this subsection shall not exceed 45 days.

25 (4) When any defendant whose highest charge is a class C felony
26 other than assault in the third degree under RCW 9A.36.031(1) (d) or
27 (f), felony physical control of a vehicle under RCW 46.61.504(6),
28 felony hit and run resulting in injury under RCW 46.52.020(4)(b), a
29 hate crime offense under RCW 9A.36.080, a class C felony with a
30 domestic violence designation, a class C felony sex offense as
31 defined in RCW 9.94A.030, or a class C felony with a sexual
32 motivation allegation is admitted for inpatient ((competency))
33 restoration with an accompanying court order for involuntary
34 medication under RCW 10.77.092, and the defendant is found not
35 ((competent to stand)) able to proceed to trial following that period
36 of ((competency)) restoration, the court shall dismiss the charges
37 pursuant to subsection (7) of this section.

38 (5) If the court determines or the parties agree before the
39 initial ((competency)) restoration period or at any subsequent stage
40 of the proceedings that the defendant is unlikely to regain

1 ((competency)) ability to proceed, the court may dismiss the charges
2 without prejudice without ordering the defendant to undergo an
3 initial or further period of ((competency)) restoration treatment, in
4 which case the court shall order that the defendant be referred for
5 evaluation for civil commitment in the manner provided in subsection
6 (7) of this section.

7 (6) On or before expiration of the initial ((competency))
8 restoration period the court shall conduct a hearing to determine
9 whether the defendant is now ((competent to stand)) able to proceed
10 to trial. If the court finds by a preponderance of the evidence that
11 the defendant is ((incompetent to stand)) unable to proceed to trial,
12 the court may order an extension of the ((competency)) restoration
13 period for an additional period of 90 days, but the court must at the
14 same time set a date for a new hearing to determine the defendant's
15 ((competency to stand)) ability to proceed to trial before the
16 expiration of this second restoration period. The defendant, the
17 defendant's attorney, and the prosecutor have the right to demand
18 that the hearing be before a jury. No extension shall be ordered for
19 a second or third ((competency)) restoration period if the defendant
20 is ineligible for a subsequent ((competency)) restoration period
21 under subsection (4) of this section or the defendant's
22 ((incompetence)) inability to proceed has been determined by the
23 secretary to be solely the result of an intellectual or developmental
24 disability, dementia, or traumatic brain injury which is such that
25 ((competence)) ability to proceed is not reasonably likely to be
26 regained during an extension.

27 (7)(a) Except as provided in (b) of this subsection, at the
28 hearing upon the expiration of the second ((competency)) restoration
29 period, or at the end of the first ((competency)) restoration period
30 if the defendant is ineligible for a second or third ((competency))
31 restoration period under subsection (3) or (6) of this section, if
32 the jury or court finds that the defendant is ((incompetent to stand
33 ~~trial~~)) unable to proceed, the court shall dismiss the charges
34 without prejudice and order the defendant to be committed to the
35 department for placement in a facility operated or contracted by the
36 department for up to 120 hours if the defendant has not undergone
37 ((competency)) restoration services or has engaged in outpatient
38 ((competency)) restoration services, and up to 72 hours if the
39 defendant engaged in inpatient ((competency)) restoration services
40 starting from admission to the facility, excluding Saturdays,

1 Sundays, and holidays, for evaluation for the purpose of filing a
2 civil commitment petition under chapter 71.05 RCW. If at the time the
3 order to dismiss the charges without prejudice is entered by the
4 court the defendant is already in a facility operated or contracted
5 by the department, the 72-hour or 120-hour period shall instead begin
6 upon department receipt of the court order.

7 (b) The court shall not dismiss the charges if the defendant is
8 eligible for a second or third ((competency)) restoration period
9 under subsection (6) of this section and the court or jury finds
10 that: (i) The defendant (A) is a substantial danger to other persons;
11 or (B) presents a substantial likelihood of committing criminal acts
12 jeopardizing public safety or security; and (ii) there is a
13 substantial probability that the defendant will regain ((competency))
14 ability to proceed within a reasonable period of time. If the court
15 or jury makes such a finding, the court may extend the period of
16 commitment for up to an additional six months.

17 (8) Any period of ((competency)) restoration treatment under this
18 section includes only the time the defendant is actually at the
19 facility or is actively participating in an outpatient ((competency))
20 restoration program and is in addition to reasonable time for
21 transport to or from the facility.

22 **Sec. 10.** RCW 10.77.074 and 2023 c 453 s 5 are each amended to
23 read as follows:

24 (1) Subject to the limitations described in subsection (2) of
25 this section, a court may appoint an impartial forensic navigator
26 employed by or contracted by the department to assist individuals who
27 have been referred for ((competency)) ability to proceed evaluation
28 and shall appoint a forensic navigator in circumstances described
29 under RCW 10.77.072.

30 (2) A forensic navigator must assist the individual to access
31 services related to diversion and community outpatient ((competency))
32 restoration. The forensic navigator must assist the individual,
33 prosecuting attorney, defense attorney, and the court to understand
34 the options available to the individual and be accountable as an
35 officer of the court for faithful execution of the responsibilities
36 outlined in this section.

37 (3) The duties of the forensic navigator include, but are not
38 limited to, the following:

1 (a) To collect relevant information about the individual,
2 including behavioral health services and supports available to the
3 individual that might support placement in outpatient restoration,
4 diversion, or some combination of these;

5 (b) To meet with, interview, and observe the individual;

6 (c) To assess the individual for appropriateness for assisted
7 outpatient treatment under chapter 71.05 RCW;

8 (d) To present information to the court in order to assist the
9 court in understanding the treatment options available to the
10 individual to support the entry of orders for diversion from the
11 forensic mental health system or for community outpatient
12 (~~competency~~) restoration, to facilitate that transition;

13 (e) To provide regular updates to the court and parties of the
14 status of the individual's participation in diversion or outpatient
15 services and be responsive to inquiries by the parties about
16 treatment status;

17 (f) When the individual is ordered to receive community
18 outpatient restoration, to provide services to the individual
19 including:

20 (i) Assisting the individual with attending appointments and
21 classes relating to outpatient (~~competency~~) restoration;

22 (ii) Coordinating access to housing for the individual;

23 (iii) Meeting with the individual on a regular basis;

24 (iv) Providing information to the court concerning the
25 individual's progress and compliance with court-ordered conditions of
26 release, which may include appearing at court hearings to provide
27 information to the court;

28 (v) Coordinating the individual's access to community case
29 management services and mental health services;

30 (vi) Assisting the individual with obtaining prescribed
31 medication and encouraging adherence with prescribed medication;

32 (vii) Assessing the individual for appropriateness for assisted
33 outpatient treatment under chapter 71.05 RCW and coordinating the
34 initiation of an assisted outpatient treatment order if appropriate;

35 (viii) Planning for a coordinated transition of the individual to
36 a case manager in the community behavioral health system;

37 (ix) Attempting to follow-up with the individual to check whether
38 the meeting with a community-based case manager took place;

39 (x) When the individual is a high utilizer, attempting to connect
40 the individual with high utilizer services; and

1 (xi) Attempting to check up on the individual at least once per
2 month for up to sixty days after coordinated transition to community
3 behavioral health services, without duplicating the services of the
4 community-based case manager;

5 (g) If the individual is an American Indian or Alaska Native who
6 receives medical, behavioral health, housing, or other supportive
7 services from a tribe within this state, to notify and coordinate
8 with the tribe and Indian health care provider. Notification shall be
9 made in person or by telephonic or electronic communication to the
10 tribal contact listed in the authority's tribal crisis coordination
11 plan as soon as possible.

12 (4) Forensic navigators may submit recommendations to the court
13 regarding treatment and restoration options for the individual, which
14 the court may consider and weigh in conjunction with the
15 recommendations of all of the parties.

16 (5) Forensic navigators shall be deemed officers of the court for
17 the purpose of immunity from civil liability.

18 (6) The signed order for (~~competency~~) ability to proceed
19 evaluation from the court shall serve as authority for the forensic
20 navigator to be given access to all records held by a behavioral
21 health, educational, or law enforcement agency or a correctional
22 facility that relates to an individual. Information that is protected
23 by state or federal law, including health information, shall not be
24 entered into the court record without the consent of the individual
25 or their defense attorney.

26 (7) Admissions made by the individual in the course of receiving
27 services from the forensic navigator may not be used against the
28 individual in the prosecution's case in chief.

29 (8) A court may not issue an order appointing a forensic
30 navigator unless the department certifies that there is adequate
31 forensic navigator capacity to provide these services at the time the
32 order is issued.

33 **Sec. 11.** RCW 10.77.075 and 2015 1st sp.s. c 7 s 2 are each
34 amended to read as follows:

35 Within twenty-four hours of the signing of a court order
36 requesting the secretary to provide (~~a competency~~) an ability to
37 proceed evaluation or (~~competency~~) restoration treatment:

38 (1) The clerk of the court shall provide the court order and the
39 charging documents, including the request for bail and certification

1 of probable cause, to the state hospital. If the order is for
2 ((competency)) restoration treatment and the ((competency)) ability
3 to proceed evaluation was provided by a qualified expert or
4 professional person who was not designated by the secretary, the
5 clerk shall also provide the state hospital with a copy of all
6 previous court orders related to ((competency)) ability to proceed or
7 criminal insanity and a copy of any of the evaluation reports;

8 (2) The prosecuting attorney shall provide the discovery packet,
9 including a statement of the defendant's criminal history, to the
10 state hospital; and

11 (3) If the court order requires transportation of the defendant
12 to a state hospital, the jail administrator shall provide the
13 defendant's medical clearance information to the state hospital
14 admission staff.

15 **Sec. 12.** RCW 10.77.078 and 2015 1st sp.s. c 7 s 3 are each
16 amended to read as follows:

17 (1) A city or county jail shall transport a defendant to a state
18 hospital or other secure facility designated by the department within
19 one day of receipt of an offer of admission of the defendant for
20 ((competency)) ability to proceed evaluation or restoration services.

21 (2) City and county jails must cooperate with ((competency))
22 ability to proceed evaluators and the department to arrange for
23 ((competency)) ability to proceed evaluators to have reasonable,
24 timely, and appropriate access to defendants for the purpose of
25 performing evaluations under this chapter to accommodate the seven-
26 day performance target for completing ((competency)) ability to
27 proceed evaluations for defendants in custody.

28 **Sec. 13.** RCW 10.77.088 and 2023 c 453 s 9 and 2023 c 433 s 19
29 are each reenacted and amended to read as follows:

30 (1) If the defendant is charged with a nonfelony crime which is a
31 serious offense as identified in RCW 10.77.092 and found by the court
32 to be ((not-competent)) unable to proceed, the court shall first
33 consider all available and appropriate alternatives to inpatient
34 ((competency)) restoration. If the parties agree that there is an
35 appropriate diversion program available to accept the defendant, the
36 court shall dismiss the proceedings without prejudice and refer the
37 defendant to the recommended diversion program. If the parties do not

1 agree that there is an appropriate diversion program available to
2 accept the defendant, then the court:

3 (a) Shall dismiss the proceedings without prejudice and detain
4 the defendant pursuant to subsection (6) of this section, unless the
5 prosecutor objects to the dismissal and provides notice of a motion
6 for an order for ((competency)) restoration treatment, in which case
7 the court shall schedule a hearing within seven days.

8 (b) At the hearing, the prosecuting attorney must establish that
9 there is a compelling state interest to order ((competency))
10 restoration treatment for the defendant. The court may consider prior
11 criminal history, prior history in treatment, prior history of
12 violence, the quality and severity of the pending charges, any
13 history that suggests whether ((competency)) restoration treatment is
14 likely to be successful, in addition to the factors listed under RCW
15 10.77.092. If the defendant is subject to an order under chapter
16 71.05 RCW or proceedings under chapter 71.05 RCW have been initiated,
17 there is a rebuttable presumption that there is no compelling state
18 interest in ordering ((competency)) restoration treatment. If the
19 prosecuting attorney proves by a preponderance of the evidence that
20 there is a compelling state interest in ordering ((competency))
21 restoration treatment, then the court shall issue an order in
22 accordance with subsection (2) of this section.

23 (2)(a) If a court finds pursuant to subsection (1)(b) of this
24 section that there is a compelling state interest in pursuing
25 ((competency)) restoration treatment, the court shall order the
26 defendant to receive outpatient ((competency)) restoration consistent
27 with the recommendation of the forensic navigator, unless the court
28 finds that an order for outpatient ((competency)) restoration is
29 inappropriate considering the health and safety of the defendant and
30 risks to public safety.

31 (b) To be eligible for an order for outpatient ((competency))
32 restoration, a defendant must be willing to:

33 (i) Adhere to medications or receive prescribed intramuscular
34 medication;

35 (ii) Abstain from alcohol and unprescribed drugs; and

36 (iii) Comply with urinalysis or breathalyzer monitoring if
37 needed.

38 (c) If the court orders inpatient ((competency)) restoration, the
39 department shall place the defendant in an appropriate facility of

1 the department for ((competency)) restoration under subsection (3) of
2 this section.

3 (d) If the court orders outpatient ((competency)) restoration,
4 the court shall modify conditions of release as needed to authorize
5 the department to place the person in approved housing, which may
6 include access to supported housing, affiliated with a contracted
7 outpatient ((competency)) restoration program. The department, in
8 conjunction with the health care authority, must establish rules for
9 conditions of participation in the outpatient ((competency))
10 restoration program, which must include the defendant being subject
11 to medication management. The court may order regular urinalysis
12 testing. The outpatient ((competency)) restoration program shall
13 monitor the defendant during the defendant's placement in the program
14 and report any noncompliance or significant changes with respect to
15 the defendant to the department and, if applicable, the forensic
16 navigator.

17 (e) If a defendant fails to comply with the restrictions of the
18 outpatient ((competency)) restoration program such that restoration
19 is no longer appropriate in that setting or the defendant is no
20 longer clinically appropriate for outpatient ((competency))
21 restoration, the director of the outpatient ((competency))
22 restoration program shall notify the authority and the department of
23 the need to terminate the outpatient ((competency)) restoration
24 placement and intent to request placement for the defendant in an
25 appropriate facility of the department for inpatient ((competency))
26 restoration. The outpatient ((competency)) restoration program shall
27 coordinate with the authority, the department, and any law
28 enforcement personnel under (e)(i) of this subsection to ensure that
29 the time period between termination and admission into the inpatient
30 facility is as minimal as possible. The time period for inpatient
31 ((competency)) restoration shall be reduced by the time period spent
32 in active treatment within the outpatient ((competency)) restoration
33 program, excluding time periods in which the defendant was absent
34 from the program and all time from notice of termination of the
35 outpatient ((competency)) restoration period through the defendant's
36 admission to the facility. The department shall obtain a placement
37 for the defendant within seven days of the notice of intent to
38 terminate the outpatient ((competency)) restoration placement.

39 (i) The department may authorize a peace officer to detain the
40 defendant into emergency custody for transport to the designated

1 inpatient ((competency)) restoration facility. If medical clearance
2 is required by the designated ((competency)) restoration facility
3 before admission, the peace officer must transport the defendant to a
4 crisis stabilization unit, evaluation and treatment facility, or
5 emergency department of a local hospital for medical clearance once a
6 bed is available at the designated inpatient ((competency))
7 restoration facility. The signed outpatient ((competency))
8 restoration order of the court shall serve as authority for the
9 detention of the defendant under this subsection. This subsection
10 does not preclude voluntary transportation of the defendant to a
11 facility for inpatient ((competency)) restoration or for medical
12 clearance, or authorize admission of the defendant into jail.

13 (ii) The department shall notify the court and parties of the
14 defendant's admission for inpatient ((competency)) restoration before
15 the close of the next judicial day. The court shall schedule a
16 hearing within five days to review the conditions of release of the
17 defendant and anticipated release from treatment and issue
18 appropriate orders.

19 (f) The court may not issue an order for outpatient
20 ((competency)) restoration unless the department certifies that there
21 is an available appropriate outpatient restoration program that has
22 adequate space for the person at the time the order is issued or the
23 court places the defendant under the guidance and control of a
24 professional person identified in the court order.

25 (g) If the court does not order the defendant to receive
26 outpatient ((competency)) restoration under (a) of this subsection,
27 the court shall commit the defendant to the department for placement
28 in a facility operated or contracted by the department for inpatient
29 ((competency)) restoration.

30 (3) The placement under subsection (2) of this section shall not
31 exceed 29 days if the defendant is ordered to receive inpatient
32 ((competency)) restoration, and shall not exceed 90 days if the
33 defendant is ordered to receive outpatient ((competency))
34 restoration. The court may order any combination of this subsection,
35 but the total period of inpatient ((competency)) restoration may not
36 exceed 29 days.

37 (4) Beginning October 1, 2023, if the defendant is charged with a
38 serious traffic offense under RCW 9.94A.030, the court may order the
39 clerk to transmit an order to the department of licensing for
40 revocation of the defendant's driver's license for a period of one

1 year. The court shall direct the clerk to transmit an order to the
2 department of licensing reinstating the defendant's driver's license
3 if the (~~defendant~~) defendant's ability to proceed is subsequently
4 restored (~~to competency~~), and may do so at any time before the end
5 of one year for good cause upon the petition of the defendant.

6 (5) If the court has determined or the parties agree that the
7 defendant is unlikely to regain (~~competency~~) ability to proceed,
8 the court may dismiss the charges without prejudice without ordering
9 the defendant to undergo (~~competency~~) restoration treatment, in
10 which case the court shall order that the defendant be referred for
11 evaluation for civil commitment in the manner provided in subsection
12 (6) of this section.

13 (6) (a) If the proceedings are dismissed under RCW 10.77.084 and
14 the defendant was on conditional release at the time of dismissal,
15 the court shall order the designated crisis responder within that
16 county to evaluate the defendant pursuant to chapter 71.05 RCW. The
17 evaluation may be conducted in any location chosen by the
18 professional.

19 (b) If the defendant was in custody and not on conditional
20 release at the time of dismissal, the defendant shall be detained and
21 sent to an evaluation and treatment facility for up to 120 hours if
22 the defendant has not undergone (~~competency~~) restoration services
23 or has engaged in outpatient (~~competency~~) restoration services and
24 up to 72 hours if the defendant engaged in inpatient (~~competency~~)
25 restoration services, excluding Saturdays, Sundays, and holidays, for
26 evaluation for purposes of filing a petition under chapter 71.05 RCW.
27 The 120-hour or 72-hour period shall commence upon the next
28 nonholiday weekday following the court order and shall run to the end
29 of the last nonholiday weekday within the 120-hour or 72-hour period.

30 (7) If the defendant is charged with a nonfelony crime that is
31 not a serious offense as defined in RCW 10.77.092 and found by the
32 court to be (~~not competent~~) unable to proceed, the court may stay
33 or dismiss proceedings and detain the defendant for sufficient time
34 to allow the designated crisis responder to evaluate the defendant
35 and consider initial detention proceedings under chapter 71.05 RCW.
36 The court must give notice to all parties at least 24 hours before
37 the dismissal of any proceeding under this subsection, and provide an
38 opportunity for a hearing on whether to dismiss the proceedings.

39 (8) If at any time the court dismisses charges under subsections
40 (1) through (7) of this section, the court shall make a finding as to

1 whether the defendant has a history of one or more violent acts. If
2 the court so finds, the defendant is barred from the possession of
3 firearms until a court restores his or her right to possess a firearm
4 under RCW 9.41.047. The court shall state to the defendant and
5 provide written notice that the defendant is barred from the
6 possession of firearms and that the prohibition remains in effect
7 until a court restores his or her right to possess a firearm under
8 RCW 9.41.047.

9 (9) Any period of (~~competency~~) restoration treatment under this
10 section includes only the time the defendant is actually at the
11 facility or is actively participating in an outpatient (~~competency~~)
12 restoration program and is in addition to reasonable time for
13 transport to or from the facility.

14 **Sec. 14.** RCW 10.77.0885 and 2023 c 453 s 16 are each amended to
15 read as follows:

16 An outpatient (~~competency~~) restoration program must include
17 access to a prescriber.

18 **Sec. 15.** RCW 10.77.089 and 2022 c 288 s 8 are each amended to
19 read as follows:

20 The authority shall report annually to the governor and relevant
21 committees of the legislature, beginning November 1, 2022, and shall
22 make the report public, describing:

23 (1) How many individuals are being served by outpatient
24 (~~competency~~) restoration programs and in what locations;

25 (2) The length of stay of individuals in outpatient
26 (~~competency~~) restoration programs;

27 (3) The number of individuals who are revoked from an outpatient
28 (~~competency~~) restoration program into inpatient treatment, and the
29 outcomes of other individuals, if any, whose participation in an
30 outpatient (~~competency~~) restoration program were terminated before
31 the completion of the program; and

32 (4) For individuals who were revoked from an outpatient
33 (~~competency~~) restoration program into an inpatient (~~competency~~)
34 restoration program, how many days the individuals spent in
35 outpatient (~~competency~~) restoration treatment and inpatient
36 (~~competency~~) restoration treatment, and whether the restoration
37 programs resulted in a finding of (~~competent to stand~~) able to
38 proceed to trial or another outcome.

1 **Sec. 16.** RCW 10.77.092 and 2023 c 453 s 11 are each amended to
2 read as follows:

3 (1) For purposes of determining whether a court may authorize
4 involuntary medication for the purpose of ((~~competency~~)) restoration
5 treatment pursuant to RCW 10.77.084 and for maintaining the level of
6 restoration in the jail following the restoration period, a pending
7 charge involving any one or more of the following crimes is a serious
8 offense per se in the context of ((~~competency~~)) restoration
9 treatment:

10 (a) Any violent offense, sex offense, serious traffic offense,
11 and most serious offense, as those terms are defined in RCW
12 9.94A.030;

13 (b) Any offense, except nonfelony counterfeiting offenses,
14 included in crimes against persons in RCW 9.94A.411;

15 (c) Any offense contained in chapter 9.41 RCW (firearms and
16 dangerous weapons);

17 (d) Any offense listed as domestic violence in RCW 10.99.020;

18 (e) Any offense listed as a harassment offense in chapter 9A.46
19 RCW, except for criminal trespass in the first or second degree;

20 (f) Any violation of chapter 69.50 RCW that is a class B felony;
21 or

22 (g) Any city or county ordinance or statute that is equivalent to
23 an offense referenced in this subsection.

24 (2) Any time a petition is filed seeking a court order
25 authorizing the involuntary medication for purposes of ((~~competency~~))
26 restoration treatment pursuant to RCW 10.77.084, the petition must
27 also seek authorization to continue involuntary medication for
28 purposes of maintaining the level of restoration in the jail or
29 juvenile detention facility following the restoration period.

30 (3) (a) In a particular case, a court may determine that a pending
31 charge not otherwise defined as serious by state or federal law or by
32 a city or county ordinance is, nevertheless, a serious offense within
33 the context of ((~~competency~~)) restoration treatment when the conduct
34 in the charged offense falls within the standards established in (b)
35 of this subsection.

36 (b) To determine that the particular case is a serious offense
37 within the context of ((~~competency~~)) restoration treatment, the court
38 must consider the following factors and determine that one or more of
39 the following factors creates a situation in which the offense is
40 serious:

1 (i) The charge includes an allegation that the defendant actually
2 inflicted bodily or emotional harm on another person or that the
3 defendant created a reasonable apprehension of bodily or emotional
4 harm to another;

5 (ii) The extent of the impact of the alleged offense on the basic
6 human need for security of the citizens within the jurisdiction;

7 (iii) The number and nature of related charges pending against
8 the defendant;

9 (iv) The length of potential confinement if the defendant is
10 convicted; and

11 (v) The number of potential and actual victims or persons
12 impacted by the defendant's alleged acts.

13 **Sec. 17.** RCW 10.77.093 and 2004 c 157 s 4 are each amended to
14 read as follows:

15 When the court must make a determination whether to order
16 involuntary medications for the purpose of ((competency)) restoration
17 or for maintenance of ((competency)) ability to proceed, the court
18 shall inquire, and shall be told, and to the extent that the
19 prosecutor or defense attorney is aware, whether the defendant is the
20 subject of a pending civil commitment proceeding or has been ordered
21 into involuntary treatment pursuant to a civil commitment proceeding.

22 **Sec. 18.** RCW 10.77.0942 and 2023 c 453 s 12 are each amended to
23 read as follows:

24 (1) When an individual has a prescription for an antipsychotic,
25 antidepressant, antiepileptic, or other drug prescribed to the
26 individual to treat a serious mental illness by a state hospital or
27 other state facility or a behavioral health agency or other certified
28 medical provider, and the individual is medically stable on the drug,
29 a jail or juvenile detention facility shall continue prescribing the
30 prescribed drug and may not require the substitution of a different
31 drug in a given therapeutic class, except under the following
32 circumstances:

33 (a) The substitution is for a generic version of a name brand
34 drug and the generic version is chemically identical to the name
35 brand drug; or

36 (b) The drug cannot be prescribed for reasons of drug recall or
37 removal from the market, or medical evidence indicating no
38 therapeutic effect of the drug.

1 (2) This section includes but is not limited to situations in
2 which the individual returns to a jail or juvenile detention facility
3 directly after undergoing treatment at a state hospital, behavioral
4 health agency, outpatient (~~competency~~) restoration program, or
5 prison.

6 (3) The department shall establish a program to reimburse jails
7 and juvenile detention facilities for the costs of any drugs the jail
8 or juvenile detention facility does not otherwise have available and
9 must continue prescribing under this section.

10 **Sec. 19.** RCW 10.77.095 and 1998 c 297 s 28 are each amended to
11 read as follows:

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

1 that their initial treatment should be separate and discrete from
2 treatment for persons involved in any other treatment or habilitation
3 program in a manner consistent with the needs of public safety.

4 **Sec. 20.** RCW 10.77.145 and 2010 c 262 s 1 are each amended to
5 read as follows:

6 (1) No person committed to the custody of the department for the
7 determination of (~~competency to stand~~) ability to proceed to trial
8 under RCW 10.77.060, the restoration (~~of competency for trial~~)
9 treatment under RCW 10.77.084, 10.77.086, or 10.77.088, or following
10 an acquittal by reason of insanity shall be authorized to leave the
11 facility where the person is confined, except in the following
12 circumstances:

13 (a) In accordance with conditional release or furlough authorized
14 by a court;

15 (b) For necessary medical or legal proceedings not available in
16 the facility where the person is confined;

17 (c) For visits to the bedside of a member of the person's
18 immediate family who is seriously ill; or

19 (d) For attendance at the funeral of a member of the person's
20 immediate family.

21 (2) Unless ordered otherwise by a court, no leave under
22 subsection (1) of this section shall be authorized unless the person
23 who is the subject of the authorization is escorted by a person
24 approved by the secretary. During the authorized leave, the person
25 approved by the secretary must be in visual or auditory contact at
26 all times with the person on authorized leave.

27 (3) Prior to the authorization of any leave under subsection (1)
28 of this section, the secretary must give notification to any county
29 or city law enforcement agency having jurisdiction in the location of
30 the leave destination.

31 **Sec. 21.** RCW 10.77.200 and 2023 c 120 s 12 are each amended to
32 read as follows:

33 (1) Upon application by the committed or conditionally released
34 person, the secretary shall determine whether or not reasonable
35 grounds exist for release. In making this determination, the
36 secretary may consider the reports filed under RCW 10.77.060,
37 10.77.110, 10.77.140, and 10.77.160, and other reports and
38 evaluations provided by professionals familiar with the case. If the

1 secretary approves the release he or she then shall authorize the
2 person to petition the court.

3 (2) In instances in which persons have not made application for
4 release, but the secretary believes, after consideration of the
5 reports filed under RCW 10.77.060, 10.77.110, 10.77.140, and
6 10.77.160, and other reports and evaluations provided by
7 professionals familiar with the case, that reasonable grounds exist
8 for release, the secretary may petition the court. If the secretary
9 petitions the court for release under this subsection, notice of the
10 petition must be provided to the person who is the subject of the
11 petition and to his or her attorney.

12 (3) The petition shall be served upon the court and the
13 prosecuting attorney. The court, upon receipt of the petition for
14 release, shall within 45 days order a hearing. Continuance of the
15 hearing date shall only be allowed for good cause shown. The
16 prosecuting attorney shall represent the state, and shall have the
17 right to have the person who is the subject of the petition examined
18 by an expert or professional person of the prosecuting attorney's
19 choice. If the secretary is the petitioner, the attorney general
20 shall represent the secretary. If the person who is the subject of
21 the petition is indigent, and the person so requests, the court shall
22 assist the person in obtaining a qualified expert or professional
23 person to examine him or her. An expert or professional person
24 obtained by an indigent person who was committed to state psychiatric
25 care following acquittal by reason of insanity shall be compensated
26 out of funds of the office of public defense as provided in policies
27 and procedures under chapter 2.70 RCW, in a manner consistent with
28 the rules of professional conduct and the standards for indigent
29 defense. If the person who is the subject of the petition has a
30 developmental disability, the examination shall be performed by a
31 developmental disabilities professional. The hearing shall be before
32 a jury if demanded by either the petitioner or the prosecuting
33 attorney. The burden of proof shall be upon the petitioner to show by
34 a preponderance of the evidence that the person who is the subject of
35 the petition no longer presents, as a result of a mental (~~disease or~~
36 ~~defect~~) health condition, a substantial danger to other persons, or
37 a substantial likelihood of committing criminal acts jeopardizing
38 public safety or security, unless kept under further control by the
39 court or other persons or institutions. If the person who is the
40 subject of the petition will be transferred to a state correctional

1 institution or facility upon release to serve a sentence for any
2 class A felony, the petitioner must show that the person's mental
3 (~~disease or defect~~) health condition is manageable within a state
4 correctional institution or facility, but must not be required to
5 prove that the person does not present either a substantial danger to
6 other persons, or a substantial likelihood of committing criminal
7 acts jeopardizing public safety or security, if released.

8 (4) For purposes of this section, a person affected by a mental
9 (~~disease or defect~~) health condition in a state of remission is
10 considered to have a mental (~~disease or defect~~) health condition
11 requiring supervision when the (~~disease~~) condition may, with
12 reasonable medical probability, occasionally become active and, when
13 active, render the person a danger to others. Upon a finding that the
14 person who is the subject of the petition has a mental (~~disease or~~
15 ~~defect~~) health condition in a state of remission under this
16 subsection, the court may deny release, or place or continue such a
17 person on conditional release.

18 (5) Nothing contained in this chapter shall prohibit the patient
19 from petitioning the court for release or conditional release from
20 the institution in which he or she is committed. The petition shall
21 be served upon the court, the prosecuting attorney, and the
22 secretary. Upon receipt of such petition, the secretary shall develop
23 a recommendation as provided in subsection (1) of this section and
24 provide the secretary's recommendation to all parties and the court.
25 The issue to be determined on such proceeding is whether the patient,
26 as a result of a mental (~~disease or defect~~) health condition, is a
27 substantial danger to other persons, or presents a substantial
28 likelihood of committing criminal acts jeopardizing public safety or
29 security, unless kept under further control by the court or other
30 persons or institutions.

31 (6) Nothing contained in this chapter shall prohibit the
32 committed person from petitioning for release by writ of habeas
33 corpus.

34 **Sec. 22.** RCW 10.77.202 and 2023 c 453 s 13 are each amended to
35 read as follows:

36 (1) Following (~~a competency~~) an ability to proceed evaluation
37 under RCW 10.77.060, individuals who are found (~~not competent to~~
38 ~~stand trial~~) unable to proceed and not restorable due to an
39 intellectual or developmental disability, dementia, or traumatic

1 brain injury, shall not be referred for (~~competency~~) restoration
2 services.

3 (2) The department shall develop a process for connecting
4 individuals who have been found (~~not competent to stand~~) unable to
5 proceed to trial due to an intellectual or developmental disability,
6 dementia, or traumatic brain injury to available wraparound services
7 and supports in community-based settings, which may include
8 residential supports. The process shall include provisions for
9 individuals who are current clients of the department's developmental
10 disabilities administration or aging and long-term support
11 administration and for individuals who are not current clients of the
12 department.

13 (a) For current clients of the developmental disabilities
14 administration and aging and long-term support administration, the
15 department's assigned case manager shall:

16 (i) Coordinate with the individual's services providers to
17 determine if the individual can return to the same or like services,
18 or determine appropriate new community-based services. This shall
19 include updating the individual's service plan and identifying and
20 coordinating potential funding for any additional supports to
21 stabilize the individual in community-based settings funded by the
22 developmental disabilities administration or aging and long-term
23 support administration so that the individual does not lose existing
24 services, including submitting any exceptions to rule for additional
25 services;

26 (ii) Conduct a current service eligibility assessment and send
27 referral packets to all community-based service providers for
28 services for which the individual is eligible; and

29 (iii) Connect with the individual's assigned forensic navigator
30 and determine if the individual is eligible for any diversion,
31 supportive housing, or case management programs as a *Trueblood* class
32 member, and assist the individual to access these services.

33 (b) For individuals who have not established eligibility for the
34 department's support services, the department shall:

35 (i) Conduct an eligibility determination for services and send
36 referral packets to service providers for all relevant community-
37 based services for which the individual is eligible. This process
38 must include identifying and coordinating funding for any additional
39 supports that are needed to stabilize the individual in any
40 community-based setting funded by the developmental disabilities

1 administration or aging and long-term support administration,
2 including submitting any necessary exceptions to rule for additional
3 services; and

4 (ii) Connect with the individual's assigned forensic navigator
5 and determine if the individual is eligible for any diversion,
6 supportive housing, or case management programs as a *Trueblood* class
7 member, if additional specialized services are available to
8 supplement diversion program services, and assist the individual to
9 access these services.

10 (3) The department shall offer to transition the individual in
11 services either directly from the jail or as soon thereafter as may
12 be practicable, without maintaining the individual at an inpatient
13 facility for longer than is clinically necessary. Nothing in this
14 subsection prohibits the department from returning the individual to
15 their home or to another less restrictive setting if such setting is
16 appropriate, which may include provision of supportive services to
17 help the person maintain stability. The individual is not required to
18 accept developmental disabilities administration, aging and long-term
19 support administration, or other diversionary services as a condition
20 of having the individual's criminal case dismissed without prejudice,
21 provided the individual meets the criteria of subsection (1) of this
22 section.

23 (4) Subject to the availability of funds appropriated for this
24 specific purpose, the department shall develop a program for
25 individuals who have been involved with the criminal justice system
26 and who have been found under RCW 10.77.084 as (~~incompetent to stand~~
27 ~~trial~~) unable to proceed due to an intellectual or developmental
28 disability, traumatic brain injury, or dementia and who do not meet
29 criteria under other programs in this section. The program must
30 involve wraparound services and housing supports appropriate to the
31 needs of the individual. It is sufficient to meet the criteria for
32 participation in this program if the individual has recently been the
33 subject of criminal charges and was found (~~incompetent to stand~~
34 ~~trial~~) unable to proceed due to an intellectual or developmental
35 disability, traumatic brain injury, or dementia.

36 **Sec. 23.** RCW 10.77.250 and 2023 c 120 s 14 are each amended to
37 read as follows:

38 (1) Within amounts appropriated, the department shall be
39 responsible for all costs relating to the evaluation and inpatient

1 treatment of persons committed to it pursuant to any provisions of
2 this chapter, and the logistical and supportive services pertaining
3 thereto except as otherwise provided by law. Reimbursement may be
4 obtained by the department pursuant to RCW 43.20B.330.

5 (2) Within amounts appropriated, the authority shall be
6 responsible for all costs relating to outpatient (~~competency~~)
7 restoration programs.

8 (3) The office of public defense shall be responsible for costs
9 of public defense services, including defense expert and professional
10 services, for indigent persons acquitted by reason of insanity
11 throughout the term of their commitment to state psychiatric care,
12 including during any period of conditional release, until legal
13 termination of commitment and final unconditional release.

14 **Sec. 24.** RCW 10.77.255 and 2023 c 453 s 19 are each amended to
15 read as follows:

16 (1) The department shall coordinate with cities, counties,
17 hospitals, and other public and private entities to identify
18 locations that may be commissioned or renovated for use in treating
19 clients committed to the department for (~~competency~~) ability to
20 proceed evaluation, (~~competency~~) restoration, civil conversion, or
21 treatment following acquittal by reason of insanity.

22 (2) The department may provide capital grants to entities to
23 accomplish the purposes described in subsection (1) of this section
24 subject to provision of funding provided for this specific purpose.

25 **Sec. 25.** RCW 10.77.270 and 2013 c 289 s 3 are each amended to
26 read as follows:

27 (1) The secretary shall establish an independent public safety
28 review panel for the purpose of advising the secretary and the courts
29 with respect to persons who have been found not guilty by reason of
30 insanity, or persons committed under the involuntary treatment act
31 where the court has made a special finding under RCW 71.05.280(3)(b).
32 The panel shall provide advice regarding all recommendations to the
33 secretary, decisions by the secretary, or actions pending in court:

34 (a) For a change in commitment status; (b) to allow furloughs or
35 temporary leaves accompanied by staff; (c) not to seek further
36 commitment terms under RCW 71.05.320; or (d) to permit movement about
37 the grounds of the treatment facility, with or without the
38 accompaniment of staff.

1 (2) The members of the public safety review panel shall be
2 appointed by the governor for a renewable term of three years and
3 shall include the following:

4 (a) A psychiatrist;

5 (b) A licensed clinical psychologist;

6 (c) A representative of the department of corrections;

7 (d) A prosecutor or a representative of a prosecutor's
8 association;

9 (e) A representative of law enforcement or a law enforcement
10 association;

11 (f) A consumer and family advocate representative; and

12 (g) A public defender or a representative of a defender's
13 association.

14 (3) Thirty days prior to issuing a recommendation for conditional
15 release under RCW 10.77.150 or forty-five days prior to issuing a
16 recommendation for release under RCW 10.77.200, the secretary shall
17 submit its recommendation with the committed person's application and
18 the department's risk assessment to the public safety review panel.
19 The public safety review panel shall complete an independent
20 assessment of the public safety risk entailed by the secretary's
21 proposed conditional release recommendation or release recommendation
22 and provide this assessment in writing to the secretary. The public
23 safety review panel may, within funds appropriated for this purpose,
24 request additional evaluations of the committed person. The public
25 safety review panel may indicate whether it is in agreement with the
26 secretary's recommendation, or whether it would issue a different
27 recommendation. The secretary shall provide the panel's assessment
28 when it is received along with any supporting documentation,
29 including all previous reports of evaluations of the committed person
30 in the person's hospital record, to the court, prosecutor in the
31 county that ordered the person's commitment, and counsel for the
32 committed person.

33 (4) The secretary shall notify the public safety review panel at
34 appropriate intervals concerning any changes in the commitment or
35 custody status of persons found not guilty by reason of insanity, or
36 persons committed under the involuntary treatment act where the court
37 has made a special finding under RCW 71.05.280(3)(b). The panel shall
38 have access, upon request, to a committed person's complete hospital
39 record, and any other records deemed necessary by the public safety
40 review panel.

1 (5) The department shall provide administrative and financial
2 support to the public safety review panel. The department, in
3 consultation with the public safety review panel, may adopt rules to
4 implement this section.

5 (6) By December 1, 2014, the public safety review panel shall
6 report to the appropriate legislative committees the following:

7 (a) Whether the public safety review panel has observed a change
8 in statewide consistency of evaluations and decisions concerning
9 changes in the commitment status of persons found not guilty by
10 reason of insanity;

11 (b) Whether the public safety review panel should be given the
12 authority to make release decisions and monitor release conditions;

13 (c) Whether further changes in the law are necessary to enhance
14 public safety when (~~incompetency~~) inability to proceed prevents
15 operation of the criminal justice system and long-term commitment of
16 the criminally insane; and

17 (d) Any other issues the public safety review panel deems
18 relevant.

19 **Sec. 26.** RCW 10.77.310 and 2023 c 453 s 15 are each amended to
20 read as follows:

21 Subject to the availability of funds appropriated for this
22 specific purpose, the health care authority shall require the
23 programs it contracts with to increase compensation for staff in
24 outpatient (~~competency~~) restoration programs to provide
25 compensation at competitive levels to improve recruitment and allow
26 for the full implementation of outpatient (~~competency~~) restoration
27 programs.

28 **Sec. 27.** RCW 10.77.320 and 2023 c 453 s 17 are each amended to
29 read as follows:

30 (1) Subject to the security and background investigation
31 requirements of the jail, jails shall allow clinical intervention
32 specialists to have access to individuals who are referred to receive
33 services under this chapter and to all records relating to the health
34 or conduct of the individual while incarcerated. Clinical
35 intervention specialists shall support jail health services in
36 providing direct services, enhanced oversight and monitoring of the
37 behavioral health status of participating individuals. Clinical
38 intervention specialists shall work collaboratively with jail health

1 services to ensure appropriate prescriptions, medication compliance
2 monitoring, and access to supportive behavioral health services to
3 the individuals. Clinical intervention specialists shall coordinate
4 with forensic navigators and the department to assist forensic
5 navigators in making recommendations for appropriate placements,
6 which may include recommendations for participation in an outpatient
7 (~~competency~~) restoration program or a diversion program designed
8 for the needs of the individual. The clinical intervention specialist
9 shall notify the department if a participating individual appears to
10 have stabilized in their behavioral health such that a new
11 (~~competency~~) ability to proceed evaluation is appropriate to
12 reassess the individual's need for (~~competency~~) restoration
13 treatment.

14 (2) The department shall establish a memorandum of understanding
15 and any contracts needed with the jail to address the terms and
16 conditions of allowing access to defendants and their records subject
17 to the requirements of this section.

18 **Sec. 28.** RCW 10.77.940 and 1999 c 13 s 4 are each amended to
19 read as follows:

20 The provisions of chapter 420, Laws of 1989 shall apply equally
21 to persons in the custody of the department on May 13, 1989, who were
22 found by a court to be not guilty by reason of insanity or
23 (~~incompetent to stand~~) unable to proceed to trial, or who have been
24 found to have committed acts constituting a felony pursuant to RCW
25 71.05.280(3) and present a substantial likelihood of repeating
26 similar acts, and the secretary shall cause such persons to be
27 evaluated to ascertain if such persons are developmentally disabled
28 for placement in a program specifically reserved for the treatment
29 and training of persons with developmental disabilities.

30 **Sec. 29.** RCW 10.97.030 and 2016 c 81 s 4 are each reenacted and
31 amended to read as follows:

32 For purposes of this chapter, the definitions of terms in this
33 section shall apply.

34 (1) "The administration of criminal justice" means performance of
35 any of the following activities: Detection, apprehension, detention,
36 pretrial release, post-trial release, prosecution, adjudication,
37 correctional supervision, or rehabilitation of accused persons or
38 criminal offenders. The term also includes criminal identification

1 activities and the collection, storage, dissemination of criminal
2 history record information, and the compensation of victims of crime.

3 (2) "Conviction or other disposition adverse to the subject"
4 means any disposition of charges other than: (a) A decision not to
5 prosecute; (b) a dismissal; or (c) acquittal; with the following
6 exceptions, which shall be considered dispositions adverse to the
7 subject: An acquittal due to a finding of not guilty by reason of
8 insanity and a dismissal by reason of (~~incompetency~~) inability to
9 proceed, pursuant to chapter 10.77 RCW; and a dismissal entered after
10 a period of probation, suspension, or deferral of sentence.

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

14 (4) "Criminal history record information" means information
15 contained in records collected by criminal justice agencies, other
16 than courts, on individuals, consisting of identifiable descriptions
17 and notations of arrests, detentions, indictments, informations, or
18 other formal criminal charges, and any disposition arising therefrom,
19 including acquittals by reason of insanity, dismissals based on
20 (~~lack of competency~~) inability to proceed due to a mental health
21 condition, sentences, correctional supervision, and release.

22 The term includes any issued certificates of restoration of
23 opportunities and any information contained in records maintained by
24 or obtained from criminal justice agencies, other than courts, which
25 records provide individual identification of a person together with
26 any portion of the individual's record of involvement in the criminal
27 justice system as an alleged or convicted offender, except:

28 (a) Posters, announcements, or lists for identifying or
29 apprehending fugitives or wanted persons;

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

33 (c) Court indices and records of public judicial proceedings,
34 court decisions, and opinions, and information disclosed during
35 public judicial proceedings;

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

38 (e) Records of any traffic offenses as maintained by the
39 department of licensing for the purpose of regulating the issuance,

1 suspension, revocation, or renewal of drivers' or other operators'
2 licenses and pursuant to RCW 46.52.130;

3 (f) Records of any aviation violations or offenses as maintained
4 by the department of transportation for the purpose of regulating
5 pilots or other aviation operators, and pursuant to RCW 47.68.330;

6 (g) Announcements of executive clemency;

7 (h) Intelligence, analytical, or investigative reports and files.

8 (5) "Criminal justice agency" means: (a) A court; or (b) a
9 government agency which performs the administration of criminal
10 justice pursuant to a statute or executive order and which allocates
11 a substantial part of its annual budget to the administration of
12 criminal justice.

13 (6) "Disposition" means the formal conclusion of a criminal
14 proceeding at whatever stage it occurs in the criminal justice
15 system.

16 (7) "Dissemination" means disclosing criminal history record
17 information or disclosing the absence of criminal history record
18 information to any person or agency outside the agency possessing the
19 information, subject to the following exceptions:

20 (a) When criminal justice agencies jointly participate in the
21 maintenance of a single recordkeeping department as an alternative to
22 maintaining separate records, the furnishing of information by that
23 department to personnel of any participating agency is not a
24 dissemination;

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

30 (c) The reporting of an event to a recordkeeping agency for the
31 purpose of maintaining the record is not a dissemination.

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

1 **Sec. 30.** RCW 4.24.550 and 2015 c 261 s 1 are each amended to
2 read as follows:

3 (1) In addition to the disclosure under subsection (5) of this
4 section, public agencies are authorized to release information to the
5 public regarding sex offenders and kidnapping offenders when the
6 agency determines that disclosure of the information is relevant and
7 necessary to protect the public and counteract the danger created by
8 the particular offender. This authorization applies to information
9 regarding: (a) Any person adjudicated or convicted of a sex offense
10 as defined in RCW 9A.44.128 or a kidnapping offense as defined by RCW
11 9A.44.128; (b) any person under the jurisdiction of the indeterminate
12 sentence review board as the result of a sex offense or kidnapping
13 offense; (c) any person committed as a sexually violent predator
14 under chapter 71.09 RCW or as a sexual psychopath under chapter 71.06
15 RCW; (d) any person found not guilty of a sex offense or kidnapping
16 offense by reason of insanity under chapter 10.77 RCW; and (e) any
17 person found (~~incompetent to stand~~) unable to proceed to trial due
18 to a mental health condition for a sex offense or kidnapping offense
19 and subsequently committed under chapter 71.05 or 71.34 RCW.

20 (2) Except for the information specifically required under
21 subsection (5) of this section, the extent of the public disclosure
22 of relevant and necessary information shall be rationally related to:
23 (a) The level of risk posed by the offender to the community; (b) the
24 locations where the offender resides, expects to reside, or is
25 regularly found; and (c) the needs of the affected community members
26 for information to enhance their individual and collective safety.

27 (3) Except for the information specifically required under
28 subsection (5) of this section, local law enforcement agencies shall
29 consider the following guidelines in determining the extent of a
30 public disclosure made under this section: (a) For offenders
31 classified as risk level I, the agency shall share information with
32 other appropriate law enforcement agencies and, if the offender is a
33 student, the public or private school regulated under Title 28A RCW
34 or chapter 72.40 RCW which the offender is attending, or planning to
35 attend. The agency may disclose, upon request, relevant, necessary,
36 and accurate information to any victim or witness to the offense, any
37 individual community member who lives near the residence where the
38 offender resides, expects to reside, or is regularly found, and any
39 individual who requests information regarding a specific offender;
40 (b) for offenders classified as risk level II, the agency may also

1 disclose relevant, necessary, and accurate information to public and
2 private schools, child day care centers, family day care providers,
3 public libraries, businesses and organizations that serve primarily
4 children, women, or vulnerable adults, and neighbors and community
5 groups near the residence where the offender resides, expects to
6 reside, or is regularly found; (c) for offenders classified as risk
7 level III, the agency may also disclose relevant, necessary, and
8 accurate information to the public at large; and (d) because more
9 localized notification is not feasible and homeless and transient
10 offenders may present unique risks to the community, the agency may
11 also disclose relevant, necessary, and accurate information to the
12 public at large for offenders registered as homeless or transient.

13 (4) The county sheriff with whom an offender classified as risk
14 level III is registered shall release a sex offender community
15 notification that conforms to the guidelines established under RCW
16 4.24.5501.

17 (5) (a) When funded by federal grants or other sources, the
18 Washington association of sheriffs and police chiefs shall create and
19 maintain a statewide registered kidnapping and sex offender website,
20 which shall be available to the public. The website shall post all
21 level III and level II registered sex offenders, level I registered
22 sex offenders only during the time they are out of compliance with
23 registration requirements under RCW 9A.44.130 or if lacking a fixed
24 residence as provided in RCW 9A.44.130, and all registered kidnapping
25 offenders in the state of Washington.

26 (i) For level III offenders, the website shall contain, but is
27 not limited to, the registered sex offender's name, relevant criminal
28 convictions, address by hundred block, physical description, and
29 photograph. The website shall provide mapping capabilities that
30 display the sex offender's address by hundred block on a map. The
31 website shall allow citizens to search for registered sex offenders
32 within the state of Washington by county, city, zip code, last name,
33 and address by hundred block.

34 (ii) For level II offenders, and level I sex offenders during the
35 time they are out of compliance with registration requirements under
36 RCW 9A.44.130, the website shall contain, but is not limited to, the
37 same information and functionality as described in (a)(i) of this
38 subsection, provided that it is permissible under state and federal
39 law. If it is not permissible, the website shall be limited to the

1 information and functionality that is permissible under state and
2 federal law.

3 (iii) For kidnapping offenders, the website shall contain, but is
4 not limited to, the same information and functionality as described
5 in (a)(i) of this subsection, provided that it is permissible under
6 state and federal law. If it is not permissible, the website shall be
7 limited to the information and functionality that is permissible
8 under state and federal law.

9 (b) Law enforcement agencies must provide information requested
10 by the Washington association of sheriffs and police chiefs to
11 administer the statewide registered kidnapping and sex offender
12 website.

13 (c)(i) Within five business days of the Washington association of
14 sheriffs and police chiefs receiving any public record request under
15 chapter 42.56 RCW for sex offender and kidnapping offender
16 information, records or website data it holds or maintains pursuant
17 to this section or a unified sex offender registry, the Washington
18 association of sheriffs and police chiefs shall refer the requester
19 in writing to the appropriate law enforcement agency or agencies for
20 submission of such a request. The Washington association of sheriffs
21 and police chiefs shall have no further obligation under chapter
22 42.56 RCW for responding to such a request.

23 (ii) This (~~subparagraph~~) subsection (5)(c) of this section is
24 remedial and applies retroactively.

25 (6)(a) Law enforcement agencies responsible for the registration
26 and dissemination of information regarding offenders required to
27 register under RCW 9A.44.130 shall assign a risk level classification
28 to all offenders after consideration of: (i) Any available risk level
29 classifications provided by the department of corrections, the
30 department of social and health services, and the indeterminate
31 sentence review board; (ii) the agency's own application of a sex
32 offender risk assessment tool; and (iii) other information and
33 aggravating or mitigating factors known to the agency and deemed
34 rationally related to the risk posed by the offender to the community
35 at large.

36 (b) A sex offender shall be classified as a risk level I if his
37 or her risk assessment and other information or factors deemed
38 relevant by the law enforcement agency indicate he or she is at a low
39 risk to sexually reoffend within the community at large. A sex
40 offender shall be classified as a risk level II if his or her risk

1 assessment and other information or factors deemed relevant by the
2 law enforcement agency indicate he or she is at a moderate risk to
3 sexually reoffend within the community at large. A sex offender shall
4 be classified as a risk level III if his or her risk assessment and
5 other information or factors deemed relevant by the law enforcement
6 agency indicate he or she is at a high risk to sexually reoffend
7 within the community at large.

8 (c) The agency shall make a good faith effort to notify the
9 public and residents within a reasonable period of time after the
10 offender registers with the agency.

11 (d) Agencies may develop a process to allow an offender to
12 petition for review of the offender's assigned risk level
13 classification. The timing, frequency, and process for review are at
14 the sole discretion of the agency.

15 (7) An appointed or elected public official, public employee, or
16 public agency as defined in RCW 4.24.470, or units of local
17 government and its employees, as provided in RCW 36.28A.010, are
18 immune from civil liability for damages for any discretionary risk
19 level classification decisions or release of relevant and necessary
20 information, unless it is shown that the official, employee, or
21 agency acted with gross negligence or in bad faith. The immunity in
22 this section applies to risk level classification decisions and the
23 release of relevant and necessary information regarding any
24 individual for whom disclosure is authorized. The decision of a law
25 enforcement agency or official to classify an offender to a risk
26 level other than the one assigned by the department of corrections,
27 the department of social and health services, or the indeterminate
28 sentence review board, or the release of any relevant and necessary
29 information based on that different classification shall not, by
30 itself, be considered gross negligence or bad faith. The immunity
31 provided under this section applies to the release of relevant and
32 necessary information to other public officials, public employees, or
33 public agencies, and to the general public.

34 (8) Except as may otherwise be provided by law, nothing in this
35 section shall impose any liability upon a public official, public
36 employee, or public agency for failing to release information
37 authorized under this section.

38 (9) Nothing in this section implies that information regarding
39 persons designated in subsection (1) of this section is confidential
40 except as may otherwise be provided by law.

1 (10) When a law enforcement agency or official classifies an
2 offender differently than the offender is classified by the end of
3 sentence review committee at the time of the offender's release from
4 confinement, the law enforcement agency or official shall notify the
5 end of sentence review committee and the Washington state patrol and
6 submit its reasons supporting the change in classification.

7 (11) As used in this section, "law enforcement agency" means a
8 general authority Washington law enforcement agency as defined in RCW
9 10.93.020.

10 **Sec. 31.** RCW 7.68.250 and 1979 ex.s. c 219 s 17 are each amended
11 to read as follows:

12 For purposes of this act, a person found not guilty as a result
13 of ~~((the))~~ a defense of mental ~~((disease or defect))~~ health condition
14 shall be deemed to be a convicted person.

15 **Sec. 32.** RCW 9.41.040 and 2023 c 295 s 3 and 2023 c 262 s 2 are
16 each reenacted and amended to read as follows:

17 (1)(a) A person, whether an adult or juvenile, is guilty of the
18 crime of unlawful possession of a firearm in the first degree, if the
19 person owns, accesses, has in the person's custody, control, or
20 possession, or receives any firearm after having previously been
21 convicted or found not guilty by reason of insanity in this state or
22 elsewhere of any serious offense.

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

25 (2)(a) A person, whether an adult or juvenile, is guilty of the
26 crime of unlawful possession of a firearm in the second degree, if
27 the person does not qualify under subsection (1) of this section for
28 the crime of unlawful possession of a firearm in the first degree and
29 the person owns, accesses, has in the person's custody, control, or
30 possession, or receives any firearm:

31 (i) After having previously been convicted or found not guilty by
32 reason of insanity in this state or elsewhere of:

33 (A) Any felony not specifically listed as prohibiting firearm
34 possession under subsection (1) of this section;

35 (B) Any of the following crimes when committed by one family or
36 household member against another or by one intimate partner against
37 another, as those terms are defined by the statutes in effect at the
38 time of the commission of the crime, committed on or after July 1,

1 1993: Assault in the fourth degree, coercion, stalking, reckless
2 endangerment, criminal trespass in the first degree, or violation of
3 the provisions of a protection order or no-contact order restraining
4 the person or excluding the person from a residence (RCW 10.99.040 or
5 any of the former RCW 26.50.060, 26.50.070, and 26.50.130);

6 (C) Harassment when committed by one family or household member
7 against another or by one intimate partner against another, as those
8 terms are defined by the statutes in effect at the time of the
9 commission of the crime, committed on or after June 7, 2018;

10 (D) Any of the following misdemeanor or gross misdemeanor crimes
11 not included under (a)(i) (B) or (C) of this subsection, committed on
12 or after July 23, 2023: Domestic violence (RCW 10.99.020); stalking;
13 cyberstalking; cyber harassment, excluding cyber harassment committed
14 solely pursuant to the element set forth in RCW 9A.90.120(1)(a)(i);
15 harassment; aiming or discharging a firearm (RCW 9.41.230); unlawful
16 carrying or handling of a firearm (RCW 9.41.270); animal cruelty in
17 the second degree committed under RCW 16.52.207(1); or any prior
18 offense as defined in RCW 46.61.5055(14) if committed within seven
19 years of a conviction for any other prior offense under RCW
20 46.61.5055;

21 (E) A violation of the provisions of a protection order under
22 chapter 7.105 RCW restraining the person or excluding the person from
23 a residence, when committed by one family or household member against
24 another or by one intimate partner against another, committed on or
25 after July 1, 2022; or

26 (F) A violation of the provisions of an order to surrender and
27 prohibit weapons, an extreme risk protection order, or the provisions
28 of any other protection order or no-contact order not included under
29 (a)(i) (B) or (E) of this subsection restraining the person or
30 excluding the person from a residence, committed on or after July 23,
31 2023;

32 (ii) During any period of time that the person is subject to a
33 protection order, no-contact order, or restraining order by a court
34 issued under chapter 7.105, 9A.40, 9A.44, 9A.46, 9A.88, 10.99, 26.09,
35 26.26A, or 26.26B RCW or any of the former chapters 7.90, 7.92,
36 10.14, and 26.50 RCW that:

37 (A) Was issued after a hearing for which the person received
38 actual notice, and at which the person had an opportunity to
39 participate, whether the court then issues a full order or reissues a
40 temporary order. If the court enters an agreed order by the parties

1 without a hearing, such an order meets the requirements of this
2 subsection;

3 (B) Restrains the person from harassing, stalking, or threatening
4 the person protected under the order or child of the person or
5 protected person, or others identified in the order, or engaging in
6 other conduct that would place the protected person in reasonable
7 fear of bodily injury to the protected person or child or others
8 identified in the order; and

9 (C) (I) Includes a finding that the person represents a credible
10 threat to the physical safety of the protected person or child or
11 others identified in the order, or by its terms explicitly prohibits
12 the use, attempted use, or threatened use of physical force against
13 the protected person or child or other persons that would reasonably
14 be expected to cause bodily injury; or

15 (II) Includes an order under RCW 9.41.800 requiring the person to
16 surrender all firearms and prohibiting the person from accessing,
17 having in his or her custody or control, possessing, purchasing,
18 receiving, or attempting to purchase or receive, firearms;

19 (iii) After having previously been involuntarily committed based
20 on a mental disorder under RCW 71.05.240, 71.05.320, 71.34.740,
21 71.34.750, chapter 10.77 RCW, or equivalent statutes of another
22 jurisdiction, unless his or her right to possess a firearm has been
23 restored as provided in RCW 9.41.047;

24 (iv) After dismissal of criminal charges based on (~~incompetency~~
25 ~~to stand~~) inability to proceed to trial under RCW 10.77.088 when the
26 court has made a finding indicating that the defendant has a history
27 of one or more violent acts, unless his or her right to possess a
28 firearm has been restored as provided in RCW 9.41.047;

29 (v) If the person is under 18 years of age, except as provided in
30 RCW 9.41.042; and/or

31 (vi) If the person is free on bond or personal recognizance
32 pending trial for a serious offense as defined in RCW 9.41.010.

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

35 (3) A person shall not be precluded from possession of a firearm
36 if the conviction has been the subject of a pardon, annulment,
37 certificate of rehabilitation, or other equivalent procedure based on
38 a finding of the rehabilitation of the person convicted or the
39 conviction or disposition has been the subject of a pardon,
40 annulment, or other equivalent procedure based on a finding of

1 innocence. Where no record of the court's disposition of the charges
2 can be found, there shall be a rebuttable presumption that the person
3 was not convicted of the charge.

4 (4) Notwithstanding subsection (1) or (2) of this section, a
5 person convicted or found not guilty by reason of insanity of an
6 offense prohibiting the possession of a firearm under this section
7 other than murder, manslaughter, robbery, rape, indecent liberties,
8 arson, assault, kidnapping, extortion, burglary, or violations with
9 respect to controlled substances under RCW 69.50.401 and 69.50.410,
10 who received a probationary sentence under RCW 9.95.200, and who
11 received a dismissal of the charge under RCW 9.95.240, shall not be
12 precluded from possession of a firearm as a result of the conviction
13 or finding of not guilty by reason of insanity.

14 (5) In addition to any other penalty provided for by law, if a
15 person under the age of 18 years is found by a court to have
16 possessed a firearm in a vehicle in violation of subsection (1) or
17 (2) of this section or to have committed an offense while armed with
18 a firearm during which offense a motor vehicle served an integral
19 function, the court shall notify the department of licensing within
20 24 hours and the person's privilege to drive shall be revoked under
21 RCW 46.20.265, unless the offense is the juvenile's first offense in
22 violation of this section and has not committed an offense while
23 armed with a firearm, an unlawful possession of a firearm offense, or
24 an offense in violation of chapter 66.44, 69.52, 69.41, or 69.50 RCW.

25 (6) Nothing in chapter 129, Laws of 1995 shall ever be construed
26 or interpreted as preventing an offender from being charged and
27 subsequently convicted for the separate felony crimes of theft of a
28 firearm or possession of a stolen firearm, or both, in addition to
29 being charged and subsequently convicted under this section for
30 unlawful possession of a firearm in the first or second degree.
31 Notwithstanding any other law, if the offender is convicted under
32 this section for unlawful possession of a firearm in the first or
33 second degree and for the felony crimes of theft of a firearm or
34 possession of a stolen firearm, or both, then the offender shall
35 serve consecutive sentences for each of the felony crimes of
36 conviction listed in this subsection.

37 (7)(a) A person, whether an adult or a juvenile, commits the
38 civil infraction of unlawful possession of a firearm if the person
39 has in the person's possession or has in the person's control a
40 firearm after the person files a voluntary waiver of firearm rights

1 under RCW 9.41.350 and the form has been accepted by the clerk of the
2 court and the voluntary waiver has not been lawfully revoked.

3 (b) The civil infraction of unlawful possession of a firearm is a
4 class 4 civil infraction punishable according to chapter 7.80 RCW.

5 (c) Each firearm unlawfully possessed under this subsection (7)
6 shall be a separate infraction.

7 (d) The court may, in its discretion, order performance of up to
8 two hours of community restitution in lieu of a monetary penalty
9 prescribed for a civil infraction under this subsection (7).

10 (8) Each firearm unlawfully possessed under this section shall be
11 a separate offense.

12 (9) A person may petition to restore the right to possess a
13 firearm as provided in RCW 9.41.041.

14 **Sec. 33.** RCW 9.41.047 and 2023 c 295 s 5 and 2023 c 161 s 3 are
15 each reenacted and amended to read as follows:

16 (1) (a) At the time a person is convicted or found not guilty by
17 reason of insanity of an offense making the person ineligible to
18 possess a firearm under state or federal law, including if the person
19 was convicted of possession under RCW 69.50.4011, 69.50.4013,
20 69.50.4014, or 69.41.030, or at the time a person is committed by
21 court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or
22 chapter 10.77 RCW for treatment for a mental disorder, or at the time
23 that charges are dismissed based on (~~incompetency to stand~~)
24 inability to proceed to trial under RCW 10.77.088 and the court makes
25 a finding that the person has a history of one or more violent acts,
26 the court shall notify the person, orally and in writing, that the
27 person must immediately surrender all firearms and any concealed
28 pistol license and that the person may not possess a firearm unless
29 the person's right to do so is restored by the superior court that
30 issued the order.

31 (b) The court shall forward within three judicial days after
32 conviction, finding of not guilty by reason of insanity, entry of the
33 commitment order, or dismissal of charges, a copy of the person's
34 driver's license or identicard, or comparable information such as the
35 person's name, address, and date of birth, along with the date of
36 conviction or commitment, or date charges are dismissed, to the
37 department of licensing and to the Washington state patrol firearms
38 background check program. When a person is committed by court order
39 under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter

1 10.77 RCW, for treatment for a mental disorder, or when a person's
2 charges are dismissed based on (~~incompetency to stand trial~~)
3 inability to proceed to trial under RCW 10.77.088 and the court makes
4 a finding that the person has a history of one or more violent acts,
5 the court also shall forward, within three judicial days after entry
6 of the commitment order, or dismissal of charges, a copy of the
7 person's driver's license, or comparable information, along with the
8 date of commitment or date charges are dismissed, to the national
9 instant criminal background check system index, denied persons file,
10 created by the federal Brady handgun violence prevention act (P.L.
11 103-159) and to the Washington state patrol. The petitioning party
12 shall provide the court with the information required. If more than
13 one commitment order is entered under one cause number, only one
14 notification to the department of licensing, the Washington state
15 patrol firearms background check program, and the national instant
16 criminal background check system is required.

17 (2) Upon receipt of the information provided for by subsection
18 (1) of this section, the department of licensing shall determine if
19 the person has a concealed pistol license. If the person has a
20 concealed pistol license, the department of licensing shall
21 immediately notify the license-issuing authority which, upon receipt
22 of such notification, shall immediately revoke the license.

23 (3) (a) A person who is prohibited from possessing a firearm, by
24 reason of having been involuntarily committed for treatment for a
25 mental disorder under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750,
26 chapter 10.77 RCW, or equivalent statutes of another jurisdiction, or
27 by reason of having been detained under RCW 71.05.150 or 71.05.153,
28 or because the person's charges were dismissed based on
29 (~~incompetency to stand~~) inability to proceed to trial under RCW
30 10.77.088 and the court made a finding that the person has a history
31 of one or more violent acts, may, upon discharge, petition the
32 superior court to have his or her right to possess a firearm
33 restored, except that a person found not guilty by reason of insanity
34 may not petition for restoration of the right to possess a firearm
35 until one year after discharge.

36 (b) The petition must be brought in the superior court that
37 ordered the involuntary commitment or dismissed the charges based on
38 (~~incompetency to stand~~) inability to proceed to trial or the
39 superior court of the county in which the petitioner resides.

1 (c) Except as provided in (d) and (e) of this subsection, firearm
2 rights shall be restored if the person petitioning for restoration of
3 firearm rights proves by a preponderance of the evidence that:

4 (i) The person petitioning for restoration of firearm rights is
5 no longer required to participate in court-ordered inpatient or
6 outpatient treatment;

7 (ii) The person petitioning for restoration of firearm rights has
8 successfully managed the condition related to the commitment or
9 detention or (~~incompetency~~) inability to proceed due to a mental
10 health condition;

11 (iii) The person petitioning for restoration of firearm rights no
12 longer presents a substantial danger to self or to the public; and

13 (iv) The symptoms related to the commitment or detention or
14 (~~incompetency~~) inability to proceed due to a mental health
15 condition are not reasonably likely to recur.

16 (d) If a preponderance of the evidence in the record supports a
17 finding that the person petitioning for restoration of firearm rights
18 has engaged in violence and that it is more likely than not that the
19 person will engage in violence after the person's right to possess a
20 firearm is restored, the person petitioning for restoration of
21 firearm rights shall bear the burden of proving by clear, cogent, and
22 convincing evidence that the person does not present a substantial
23 danger to the safety of others.

24 (e) If the person seeking restoration of firearm rights seeks
25 restoration after having been detained under RCW 71.05.150 or
26 71.05.153, the state shall bear the burden of proof to show, by a
27 preponderance of the evidence, that the person does not meet the
28 restoration criteria in (c) of this subsection.

29 (f) When a person's right to possess a firearm has been restored
30 under this subsection, the court shall forward, within three judicial
31 days after entry of the restoration order, notification that the
32 person's right to possess a firearm has been restored to the
33 department of licensing and the Washington state patrol criminal
34 records division, with a copy of the person's driver's license or
35 identicard, or comparable identification such as the person's name,
36 address, and date of birth, and to the health care authority, and the
37 national instant criminal background check system index, denied
38 persons file. In the case of a person whose right to possess a
39 firearm has been suspended for six months as provided in RCW
40 71.05.182, the department of licensing shall forward notification of

1 the restoration order to the licensing authority, which, upon receipt
2 of such notification, shall immediately lift the suspension,
3 restoring the person's concealed pistol license.

4 (4) No person who has been found not guilty by reason of insanity
5 may petition a court for restoration of the right to possess a
6 firearm unless the person meets the requirements for the restoration
7 of the right to possess a firearm under RCW 9.41.041.

8 **Sec. 34.** RCW 9.41.098 and 2016 sp.s. c 29 s 281 are each amended
9 to read as follows:

10 (1) The superior courts and the courts of limited jurisdiction of
11 the state may order forfeiture of a firearm which is proven to be:

12 (a) Found concealed on a person not authorized by RCW 9.41.060 or
13 9.41.070 to carry a concealed pistol: PROVIDED, That it is an
14 absolute defense to forfeiture if the person possessed a valid
15 Washington concealed pistol license within the preceding two years
16 and has not become ineligible for a concealed pistol license in the
17 interim. Before the firearm may be returned, the person must pay the
18 past due renewal fee and the current renewal fee;

19 (b) Commercially sold to any person without an application as
20 required by RCW 9.41.090;

21 (c) In the possession of a person prohibited from possessing the
22 firearm under RCW 9.41.040 or 9.41.045;

23 (d) In the possession or under the control of a person at the
24 time the person committed or was arrested for committing a felony or
25 committing a nonfelony crime in which a firearm was used or
26 displayed;

27 (e) In the possession of a person who is in any place in which a
28 concealed pistol license is required, and who is under the influence
29 of any drug or under the influence of intoxicating liquor, as defined
30 in chapter 46.61 RCW;

31 (f) In the possession of a person free on bail or personal
32 recognizance pending trial, appeal, or sentencing for a felony or for
33 a nonfelony crime in which a firearm was used or displayed, except
34 that violations of Title 77 RCW shall not result in forfeiture under
35 this section;

36 (g) In the possession of a person found to have been (~~mentally~~
37 ~~incompetent~~) unable to proceed due to a mental health condition
38 while in possession of a firearm when apprehended or who is

1 thereafter committed pursuant to chapter 10.77 RCW or committed for
2 mental health treatment under chapter 71.05 RCW;

3 (h) Used or displayed by a person in the violation of a proper
4 written order of a court of general jurisdiction; or

5 (i) Used in the commission of a felony or of a nonfelony crime in
6 which a firearm was used or displayed.

7 (2) Upon order of forfeiture, the court in its discretion may
8 order destruction of any forfeited firearm. A court may temporarily
9 retain forfeited firearms needed for evidence.

10 (a) Except as provided in (b), (c), and (d) of this subsection,
11 firearms that are: (i) Judicially forfeited and no longer needed for
12 evidence; or (ii) forfeited due to a failure to make a claim under
13 RCW 63.32.010 or 63.40.010; may be disposed of in any manner
14 determined by the local legislative authority. Any proceeds of an
15 auction or trade may be retained by the legislative authority. This
16 subsection (2)(a) applies only to firearms that come into the
17 possession of the law enforcement agency after June 30, 1993.

18 By midnight, June 30, 1993, every law enforcement agency shall
19 prepare an inventory, under oath, of every firearm that has been
20 judicially forfeited, has been seized and may be subject to judicial
21 forfeiture, or that has been, or may be, forfeited due to a failure
22 to make a claim under RCW 63.32.010 or 63.40.010.

23 (b) Except as provided in (c) of this subsection, of the
24 inventoried firearms a law enforcement agency shall destroy illegal
25 firearms, may retain a maximum of ten percent of legal forfeited
26 firearms for agency use, and shall either:

27 (i) Comply with the provisions for the auction of firearms in
28 (~~RCW 9.41.098~~) this section that were in effect immediately
29 preceding May 7, 1993; or

30 (ii) Trade, auction, or arrange for the auction of, rifles and
31 shotguns. In addition, the law enforcement agency shall either trade,
32 auction, or arrange for the auction of, short firearms, or shall pay
33 a fee of twenty-five dollars to the state treasurer for every short
34 firearm neither auctioned nor traded, to a maximum of fifty thousand
35 dollars. The fees shall be accompanied by an inventory, under oath,
36 of every short firearm listed in the inventory required by (a) of
37 this subsection, that has been neither traded nor auctioned. The
38 state treasurer shall credit the fees to the firearms range account
39 established in RCW 79A.25.210. All trades or auctions of firearms
40 under this subsection shall be to licensed dealers. Proceeds of any

1 auction less costs, including actual costs of storage and sale, shall
2 be forwarded to the firearms range account established in RCW
3 79A.25.210.

4 (c) Antique firearms and firearms recognized as curios, relics,
5 and firearms of particular historical significance by the United
6 States treasury department bureau of alcohol, tobacco, firearms, and
7 explosives are exempt from destruction and shall be disposed of by
8 auction or trade to licensed dealers.

9 (d) Firearms in the possession of the Washington state patrol on
10 or after May 7, 1993, that are judicially forfeited and no longer
11 needed for evidence, or forfeited due to a failure to make a claim
12 under RCW 63.35.020, must be disposed of as follows: (i) Firearms
13 illegal for any person to possess must be destroyed; (ii) the
14 Washington state patrol may retain a maximum of ten percent of legal
15 firearms for agency use; and (iii) all other legal firearms must be
16 auctioned or traded to licensed dealers. The Washington state patrol
17 may retain any proceeds of an auction or trade.

18 (3) The court shall order the firearm returned to the owner upon
19 a showing that there is no probable cause to believe a violation of
20 subsection (1) of this section existed or the firearm was stolen from
21 the owner or the owner neither had knowledge of nor consented to the
22 act or omission involving the firearm which resulted in its
23 forfeiture.

24 (4) A law enforcement officer of the state or of any county or
25 municipality may confiscate a firearm found to be in the possession
26 of a person under circumstances specified in subsection (1) of this
27 section. After confiscation, the firearm shall not be surrendered
28 except: (a) To the prosecuting attorney for use in subsequent legal
29 proceedings; (b) for disposition according to an order of a court
30 having jurisdiction as provided in subsection (1) of this section; or
31 (c) to the owner if the proceedings are dismissed or as directed in
32 subsection (3) of this section.

33 **Sec. 35.** RCW 9.94B.080 and 2015 c 80 s 1 are each amended to
34 read as follows:

35 The court may order an offender whose sentence includes community
36 placement or community supervision to undergo a mental status
37 evaluation and to participate in available outpatient mental health
38 treatment, if the court finds that reasonable grounds exist to
39 believe that the offender is a mentally ill person as defined in RCW

1 71.24.025, and that this condition is likely to have influenced the
2 offense. An order requiring mental status evaluation or treatment may
3 be based on a presentence report and, if applicable, mental status
4 evaluations that have been filed with the court to determine the
5 offender's (~~competency~~) ability to stand trial or eligibility for a
6 defense of insanity. The court may order additional evaluations at a
7 later date if deemed appropriate.

8 **Sec. 36.** RCW 9.98.010 and 2021 c 265 s 1 are each amended to
9 read as follows:

10 (1) Whenever a person has entered upon a term of imprisonment in
11 a penal, correctional, or juvenile rehabilitation institution of this
12 state, and whenever during the continuance of the term of
13 imprisonment there is pending in this state any untried indictment,
14 information, or complaint against the person, he or she shall be
15 brought to trial within 120 days after he or she shall have caused to
16 be delivered to the prosecuting attorney and the court in which the
17 indictment, information, or complaint is pending written notice of
18 the place of his or her imprisonment and his or her request for a
19 final disposition to be made of the indictment, information, or
20 complaint. The following time periods shall be excluded from the 120-
21 day calculation:

22 (a) Arraignment, pretrial proceedings, trial, and sentencing on
23 an unrelated charge in a different county than the court where the
24 charge is pending;

25 (b) Proceedings related to (~~competency to stand~~) ability to
26 proceed to trial on the pending charge, from the entry of an
27 evaluation order to the entry of a court order finding the person
28 (~~competent~~) able to proceed; and

29 (c) Time during which the person is detained in a federal jail or
30 prison and subject to conditions of release not imposed by the state
31 of Washington.

32 (2) The superintendent or the superintendent's designee who
33 provides the certificate under subsection (4) of this section shall
34 inform any prosecuting attorney or court requesting transportation of
35 the person to resolve an untried indictment, information, or
36 complaint of the person's current location and availability for
37 trial. If the person is unavailable for transportation due to court
38 proceedings in another county, the superintendent shall inform the
39 prosecuting attorney or court when the person becomes available for

1 transportation and provide a new certificate containing the
2 information under subsection (4) of this section.

3 (3) For good cause shown in open court, with the person or his or
4 her counsel having the right to be present, the court having
5 jurisdiction of the matter may grant any necessary or reasonable
6 continuance.

7 (4) The request of the person shall be accompanied by a
8 certificate of the superintendent or the superintendent's designee
9 having custody of the person, stating the term of commitment under
10 which the person is being held, the time already served, the time
11 remaining to be served on the sentence, the amount of good time
12 earned, the earned release date of the person, and any decisions of
13 the indeterminate sentence review board relating to the person.

14 (5) The written notice and request for final disposition referred
15 to in subsection (1) of this section shall be given or sent by the
16 person to the superintendent or the superintendent's designee having
17 custody of him or her, who shall promptly forward it together with
18 the certificate to the appropriate prosecuting attorney and superior,
19 district, municipal, or juvenile court by certified mail, return
20 receipt requested.

21 (6) The superintendent or the superintendent's designee having
22 custody of the person shall promptly inform him or her in writing of
23 the source and contents of any untried indictment, information, or
24 complaint against him or her concerning which the superintendent or
25 the superintendent's designee has knowledge and of his or her right
26 to make a request for final disposition thereof.

27 (7) Escape from custody by the person subsequent to his or her
28 execution of the request for final disposition referred to in
29 subsection (1) of this section shall void the request.

30 **Sec. 37.** RCW 9A.12.010 and 2011 c 336 s 353 are each amended to
31 read as follows:

32 To establish the defense of insanity, it must be shown that:

33 (1) At the time of the commission of the offense, as a result of
34 (~~mental disease or defect~~) a mental health condition, the mind of
35 the actor was affected to such an extent that:

36 (a) He or she was unable to perceive the nature and quality of
37 the act with which he or she is charged; or

38 (b) He or she was unable to tell right from wrong with reference
39 to the particular act charged.

1 (2) The defense of insanity must be established by a
2 preponderance of the evidence.

3 **Sec. 38.** RCW 10.01.160 and 2022 c 260 s 9 are each amended to
4 read as follows:

5 (1) Except as provided in subsection (3) of this section, the
6 court may require a defendant to pay costs. Costs may be imposed only
7 upon a convicted defendant, except for costs imposed upon a
8 defendant's entry into a deferred prosecution program, costs imposed
9 upon a defendant for pretrial supervision, or costs imposed upon a
10 defendant for preparing and serving a warrant for failure to appear.

11 (2) Costs shall be limited to expenses specially incurred by the
12 state in prosecuting the defendant or in administering the deferred
13 prosecution program under chapter 10.05 RCW or pretrial supervision.
14 They cannot include expenses inherent in providing a constitutionally
15 guaranteed jury trial or expenditures in connection with the
16 maintenance and operation of government agencies that must be made by
17 the public irrespective of specific violations of law. Expenses
18 incurred for serving of warrants for failure to appear and jury fees
19 under RCW 10.46.190 may be included in costs the court may require a
20 defendant to pay. Costs for administering a deferred prosecution may
21 not exceed \$250. Costs for administering a pretrial supervision other
22 than a pretrial electronic alcohol monitoring program, drug
23 monitoring program, or 24/7 sobriety program may not exceed \$150.
24 Costs for preparing and serving a warrant for failure to appear may
25 not exceed \$100. Costs of incarceration imposed on a defendant
26 convicted of a misdemeanor or a gross misdemeanor may not exceed the
27 actual cost of incarceration. In no case may the court require the
28 offender to pay more than \$100 per day for the cost of incarceration.
29 Payment of other court-ordered financial obligations, including all
30 legal financial obligations and costs of supervision take precedence
31 over the payment of the cost of incarceration ordered by the court.
32 All funds received from defendants for the cost of incarceration in
33 the county or city jail must be remitted for criminal justice
34 purposes to the county or city that is responsible for the
35 defendant's jail costs. Costs imposed constitute a judgment against a
36 defendant and survive a dismissal of the underlying action against
37 the defendant. However, if the defendant is acquitted on the
38 underlying action, the costs for preparing and serving a warrant for

1 failure to appear do not survive the acquittal, and the judgment that
2 such costs would otherwise constitute shall be vacated.

3 (3) The court shall not order a defendant to pay costs if the
4 defendant at the time of sentencing is indigent. In determining the
5 amount and method of payment of costs for defendants who are not
6 indigent, the court shall take account of the financial resources of
7 the defendant and the nature of the burden that payment of costs will
8 impose. For the purposes of this section, a defendant is "indigent"
9 if the defendant: (a) Meets the criteria defined in RCW 10.101.010(3)
10 (a) through (c); (b) is homeless or mentally ill as defined in RCW
11 71.24.025; (c) has household income above 125 percent of the federal
12 poverty guidelines and has recurring basic living costs, as defined
13 in RCW 10.101.010, that render the defendant without the financial
14 ability to pay; or (d) has other compelling circumstances that exist
15 that demonstrate an inability to pay.

16 (4) A defendant who has been ordered to pay costs and who has not
17 willfully failed to pay the obligation, as described in RCW
18 9.94A.6333, 9.94B.040, and 10.01.180, may at any time petition the
19 sentencing court for remission of the payment of costs or of any
20 unpaid portion thereof. If it appears to the satisfaction of the
21 court that payment of the amount due will impose manifest hardship on
22 the defendant or the defendant's immediate family, the court may
23 remit all or part of the amount due in costs, modify the method of
24 payment under RCW 10.01.170, or convert the unpaid costs to community
25 restitution hours, if the jurisdiction operates a community
26 restitution program, at the rate of no less than the state minimum
27 wage established in RCW 49.46.020 for each hour of community
28 restitution. Manifest hardship exists where the defendant is indigent
29 as defined in subsection (3) of this section.

30 (5) Except for direct costs relating to evaluating and reporting
31 to the court, prosecutor, or defense counsel regarding a defendant's
32 (~~competency to stand~~) ability to proceed to trial as provided in
33 RCW 10.77.060, this section shall not apply to costs related to
34 medical or mental health treatment or services a defendant receives
35 while in custody of the secretary of the department of social and
36 health services or other governmental units. This section shall not
37 prevent the secretary of the department of social and health services
38 or other governmental units from imposing liability and seeking
39 reimbursement from a defendant committed to an appropriate facility
40 as provided in RCW 10.77.084 while criminal proceedings are stayed.

1 This section shall also not prevent governmental units from imposing
2 liability on defendants for costs related to providing medical or
3 mental health treatment while the defendant is in the governmental
4 unit's custody. Medical or mental health treatment and services a
5 defendant receives at a state hospital or other facility are not a
6 cost of prosecution and shall be recoverable under RCW 10.77.250 and
7 70.48.130, chapter 43.20B RCW, and any other applicable statute.

8 **Sec. 39.** RCW 41.37.010 and 2023 c 199 s 3 are each amended to
9 read as follows:

10 The definitions in this section apply throughout this chapter
11 unless the context clearly requires otherwise.

12 (1) "Accumulated contributions" means the sum of all
13 contributions standing to the credit of a member in the member's
14 individual account, including any amount paid under RCW 41.50.165(2),
15 together with the regular interest thereon.

16 (2) "Actuarial equivalent" means a benefit of equal value when
17 computed upon the basis of such mortality and other tables as may be
18 adopted by the director.

19 (3) "Adjustment ratio" means the value of index A divided by
20 index B.

21 (4) "Annuity" means payments for life derived from accumulated
22 contributions of a member. All annuities shall be paid in monthly
23 installments.

24 (5)(a) "Average final compensation" means the member's average
25 compensation earnable of the highest consecutive sixty months of
26 service credit months prior to such member's retirement, termination,
27 or death. Periods constituting authorized leaves of absence may not
28 be used in the calculation of average final compensation except under
29 RCW 41.37.290.

30 (b) In calculating average final compensation under (a) of this
31 subsection, the department of retirement systems shall include:

32 (i) Any compensation forgone by a member employed by a state
33 agency or institution during the 2009-2011 fiscal biennium as a
34 result of reduced work hours, mandatory or voluntary leave without
35 pay, temporary reduction in pay implemented prior to December 11,
36 2010, or temporary layoffs if the reduced compensation is an integral
37 part of the employer's expenditure reduction efforts, as certified by
38 the employer;

1 (ii) Any compensation forgone by a member employed by the state
2 or a local government employer during the 2011-2013 fiscal biennium
3 as a result of reduced work hours, mandatory leave without pay,
4 temporary layoffs, or reductions to current pay if the reduced
5 compensation is an integral part of the employer's expenditure
6 reduction efforts, as certified by the employer. Reductions to
7 current pay shall not include elimination of previously agreed upon
8 future salary increases; and

9 (iii) Any compensation forgone by a member during the 2019-2021
10 and 2021-2023 fiscal biennia as a result of reduced work hours,
11 mandatory leave without pay, temporary layoffs, furloughs, reductions
12 to current pay, or other similar measures resulting from the COVID-19
13 budgetary crisis, if the reduced compensation is an integral part of
14 the employer's expenditure reduction efforts, as certified by the
15 employer. Reductions to current pay shall not include elimination of
16 previously agreed upon future salary increases.

17 (6) "Beneficiary" means any person in receipt of a retirement
18 allowance or other benefit provided by this chapter resulting from
19 service rendered to an employer by another person.

20 (7)(a) "Compensation earnable" for members, means salaries or
21 wages earned by a member during a payroll period for personal
22 services, including overtime payments, and shall include wages and
23 salaries deferred under provisions established pursuant to sections
24 403(b), 414(h), and 457 of the United States internal revenue code,
25 but shall exclude nonmoney maintenance compensation and lump sum or
26 other payments for deferred annual sick leave, unused accumulated
27 vacation, unused accumulated annual leave, or any form of severance
28 pay.

29 (b) "Compensation earnable" for members also includes the
30 following actual or imputed payments, which are not paid for personal
31 services:

32 (i) Retroactive payments to an individual by an employer on
33 reinstatement of the employee in a position, or payments by an
34 employer to an individual in lieu of reinstatement, which are awarded
35 or granted as the equivalent of the salary or wage which the
36 individual would have earned during a payroll period shall be
37 considered compensation earnable to the extent provided in this
38 subsection, and the individual shall receive the equivalent service
39 credit;

1 (ii) In any year in which a member serves in the legislature, the
2 member shall have the option of having such member's compensation
3 earnable be the greater of:

4 (A) The compensation earnable the member would have received had
5 such member not served in the legislature; or

6 (B) Such member's actual compensation earnable received for
7 nonlegislative public employment and legislative service combined.
8 Any additional contributions to the retirement system required
9 because compensation earnable under (b)(ii)(A) of this subsection is
10 greater than compensation earnable under (b)(ii)(B) of this
11 subsection shall be paid by the member for both member and employer
12 contributions;

13 (iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045,
14 and 72.09.240;

15 (iv) Compensation that a member would have received but for a
16 disability occurring in the line of duty only as authorized by RCW
17 41.37.060;

18 (v) Compensation that a member receives due to participation in
19 the leave sharing program only as authorized by RCW 41.04.650 through
20 41.04.670; and

21 (vi) Compensation that a member receives for being in standby
22 status. For the purposes of this section, a member is in standby
23 status when not being paid for time actually worked and the employer
24 requires the member to be prepared to report immediately for work, if
25 the need arises, although the need may not arise.

26 (8) "Department" means the department of retirement systems
27 created in chapter 41.50 RCW.

28 (9) "Director" means the director of the department.

29 (10) "Eligible position" means any permanent, full-time position
30 included in subsection (19) of this section.

31 (11) "Employee" or "employed" means a person who is providing
32 services for compensation to an employer, unless the person is free
33 from the employer's direction and control over the performance of
34 work. The department shall adopt rules and interpret this subsection
35 consistent with common law.

36 (12)(a) "Employer" means:

37 (i) The Washington state department of corrections;

38 (ii) The Washington state parks and recreation commission;

39 (iii) The Washington state gambling commission;

40 (iv) The Washington state patrol;

1 (v) The Washington state department of natural resources;
2 (vi) The Washington state liquor and cannabis board;
3 (vii) The Washington state department of veterans affairs;
4 (viii) The Washington state department of children, youth, and
5 families;
6 (ix) The Washington state department of social and health
7 services;
8 (x) Any county corrections department;
9 (xi) Any city corrections department not covered under chapter
10 41.28 RCW;
11 (xii) Any public corrections entity created under RCW 39.34.030
12 by counties, cities not covered under chapter 41.28 RCW, or both; and
13 (xiii) Any employer participating in the public employees'
14 retirement system in chapter 41.40 RCW, some or all of whose
15 employees' primary responsibility is to receive, process, transmit,
16 or dispatch 911 emergency and nonemergency calls for law enforcement,
17 fire, emergency medical, or other public safety services that is not
18 already covered by the provisions of this subsection.
19 (b) Except as otherwise specifically provided in this chapter,
20 "employer" does not include a government contractor. For purposes of
21 this subsection, a "government contractor" is any entity, including a
22 partnership, limited liability company, for-profit or nonprofit
23 corporation, or person, that provides services pursuant to a contract
24 with an employer. The determination whether an employer-employee
25 relationship has been established is not based on the relationship
26 between a government contractor and an employer, but is based solely
27 on the relationship between a government contractor's employee and an
28 employer under this chapter.
29 (13) "Final compensation" means the annual rate of compensation
30 earnable by a member at the time of termination of employment.
31 (14) "Index" means, for any calendar year, that year's annual
32 average consumer price index, Seattle, Washington area, for urban
33 wage earners and clerical workers, all items, compiled by the bureau
34 of labor statistics, United States department of labor.
35 (15) "Index A" means the index for the year prior to the
36 determination of a postretirement adjustment.
37 (16) "Index B" means the index for the year prior to index A.
38 (17) "Ineligible position" means any position which does not
39 conform with the requirements set forth in subsection (10) of this
40 section.

1 (18) "Leave of absence" means the period of time a member is
2 authorized by the employer to be absent from service without being
3 separated from membership.

4 (19) "Member" means any employee employed by an employer on a
5 full-time basis:

6 (a) Who is in a position that requires completion of a certified
7 criminal justice training course and is authorized by their employer
8 to arrest, conduct criminal investigations, enforce the criminal laws
9 of the state of Washington, and carry a firearm as part of the job;

10 (b) Whose primary responsibility is to ensure the custody and
11 security of incarcerated or probationary individuals as a corrections
12 officer, probation officer, or jailer;

13 (c) Who is a limited authority Washington peace officer, as
14 defined in RCW 10.93.020, for an employer;

15 (d) Whose primary responsibility is to provide nursing care to,
16 or to ensure the custody and safety of, offender, adult probationary,
17 or patient populations; and who is in a position that requires
18 completion of defensive tactics training or de-escalation training;
19 and who is employed by one of the following state institutions or
20 centers operated by the department of social and health services or
21 the department of children, youth, and families:

22 (i) Juvenile rehabilitation administration institutions, not
23 including community facilities;

24 (ii) Mental health hospitals;

25 (iii) Child study and treatment centers; or

26 (iv) Institutions or residential sites that serve developmentally
27 disabled patients or offenders, or perform (~~competency~~) restoration
28 treatment services, except for state-operated living alternatives
29 facilities;

30 (e) Whose primary responsibility is to provide nursing care to
31 offender and patient populations in institutions and centers operated
32 by the following employers: A city or county corrections department
33 as set forth in subsection (12) of this section, a public corrections
34 entity as set forth in subsection (12) of this section, the
35 Washington state department of corrections, or the Washington state
36 department of veterans affairs;

37 (f) Whose primary responsibility is to receive, process,
38 transmit, or dispatch 911 emergency and nonemergency calls for law
39 enforcement, fire, emergency medical, or other public safety
40 services, or to supervise those employees; or

1 (g) Whose primary responsibility is to supervise members eligible
2 under this subsection.

3 (20) "Membership service" means all service rendered as a member.

4 (21) "Pension" means payments for life derived from contributions
5 made by the employer. All pensions shall be paid in monthly
6 installments.

7 (22) "Plan" means the Washington public safety employees'
8 retirement system plan 2.

9 (23) "Regular interest" means such rate as the director may
10 determine.

11 (24) "Retiree" means any person who has begun accruing a
12 retirement allowance or other benefit provided by this chapter
13 resulting from service rendered to an employer while a member.

14 (25) "Retirement" means withdrawal from active service with a
15 retirement allowance as provided by this chapter.

16 (26) "Retirement allowance" means monthly payments to a retiree
17 or beneficiary as provided in this chapter.

18 (27) "Retirement system" means the Washington public safety
19 employees' retirement system provided for in this chapter.

20 (28) "Separation from service" occurs when a person has
21 terminated all employment with an employer.

22 (29) "Service" means periods of employment by a member on or
23 after July 1, 2006, for one or more employers for which compensation
24 earnable is paid. Compensation earnable earned for ninety or more
25 hours in any calendar month shall constitute one service credit
26 month. Compensation earnable earned for at least seventy hours but
27 less than ninety hours in any calendar month shall constitute one-
28 half service credit month of service. Compensation earnable earned
29 for less than seventy hours in any calendar month shall constitute
30 one-quarter service credit month of service. Time spent in standby
31 status, whether compensated or not, is not service.

32 Any fraction of a year of service shall be taken into account in
33 the computation of such retirement allowance or benefits.

34 (a) Service in any state elective position shall be deemed to be
35 full-time service.

36 (b) A member shall receive a total of not more than twelve
37 service credit months of service for such calendar year. If an
38 individual is employed in an eligible position by one or more
39 employers the individual shall receive no more than one service

1 credit month during any calendar month in which multiple service for
2 ninety or more hours is rendered.

3 (c) Reduction efforts such as furloughs, reduced work hours,
4 mandatory leave without pay, temporary layoffs, or other similar
5 situations as contemplated by subsection (5)(b)(iii) of this section
6 do not result in a reduction in service credit that otherwise would
7 have been earned for that month of work, and the member shall receive
8 the full service credit for the hours that were scheduled to be
9 worked before the reduction.

10 (30) "Service credit month" means a month or an accumulation of
11 months of service credit which is equal to one.

12 (31) "Service credit year" means an accumulation of months of
13 service credit which is equal to one when divided by twelve.

14 (32) "State actuary" or "actuary" means the person appointed
15 pursuant to RCW 44.44.010(2).

16 (33) "State elective position" means any position held by any
17 person elected or appointed to statewide office or elected or
18 appointed as a member of the legislature.

19 (34) "State treasurer" means the treasurer of the state of
20 Washington.

21 **Sec. 40.** RCW 70.02.010 and 2020 c 302 s 112 and 2020 c 256 s 401
22 are each reenacted and amended to read as follows:

23 The definitions in this section apply throughout this chapter
24 unless the context clearly requires otherwise.

25 (1) "Admission" has the same meaning as in RCW 71.05.020.

26 (2) "Audit" means an assessment, evaluation, determination, or
27 investigation of a health care provider by a person not employed by
28 or affiliated with the provider to determine compliance with:

29 (a) Statutory, regulatory, fiscal, medical, or scientific
30 standards;

31 (b) A private or public program of payments to a health care
32 provider; or

33 (c) Requirements for licensing, accreditation, or certification.

34 (3) "Authority" means the Washington state health care authority.

35 (4) "Commitment" has the same meaning as in RCW 71.05.020.

36 (5) "Custody" has the same meaning as in RCW 71.05.020.

37 (6) "Deidentified" means health information that does not
38 identify an individual and with respect to which there is no

1 reasonable basis to believe that the information can be used to
2 identify an individual.

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

5 (8) "Designated crisis responder" has the same meaning as in RCW
6 71.05.020 or 71.34.020, as applicable.

7 (9) "Detention" or "detain" has the same meaning as in RCW
8 71.05.020.

9 (10) "Directory information" means information disclosing the
10 presence, and for the purpose of identification, the name, location
11 within a health care facility, and the general health condition of a
12 particular patient who is a patient in a health care facility or who
13 is currently receiving emergency health care in a health care
14 facility.

15 (11) "Discharge" has the same meaning as in RCW 71.05.020.

16 (12) "Evaluation and treatment facility" has the same meaning as
17 in RCW 71.05.020 or 71.34.020, as applicable.

18 (13) "Federal, state, or local law enforcement authorities" means
19 an officer of any agency or authority in the United States, a state,
20 a tribe, a territory, or a political subdivision of a state, a tribe,
21 or a territory who is empowered by law to: (a) Investigate or conduct
22 an official inquiry into a potential criminal violation of law; or
23 (b) prosecute or otherwise conduct a criminal proceeding arising from
24 an alleged violation of law.

25 (14) "General health condition" means the patient's health status
26 described in terms of "critical," "poor," "fair," "good,"
27 "excellent," or terms denoting similar conditions.

28 (15) "Health care" means any care, service, or procedure provided
29 by a health care provider:

30 (a) To diagnose, treat, or maintain a patient's physical or
31 mental condition; or

32 (b) That affects the structure or any function of the human body.

33 (16) "Health care facility" means a hospital, clinic, nursing
34 home, laboratory, office, or similar place where a health care
35 provider provides health care to patients.

36 (17) "Health care information" means any information, whether
37 oral or recorded in any form or medium, that identifies or can
38 readily be associated with the identity of a patient and directly
39 relates to the patient's health care, including a patient's
40 deoxyribonucleic acid and identified sequence of chemical base pairs.

1 The term includes any required accounting of disclosures of health
2 care information.

3 (18) "Health care operations" means any of the following
4 activities of a health care provider, health care facility, or third-
5 party payor to the extent that the activities are related to
6 functions that make an entity a health care provider, a health care
7 facility, or a third-party payor:

8 (a) Conducting: Quality assessment and improvement activities,
9 including outcomes evaluation and development of clinical guidelines,
10 if the obtaining of generalizable knowledge is not the primary
11 purpose of any studies resulting from such activities; population-
12 based activities relating to improving health or reducing health care
13 costs, protocol development, case management and care coordination,
14 contacting of health care providers and patients with information
15 about treatment alternatives; and related functions that do not
16 include treatment;

17 (b) Reviewing the competence or qualifications of health care
18 professionals, evaluating practitioner and provider performance and
19 third-party payor performance, conducting training programs in which
20 students, trainees, or practitioners in areas of health care learn
21 under supervision to practice or improve their skills as health care
22 providers, training of nonhealth care professionals, accreditation,
23 certification, licensing, or credentialing activities;

24 (c) Underwriting, premium rating, and other activities relating
25 to the creation, renewal, or replacement of a contract of health
26 insurance or health benefits, and ceding, securing, or placing a
27 contract for reinsurance of risk relating to claims for health care,
28 including stop-loss insurance and excess of loss insurance, if any
29 applicable legal requirements are met;

30 (d) Conducting or arranging for medical review, legal services,
31 and auditing functions, including fraud and abuse detection and
32 compliance programs;

33 (e) Business planning and development, such as conducting cost-
34 management and planning-related analyses related to managing and
35 operating the health care facility or third-party payor, including
36 formulary development and administration, development, or improvement
37 of methods of payment or coverage policies; and

38 (f) Business management and general administrative activities of
39 the health care facility, health care provider, or third-party payor
40 including, but not limited to:

1 (i) Management activities relating to implementation of and
2 compliance with the requirements of this chapter;

3 (ii) Customer service, including the provision of data analyses
4 for policyholders, plan sponsors, or other customers, provided that
5 health care information is not disclosed to such policyholder, plan
6 sponsor, or customer;

7 (iii) Resolution of internal grievances;

8 (iv) The sale, transfer, merger, or consolidation of all or part
9 of a health care provider, health care facility, or third-party payor
10 with another health care provider, health care facility, or third-
11 party payor or an entity that following such activity will become a
12 health care provider, health care facility, or third-party payor, and
13 due diligence related to such activity; and

14 (v) Consistent with applicable legal requirements, creating
15 deidentified health care information or a limited data set for the
16 benefit of the health care provider, health care facility, or third-
17 party payor.

18 (19) "Health care provider" means a person who is licensed,
19 certified, registered, or otherwise authorized by the law of this
20 state to provide health care in the ordinary course of business or
21 practice of a profession.

22 (20) "Human immunodeficiency virus" or "HIV" has the same meaning
23 as in RCW 70.24.017.

24 (21) "Imminent" has the same meaning as in RCW 71.05.020.

25 (22) "Indian health care provider" has the same meaning as in RCW
26 43.71B.010(11).

27 (23) "Information and records related to mental health services"
28 means a type of health care information that relates to all
29 information and records compiled, obtained, or maintained in the
30 course of providing services by a mental health service agency or
31 mental health professional to persons who are receiving or have
32 received services for mental illness. The term includes mental health
33 information contained in a medical bill, registration records, as
34 defined in RCW 70.97.010, and all other records regarding the person
35 maintained by the department, by the authority, by behavioral health
36 administrative services organizations and their staff, managed care
37 organizations contracted with the authority under chapter 74.09 RCW
38 and their staff, and by treatment facilities. The term further
39 includes documents of legal proceedings under chapter 71.05, 71.34,
40 or 10.77 RCW, or somatic health care information. For health care

1 information maintained by a hospital as defined in RCW 70.41.020 or a
2 health care facility or health care provider that participates with a
3 hospital in an organized health care arrangement defined under
4 federal law, "information and records related to mental health
5 services" is limited to information and records of services provided
6 by a mental health professional or information and records of
7 services created by a hospital-operated community behavioral health
8 program as defined in RCW 71.24.025. The term does not include
9 psychotherapy notes.

10 (24) "Information and records related to sexually transmitted
11 diseases" means a type of health care information that relates to the
12 identity of any person upon whom an HIV antibody test or other
13 sexually transmitted infection test is performed, the results of such
14 tests, and any information relating to diagnosis of or treatment for
15 any confirmed sexually transmitted infections.

16 (25) "Institutional review board" means any board, committee, or
17 other group formally designated by an institution, or authorized
18 under federal or state law, to review, approve the initiation of, or
19 conduct periodic review of research programs to assure the protection
20 of the rights and welfare of human research subjects.

21 (26) "Legal counsel" has the same meaning as in RCW 71.05.020.

22 (27) "Local public health officer" has the same meaning as in RCW
23 70.24.017.

24 (28) "Maintain," as related to health care information, means to
25 hold, possess, preserve, retain, store, or control that information.

26 (29) "Managed care organization" has the same meaning as provided
27 in RCW 71.24.025.

28 (30) "Mental health professional" means a psychiatrist,
29 psychologist, psychiatric advanced registered nurse practitioner,
30 psychiatric nurse, or social worker, and such other mental health
31 professionals as may be defined by rules adopted by the secretary of
32 health under chapter 71.05 RCW, whether that person works in a
33 private or public setting.

34 (31) "Mental health service agency" means a public or private
35 agency that provides services to persons with mental disorders as
36 defined under RCW 71.05.020 or 71.34.020 and receives funding from
37 public sources. This includes evaluation and treatment facilities as
38 defined in RCW 71.34.020, community mental health service delivery
39 systems, or community behavioral health programs, as defined in RCW

1 71.24.025, and facilities conducting (~~competency~~) ability to
2 proceed evaluations and restoration under chapter 10.77 RCW.

3 (32) "Minor" has the same meaning as in RCW 71.34.020.

4 (33) "Parent" has the same meaning as in RCW 71.34.020.

5 (34) "Patient" means an individual who receives or has received
6 health care. The term includes a deceased individual who has received
7 health care.

8 (35) "Payment" means:

9 (a) The activities undertaken by:

10 (i) A third-party payor to obtain premiums or to determine or
11 fulfill its responsibility for coverage and provision of benefits by
12 the third-party payor; or

13 (ii) A health care provider, health care facility, or third-party
14 payor, to obtain or provide reimbursement for the provision of health
15 care; and

16 (b) The activities in (a) of this subsection that relate to the
17 patient to whom health care is provided and that include, but are not
18 limited to:

19 (i) Determinations of eligibility or coverage, including
20 coordination of benefits or the determination of cost-sharing
21 amounts, and adjudication or subrogation of health benefit claims;

22 (ii) Risk adjusting amounts due based on enrollee health status
23 and demographic characteristics;

24 (iii) Billing, claims management, collection activities,
25 obtaining payment under a contract for reinsurance, including stop-
26 loss insurance and excess of loss insurance, and related health care
27 data processing;

28 (iv) Review of health care services with respect to medical
29 necessity, coverage under a health plan, appropriateness of care, or
30 justification of charges;

31 (v) Utilization review activities, including precertification and
32 preauthorization of services, and concurrent and retrospective review
33 of services; and

34 (vi) Disclosure to consumer reporting agencies of any of the
35 following health care information relating to collection of premiums
36 or reimbursement:

37 (A) Name and address;

38 (B) Date of birth;

39 (C) Social security number;

40 (D) Payment history;

1 (E) Account number; and
2 (F) Name and address of the health care provider, health care
3 facility, and/or third-party payor.
4 (36) "Person" means an individual, corporation, business trust,
5 estate, trust, partnership, association, joint venture, government,
6 governmental subdivision or agency, or any other legal or commercial
7 entity.
8 (37) "Professional person" has the same meaning as in RCW
9 71.05.020.
10 (38) "Psychiatric advanced registered nurse practitioner" has the
11 same meaning as in RCW 71.05.020.
12 (39) "Psychotherapy notes" means notes recorded, in any medium,
13 by a mental health professional documenting or analyzing the contents
14 of conversations during a private counseling session or group, joint,
15 or family counseling session, and that are separated from the rest of
16 the individual's medical record. The term excludes mediation
17 prescription and monitoring, counseling session start and stop times,
18 the modalities and frequencies of treatment furnished, results of
19 clinical tests, and any summary of the following items: Diagnosis,
20 functional status, the treatment plan, symptoms, prognosis, and
21 progress to date.
22 (40) "Reasonable fee" means the charges for duplicating or
23 searching the record, but shall not exceed sixty-five cents per page
24 for the first thirty pages and fifty cents per page for all other
25 pages. In addition, a clerical fee for searching and handling may be
26 charged not to exceed fifteen dollars. These amounts shall be
27 adjusted biennially in accordance with changes in the consumer price
28 index, all consumers, for Seattle-Tacoma metropolitan statistical
29 area as determined by the secretary of health. However, where editing
30 of records by a health care provider is required by statute and is
31 done by the provider personally, the fee may be the usual and
32 customary charge for a basic office visit.
33 (41) "Release" has the same meaning as in RCW 71.05.020.
34 (42) "Resource management services" has the same meaning as in
35 RCW 71.05.020.
36 (43) "Serious violent offense" has the same meaning as in RCW
37 9.94A.030.
38 (44) "Sexually transmitted infection" or "sexually transmitted
39 disease" has the same meaning as "sexually transmitted disease" in
40 RCW 70.24.017.

1 (45) "Test for a sexually transmitted disease" has the same
2 meaning as in RCW 70.24.017.

3 (46) "Third-party payor" means an insurer regulated under Title
4 48 RCW authorized to transact business in this state or other
5 jurisdiction, including a health care service contractor, and health
6 maintenance organization; or an employee welfare benefit plan,
7 excluding fitness or wellness plans; or a state or federal health
8 benefit program.

9 (47) "Treatment" means the provision, coordination, or management
10 of health care and related services by one or more health care
11 providers or health care facilities, including the coordination or
12 management of health care by a health care provider or health care
13 facility with a third party; consultation between health care
14 providers or health care facilities relating to a patient; or the
15 referral of a patient for health care from one health care provider
16 or health care facility to another.

17 **Sec. 41.** RCW 70.02.230 and 2023 c 295 s 12 are each amended to
18 read as follows:

19 (1) The fact of admission to a provider for mental health
20 services and all information and records compiled, obtained, or
21 maintained in the course of providing mental health services to
22 either voluntary or involuntary recipients of services at public or
23 private agencies may not be disclosed except as provided in this
24 section, RCW 70.02.050, 71.05.445, 74.09.295, 70.02.210, 70.02.240,
25 70.02.250, 70.02.260, and 70.02.265, or pursuant to a valid
26 authorization under RCW 70.02.030.

27 (2) Information and records related to mental health services,
28 other than those obtained through treatment under chapter 71.34 RCW,
29 may be disclosed:

30 (a) In communications between qualified professional persons to
31 meet the requirements of chapter 71.05 RCW, including Indian health
32 care providers, in the provision of services or appropriate
33 referrals, or in the course of guardianship proceedings if provided
34 to a professional person:

- 35 (i) Employed by the facility;
36 (ii) Who has medical responsibility for the patient's care;
37 (iii) Who is a designated crisis responder;
38 (iv) Who is providing services under chapter 71.24 RCW;

1 (v) Who is employed by a state or local correctional facility
2 where the person is confined or supervised; or

3 (vi) Who is providing evaluation, treatment, or follow-up
4 services under chapter 10.77 RCW;

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

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

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

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

18 (B) A statement evaluating the mental and physical condition of
19 the patient, and a statement of the probable duration of the
20 patient's confinement, if such information is requested by the next
21 of kin, attorney, personal representative, guardian, or conservator;
22 and

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

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

31 (ii) To a court or its designee in which a motion under chapter
32 10.77 RCW has been made for involuntary medication of a defendant for
33 the purpose of (~~competency~~) restoration treatment.

34 (iii) Disclosure under this subsection is mandatory for the
35 purpose of the federal health insurance portability and
36 accountability act;

37 (e) (i) When a mental health professional or designated crisis
38 responder is requested by a representative of a law enforcement or
39 corrections agency, including a police officer, sheriff, community
40 corrections officer, a municipal attorney, or prosecuting attorney to

1 undertake an investigation or provide treatment under RCW 71.05.150,
2 10.31.110, or 71.05.153, the mental health professional or designated
3 crisis responder shall, if requested to do so, advise the
4 representative in writing of the results of the investigation
5 including a statement of reasons for the decision to detain or
6 release the person investigated. The written report must be submitted
7 within seventy-two hours of the completion of the investigation or
8 the request from the law enforcement or corrections representative,
9 whichever occurs later.

10 (ii) Disclosure under this subsection is mandatory for the
11 purposes of the federal health insurance portability and
12 accountability act;

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

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

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

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

39 (i)(i) To appropriate corrections and law enforcement agencies
40 all necessary and relevant information in the event of a crisis or

1 emergent situation that poses a significant and imminent risk to the
2 public. The mental health service agency or its employees are not
3 civilly liable for the decision to disclose or not so long as the
4 decision was reached in good faith and without gross negligence.

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

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

9 (k) By a care coordinator under RCW 71.05.585 or 10.77.175
10 assigned to a person ordered to receive less restrictive alternative
11 treatment for the purpose of sharing information to parties necessary
12 for the implementation of proceedings under chapter 71.05 or 10.77
13 RCW;

14 (l) Upon the death of a person. The person's next of kin,
15 personal representative, guardian, or conservator, if any, must be
16 notified. Next of kin who are of legal age and competent must be
17 notified under this section in the following order: Spouse, parents,
18 children, brothers and sisters, and other relatives according to the
19 degree of relation. Access to all records and information compiled,
20 obtained, or maintained in the course of providing services to a
21 deceased patient are governed by RCW 70.02.140;

22 (m) To mark headstones or otherwise memorialize patients interred
23 at state hospital cemeteries. The department of social and health
24 services shall make available the name, date of birth, and date of
25 death of patients buried in state hospital cemeteries fifty years
26 after the death of a patient;

27 (n) To law enforcement officers and to prosecuting attorneys as
28 are necessary to enforce RCW 9.41.040(2)(a)(iii). The extent of
29 information that may be released is limited as follows:

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

35 (ii) The law enforcement and prosecuting attorneys may only
36 release the information obtained to the person's attorney as required
37 by court rule and to a jury or judge, if a jury is waived, that
38 presides over any trial at which the person is charged with violating
39 RCW 9.41.040(2)(a)(iii);

1 (iii) Disclosure under this subsection is mandatory for the
2 purposes of the federal health insurance portability and
3 accountability act;

4 (o) When a patient would otherwise be subject to the provisions
5 of this section and disclosure is necessary for the protection of the
6 patient or others due to his or her unauthorized disappearance from
7 the facility, and his or her whereabouts is unknown, notice of the
8 disappearance, along with relevant information, may be made to
9 relatives, the department of corrections when the person is under the
10 supervision of the department, and governmental law enforcement
11 agencies designated by the physician or psychiatric advanced
12 registered nurse practitioner in charge of the patient or the
13 professional person in charge of the facility, or his or her
14 professional designee;

15 (p) Pursuant to lawful order of a court, including a tribal
16 court;

17 (q) To qualified staff members of the department, to the
18 authority, to behavioral health administrative services
19 organizations, to managed care organizations, to resource management
20 services responsible for serving a patient, or to service providers
21 designated by resource management services as necessary to determine
22 the progress and adequacy of treatment and to determine whether the
23 person should be transferred to a less restrictive or more
24 appropriate treatment modality or facility;

25 (r) Within the mental health service agency or Indian health care
26 provider facility where the patient is receiving treatment,
27 confidential information may be disclosed to persons employed,
28 serving in bona fide training programs, or participating in
29 supervised volunteer programs, at the facility when it is necessary
30 to perform their duties;

31 (s) Within the department and the authority as necessary to
32 coordinate treatment for mental illness, developmental disabilities,
33 or substance use disorder of persons who are under the supervision of
34 the department;

35 (t) Between the department of social and health services, the
36 department of children, youth, and families, and the health care
37 authority as necessary to coordinate treatment for mental illness,
38 developmental disabilities, or substance use disorder of persons who
39 are under the supervision of the department of social and health
40 services or the department of children, youth, and families;

1 (u) To a licensed physician or psychiatric advanced registered
2 nurse practitioner who has determined that the life or health of the
3 person is in danger and that treatment without the information and
4 records related to mental health services could be injurious to the
5 patient's health. Disclosure must be limited to the portions of the
6 records necessary to meet the medical emergency;

7 (v) (i) Consistent with the requirements of the federal health
8 insurance portability and accountability act, to:

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

12 (B) Any other person who is working in a care coordinator role
13 for a health care facility, health care provider, or Indian health
14 care provider, or is under an agreement pursuant to the federal
15 health insurance portability and accountability act with a health
16 care facility or a health care provider and requires the information
17 and records to assure coordinated care and treatment of that patient.

18 (ii) A person authorized to use or disclose information and
19 records related to mental health services under this subsection
20 (2)(v) must take appropriate steps to protect the information and
21 records relating to mental health services.

22 (iii) Psychotherapy notes may not be released without
23 authorization of the patient who is the subject of the request for
24 release of information;

25 (w) To administrative and office support staff designated to
26 obtain medical records for those licensed professionals listed in (v)
27 of this subsection;

28 (x) To a facility that is to receive a person who is
29 involuntarily committed under chapter 71.05 RCW, or upon transfer of
30 the person from one evaluation and treatment facility to another. The
31 release of records under this subsection is limited to the
32 information and records related to mental health services required by
33 law, a record or summary of all somatic treatments, and a discharge
34 summary. The discharge summary may include a statement of the
35 patient's problem, the treatment goals, the type of treatment which
36 has been provided, and recommendation for future treatment, but may
37 not include the patient's complete treatment record;

38 (y) To the person's counsel or guardian ad litem, without
39 modification, at any time in order to prepare for involuntary
40 commitment or recommitment proceedings, reexaminations, appeals, or

1 other actions relating to detention, admission, commitment, or
2 patient's rights under chapter 71.05 RCW;

3 (z) To staff members of the protection and advocacy agency or to
4 staff members of a private, nonprofit corporation for the purpose of
5 protecting and advocating the rights of persons with mental disorders
6 or developmental disabilities. Resource management services may limit
7 the release of information to the name, birthdate, and county of
8 residence of the patient, information regarding whether the patient
9 was voluntarily admitted, or involuntarily committed, the date and
10 place of admission, placement, or commitment, the name and address of
11 a guardian of the patient, and the date and place of the guardian's
12 appointment. Any staff member who wishes to obtain additional
13 information must notify the patient's resource management services in
14 writing of the request and of the resource management services' right
15 to object. The staff member shall send the notice by mail to the
16 guardian's address. If the guardian does not object in writing within
17 fifteen days after the notice is mailed, the staff member may obtain
18 the additional information. If the guardian objects in writing within
19 fifteen days after the notice is mailed, the staff member may not
20 obtain the additional information;

21 (aa) To all current treating providers, including Indian health
22 care providers, of the patient with prescriptive authority who have
23 written a prescription for the patient within the last twelve months.
24 For purposes of coordinating health care, the department or the
25 authority may release without written authorization of the patient,
26 information acquired for billing and collection purposes as described
27 in RCW 70.02.050(1)(d). The department, or the authority, if
28 applicable, shall notify the patient that billing and collection
29 information has been released to named providers, and provide the
30 substance of the information released and the dates of such release.
31 Neither the department nor the authority may release counseling,
32 inpatient psychiatric hospitalization, or drug and alcohol treatment
33 information without a signed written release from the client;

34 (bb)(i) To the secretary of social and health services and the
35 director of the health care authority for either program evaluation
36 or research, or both so long as the secretary or director, where
37 applicable, adopts rules for the conduct of the evaluation or
38 research, or both. Such rules must include, but need not be limited
39 to, the requirement that all evaluators and researchers sign an oath
40 of confidentiality substantially as follows:

1 "As a condition of conducting evaluation or research concerning
2 persons who have received services from (fill in the facility,
3 agency, or person) I,, agree not to divulge, publish, or
4 otherwise make known to unauthorized persons or the public any
5 information obtained in the course of such evaluation or research
6 regarding persons who have received services such that the person who
7 received such services is identifiable.

8 I recognize that unauthorized release of confidential information
9 may subject me to civil liability under the provisions of state law.
10 /s/"

11 (ii) Nothing in this chapter may be construed to prohibit the
12 compilation and publication of statistical data for use by government
13 or researchers under standards, including standards to assure
14 maintenance of confidentiality, set forth by the secretary, or
15 director, where applicable;

16 (cc) To any person if the conditions in RCW 70.02.205 are met;

17 (dd) To the secretary of health for the purposes of the maternal
18 mortality review panel established in RCW 70.54.450; or

19 (ee) To a tribe or Indian health care provider to carry out the
20 requirements of RCW 71.05.150(6).

21 (3) Whenever federal law or federal regulations restrict the
22 release of information contained in the information and records
23 related to mental health services of any patient who receives
24 treatment for a substance use disorder, the department or the
25 authority may restrict the release of the information as necessary to
26 comply with federal law and regulations.

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

32 (5) The fact of admission to a provider of mental health
33 services, as well as all records, files, evidence, findings, or
34 orders made, prepared, collected, or maintained pursuant to chapter
35 71.05 RCW are not admissible as evidence in any legal proceeding
36 outside that chapter without the written authorization of the person
37 who was the subject of the proceeding except as provided in RCW
38 70.02.260, in a subsequent criminal prosecution of a person committed
39 pursuant to RCW 71.05.280(3) or 71.05.320(4)(c) on charges that were

1 dismissed pursuant to chapter 10.77 RCW due to (~~incompetency to~~
2 ~~stand trial~~) inability to proceed, in a civil commitment proceeding
3 pursuant to chapter 71.09 RCW, or, in the case of a minor, a
4 guardianship or dependency proceeding. The records and files
5 maintained in any court proceeding pursuant to chapter 71.05 RCW must
6 be confidential and available subsequent to such proceedings only to
7 the person who was the subject of the proceeding or his or her
8 attorney. In addition, the court may order the subsequent release or
9 use of such records or files only upon good cause shown if the court
10 finds that appropriate safeguards for strict confidentiality are and
11 will be maintained.

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

17 (i) One thousand dollars; or

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

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

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

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

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

31 **Sec. 42.** RCW 71.05.020 and 2023 c 433 s 3 and 2023 c 425 s 20
32 are each reenacted and amended to read as follows:

33 The definitions in this section apply throughout this chapter
34 unless the context clearly requires otherwise.

35 (1) "23-hour crisis relief center" has the same meaning as under
36 RCW 71.24.025;

37 (2) "Admission" or "admit" means a decision by a physician,
38 physician assistant, or psychiatric advanced registered nurse

1 practitioner that a person should be examined or treated as a patient
2 in a hospital;

3 (3) "Alcoholism" means a disease, characterized by a dependency
4 on alcoholic beverages, loss of control over the amount and
5 circumstances of use, symptoms of tolerance, physiological or
6 psychological withdrawal, or both, if use is reduced or discontinued,
7 and impairment of health or disruption of social or economic
8 functioning;

9 (4) "Antipsychotic medications" means that class of drugs
10 primarily used to treat serious manifestations of mental illness
11 associated with thought disorders, which includes, but is not limited
12 to atypical antipsychotic medications;

13 (5) "Approved substance use disorder treatment program" means a
14 program for persons with a substance use disorder provided by a
15 treatment program certified by the department as meeting standards
16 adopted under chapter 71.24 RCW;

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

20 (7) "Authority" means the Washington state health care authority;

21 (8) "Behavioral health disorder" means either a mental disorder
22 as defined in this section, a substance use disorder as defined in
23 this section, or a co-occurring mental disorder and substance use
24 disorder;

25 (9) "Behavioral health service provider" means a public or
26 private agency that provides mental health, substance use disorder,
27 or co-occurring disorder services to persons with behavioral health
28 disorders as defined under this section and receives funding from
29 public sources. This includes, but is not limited to: Hospitals
30 licensed under chapter 70.41 RCW; evaluation and treatment facilities
31 as defined in this section; community mental health service delivery
32 systems or community behavioral health programs as defined in RCW
33 71.24.025; licensed or certified behavioral health agencies under RCW
34 71.24.037; facilities conducting (~~competency~~) ability to proceed
35 evaluations and restoration under chapter 10.77 RCW; approved
36 substance use disorder treatment programs as defined in this section;
37 secure withdrawal management and stabilization facilities as defined
38 in this section; and correctional facilities operated by state and
39 local governments;

1 (10) "Co-occurring disorder specialist" means an individual
2 possessing an enhancement granted by the department of health under
3 chapter 18.205 RCW that certifies the individual to provide substance
4 use disorder counseling subject to the practice limitations under RCW
5 18.205.105;

6 (11) "Commitment" means the determination by a court that a
7 person should be detained for a period of either evaluation or
8 treatment, or both, in an inpatient or a less restrictive setting;

9 (12) "Community behavioral health agency" has the same meaning as
10 "licensed or certified behavioral health agency" defined in RCW
11 71.24.025;

12 (13) "Conditional release" means a revocable modification of a
13 commitment, which may be revoked upon violation of any of its terms;

14 (14) "Crisis stabilization unit" means a short-term facility or a
15 portion of a facility licensed or certified by the department, such
16 as an evaluation and treatment facility or a hospital, which has been
17 designed to assess, diagnose, and treat individuals experiencing an
18 acute crisis without the use of long-term hospitalization, or to
19 determine the need for involuntary commitment of an individual;

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

24 (16) "Department" means the department of health;

25 (17) "Designated crisis responder" means a mental health
26 professional appointed by the county, by an entity appointed by the
27 county, or by the authority in consultation with a federally
28 recognized Indian tribe or after meeting and conferring with an
29 Indian health care provider, to perform the duties specified in this
30 chapter;

31 (18) "Detention" or "detain" means the lawful confinement of a
32 person, under the provisions of this chapter;

33 (19) "Developmental disabilities professional" means a person who
34 has specialized training and three years of experience in directly
35 treating or working with persons with developmental disabilities and
36 is a psychiatrist, physician assistant working with a supervising
37 psychiatrist, psychologist, psychiatric advanced registered nurse
38 practitioner, or social worker, and such other developmental
39 disabilities professionals as may be defined by rules adopted by the
40 secretary of the department of social and health services;

1 (20) "Developmental disability" means that condition defined in
2 RCW 71A.10.020(6);

3 (21) "Director" means the director of the authority;

4 (22) "Discharge" means the termination of hospital medical
5 authority. The commitment may remain in place, be terminated, or be
6 amended by court order;

7 (23) "Drug addiction" means a disease, characterized by a
8 dependency on psychoactive chemicals, loss of control over the amount
9 and circumstances of use, symptoms of tolerance, physiological or
10 psychological withdrawal, or both, if use is reduced or discontinued,
11 and impairment of health or disruption of social or economic
12 functioning;

13 (24) "Evaluation and treatment facility" means any facility which
14 can provide directly, or by direct arrangement with other public or
15 private agencies, emergency evaluation and treatment, outpatient
16 care, and timely and appropriate inpatient care to persons suffering
17 from a mental disorder, and which is licensed or certified as such by
18 the department. The authority may certify single beds as temporary
19 evaluation and treatment beds under RCW 71.05.745. A physically
20 separate and separately operated portion of a state hospital may be
21 designated as an evaluation and treatment facility. A facility which
22 is part of, or operated by, the department of social and health
23 services or any federal agency will not require certification. No
24 correctional institution or facility, or jail, shall be an evaluation
25 and treatment facility within the meaning of this chapter;

26 (25) "Gravely disabled" means a condition in which a person, as a
27 result of a behavioral health disorder: (a) Is in danger of serious
28 physical harm resulting from a failure to provide for his or her
29 essential human needs of health or safety; or (b) manifests severe
30 deterioration in routine functioning evidenced by repeated and
31 escalating loss of cognitive or volitional control over his or her
32 actions and is not receiving such care as is essential for his or her
33 health or safety;

34 (26) "Habilitative services" means those services provided by
35 program personnel to assist persons in acquiring and maintaining life
36 skills and in raising their levels of physical, mental, social, and
37 vocational functioning. Habilitative services include education,
38 training for employment, and therapy. The habilitative process shall
39 be undertaken with recognition of the risk to the public safety

1 presented by the person being assisted as manifested by prior charged
2 criminal conduct;

3 (27) "Hearing" means any proceeding conducted in open court that
4 conforms to the requirements of RCW 71.05.820;

5 (28) "History of one or more violent acts" refers to the period
6 of time ten years prior to the filing of a petition under this
7 chapter, excluding any time spent, but not any violent acts
8 committed, in a behavioral health facility, or in confinement as a
9 result of a criminal conviction;

10 (29) "Imminent" means the state or condition of being likely to
11 occur at any moment or near at hand, rather than distant or remote;

12 (30) "In need of assisted outpatient treatment" refers to a
13 person who meets the criteria for assisted outpatient treatment
14 established under RCW 71.05.148;

15 (31) "Individualized service plan" means a plan prepared by a
16 developmental disabilities professional with other professionals as a
17 team, for a person with developmental disabilities, which shall
18 state:

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

21 (b) The conditions and strategies necessary to achieve the
22 purposes of habilitation;

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

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

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

28 (f) Where relevant in light of past criminal behavior and due
29 consideration for public safety, the criteria for proposed movement
30 to less-restrictive settings, criteria for proposed eventual
31 discharge or release, and a projected possible date for discharge or
32 release; and

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

35 (32) "Intoxicated person" means a person whose mental or physical
36 functioning is substantially impaired as a result of the use of
37 alcohol or other psychoactive chemicals;

38 (33) "Judicial commitment" means a commitment by a court pursuant
39 to the provisions of this chapter;

1 (34) "Legal counsel" means attorneys and staff employed by county
2 prosecutor offices or the state attorney general acting in their
3 capacity as legal representatives of public behavioral health service
4 providers under RCW 71.05.130;

5 (35) "Less restrictive alternative treatment" means a program of
6 individualized treatment in a less restrictive setting than inpatient
7 treatment that includes the services described in RCW 71.05.585. This
8 term includes: Treatment pursuant to a less restrictive alternative
9 treatment order under RCW 71.05.240 or 71.05.320; treatment pursuant
10 to a conditional release under RCW 71.05.340; and treatment pursuant
11 to an assisted outpatient treatment order under RCW 71.05.148;

12 (36) "Licensed physician" means a person licensed to practice
13 medicine or osteopathic medicine and surgery in the state of
14 Washington;

15 (37) "Likelihood of serious harm" means:

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

25 (b) The person has threatened the physical safety of another and
26 has a history of one or more violent acts;

27 (38) "Medical clearance" means a physician or other health care
28 provider has determined that a person is medically stable and ready
29 for referral to the designated crisis responder;

30 (39) "Mental disorder" means any organic, mental, or emotional
31 impairment which has substantial adverse effects on a person's
32 cognitive or volitional functions;

33 (40) "Mental health professional" means an individual practicing
34 within the mental health professional's statutory scope of practice
35 who is:

36 (a) A psychiatrist, psychologist, physician assistant working
37 with a supervising psychiatrist, psychiatric advanced registered
38 nurse practitioner, psychiatric nurse, or social worker, as defined
39 in this chapter and chapter 71.34 RCW;

1 (b) A mental health counselor, mental health counselor associate,
2 marriage and family therapist, or marriage and family therapist
3 associate, as defined in chapter 18.225 RCW; or

4 (c) A certified or licensed agency affiliated counselor, as
5 defined in chapter 18.19 RCW;

6 (41) "Peace officer" means a law enforcement official of a public
7 agency or governmental unit, and includes persons specifically given
8 peace officer powers by any state law, local ordinance, or judicial
9 order of appointment;

10 (42) "Physician assistant" means a person licensed as a physician
11 assistant under chapter 18.71A RCW;

12 (43) "Private agency" means any person, partnership, corporation,
13 or association that is not a public agency, whether or not financed
14 in whole or in part by public funds, which constitutes an evaluation
15 and treatment facility or private institution, or hospital, or
16 approved substance use disorder treatment program, which is conducted
17 for, or includes a department or ward conducted for, the care and
18 treatment of persons with behavioral health disorders;

19 (44) "Professional person" means a mental health professional,
20 substance use disorder professional, or designated crisis responder
21 and shall also mean a physician, physician assistant, psychiatric
22 advanced registered nurse practitioner, registered nurse, and such
23 others as may be defined by rules adopted by the secretary pursuant
24 to the provisions of this chapter;

25 (45) "Psychiatric advanced registered nurse practitioner" means a
26 person who is licensed as an advanced registered nurse practitioner
27 pursuant to chapter 18.79 RCW; and who is board certified in advanced
28 practice psychiatric and mental health nursing;

29 (46) "Psychiatrist" means a person having a license as a
30 physician and surgeon in this state who has in addition completed
31 three years of graduate training in psychiatry in a program approved
32 by the American medical association or the American osteopathic
33 association and is certified or eligible to be certified by the
34 American board of psychiatry and neurology;

35 (47) "Psychologist" means a person who has been licensed as a
36 psychologist pursuant to chapter 18.83 RCW;

37 (48) "Public agency" means any evaluation and treatment facility
38 or institution, secure withdrawal management and stabilization
39 facility, approved substance use disorder treatment program, or
40 hospital which is conducted for, or includes a department or ward

1 conducted for, the care and treatment of persons with behavioral
2 health disorders, if the agency is operated directly by federal,
3 state, county, or municipal government, or a combination of such
4 governments;

5 (49) "Release" means legal termination of the commitment under
6 the provisions of this chapter;

7 (50) "Resource management services" has the meaning given in
8 chapter 71.24 RCW;

9 (51) "Secretary" means the secretary of the department of health,
10 or his or her designee;

11 (52) "Secure withdrawal management and stabilization facility"
12 means a facility operated by either a public or private agency or by
13 the program of an agency which provides care to voluntary individuals
14 and individuals involuntarily detained and committed under this
15 chapter for whom there is a likelihood of serious harm or who are
16 gravely disabled due to the presence of a substance use disorder.
17 Secure withdrawal management and stabilization facilities must:

18 (a) Provide the following services:

19 (i) Assessment and treatment, provided by certified substance use
20 disorder professionals or co-occurring disorder specialists;

21 (ii) Clinical stabilization services;

22 (iii) Acute or subacute detoxification services for intoxicated
23 individuals; and

24 (iv) Discharge assistance provided by certified substance use
25 disorder professionals or co-occurring disorder specialists,
26 including facilitating transitions to appropriate voluntary or
27 involuntary inpatient services or to less restrictive alternatives as
28 appropriate for the individual;

29 (b) Include security measures sufficient to protect the patients,
30 staff, and community; and

31 (c) Be licensed or certified as such by the department of health;

32 (53) "Social worker" means a person with a master's or further
33 advanced degree from a social work educational program accredited and
34 approved as provided in RCW 18.320.010;

35 (54) "Substance use disorder" means a cluster of cognitive,
36 behavioral, and physiological symptoms indicating that an individual
37 continues using the substance despite significant substance-related
38 problems. The diagnosis of a substance use disorder is based on a
39 pathological pattern of behaviors related to the use of the
40 substances;

1 (55) "Substance use disorder professional" means a person
2 certified as a substance use disorder professional by the department
3 of health under chapter 18.205 RCW;

4 (56) "Therapeutic court personnel" means the staff of a mental
5 health court or other therapeutic court which has jurisdiction over
6 defendants who are dually diagnosed with mental disorders, including
7 court personnel, probation officers, a court monitor, prosecuting
8 attorney, or defense counsel acting within the scope of therapeutic
9 court duties;

10 (57) "Treatment records" include registration and all other
11 records concerning persons who are receiving or who at any time have
12 received services for behavioral health disorders, which are
13 maintained by the department of social and health services, the
14 department, the authority, behavioral health administrative services
15 organizations and their staffs, managed care organizations and their
16 staffs, and by treatment facilities. Treatment records include mental
17 health information contained in a medical bill including but not
18 limited to mental health drugs, a mental health diagnosis, provider
19 name, and dates of service stemming from a medical service. Treatment
20 records do not include notes or records maintained for personal use
21 by a person providing treatment services for the department of social
22 and health services, the department, the authority, behavioral health
23 administrative services organizations, managed care organizations, or
24 a treatment facility if the notes or records are not available to
25 others;

26 (58) "Video," unless the context clearly indicates otherwise,
27 means the delivery of behavioral health services through the use of
28 interactive audio and video technology, permitting real-time
29 communication between a person and a designated crisis responder, for
30 the purpose of evaluation. "Video" does not include the use of audio-
31 only telephone, facsimile, email, or store and forward technology.
32 "Store and forward technology" means use of an asynchronous
33 transmission of a person's medical information from a mental health
34 service provider to the designated crisis responder which results in
35 medical diagnosis, consultation, or treatment;

36 (59) "Violent act" means behavior that resulted in homicide,
37 attempted suicide, injury, or substantial loss or damage to property.

38 **Sec. 43.** RCW 71.05.020 and 2023 c 433 s 4 and 2023 c 425 s 21
39 are each reenacted and amended to read as follows:

1 The definitions in this section apply throughout this chapter
2 unless the context clearly requires otherwise.

3 (1) "23-hour crisis relief center" has the same meaning as under
4 RCW 71.24.025;

5 (2) "Admission" or "admit" means a decision by a physician,
6 physician assistant, or psychiatric advanced registered nurse
7 practitioner that a person should be examined or treated as a patient
8 in a hospital;

9 (3) "Alcoholism" means a disease, characterized by a dependency
10 on alcoholic beverages, loss of control over the amount and
11 circumstances of use, symptoms of tolerance, physiological or
12 psychological withdrawal, or both, if use is reduced or discontinued,
13 and impairment of health or disruption of social or economic
14 functioning;

15 (4) "Antipsychotic medications" means that class of drugs
16 primarily used to treat serious manifestations of mental illness
17 associated with thought disorders, which includes, but is not limited
18 to atypical antipsychotic medications;

19 (5) "Approved substance use disorder treatment program" means a
20 program for persons with a substance use disorder provided by a
21 treatment program certified by the department as meeting standards
22 adopted under chapter 71.24 RCW;

23 (6) "Attending staff" means any person on the staff of a public
24 or private agency having responsibility for the care and treatment of
25 a patient;

26 (7) "Authority" means the Washington state health care authority;

27 (8) "Behavioral health disorder" means either a mental disorder
28 as defined in this section, a substance use disorder as defined in
29 this section, or a co-occurring mental disorder and substance use
30 disorder;

31 (9) "Behavioral health service provider" means a public or
32 private agency that provides mental health, substance use disorder,
33 or co-occurring disorder services to persons with behavioral health
34 disorders as defined under this section and receives funding from
35 public sources. This includes, but is not limited to: Hospitals
36 licensed under chapter 70.41 RCW; evaluation and treatment facilities
37 as defined in this section; community mental health service delivery
38 systems or community behavioral health programs as defined in RCW
39 71.24.025; licensed or certified behavioral health agencies under RCW
40 71.24.037; facilities conducting (~~competency~~) ability to proceed

1 evaluations and restoration under chapter 10.77 RCW; approved
2 substance use disorder treatment programs as defined in this section;
3 secure withdrawal management and stabilization facilities as defined
4 in this section; and correctional facilities operated by state and
5 local governments;

6 (10) "Co-occurring disorder specialist" means an individual
7 possessing an enhancement granted by the department of health under
8 chapter 18.205 RCW that certifies the individual to provide substance
9 use disorder counseling subject to the practice limitations under RCW
10 18.205.105;

11 (11) "Commitment" means the determination by a court that a
12 person should be detained for a period of either evaluation or
13 treatment, or both, in an inpatient or a less restrictive setting;

14 (12) "Community behavioral health agency" has the same meaning as
15 "licensed or certified behavioral health agency" defined in RCW
16 71.24.025;

17 (13) "Conditional release" means a revocable modification of a
18 commitment, which may be revoked upon violation of any of its terms;

19 (14) "Crisis stabilization unit" means a short-term facility or a
20 portion of a facility licensed or certified by the department, such
21 as an evaluation and treatment facility or a hospital, which has been
22 designed to assess, diagnose, and treat individuals experiencing an
23 acute crisis without the use of long-term hospitalization, or to
24 determine the need for involuntary commitment of an individual;

25 (15) "Custody" means involuntary detention under the provisions
26 of this chapter or chapter 10.77 RCW, uninterrupted by any period of
27 unconditional release from commitment from a facility providing
28 involuntary care and treatment;

29 (16) "Department" means the department of health;

30 (17) "Designated crisis responder" means a mental health
31 professional appointed by the county, by an entity appointed by the
32 county, or by the authority in consultation with a federally
33 recognized Indian tribe or after meeting and conferring with an
34 Indian health care provider, to perform the duties specified in this
35 chapter;

36 (18) "Detention" or "detain" means the lawful confinement of a
37 person, under the provisions of this chapter;

38 (19) "Developmental disabilities professional" means a person who
39 has specialized training and three years of experience in directly
40 treating or working with persons with developmental disabilities and

1 is a psychiatrist, physician assistant working with a supervising
2 psychiatrist, psychologist, psychiatric advanced registered nurse
3 practitioner, or social worker, and such other developmental
4 disabilities professionals as may be defined by rules adopted by the
5 secretary of the department of social and health services;

6 (20) "Developmental disability" means that condition defined in
7 RCW 71A.10.020(6);

8 (21) "Director" means the director of the authority;

9 (22) "Discharge" means the termination of hospital medical
10 authority. The commitment may remain in place, be terminated, or be
11 amended by court order;

12 (23) "Drug addiction" means a disease, characterized by a
13 dependency on psychoactive chemicals, loss of control over the amount
14 and circumstances of use, symptoms of tolerance, physiological or
15 psychological withdrawal, or both, if use is reduced or discontinued,
16 and impairment of health or disruption of social or economic
17 functioning;

18 (24) "Evaluation and treatment facility" means any facility which
19 can provide directly, or by direct arrangement with other public or
20 private agencies, emergency evaluation and treatment, outpatient
21 care, and timely and appropriate inpatient care to persons suffering
22 from a mental disorder, and which is licensed or certified as such by
23 the department. The authority may certify single beds as temporary
24 evaluation and treatment beds under RCW 71.05.745. A physically
25 separate and separately operated portion of a state hospital may be
26 designated as an evaluation and treatment facility. A facility which
27 is part of, or operated by, the department of social and health
28 services or any federal agency will not require certification. No
29 correctional institution or facility, or jail, shall be an evaluation
30 and treatment facility within the meaning of this chapter;

31 (25) "Gravely disabled" means a condition in which a person, as a
32 result of a behavioral health disorder: (a) Is in danger of serious
33 physical harm resulting from a failure to provide for his or her
34 essential human needs of health or safety; or (b) manifests severe
35 deterioration from safe behavior evidenced by repeated and escalating
36 loss of cognitive or volitional control over his or her actions and
37 is not receiving such care as is essential for his or her health or
38 safety;

39 (26) "Habilitative services" means those services provided by
40 program personnel to assist persons in acquiring and maintaining life

1 skills and in raising their levels of physical, mental, social, and
2 vocational functioning. Habilitative services include education,
3 training for employment, and therapy. The habilitative process shall
4 be undertaken with recognition of the risk to the public safety
5 presented by the person being assisted as manifested by prior charged
6 criminal conduct;

7 (27) "Hearing" means any proceeding conducted in open court that
8 conforms to the requirements of RCW 71.05.820;

9 (28) "History of one or more violent acts" refers to the period
10 of time ten years prior to the filing of a petition under this
11 chapter, excluding any time spent, but not any violent acts
12 committed, in a behavioral health facility, or in confinement as a
13 result of a criminal conviction;

14 (29) "Imminent" means the state or condition of being likely to
15 occur at any moment or near at hand, rather than distant or remote;

16 (30) "In need of assisted outpatient treatment" refers to a
17 person who meets the criteria for assisted outpatient treatment
18 established under RCW 71.05.148;

19 (31) "Individualized service plan" means a plan prepared by a
20 developmental disabilities professional with other professionals as a
21 team, for a person with developmental disabilities, which shall
22 state:

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

25 (b) The conditions and strategies necessary to achieve the
26 purposes of habilitation;

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

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

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

32 (f) Where relevant in light of past criminal behavior and due
33 consideration for public safety, the criteria for proposed movement
34 to less-restrictive settings, criteria for proposed eventual
35 discharge or release, and a projected possible date for discharge or
36 release; and

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

1 (32) "Intoxicated person" means a person whose mental or physical
2 functioning is substantially impaired as a result of the use of
3 alcohol or other psychoactive chemicals;

4 (33) "Judicial commitment" means a commitment by a court pursuant
5 to the provisions of this chapter;

6 (34) "Legal counsel" means attorneys and staff employed by county
7 prosecutor offices or the state attorney general acting in their
8 capacity as legal representatives of public behavioral health service
9 providers under RCW 71.05.130;

10 (35) "Less restrictive alternative treatment" means a program of
11 individualized treatment in a less restrictive setting than inpatient
12 treatment that includes the services described in RCW 71.05.585. This
13 term includes: Treatment pursuant to a less restrictive alternative
14 treatment order under RCW 71.05.240 or 71.05.320; treatment pursuant
15 to a conditional release under RCW 71.05.340; and treatment pursuant
16 to an assisted outpatient treatment order under RCW 71.05.148;

17 (36) "Licensed physician" means a person licensed to practice
18 medicine or osteopathic medicine and surgery in the state of
19 Washington;

20 (37) "Likelihood of serious harm" means:

21 (a) A substantial risk that: (i) Physical harm will be inflicted
22 by a person upon his or her own person, as evidenced by threats or
23 attempts to commit suicide or inflict physical harm on oneself; (ii)
24 physical harm will be inflicted by a person upon another, as
25 evidenced by behavior which has caused harm, substantial pain, or
26 which places another person or persons in reasonable fear of harm to
27 themselves or others; or (iii) physical harm will be inflicted by a
28 person upon the property of others, as evidenced by behavior which
29 has caused substantial loss or damage to the property of others; or

30 (b) The person has threatened the physical safety of another and
31 has a history of one or more violent acts;

32 (38) "Medical clearance" means a physician or other health care
33 provider has determined that a person is medically stable and ready
34 for referral to the designated crisis responder;

35 (39) "Mental disorder" means any organic, mental, or emotional
36 impairment which has substantial adverse effects on a person's
37 cognitive or volitional functions;

38 (40) "Mental health professional" means an individual practicing
39 within the mental health professional's statutory scope of practice
40 who is:

1 (a) A psychiatrist, psychologist, physician assistant working
2 with a supervising psychiatrist, psychiatric advanced registered
3 nurse practitioner, psychiatric nurse, or social worker, as defined
4 in this chapter and chapter 71.34 RCW;

5 (b) A mental health counselor, mental health counselor associate,
6 marriage and family therapist, or marriage and family therapist
7 associate, as defined in chapter 18.225 RCW; or

8 (c) A certified or licensed agency affiliated counselor, as
9 defined in chapter 18.19 RCW;

10 (41) "Peace officer" means a law enforcement official of a public
11 agency or governmental unit, and includes persons specifically given
12 peace officer powers by any state law, local ordinance, or judicial
13 order of appointment;

14 (42) "Physician assistant" means a person licensed as a physician
15 assistant under chapter 18.71A RCW;

16 (43) "Private agency" means any person, partnership, corporation,
17 or association that is not a public agency, whether or not financed
18 in whole or in part by public funds, which constitutes an evaluation
19 and treatment facility or private institution, or hospital, or
20 approved substance use disorder treatment program, which is conducted
21 for, or includes a department or ward conducted for, the care and
22 treatment of persons with behavioral health disorders;

23 (44) "Professional person" means a mental health professional,
24 substance use disorder professional, or designated crisis responder
25 and shall also mean a physician, physician assistant, psychiatric
26 advanced registered nurse practitioner, registered nurse, and such
27 others as may be defined by rules adopted by the secretary pursuant
28 to the provisions of this chapter;

29 (45) "Psychiatric advanced registered nurse practitioner" means a
30 person who is licensed as an advanced registered nurse practitioner
31 pursuant to chapter 18.79 RCW; and who is board certified in advanced
32 practice psychiatric and mental health nursing;

33 (46) "Psychiatrist" means a person having a license as a
34 physician and surgeon in this state who has in addition completed
35 three years of graduate training in psychiatry in a program approved
36 by the American medical association or the American osteopathic
37 association and is certified or eligible to be certified by the
38 American board of psychiatry and neurology;

39 (47) "Psychologist" means a person who has been licensed as a
40 psychologist pursuant to chapter 18.83 RCW;

1 (48) "Public agency" means any evaluation and treatment facility
2 or institution, secure withdrawal management and stabilization
3 facility, approved substance use disorder treatment program, or
4 hospital which is conducted for, or includes a department or ward
5 conducted for, the care and treatment of persons with behavioral
6 health disorders, if the agency is operated directly by federal,
7 state, county, or municipal government, or a combination of such
8 governments;

9 (49) "Release" means legal termination of the commitment under
10 the provisions of this chapter;

11 (50) "Resource management services" has the meaning given in
12 chapter 71.24 RCW;

13 (51) "Secretary" means the secretary of the department of health,
14 or his or her designee;

15 (52) "Secure withdrawal management and stabilization facility"
16 means a facility operated by either a public or private agency or by
17 the program of an agency which provides care to voluntary individuals
18 and individuals involuntarily detained and committed under this
19 chapter for whom there is a likelihood of serious harm or who are
20 gravely disabled due to the presence of a substance use disorder.
21 Secure withdrawal management and stabilization facilities must:

22 (a) Provide the following services:

23 (i) Assessment and treatment, provided by certified substance use
24 disorder professionals or co-occurring disorder specialists;

25 (ii) Clinical stabilization services;

26 (iii) Acute or subacute detoxification services for intoxicated
27 individuals; and

28 (iv) Discharge assistance provided by certified substance use
29 disorder professionals or co-occurring disorder specialists,
30 including facilitating transitions to appropriate voluntary or
31 involuntary inpatient services or to less restrictive alternatives as
32 appropriate for the individual;

33 (b) Include security measures sufficient to protect the patients,
34 staff, and community; and

35 (c) Be licensed or certified as such by the department of health;

36 (53) "Severe deterioration from safe behavior" means that a
37 person will, if not treated, suffer or continue to suffer severe and
38 abnormal mental, emotional, or physical distress, and this distress
39 is associated with significant impairment of judgment, reason, or
40 behavior;

1 (54) "Social worker" means a person with a master's or further
2 advanced degree from a social work educational program accredited and
3 approved as provided in RCW 18.320.010;

4 (55) "Substance use disorder" means a cluster of cognitive,
5 behavioral, and physiological symptoms indicating that an individual
6 continues using the substance despite significant substance-related
7 problems. The diagnosis of a substance use disorder is based on a
8 pathological pattern of behaviors related to the use of the
9 substances;

10 (56) "Substance use disorder professional" means a person
11 certified as a substance use disorder professional by the department
12 of health under chapter 18.205 RCW;

13 (57) "Therapeutic court personnel" means the staff of a mental
14 health court or other therapeutic court which has jurisdiction over
15 defendants who are dually diagnosed with mental disorders, including
16 court personnel, probation officers, a court monitor, prosecuting
17 attorney, or defense counsel acting within the scope of therapeutic
18 court duties;

19 (58) "Treatment records" include registration and all other
20 records concerning persons who are receiving or who at any time have
21 received services for behavioral health disorders, which are
22 maintained by the department of social and health services, the
23 department, the authority, behavioral health administrative services
24 organizations and their staffs, managed care organizations and their
25 staffs, and by treatment facilities. Treatment records include mental
26 health information contained in a medical bill including but not
27 limited to mental health drugs, a mental health diagnosis, provider
28 name, and dates of service stemming from a medical service. Treatment
29 records do not include notes or records maintained for personal use
30 by a person providing treatment services for the department of social
31 and health services, the department, the authority, behavioral health
32 administrative services organizations, managed care organizations, or
33 a treatment facility if the notes or records are not available to
34 others;

35 (59) "Video," unless the context clearly indicates otherwise,
36 means the delivery of behavioral health services through the use of
37 interactive audio and video technology, permitting real-time
38 communication between a person and a designated crisis responder, for
39 the purpose of evaluation. "Video" does not include the use of audio-
40 only telephone, facsimile, email, or store and forward technology.

1 "Store and forward technology" means use of an asynchronous
2 transmission of a person's medical information from a mental health
3 service provider to the designated crisis responder which results in
4 medical diagnosis, consultation, or treatment;

5 (60) "Violent act" means behavior that resulted in homicide,
6 attempted suicide, injury, or substantial loss or damage to property.

7 **Sec. 44.** RCW 71.05.212 and 2022 c 210 s 9 are each amended to
8 read as follows:

9 (1) Whenever a designated crisis responder or professional person
10 is conducting an evaluation under this chapter, consideration shall
11 include all reasonably available information from credible witnesses
12 and records regarding:

13 (a) Prior recommendations for evaluation of the need for civil
14 commitments when the recommendation is made pursuant to an evaluation
15 conducted under chapter 10.77 RCW;

16 (b) Historical behavior, including history of one or more violent
17 acts;

18 (c) Prior determinations of (~~incompetency~~) inability to proceed
19 or insanity under chapter 10.77 RCW; and

20 (d) Prior commitments under this chapter.

21 (2) Credible witnesses may include family members, landlords,
22 neighbors, or others with significant contact and history of
23 involvement with the person. If the designated crisis responder
24 relies upon information from a credible witness in reaching his or
25 her decision to detain the individual, then he or she must provide
26 contact information for any such witness to the prosecutor. The
27 designated crisis responder or prosecutor shall provide notice of the
28 date, time, and location of the probable cause hearing to such a
29 witness.

30 (3) Symptoms and behavior of the respondent which standing alone
31 would not justify civil commitment may support a finding of grave
32 disability or likelihood of serious harm, or a finding that the
33 person is in need of assisted outpatient treatment, when:

34 (a) Such symptoms or behavior are closely associated with
35 symptoms or behavior which preceded and led to a past incident of
36 involuntary hospitalization, severe deterioration, or one or more
37 violent acts;

38 (b) These symptoms or behavior represent a marked and concerning
39 change in the baseline behavior of the respondent; and

1 (c) Without treatment, the continued deterioration of the
2 respondent is probable.

3 (4) When conducting an evaluation for offenders identified under
4 RCW 72.09.370, the designated crisis responder or professional person
5 shall consider an offender's history of judicially required or
6 administratively ordered antipsychotic medication while in
7 confinement.

8 **Sec. 45.** RCW 71.05.212 and 2022 c 210 s 10 are each amended to
9 read as follows:

10 (1) Whenever a designated crisis responder or professional person
11 is conducting an evaluation under this chapter, consideration shall
12 include all reasonably available information from credible witnesses
13 and records regarding:

14 (a) Prior recommendations for evaluation of the need for civil
15 commitments when the recommendation is made pursuant to an evaluation
16 conducted under chapter 10.77 RCW;

17 (b) Historical behavior, including history of one or more violent
18 acts;

19 (c) Prior determinations of (~~incompetency~~) inability to proceed
20 or insanity under chapter 10.77 RCW; and

21 (d) Prior commitments under this chapter.

22 (2) Credible witnesses may include family members, landlords,
23 neighbors, or others with significant contact and history of
24 involvement with the person. If the designated crisis responder
25 relies upon information from a credible witness in reaching his or
26 her decision to detain the individual, then he or she must provide
27 contact information for any such witness to the prosecutor. The
28 designated crisis responder or prosecutor shall provide notice of the
29 date, time, and location of the probable cause hearing to such a
30 witness.

31 (3) Symptoms and behavior of the respondent which standing alone
32 would not justify civil commitment may support a finding of grave
33 disability or likelihood of serious harm, or a finding that the
34 person is in need of assisted outpatient treatment, when:

35 (a) Such symptoms or behavior are closely associated with
36 symptoms or behavior which preceded and led to a past incident of
37 involuntary hospitalization, severe deterioration from safe behavior,
38 or one or more violent acts;

1 (b) These symptoms or behavior represent a marked and concerning
2 change in the baseline behavior of the respondent; and

3 (c) Without treatment, the continued deterioration of the
4 respondent is probable.

5 (4) When conducting an evaluation for offenders identified under
6 RCW 72.09.370, the designated crisis responder or professional person
7 shall consider an offender's history of judicially required or
8 administratively ordered antipsychotic medication while in
9 confinement.

10 **Sec. 46.** RCW 71.05.217 and 2020 c 302 s 32 are each amended to
11 read as follows:

12 (1) Insofar as danger to the individual or others is not created,
13 each person involuntarily detained, treated in a less restrictive
14 alternative course of treatment, or committed for treatment and
15 evaluation pursuant to this chapter shall have, in addition to other
16 rights not specifically withheld by law, the following rights, a list
17 of which shall be prominently posted in all facilities, institutions,
18 and hospitals providing such services:

19 (a) To wear his or her own clothes and to keep and use his or her
20 own personal possessions, except when deprivation of same is
21 essential to protect the safety of the resident or other persons;

22 (b) To keep and be allowed to spend a reasonable sum of his or
23 her own money for canteen expenses and small purchases;

24 (c) To have access to individual storage space for his or her
25 private use;

26 (d) To have visitors at reasonable times;

27 (e) To have reasonable access to a telephone, both to make and
28 receive confidential calls;

29 (f) To have ready access to letter writing materials, including
30 stamps, and to send and receive uncensored correspondence through the
31 mails;

32 (g) To have the right to individualized care and adequate
33 treatment;

34 (h) To discuss treatment plans and decisions with professional
35 persons;

36 (i) To not be denied access to treatment by spiritual means
37 through prayer in accordance with the tenets and practices of a
38 church or religious denomination in addition to the treatment
39 otherwise proposed;

1 (j) Not to consent to the administration of antipsychotic
2 medications beyond the hearing conducted pursuant to RCW 71.05.320(4)
3 or the performance of electroconvulsant therapy or surgery, except
4 emergency lifesaving surgery, unless ordered by a court of competent
5 jurisdiction pursuant to the following standards and procedures:

6 (i) The administration of antipsychotic medication or
7 electroconvulsant therapy shall not be ordered unless the petitioning
8 party proves by clear, cogent, and convincing evidence that there
9 exists a compelling state interest that justifies overriding the
10 patient's lack of consent to the administration of antipsychotic
11 medications or electroconvulsant therapy, that the proposed treatment
12 is necessary and effective, and that medically acceptable alternative
13 forms of treatment are not available, have not been successful, or
14 are not likely to be effective.

15 (ii) The court shall make specific findings of fact concerning:
16 (A) The existence of one or more compelling state interests; (B) the
17 necessity and effectiveness of the treatment; and (C) the person's
18 desires regarding the proposed treatment. If the patient is unable to
19 make a rational and informed decision about consenting to or refusing
20 the proposed treatment, the court shall make a substituted judgment
21 for the patient as if he or she were competent to make such a
22 determination.

23 (iii) The person shall be present at any hearing on a request to
24 administer antipsychotic medication or electroconvulsant therapy
25 filed pursuant to this subsection. The person has the right: (A) To
26 be represented by an attorney; (B) to present evidence; (C) to cross-
27 examine witnesses; (D) to have the rules of evidence enforced; (E) to
28 remain silent; (F) to view and copy all petitions and reports in the
29 court file; and (G) to be given reasonable notice and an opportunity
30 to prepare for the hearing. The court may appoint a psychiatrist,
31 physician assistant working with a supervising psychiatrist,
32 psychiatric advanced registered nurse practitioner, psychologist
33 within their scope of practice, physician assistant, or physician to
34 examine and testify on behalf of such person. The court shall appoint
35 a psychiatrist, physician assistant working with a supervising
36 psychiatrist, psychiatric advanced registered nurse practitioner,
37 psychologist within their scope of practice, physician assistant, or
38 physician designated by such person or the person's counsel to
39 testify on behalf of the person in cases where an order for
40 electroconvulsant therapy is sought.

1 (iv) An order for the administration of antipsychotic medications
2 entered following a hearing conducted pursuant to this section shall
3 be effective for the period of the current involuntary treatment
4 order, and any interim period during which the person is awaiting
5 trial or hearing on a new petition for involuntary treatment or
6 involuntary medication.

7 (v) Any person detained pursuant to RCW 71.05.320(4), who
8 subsequently refuses antipsychotic medication, shall be entitled to
9 the procedures set forth in this subsection.

10 (vi) Antipsychotic medication may be administered to a
11 nonconsenting person detained or committed pursuant to this chapter
12 without a court order pursuant to RCW 71.05.215(2) or under the
13 following circumstances:

14 (A) A person presents an imminent likelihood of serious harm;

15 (B) Medically acceptable alternatives to administration of
16 antipsychotic medications are not available, have not been
17 successful, or are not likely to be effective; and

18 (C) In the opinion of the physician, physician assistant, or
19 psychiatric advanced registered nurse practitioner with
20 responsibility for treatment of the person, or his or her designee,
21 the person's condition constitutes an emergency requiring the
22 treatment be instituted before a judicial hearing as authorized
23 pursuant to this section can be held.

24 If antipsychotic medications are administered over a person's
25 lack of consent pursuant to this subsection, a petition for an order
26 authorizing the administration of antipsychotic medications shall be
27 filed on the next judicial day. The hearing shall be held within two
28 judicial days. If deemed necessary by the physician, physician
29 assistant, or psychiatric advanced registered nurse practitioner with
30 responsibility for the treatment of the person, administration of
31 antipsychotic medications may continue until the hearing is held;

32 (k) To dispose of property and sign contracts unless such person
33 has been adjudicated (~~(an incompetent)~~) unable to proceed in a court
34 proceeding directed to that particular issue;

35 (1) Not to have psychosurgery performed on him or her under any
36 circumstances.

37 (2) Every person involuntarily detained or committed under the
38 provisions of this chapter is entitled to all the rights set forth in
39 this chapter and retains all rights not denied him or her under this
40 chapter except as limited by chapter 9.41 RCW.

1 (3) No person may be presumed (~~incompetent~~) unable to proceed
2 as a consequence of receiving evaluation or treatment for a
3 behavioral health disorder. (~~Competency~~) Ability to proceed may not
4 be determined or withdrawn except under the provisions of chapter
5 10.77 or 11.88 RCW.

6 (4) Subject to RCW 71.05.745 and related regulations, persons
7 receiving evaluation or treatment under this chapter must be given a
8 reasonable choice of an available physician, physician assistant,
9 psychiatric advanced registered nurse practitioner, or other
10 professional person qualified to provide such services.

11 (5) Whenever any person is detained under this chapter, the
12 person must be advised that unless the person is released or
13 voluntarily admits himself or herself for treatment within one
14 hundred twenty hours of the initial detention, a judicial hearing
15 must be held in a superior court within one hundred twenty hours to
16 determine whether there is probable cause to detain the person for up
17 to an additional fourteen days based on an allegation that because of
18 a behavioral health disorder the person presents a likelihood of
19 serious harm or is gravely disabled, and that at the probable cause
20 hearing the person has the following rights:

21 (a) To communicate immediately with an attorney; to have an
22 attorney appointed if the person is indigent; and to be told the name
23 and address of the attorney that has been designated;

24 (b) To remain silent, and to know that any statement the person
25 makes may be used against him or her;

26 (c) To present evidence on the person's behalf;

27 (d) To cross-examine witnesses who testify against him or her;

28 (e) To be proceeded against by the rules of evidence;

29 (f) To have the court appoint a reasonably available independent
30 professional person to examine the person and testify in the hearing,
31 at public expense unless the person is able to bear the cost;

32 (g) To view and copy all petitions and reports in the court file;
33 and

34 (h) To refuse psychiatric medications, including antipsychotic
35 medication beginning twenty-four hours prior to the probable cause
36 hearing.

37 (6) The judicial hearing described in subsection (5) of this
38 section must be held according to the provisions of subsection (5) of
39 this section and rules promulgated by the supreme court.

1 (7) (a) Privileges between patients and physicians, physician
2 assistants, psychologists, or psychiatric advanced registered nurse
3 practitioners are deemed waived in proceedings under this chapter
4 relating to the administration of antipsychotic medications. As to
5 other proceedings under this chapter, the privileges are waived when
6 a court of competent jurisdiction in its discretion determines that
7 such waiver is necessary to protect either the detained person or the
8 public.

9 (b) The waiver of a privilege under this section is limited to
10 records or testimony relevant to evaluation of the detained person
11 for purposes of a proceeding under this chapter. Upon motion by the
12 detained person or on its own motion, the court shall examine a
13 record or testimony sought by a petitioner to determine whether it is
14 within the scope of the waiver.

15 (c) The record maker may not be required to testify in order to
16 introduce medical or psychological records of the detained person so
17 long as the requirements of RCW 5.45.020 are met except that portions
18 of the record which contain opinions as to the detained person's
19 mental state must be deleted from such records unless the person
20 making such conclusions is available for cross-examination.

21 (8) Nothing contained in this chapter prohibits the patient from
22 petitioning by writ of habeas corpus for release.

23 (9) Nothing in this section permits any person to knowingly
24 violate a no-contact order or a condition of an active judgment and
25 sentence or an active condition of supervision by the department of
26 corrections.

27 (10) The rights set forth under this section apply equally to
28 ninety-day or one hundred eighty-day hearings under RCW 71.05.310.

29 **Sec. 47.** RCW 71.05.280 and 2023 c 453 s 22 are each amended to
30 read as follows:

31 At the expiration of the fourteen-day period of intensive
32 treatment, a person may be committed for further treatment pursuant
33 to RCW 71.05.320 if:

34 (1) Such person after having been taken into custody for
35 evaluation and treatment has threatened, attempted, or inflicted: (a)
36 Physical harm upon the person of another or himself or herself, or
37 substantial damage upon the property of another, and (b) as a result
38 of a behavioral health disorder presents a likelihood of serious
39 harm; or

1 (2) Such person was taken into custody as a result of conduct in
2 which he or she attempted or inflicted physical harm upon the person
3 of another or himself or herself, or substantial damage upon the
4 property of others, and continues to present, as a result of a
5 behavioral health disorder, a likelihood of serious harm; or

6 (3) Such person has been determined to be (~~(incompetent)~~) unable
7 to proceed and criminal charges have been dismissed pursuant to RCW
8 10.77.086(7), and has committed acts constituting a felony, and as a
9 result of a behavioral health disorder, presents a substantial
10 likelihood of repeating similar acts.

11 (a) In any proceeding pursuant to this subsection it shall not be
12 necessary to show intent, willfulness, or state of mind as an element
13 of the crime;

14 (b) For any person subject to commitment under this subsection
15 where the charge underlying the finding of (~~(incompetence)~~) inability
16 to proceed is for a felony classified as violent under RCW 9.94A.030,
17 the court shall determine whether the acts the person committed
18 constitute a violent offense under RCW 9.94A.030; or

19 (4) Such person is gravely disabled.

20 **Sec. 48.** RCW 71.05.290 and 2023 c 453 s 23 are each amended to
21 read as follows:

22 (1) At any time during a person's 14-day intensive treatment
23 period, the professional person in charge of a treatment facility or
24 his or her professional designee or the designated crisis responder
25 may petition the superior court for an order requiring such person to
26 undergo an additional period of treatment. Such petition must be
27 based on one or more of the grounds set forth in RCW 71.05.280.

28 (2)(a)(i) The petition shall summarize the facts which support
29 the need for further commitment and shall be supported by affidavits
30 based on an examination of the patient and signed by:

31 (A) One physician, physician assistant, or psychiatric advanced
32 registered nurse practitioner; and

33 (B) One physician, physician assistant, psychiatric advanced
34 registered nurse practitioner, or mental health professional.

35 (ii) If the petition is for substance use disorder treatment, the
36 petition may be signed by a substance use disorder professional
37 instead of a mental health professional and by an advanced registered
38 nurse practitioner instead of a psychiatric advanced registered nurse
39 practitioner.

1 (b) The affidavits shall describe in detail the behavior of the
2 detained person which supports the petition and shall explain what,
3 if any, less restrictive treatments which are alternatives to
4 detention are available to such person, and shall state the
5 willingness of the affiant to testify to such facts in subsequent
6 judicial proceedings under this chapter. If less restrictive
7 alternative treatment is sought, the petition shall set forth any
8 recommendations for less restrictive alternative treatment services.

9 (3) If a person has been determined to be (~~incompetent~~) unable
10 to proceed pursuant to RCW 10.77.086(7), then the professional person
11 in charge of the treatment facility or his or her professional
12 designee or the designated crisis responder may directly file a
13 petition for 180-day treatment under RCW 71.05.280(3), or for 90-day
14 treatment under RCW 71.05.280 (1), (2), or (4). No petition for
15 initial detention or 14-day detention is required before such a
16 petition may be filed.

17 **Sec. 49.** RCW 71.05.300 and 2023 c 453 s 24 are each amended to
18 read as follows:

19 (1) The petition for ninety day treatment shall be filed with the
20 clerk of the superior court at least three days before expiration of
21 the fourteen-day period of intensive treatment. The clerk shall set a
22 trial setting date as provided in RCW 71.05.310 on the next judicial
23 day after the date of filing the petition and notify the designated
24 crisis responder. The designated crisis responder shall immediately
25 notify the person detained, his or her attorney, if any, and his or
26 her guardian or conservator, if any, the prosecuting attorney, and
27 the behavioral health administrative services organization
28 administrator, and provide a copy of the petition to such persons as
29 soon as possible. The behavioral health administrative services
30 organization administrator or designee may review the petition and
31 may appear and testify at the full hearing on the petition.

32 (2) The attorney for the detained person shall advise him or her
33 of his or her right to be represented by an attorney, his or her
34 right to a jury trial, and, if the petition is for commitment for
35 mental health treatment, his or her loss of firearm rights if
36 involuntarily committed. If the detained person is not represented by
37 an attorney, or is indigent or is unwilling to retain an attorney,
38 the court shall immediately appoint an attorney to represent him or
39 her. The court shall, if requested, appoint a reasonably available

1 licensed physician, physician assistant, psychiatric advanced
2 registered nurse practitioner, psychologist, psychiatrist, or other
3 professional person, designated by the detained person to examine and
4 testify on behalf of the detained person.

5 (3) The court may, if requested, also appoint a professional
6 person as defined in RCW 71.05.020 to seek less restrictive
7 alternative courses of treatment and to testify on behalf of the
8 detained person. In the case of a person with a developmental
9 disability who has been determined to be (~~incompetent~~) unable to
10 proceed pursuant to RCW 10.77.086(7), the appointed professional
11 person under this section shall be a developmental disabilities
12 professional.

13 **Sec. 50.** RCW 71.05.940 and 2018 c 201 s 3037 are each amended to
14 read as follows:

15 The provisions of chapter 420, Laws of 1989 shall apply equally
16 to persons in the custody of the department of social and health
17 services on May 13, 1989, who were found by a court to be not guilty
18 by reason of insanity or (~~incompetent to stand~~) unable to proceed
19 to trial due to a mental health condition, or who have been found to
20 have committed acts constituting a felony pursuant to RCW
21 71.05.280(3) and present a substantial likelihood of repeating
22 similar acts, and the secretary of the department of social and
23 health services shall cause such persons to be evaluated to ascertain
24 if such persons have a developmental disability for placement in a
25 program specifically reserved for the treatment and training of
26 persons with developmental disabilities.

27 **Sec. 51.** RCW 71.09.010 and 2001 c 286 s 3 are each amended to
28 read as follows:

29 The legislature finds that a small but extremely dangerous group
30 of sexually violent predators exist who do not have a mental
31 (~~disease or defect~~) disorder that renders them appropriate for the
32 existing involuntary treatment act, chapter 71.05 RCW, which is
33 intended to be a short-term civil commitment system that is primarily
34 designed to provide short-term treatment to individuals with serious
35 mental disorders and then return them to the community. In contrast
36 to persons appropriate for civil commitment under chapter 71.05 RCW,
37 sexually violent predators generally have personality disorders
38 and/or mental abnormalities which are unamenable to existing mental

1 illness treatment modalities and those conditions render them likely
2 to engage in sexually violent behavior. The legislature further finds
3 that sex offenders' likelihood of engaging in repeat acts of
4 predatory sexual violence is high. The existing involuntary
5 commitment act, chapter 71.05 RCW, is inadequate to address the risk
6 to reoffend because during confinement these offenders do not have
7 access to potential victims and therefore they will not engage in an
8 overt act during confinement as required by the involuntary treatment
9 act for continued confinement. The legislature further finds that the
10 prognosis for curing sexually violent offenders is poor, the
11 treatment needs of this population are very long term, and the
12 treatment modalities for this population are very different than the
13 traditional treatment modalities for people appropriate for
14 commitment under the involuntary treatment act.

15 **Sec. 52.** RCW 71.09.025 and 2023 c 453 s 26 are each amended to
16 read as follows:

17 (1)(a) When it appears that a person may meet the criteria of a
18 sexually violent predator as defined in RCW 71.09.020, the agency
19 with jurisdiction shall refer the person in writing to the
20 prosecuting attorney of the county in which an action under this
21 chapter may be filed pursuant to RCW 71.09.030 and the attorney
22 general, three months prior to:

23 (i) The anticipated release from total confinement of a person
24 who has been convicted of a sexually violent offense;

25 (ii) The anticipated release from total confinement of a person
26 found to have committed a sexually violent offense as a juvenile;

27 (iii) Release of a person who has been charged with a sexually
28 violent offense and who has been determined to be (~~incompetent to~~
29 ~~stand trial~~) unable to proceed pursuant to RCW 10.77.086(7); or

30 (iv) Release of a person who has been found not guilty by reason
31 of insanity of a sexually violent offense pursuant to RCW
32 10.77.020(3).

33 (b) The agency shall provide the prosecuting agency with all
34 relevant information including but not limited to the following
35 information:

36 (i) A complete copy of the institutional records compiled by the
37 department of corrections relating to the person, and any such out-
38 of-state department of corrections' records, if available;

1 (ii) A complete copy, if applicable, of any file compiled by the
2 indeterminate sentence review board relating to the person;

3 (iii) All records relating to the psychological or psychiatric
4 evaluation and/or treatment of the person;

5 (iv) A current record of all prior arrests and convictions, and
6 full police case reports relating to those arrests and convictions;
7 and

8 (v) A current mental health evaluation or mental health records
9 review.

10 (c) The prosecuting agency has the authority, consistent with RCW
11 72.09.345(4), to obtain all records relating to the person if the
12 prosecuting agency deems such records are necessary to fulfill its
13 duties under this chapter. The prosecuting agency may only disclose
14 such records in the course of performing its duties pursuant to this
15 chapter, unless otherwise authorized by law.

16 (d) The prosecuting agency has the authority to utilize the
17 inquiry judge procedures of chapter 10.27 RCW prior to the filing of
18 any action under this chapter to seek the issuance of compulsory
19 process for the production of any records necessary for a
20 determination of whether to seek the civil commitment of a person
21 under this chapter. Any records obtained pursuant to this process may
22 only be disclosed by the prosecuting agency in the course of
23 performing its duties pursuant to this chapter, or unless otherwise
24 authorized by law.

25 (2) The agency, its employees, and officials shall be immune from
26 liability for any good-faith conduct under this section.

27 (3) As used in this section, "agency with jurisdiction" means
28 that agency with the authority to direct the release of a person
29 serving a sentence or term of confinement and includes the department
30 of corrections, the indeterminate sentence review board, and the
31 department of social and health services.

32 **Sec. 53.** RCW 71.09.030 and 2023 c 453 s 27 are each amended to
33 read as follows:

34 (1) A petition may be filed alleging that a person is a sexually
35 violent predator and stating sufficient facts to support such
36 allegation when it appears that: (a) A person who at any time
37 previously has been convicted of a sexually violent offense is about
38 to be released from total confinement; (b) a person found to have
39 committed a sexually violent offense as a juvenile is about to be

1 released from total confinement; (c) a person who has been charged
2 with a sexually violent offense and who has been determined to be
3 (~~incompetent to stand~~) unable to proceed to trial is about to be
4 released, or has been released, pursuant to RCW 10.77.086(7); (d) a
5 person who has been found not guilty by reason of insanity of a
6 sexually violent offense is about to be released, or has been
7 released, pursuant to RCW 10.77.020(~~(3)~~), 10.77.110 (1) or (3), or
8 10.77.150; or (e) a person who at any time previously has been
9 convicted of a sexually violent offense and has since been released
10 from total confinement and has committed a recent overt act.

11 (2) The petition may be filed by:

12 (a) The prosecuting attorney of a county in which:

13 (i) The person has been charged or convicted with a sexually
14 violent offense;

15 (ii) A recent overt act occurred involving a person covered under
16 subsection (1)(e) of this section; or

17 (iii) The person committed a recent overt act, or was charged or
18 convicted of a criminal offense that would qualify as a recent overt
19 act, if the only sexually violent offense charge or conviction
20 occurred in a jurisdiction other than Washington; or

21 (b) The attorney general, if requested by the county prosecuting
22 attorney identified in (a) of this subsection. If the county
23 prosecuting attorney requests that the attorney general file and
24 prosecute a case under this chapter, then the county shall charge the
25 attorney general only the fees, including filing and jury fees, that
26 would be charged and paid by the county prosecuting attorney, if the
27 county prosecuting attorney retained the case.

28 **Sec. 54.** RCW 71.09.060 and 2023 c 453 s 28 are each amended to
29 read as follows:

30 (1) The court or jury shall determine whether, beyond a
31 reasonable doubt, the person is a sexually violent predator. In
32 determining whether or not the person would be likely to engage in
33 predatory acts of sexual violence if not confined in a secure
34 facility, the fact finder may consider only placement conditions and
35 voluntary treatment options that would exist for the person if
36 unconditionally released from detention on the sexually violent
37 predator petition. The community protection program under RCW
38 71A.12.230 may not be considered as a placement condition or
39 treatment option available to the person if unconditionally released

1 from detention on a sexually violent predator petition. When the
2 determination is made by a jury, the verdict must be unanimous.

3 If, on the date that the petition is filed, the person was living
4 in the community after release from custody, the state must also
5 prove beyond a reasonable doubt that the person had committed a
6 recent overt act. If the state alleges that the prior sexually
7 violent offense that forms the basis for the petition for commitment
8 was an act that was sexually motivated as provided in RCW
9 71.09.020(18)(c), the state must prove beyond a reasonable doubt that
10 the alleged sexually violent act was sexually motivated as defined in
11 RCW 9.94A.030.

12 If the court or jury determines that the person is a sexually
13 violent predator, the person shall be committed to the custody of the
14 department of social and health services for placement in a secure
15 facility operated by the department of social and health services for
16 control, care, and treatment until such time as: (a) The person's
17 condition has so changed that the person no longer meets the
18 definition of a sexually violent predator; or (b) conditional release
19 to a less restrictive alternative as set forth in RCW 71.09.092 is in
20 the best interest of the person and conditions can be imposed that
21 would adequately protect the community.

22 If the court or unanimous jury decides that the state has not met
23 its burden of proving that the person is a sexually violent predator,
24 the court shall direct the person's release.

25 If the jury is unable to reach a unanimous verdict, the court
26 shall declare a mistrial and set a retrial within forty-five days of
27 the date of the mistrial unless the prosecuting agency earlier moves
28 to dismiss the petition. The retrial may be continued upon the
29 request of either party accompanied by a showing of good cause, or by
30 the court on its own motion in the due administration of justice
31 provided that the respondent will not be substantially prejudiced. In
32 no event may the person be released from confinement prior to retrial
33 or dismissal of the case.

34 (2) If the person charged with a sexually violent offense has
35 been found (~~incompetent to stand~~) unable to proceed to trial due to
36 a mental health condition, and is about to be or has been released
37 pursuant to RCW 10.77.086(7), and his or her commitment is sought
38 pursuant to subsection (1) of this section, the court shall first
39 hear evidence and determine whether the person did commit the act or
40 acts charged if the court did not enter a finding prior to dismissal

1 under RCW 10.77.086(7) that the person committed the act or acts
2 charged. The hearing on this issue must comply with all the
3 procedures specified in this section. In addition, the rules of
4 evidence applicable in criminal cases shall apply, and all
5 constitutional rights available to defendants at criminal trials,
6 other than the right not to be tried while (~~incompetent~~) unable to
7 proceed, shall apply. After hearing evidence on this issue, the court
8 shall make specific findings on whether the person did commit the act
9 or acts charged, the extent to which the person's (~~incompetence~~)
10 inability to proceed or developmental disability affected the outcome
11 of the hearing, including its effect on the person's ability to
12 consult with and assist counsel and to testify on his or her own
13 behalf, the extent to which the evidence could be reconstructed
14 without the assistance of the person, and the strength of the
15 prosecution's case. If, after the conclusion of the hearing on this
16 issue, the court finds, beyond a reasonable doubt, that the person
17 did commit the act or acts charged, it shall enter a final order,
18 appealable by the person, on that issue, and may proceed to consider
19 whether the person should be committed pursuant to this section.

20 (3) Except as otherwise provided in this chapter, the state shall
21 comply with RCW 10.77.220 while confining the person. During all
22 court proceedings where the person is present, the person shall be
23 detained in a secure facility. If the proceedings last more than one
24 day, the person may be held in the county jail for the duration of
25 the proceedings, except the person may be returned to the
26 department's custody on weekends and court holidays if the court
27 deems such a transfer feasible. The county shall be entitled to
28 reimbursement for the cost of housing and transporting the person
29 pursuant to rules adopted by the secretary. The department shall not
30 place the person, even temporarily, in a facility on the grounds of
31 any state mental facility or regional habilitation center because
32 these institutions are insufficiently secure for this population.

33 (4) A court has jurisdiction to order a less restrictive
34 alternative placement only after a hearing ordered pursuant to RCW
35 71.09.090 following initial commitment under this section and in
36 accord with the provisions of this chapter.

37 **Sec. 55.** RCW 71A.12.025 and 1998 c 297 s 5 are each amended to
38 read as follows:

1 The legislature finds that among those persons who endanger the
2 safety of others by committing crimes are a small number of persons
3 with developmental disabilities. While their conduct is not typical
4 of the vast majority of persons with developmental disabilities who
5 are responsible citizens, for their own welfare and for the safety of
6 others the state may need to exercise control over those few
7 dangerous individuals who are ~~((developmentally—disabled))~~
8 individuals with developmental disabilities, have been charged with
9 crimes that involve a threat to public safety or security, and have
10 been found either ~~((incompetent to stand))~~ unable to proceed to trial
11 due to a mental health condition or not guilty by reason of insanity.

12 The legislature finds, however, that the use of civil commitment
13 procedures under chapter 71.05 RCW to effect state control over
14 dangerous ~~((developmentally—disabled—persons))~~ individuals with
15 developmental disabilities has resulted in their commitment to
16 institutions for the ~~((mentally—ill))~~ individuals with mental
17 illness. The legislature finds that existing programs in mental
18 institutions may be inappropriate for persons who are
19 ~~((developmentally—disabled))~~ individuals with developmental
20 disabilities because the services provided in mental institutions are
21 oriented to persons with mental illness, a condition not necessarily
22 associated with developmental disabilities.

23 Therefore, the legislature believes that, where appropriate, and
24 subject to available funds, persons with developmental disabilities
25 who have been charged with crimes that involve a threat to public
26 safety or security and have been found ~~((incompetent to stand))~~
27 unable to proceed to trial due to a mental health condition or not
28 guilty by reason of insanity should receive state services addressing
29 their needs, that such services must be provided in conformance with
30 an individual habilitation plan, and that their initial treatment
31 should be separate and discrete from treatment for persons involved
32 in any other treatment or habilitation program in a manner consistent
33 with the needs of public safety.

34 **Sec. 56.** RCW 74.13.075 and 2009 c 520 s 61 and 2009 c 250 s 2
35 are each reenacted and amended to read as follows:

36 (1) For the purposes of funds appropriated for the treatment of
37 sexually aggressive youth, the term "sexually aggressive youth" means
38 those juveniles who:

1 (a) Have been abused and have committed a sexually aggressive act
2 or other violent act that is sexual in nature; and

3 (i) Are in the care and custody of the state or a federally
4 recognized Indian tribe located within the state; or

5 (ii) Are the subject of a proceeding under chapter 13.34 RCW or a
6 child welfare proceeding held before a tribal court located within
7 the state; or

8 (b) Cannot be detained under the juvenile justice system due to
9 being under age twelve and (~~incompetent to stand~~) unable to proceed
10 to trial due to a mental health condition for acts that could be
11 prosecuted as sex offenses as defined by RCW 9.94A.030 if the
12 juvenile was over twelve years of age, or (~~competent to stand~~) able
13 to proceed to trial if under twelve years of age.

14 (2) The department may offer appropriate available services and
15 treatment to a sexually aggressive youth and his or her parents or
16 legal guardians as provided in this section and may refer the child
17 and his or her parents to appropriate treatment and services
18 available within the community, regardless of whether the child is
19 the subject of a proceeding under chapter 13.34 RCW.

20 (3) In expending these funds, the department shall establish in
21 each region a case review committee to review all cases for which the
22 funds are used. In determining whether to use these funds in a
23 particular case, the committee shall consider:

24 (a) The age of the juvenile;

25 (b) The extent and type of abuse to which the juvenile has been
26 subjected;

27 (c) The juvenile's past conduct;

28 (d) The benefits that can be expected from the treatment;

29 (e) The cost of the treatment; and

30 (f) The ability of the juvenile's parent or guardian to pay for
31 the treatment.

32 (4) The department may provide funds, under this section, for
33 youth in the care and custody of a tribe or through a tribal court,
34 for the treatment of sexually aggressive youth only if: (a) The tribe
35 uses the same or equivalent definitions and standards for determining
36 which youth are sexually aggressive; and (b) the department seeks to
37 recover any federal funds available for the treatment of youth.

38 (5) A juvenile's status as a sexually aggressive youth, and any
39 protective plan, services, and treatment plans and progress reports
40 provided with these funds are confidential and not subject to public

1 disclosure by the department. This information shall be shared with
2 relevant juvenile care agencies, law enforcement agencies, and
3 schools, but remains confidential and not subject to public
4 disclosure by those agencies.

5 NEW SECTION. **Sec. 57.** The amendments in this act are not
6 intended to change the substantive meaning of the underlying concepts
7 involved, and do not change the applicability or effect of prior case
8 law related to criminal insanity or inability to proceed to trial due
9 to a mental health condition.

10 NEW SECTION. **Sec. 58.** Sections 43 and 45 of this act take
11 effect when sections 2 and 10, chapter 210, Laws of 2022 take effect.

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