
HOUSE BILL 2152

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By Representatives Thai, Mosbrucker, Reed, Ormsby, Taylor, Farivar, Goodman, Paul, Fosse, and Davis

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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, 46.20.031, 70.02.230, 70.74.360, 70.74.370,
9 71.05.212, 71.05.212, 71.05.217, 71.05.280, 71.05.290, 71.05.300,
10 71.05.940, 71.09.010, 71.09.025, 71.09.030, 71.09.060, and
11 71A.12.025; reenacting and amending RCW 10.77.010, 10.77.086,
12 10.77.088, 10.97.030, 9.41.040, 9.41.047, 70.02.010, 71.05.020,
13 71.05.020, and 74.13.075; creating a new section; and providing a
14 contingent effective date.

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

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

18 As used in this chapter:

19 (1) "Admission" means acceptance based on medical necessity, of a
20 person as a patient.

21 (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
32 disorder.

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) "Mental disorder" has the same meaning as under RCW
23 71.05.020.

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

28 (31) "Unable to proceed" means the same as "inability to
29 proceed."

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

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

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

37 (1) (a) Whenever a defendant has pleaded not guilty by reason of
38 insanity, the court on its own motion or on the motion of any party

1 shall either appoint or request the secretary to designate a
2 qualified expert or professional person, who shall be approved by the
3 prosecuting attorney, to evaluate and report upon the mental
4 condition of the defendant.

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

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

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

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

1 the court shall serve as authority for the evaluator to request the
2 jail or detention facility to transport the defendant to a hospital
3 or secure mental health facility for a period of commitment not to
4 exceed fifteen days from the time of admission to the facility.
5 Otherwise, the evaluator shall complete the evaluation.

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

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

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

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

1 to appear for a future court hearing; and (v) whether the defendant
2 is a threat to public safety.

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

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

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

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

22 (b) A diagnosis or description of the current mental status of
23 the defendant;

24 (c) If the defendant has a mental ~~((disease or defect))~~ disorder,
25 or has a developmental disability, an opinion as to ~~((competency))~~
26 ability to proceed;

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

1 (e) When directed by the court, if an evaluation and report by an
2 expert or professional person has been provided concluding that the
3 defendant lacked the capacity at the time of the offense to form the
4 mental state necessary to commit the charged offense, an opinion as
5 to the capacity of the defendant to have a particular state of mind
6 which is an element of the offense charged;

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

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

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

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

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

1 for (~~competency~~) ability to proceed evaluation and may issue a
2 warrant for the failure to appear.

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

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

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

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

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

1 professional person at the behavioral health administrative services
2 organization to receive the report and recommendation.

3 (v) Upon commencement of a defendant's evaluation in the local
4 correctional facility, the local correctional facility must notify
5 the evaluator of the name of the professional person, or person
6 designated under (a)(iv) of this subsection, to receive the report
7 and recommendation.

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

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

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

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

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

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

37 (1)(a) The legislature establishes a performance target of seven
38 days or fewer to extend an offer of admission to a defendant in
39 pretrial custody for inpatient (~~competency~~) ability to proceed

1 evaluation or inpatient (~~competency~~) restoration services, when
2 access to the services is legally authorized.

3 (b) The legislature establishes a performance target of 14 days
4 or fewer for the following services related to (~~competency to stand~~
5 ~~trial~~) ability to proceed, when access to the services is legally
6 authorized:

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

9 (ii) To extend an offer of admission to a defendant ordered to be
10 committed to the department for placement in a facility operated by
11 or contracted by the department following dismissal of charges based
12 on (~~incompetency to stand~~) inability to proceed to trial under RCW
13 10.77.086.

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

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

23 (b) A maximum time limit of 14 days as measured from the
24 department's receipt of the court order, or a maximum time limit of
25 21 days as measured from signature of the court order, whichever is
26 shorter, is established to complete the services specified in
27 subsection (1) (b) of this section, subject to the limitations under
28 subsection (9) of this section.

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

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

1 (a) Despite a timely request, the department has not received
2 necessary medical information regarding the current medical status of
3 a defendant;

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

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

14 (d) The defendant is medically unavailable for (~~competency~~)
15 ability to proceed evaluation or admission to a facility for
16 (~~competency~~) restoration treatment;

17 (e) Completion of the referral requires additional time to
18 accommodate the availability or participation of counsel, court
19 personnel, interpreters, or the defendant;

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

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

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

34 (6) The department shall:

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

1 (b) Investigate the extent to which patients admitted to a state
2 hospital under this chapter overstay time periods authorized by law
3 and take reasonable steps to limit the time of commitment to
4 authorized periods; and

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

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

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

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

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

30 (1) In counties with a forensic navigator program, a forensic
31 navigator shall:

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

1 cases dismissed due to a finding of (~~incompetency to stand~~)
2 inability to proceed to trial in the preceding 24 months and who are
3 at risk for a finding of (~~incompetency~~) inability to proceed under
4 their current charge. The forensic navigator shall determine the
5 defendants' willingness to engage with services under this section;
6 and

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

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

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

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

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

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

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

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

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

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

1 established by RCW 10.77.086 or 10.77.088 is likely to restore
2 (~~competency~~) ability to proceed, and a further period of treatment
3 is allowed under RCW 10.77.086 or 10.77.088.

4 (d) If at any time during the proceeding the court finds,
5 following notice and hearing, a defendant is not likely to regain
6 (~~competency~~) ability to proceed, the court shall dismiss the
7 proceedings without prejudice and refer the defendant for civil
8 commitment evaluation or proceedings if appropriate under RCW
9 10.77.065, 10.77.086, or 10.77.088.

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

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

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

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

36 (5) At or before the conclusion of any commitment period provided
37 for by this section, the facility providing evaluation and treatment
38 shall provide to the court a written report of evaluation which meets
39 the requirements of RCW 10.77.060(3). For defendants charged with a
40 felony, the report following the second (~~competency~~) restoration

1 period or first (~~competency~~) restoration period if the defendant's
2 (~~incompetence~~) inability to proceed is determined to be solely due
3 to a developmental disability or the evaluator concludes that the
4 defendant is not likely to regain (~~competency~~) ability to proceed
5 must include an assessment of the defendant's future dangerousness
6 which is evidence-based regarding predictive validity.

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

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

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

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

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

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

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

35 (4) The department may establish admission priorities in the
36 event that the number of eligible persons exceeds the limits set by
37 the department.

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

3 (1)(a) Except as otherwise provided in this section, if the
4 defendant is charged with a felony and determined to be
5 (~~incompetent~~) unable to proceed, until he or she has regained the
6 (~~competency~~) ability to proceed necessary to understand the
7 proceedings against him or her and assist in his or her own defense,
8 but in any event for a period of no longer than 90 days, the court
9 shall commit the defendant to the custody of the secretary for
10 inpatient (~~competency~~) restoration, or may alternatively order the
11 defendant to receive outpatient (~~competency~~) restoration based on a
12 recommendation from a forensic navigator and input from the parties.

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

26 (2)(a) To be eligible for an order for outpatient (~~competency~~)
27 restoration, a defendant must be clinically appropriate and be
28 willing to:

29 (i) Adhere to medications or receive prescribed intramuscular
30 medication;

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

32 (iii) Comply with urinalysis or breathalyzer monitoring if
33 needed.

34 (b) If the court orders inpatient (~~competency~~) restoration, the
35 department shall place the defendant in an appropriate facility of
36 the department for (~~competency~~) restoration.

37 (c) If the court orders outpatient (~~competency~~) restoration,
38 the court shall modify conditions of release as needed to authorize
39 the department to place the person in approved housing, which may
40 include access to supported housing, affiliated with a contracted

1 outpatient ((competency)) restoration program. The department, in
2 conjunction with the health care authority, must establish rules for
3 conditions of participation in the outpatient ((competency))
4 restoration program, which must include the defendant being subject
5 to medication management. The court may order regular urinalysis
6 testing. The outpatient ((competency)) restoration program shall
7 monitor the defendant during the defendant's placement in the program
8 and report any noncompliance or significant changes with respect to
9 the defendant to the department and, if applicable, the forensic
10 navigator.

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

33 (i) The department may authorize a peace officer to detain the
34 defendant into emergency custody for transport to the designated
35 inpatient ((competency)) restoration facility. If medical clearance
36 is required by the designated ((competency)) restoration facility
37 before admission, the peace officer must transport the defendant to a
38 crisis stabilization unit, evaluation and treatment facility, or
39 emergency department of a local hospital for medical clearance once a
40 bed is available at the designated inpatient ((competency))

1 restoration facility. The signed outpatient ((competency))
2 restoration order of the court shall serve as authority for the
3 detention of the defendant under this subsection. This subsection
4 does not preclude voluntary transportation of the defendant to a
5 facility for inpatient ((competency)) restoration or for medical
6 clearance, or authorize admission of the defendant into jail.

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

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

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

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

1 of (~~competency~~) restoration, the court shall dismiss the charges
2 pursuant to subsection (7) of this section.

3 (5) If the court determines or the parties agree before the
4 initial (~~competency~~) restoration period or at any subsequent stage
5 of the proceedings that the defendant is unlikely to regain
6 (~~competency~~) ability to proceed, the court may dismiss the charges
7 without prejudice without ordering the defendant to undergo an
8 initial or further period of (~~competency~~) restoration treatment, in
9 which case the court shall order that the defendant be referred for
10 evaluation for civil commitment in the manner provided in subsection
11 (7) of this section.

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

32 (7)(a) Except as provided in (b) of this subsection, at the
33 hearing upon the expiration of the second (~~competency~~) restoration
34 period, or at the end of the first (~~competency~~) restoration period
35 if the defendant is ineligible for a second or third (~~competency~~)
36 restoration period under subsection (3) or (6) of this section, if
37 the jury or court finds that the defendant is (~~incompetent to stand~~
38 ~~trial~~) unable to proceed, the court shall dismiss the charges
39 without prejudice and order the defendant to be committed to the
40 department for placement in a facility operated or contracted by the

1 department for up to 120 hours if the defendant has not undergone
2 ((competency)) restoration services or has engaged in outpatient
3 ((competency)) restoration services, and up to 72 hours if the
4 defendant engaged in inpatient ((competency)) restoration services
5 starting from admission to the facility, excluding Saturdays,
6 Sundays, and holidays, for evaluation for the purpose of filing a
7 civil commitment petition under chapter 71.05 RCW. If at the time the
8 order to dismiss the charges without prejudice is entered by the
9 court the defendant is already in a facility operated or contracted
10 by the department, the 72-hour or 120-hour period shall instead begin
11 upon department receipt of the court order.

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

22 (8) Any period of ((competency)) restoration treatment under this
23 section includes only the time the defendant is actually at the
24 facility or is actively participating in an outpatient ((competency))
25 restoration program and is in addition to reasonable time for
26 transport to or from the facility.

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

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

35 (2) A forensic navigator must assist the individual to access
36 services related to diversion and community outpatient ((competency))
37 restoration. The forensic navigator must assist the individual,
38 prosecuting attorney, defense attorney, and the court to understand
39 the options available to the individual and be accountable as an

1 officer of the court for faithful execution of the responsibilities
2 outlined in this section.

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

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

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

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

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

17 (e) To provide regular updates to the court and parties of the
18 status of the individual's participation in diversion or outpatient
19 services and be responsive to inquiries by the parties about
20 treatment status;

21 (f) When the individual is ordered to receive community
22 outpatient restoration, to provide services to the individual
23 including:

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

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

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

28 (iv) Providing information to the court concerning the
29 individual's progress and compliance with court-ordered conditions of
30 release, which may include appearing at court hearings to provide
31 information to the court;

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

34 (vi) Assisting the individual with obtaining prescribed
35 medication and encouraging adherence with prescribed medication;

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

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

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

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

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

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

16 (4) Forensic navigators may submit recommendations to the court
17 regarding treatment and restoration options for the individual, which
18 the court may consider and weigh in conjunction with the
19 recommendations of all of the parties.

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

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

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

33 (8) A court may not issue an order appointing a forensic
34 navigator unless the department certifies that there is adequate
35 forensic navigator capacity to provide these services at the time the
36 order is issued.

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

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

4 (1) The clerk of the court shall provide the court order and the
5 charging documents, including the request for bail and certification
6 of probable cause, to the state hospital. If the order is for
7 (~~(competency)~~) restoration treatment and the (~~(competency)~~) ability
8 to proceed evaluation was provided by a qualified expert or
9 professional person who was not designated by the secretary, the
10 clerk shall also provide the state hospital with a copy of all
11 previous court orders related to (~~(competency)~~) ability to proceed or
12 criminal insanity and a copy of any of the evaluation reports;

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

16 (3) If the court order requires transportation of the defendant
17 to a state hospital, the jail administrator shall provide the
18 defendant's medical clearance information to the state hospital
19 admission staff.

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

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

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

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

35 (1) If the defendant is charged with a nonfelony crime which is a
36 serious offense as identified in RCW 10.77.092 and found by the court
37 to be (~~(not competent)~~) unable to proceed, the court shall first
38 consider all available and appropriate alternatives to inpatient

1 ((competency)) restoration. If the parties agree that there is an
2 appropriate diversion program available to accept the defendant, the
3 court shall dismiss the proceedings without prejudice and refer the
4 defendant to the recommended diversion program. If the parties do not
5 agree that there is an appropriate diversion program available to
6 accept the defendant, then the court:

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

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

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

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

37 (i) Adhere to medications or receive prescribed intramuscular
38 medication;

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

1 (iii) Comply with urinalysis or breathalyzer monitoring if
2 needed.

3 (c) If the court orders inpatient ((competency)) restoration, the
4 department shall place the defendant in an appropriate facility of
5 the department for ((competency)) restoration under subsection (3) of
6 this section.

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

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

1 for the defendant within seven days of the notice of intent to
2 terminate the outpatient ((competency)) restoration placement.

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

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

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

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

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

1 (4) Beginning October 1, 2023, if the defendant is charged with a
2 serious traffic offense under RCW 9.94A.030, the court may order the
3 clerk to transmit an order to the department of licensing for
4 revocation of the defendant's driver's license for a period of one
5 year. The court shall direct the clerk to transmit an order to the
6 department of licensing reinstating the defendant's driver's license
7 if the ((defendant)) defendant's ability to proceed is subsequently
8 restored ((to competency)), and may do so at any time before the end
9 of one year for good cause upon the petition of the defendant.

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

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

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

34 (7) If the defendant is charged with a nonfelony crime that is
35 not a serious offense as defined in RCW 10.77.092 and found by the
36 court to be ((not competent)) unable to proceed, the court may stay
37 or dismiss proceedings and detain the defendant for sufficient time
38 to allow the designated crisis responder to evaluate the defendant
39 and consider initial detention proceedings under chapter 71.05 RCW.
40 The court must give notice to all parties at least 24 hours before

1 the dismissal of any proceeding under this subsection, and provide an
2 opportunity for a hearing on whether to dismiss the proceedings.

3 (8) If at any time the court dismisses charges under subsections
4 (1) through (7) of this section, the court shall make a finding as to
5 whether the defendant has a history of one or more violent acts. If
6 the court so finds, the defendant is barred from the possession of
7 firearms until a court restores his or her right to possess a firearm
8 under RCW 9.41.047. The court shall state to the defendant and
9 provide written notice that the defendant is barred from the
10 possession of firearms and that the prohibition remains in effect
11 until a court restores his or her right to possess a firearm under
12 RCW 9.41.047.

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

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

20 An outpatient ((competency)) restoration program must include
21 access to a prescriber.

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

24 The authority shall report annually to the governor and relevant
25 committees of the legislature, beginning November 1, 2022, and shall
26 make the report public, describing:

27 (1) How many individuals are being served by outpatient
28 ((competency)) restoration programs and in what locations;

29 (2) The length of stay of individuals in outpatient
30 ((competency)) restoration programs;

31 (3) The number of individuals who are revoked from an outpatient
32 ((competency)) restoration program into inpatient treatment, and the
33 outcomes of other individuals, if any, whose participation in an
34 outpatient ((competency)) restoration program were terminated before
35 the completion of the program; and

36 (4) For individuals who were revoked from an outpatient
37 ((competency)) restoration program into an inpatient ((competency))
38 restoration program, how many days the individuals spent in

1 outpatient ((competency)) restoration treatment and inpatient
2 ((competency)) restoration treatment, and whether the restoration
3 programs resulted in a finding of ((competent to stand)) able to
4 proceed to trial or another outcome.

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

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

14 (a) Any violent offense, sex offense, serious traffic offense,
15 and most serious offense, as those terms are defined in RCW
16 9.94A.030;

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

19 (c) Any offense contained in chapter 9.41 RCW (firearms and
20 dangerous weapons);

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

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

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

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

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

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

1 (b) To determine that the particular case is a serious offense
2 within the context of ((competency)) restoration treatment, the court
3 must consider the following factors and determine that one or more of
4 the following factors creates a situation in which the offense is
5 serious:

6 (i) The charge includes an allegation that the defendant actually
7 inflicted bodily or emotional harm on another person or that the
8 defendant created a reasonable apprehension of bodily or emotional
9 harm to another;

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

12 (iii) The number and nature of related charges pending against
13 the defendant;

14 (iv) The length of potential confinement if the defendant is
15 convicted; and

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

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

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

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

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

1 (a) The substitution is for a generic version of a name brand
2 drug and the generic version is chemically identical to the name
3 brand drug; or

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

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

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

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

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

1 available funds, persons with developmental disabilities who have
2 been charged with crimes that involve a threat to public safety or
3 security and have been found (~~(incompetent to stand)~~) unable to
4 proceed to trial or not guilty by reason of insanity should receive
5 state services addressing their needs, that such services must be
6 provided in conformance with an individual habilitation plan, and
7 that their initial treatment should be separate and discrete from
8 treatment for persons involved in any other treatment or habilitation
9 program in a manner consistent with the needs of public safety.

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

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

19 (a) In accordance with conditional release or furlough authorized
20 by a court;

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

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

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

27 (2) Unless ordered otherwise by a court, no leave under
28 subsection (1) of this section shall be authorized unless the person
29 who is the subject of the authorization is escorted by a person
30 approved by the secretary. During the authorized leave, the person
31 approved by the secretary must be in visual or auditory contact at
32 all times with the person on authorized leave.

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

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

1 (1) Upon application by the committed or conditionally released
2 person, the secretary shall determine whether or not reasonable
3 grounds exist for release. In making this determination, the
4 secretary may consider the reports filed under RCW 10.77.060,
5 10.77.110, 10.77.140, and 10.77.160, and other reports and
6 evaluations provided by professionals familiar with the case. If the
7 secretary approves the release he or she then shall authorize the
8 person to petition the court.

9 (2) In instances in which persons have not made application for
10 release, but the secretary believes, after consideration of the
11 reports filed under RCW 10.77.060, 10.77.110, 10.77.140, and
12 10.77.160, and other reports and evaluations provided by
13 professionals familiar with the case, that reasonable grounds exist
14 for release, the secretary may petition the court. If the secretary
15 petitions the court for release under this subsection, notice of the
16 petition must be provided to the person who is the subject of the
17 petition and to his or her attorney.

18 (3) The petition shall be served upon the court and the
19 prosecuting attorney. The court, upon receipt of the petition for
20 release, shall within 45 days order a hearing. Continuance of the
21 hearing date shall only be allowed for good cause shown. The
22 prosecuting attorney shall represent the state, and shall have the
23 right to have the person who is the subject of the petition examined
24 by an expert or professional person of the prosecuting attorney's
25 choice. If the secretary is the petitioner, the attorney general
26 shall represent the secretary. If the person who is the subject of
27 the petition is indigent, and the person so requests, the court shall
28 assist the person in obtaining a qualified expert or professional
29 person to examine him or her. An expert or professional person
30 obtained by an indigent person who was committed to state psychiatric
31 care following acquittal by reason of insanity shall be compensated
32 out of funds of the office of public defense as provided in policies
33 and procedures under chapter 2.70 RCW, in a manner consistent with
34 the rules of professional conduct and the standards for indigent
35 defense. If the person who is the subject of the petition has a
36 developmental disability, the examination shall be performed by a
37 developmental disabilities professional. The hearing shall be before
38 a jury if demanded by either the petitioner or the prosecuting
39 attorney. The burden of proof shall be upon the petitioner to show by
40 a preponderance of the evidence that the person who is the subject of

1 the petition no longer presents, as a result of a mental (~~disease or~~
2 ~~defect~~) disorder, a substantial danger to other persons, or a
3 substantial likelihood of committing criminal acts jeopardizing
4 public safety or security, unless kept under further control by the
5 court or other persons or institutions. If the person who is the
6 subject of the petition will be transferred to a state correctional
7 institution or facility upon release to serve a sentence for any
8 class A felony, the petitioner must show that the person's mental
9 (~~disease or defect~~) disorder is manageable within a state
10 correctional institution or facility, but must not be required to
11 prove that the person does not present either a substantial danger to
12 other persons, or a substantial likelihood of committing criminal
13 acts jeopardizing public safety or security, if released.

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

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

36 (6) Nothing contained in this chapter shall prohibit the
37 committed person from petitioning for release by writ of habeas
38 corpus.

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

3 (1) Following (~~(a competency)~~) an ability to proceed evaluation
4 under RCW 10.77.060, individuals who are found (~~((not competent to~~
5 ~~stand trial))~~) unable to proceed and not restorable due to an
6 intellectual or developmental disability, dementia, or traumatic
7 brain injury, shall not be referred for (~~(competency)~~) restoration
8 services.

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

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

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

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

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

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

1 (i) Conduct an eligibility determination for services and send
2 referral packets to service providers for all relevant community-
3 based services for which the individual is eligible. This process
4 must include identifying and coordinating funding for any additional
5 supports that are needed to stabilize the individual in any
6 community-based setting funded by the developmental disabilities
7 administration or aging and long-term support administration,
8 including submitting any necessary exceptions to rule for additional
9 services; and

10 (ii) Connect with the individual's assigned forensic navigator
11 and determine if the individual is eligible for any diversion,
12 supportive housing, or case management programs as a *Trueblood* class
13 member, if additional specialized services are available to
14 supplement diversion program services, and assist the individual to
15 access these services.

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

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

1 ~~trial~~) unable to proceed due to an intellectual or developmental
2 disability, traumatic brain injury, or dementia.

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

5 (1) Within amounts appropriated, the department shall be
6 responsible for all costs relating to the evaluation and inpatient
7 treatment of persons committed to it pursuant to any provisions of
8 this chapter, and the logistical and supportive services pertaining
9 thereto except as otherwise provided by law. Reimbursement may be
10 obtained by the department pursuant to RCW 43.20B.330.

11 (2) Within amounts appropriated, the authority shall be
12 responsible for all costs relating to outpatient (~~competency~~)
13 restoration programs.

14 (3) The office of public defense shall be responsible for costs
15 of public defense services, including defense expert and professional
16 services, for indigent persons acquitted by reason of insanity
17 throughout the term of their commitment to state psychiatric care,
18 including during any period of conditional release, until legal
19 termination of commitment and final unconditional release.

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

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

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

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

33 (1) The secretary shall establish an independent public safety
34 review panel for the purpose of advising the secretary and the courts
35 with respect to persons who have been found not guilty by reason of
36 insanity, or persons committed under the involuntary treatment act
37 where the court has made a special finding under RCW 71.05.280(3)(b).

1 The panel shall provide advice regarding all recommendations to the
2 secretary, decisions by the secretary, or actions pending in court:
3 (a) For a change in commitment status; (b) to allow furloughs or
4 temporary leaves accompanied by staff; (c) not to seek further
5 commitment terms under RCW 71.05.320; or (d) to permit movement about
6 the grounds of the treatment facility, with or without the
7 accompaniment of staff.

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

11 (a) A psychiatrist;

12 (b) A licensed clinical psychologist;

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

14 (d) A prosecutor or a representative of a prosecutor's
15 association;

16 (e) A representative of law enforcement or a law enforcement
17 association;

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

19 (g) A public defender or a representative of a defender's
20 association.

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

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

9 (5) The department shall provide administrative and financial
10 support to the public safety review panel. The department, in
11 consultation with the public safety review panel, may adopt rules to
12 implement this section.

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

15 (a) Whether the public safety review panel has observed a change
16 in statewide consistency of evaluations and decisions concerning
17 changes in the commitment status of persons found not guilty by
18 reason of insanity;

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

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

25 (d) Any other issues the public safety review panel deems
26 relevant.

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

29 Subject to the availability of funds appropriated for this
30 specific purpose, the health care authority shall require the
31 programs it contracts with to increase compensation for staff in
32 outpatient (~~competency~~) restoration programs to provide
33 compensation at competitive levels to improve recruitment and allow
34 for the full implementation of outpatient (~~competency~~) restoration
35 programs.

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

1 (1) Subject to the security and background investigation
2 requirements of the jail, jails shall allow clinical intervention
3 specialists to have access to individuals who are referred to receive
4 services under this chapter and to all records relating to the health
5 or conduct of the individual while incarcerated. Clinical
6 intervention specialists shall support jail health services in
7 providing direct services, enhanced oversight and monitoring of the
8 behavioral health status of participating individuals. Clinical
9 intervention specialists shall work collaboratively with jail health
10 services to ensure appropriate prescriptions, medication compliance
11 monitoring, and access to supportive behavioral health services to
12 the individuals. Clinical intervention specialists shall coordinate
13 with forensic navigators and the department to assist forensic
14 navigators in making recommendations for appropriate placements,
15 which may include recommendations for participation in an outpatient
16 ((competency)) restoration program or a diversion program designed
17 for the needs of the individual. The clinical intervention specialist
18 shall notify the department if a participating individual appears to
19 have stabilized in their behavioral health such that a new
20 ((competency)) ability to proceed evaluation is appropriate to
21 reassess the individual's need for ((competency)) restoration
22 treatment.

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

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

29 The provisions of chapter 420, Laws of 1989 shall apply equally
30 to persons in the custody of the department on May 13, 1989, who were
31 found by a court to be not guilty by reason of insanity or
32 ((incompetent to stand)) unable to proceed to trial, or who have been
33 found to have committed acts constituting a felony pursuant to RCW
34 71.05.280(3) and present a substantial likelihood of repeating
35 similar acts, and the secretary shall cause such persons to be
36 evaluated to ascertain if such persons are developmentally disabled
37 for placement in a program specifically reserved for the treatment
38 and training of persons with developmental disabilities.

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

3 For purposes of this chapter, the definitions of terms in this
4 section shall apply.

5 (1) "The administration of criminal justice" means performance of
6 any of the following activities: Detection, apprehension, detention,
7 pretrial release, post-trial release, prosecution, adjudication,
8 correctional supervision, or rehabilitation of accused persons or
9 criminal offenders. The term also includes criminal identification
10 activities and the collection, storage, dissemination of criminal
11 history record information, and the compensation of victims of crime.

12 (2) "Conviction or other disposition adverse to the subject"
13 means any disposition of charges other than: (a) A decision not to
14 prosecute; (b) a dismissal; or (c) acquittal; with the following
15 exceptions, which shall be considered dispositions adverse to the
16 subject: An acquittal due to a finding of not guilty by reason of
17 insanity and a dismissal by reason of (~~incompetency~~) inability to
18 proceed, pursuant to chapter 10.77 RCW; and a dismissal entered after
19 a period of probation, suspension, or deferral of sentence.

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

23 (4) "Criminal history record information" means information
24 contained in records collected by criminal justice agencies, other
25 than courts, on individuals, consisting of identifiable descriptions
26 and notations of arrests, detentions, indictments, informations, or
27 other formal criminal charges, and any disposition arising therefrom,
28 including acquittals by reason of insanity, dismissals based on
29 (~~lack of competency~~) inability to proceed due to a mental disorder,
30 sentences, correctional supervision, and release.

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

37 (a) Posters, announcements, or lists for identifying or
38 apprehending fugitives or wanted persons;

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

4 (c) Court indices and records of public judicial proceedings,
5 court decisions, and opinions, and information disclosed during
6 public judicial proceedings;

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

9 (e) Records of any traffic offenses as maintained by the
10 department of licensing for the purpose of regulating the issuance,
11 suspension, revocation, or renewal of drivers' or other operators'
12 licenses and pursuant to RCW 46.52.130;

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

16 (g) Announcements of executive clemency;

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

18 (5) "Criminal justice agency" means: (a) A court; or (b) a
19 government agency which performs the administration of criminal
20 justice pursuant to a statute or executive order and which allocates
21 a substantial part of its annual budget to the administration of
22 criminal justice.

23 (6) "Disposition" means the formal conclusion of a criminal
24 proceeding at whatever stage it occurs in the criminal justice
25 system.

26 (7) "Dissemination" means disclosing criminal history record
27 information or disclosing the absence of criminal history record
28 information to any person or agency outside the agency possessing the
29 information, subject to the following exceptions:

30 (a) When criminal justice agencies jointly participate in the
31 maintenance of a single recordkeeping department as an alternative to
32 maintaining separate records, the furnishing of information by that
33 department to personnel of any participating agency is not a
34 dissemination;

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

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

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

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

12 (1) In addition to the disclosure under subsection (5) of this
13 section, public agencies are authorized to release information to the
14 public regarding sex offenders and kidnapping offenders when the
15 agency determines that disclosure of the information is relevant and
16 necessary to protect the public and counteract the danger created by
17 the particular offender. This authorization applies to information
18 regarding: (a) Any person adjudicated or convicted of a sex offense
19 as defined in RCW 9A.44.128 or a kidnapping offense as defined by RCW
20 9A.44.128; (b) any person under the jurisdiction of the indeterminate
21 sentence review board as the result of a sex offense or kidnapping
22 offense; (c) any person committed as a sexually violent predator
23 under chapter 71.09 RCW or as a sexual psychopath under chapter 71.06
24 RCW; (d) any person found not guilty of a sex offense or kidnapping
25 offense by reason of insanity under chapter 10.77 RCW; and (e) any
26 person found (~~incompetent to stand~~) unable to proceed to trial due
27 to a mental disorder for a sex offense or kidnapping offense and
28 subsequently committed under chapter 71.05 or 71.34 RCW.

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

36 (3) Except for the information specifically required under
37 subsection (5) of this section, local law enforcement agencies shall
38 consider the following guidelines in determining the extent of a
39 public disclosure made under this section: (a) For offenders

1 classified as risk level I, the agency shall share information with
2 other appropriate law enforcement agencies and, if the offender is a
3 student, the public or private school regulated under Title 28A RCW
4 or chapter 72.40 RCW which the offender is attending, or planning to
5 attend. The agency may disclose, upon request, relevant, necessary,
6 and accurate information to any victim or witness to the offense, any
7 individual community member who lives near the residence where the
8 offender resides, expects to reside, or is regularly found, and any
9 individual who requests information regarding a specific offender;
10 (b) for offenders classified as risk level II, the agency may also
11 disclose relevant, necessary, and accurate information to public and
12 private schools, child day care centers, family day care providers,
13 public libraries, businesses and organizations that serve primarily
14 children, women, or vulnerable adults, and neighbors and community
15 groups near the residence where the offender resides, expects to
16 reside, or is regularly found; (c) for offenders classified as risk
17 level III, the agency may also disclose relevant, necessary, and
18 accurate information to the public at large; and (d) because more
19 localized notification is not feasible and homeless and transient
20 offenders may present unique risks to the community, the agency may
21 also disclose relevant, necessary, and accurate information to the
22 public at large for offenders registered as homeless or transient.

23 (4) The county sheriff with whom an offender classified as risk
24 level III is registered shall release a sex offender community
25 notification that conforms to the guidelines established under RCW
26 4.24.5501.

27 (5) (a) When funded by federal grants or other sources, the
28 Washington association of sheriffs and police chiefs shall create and
29 maintain a statewide registered kidnapping and sex offender website,
30 which shall be available to the public. The website shall post all
31 level III and level II registered sex offenders, level I registered
32 sex offenders only during the time they are out of compliance with
33 registration requirements under RCW 9A.44.130 or if lacking a fixed
34 residence as provided in RCW 9A.44.130, and all registered kidnapping
35 offenders in the state of Washington.

36 (i) For level III offenders, the website shall contain, but is
37 not limited to, the registered sex offender's name, relevant criminal
38 convictions, address by hundred block, physical description, and
39 photograph. The website shall provide mapping capabilities that
40 display the sex offender's address by hundred block on a map. The

1 website shall allow citizens to search for registered sex offenders
2 within the state of Washington by county, city, zip code, last name,
3 and address by hundred block.

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

12 (iii) For kidnapping offenders, the website shall contain, but is
13 not limited to, the same information and functionality as described
14 in (a)(i) of this subsection, provided that it is permissible under
15 state and federal law. If it is not permissible, the website shall be
16 limited to the information and functionality that is permissible
17 under state and federal law.

18 (b) Law enforcement agencies must provide information requested
19 by the Washington association of sheriffs and police chiefs to
20 administer the statewide registered kidnapping and sex offender
21 website.

22 (c)(i) Within five business days of the Washington association of
23 sheriffs and police chiefs receiving any public record request under
24 chapter 42.56 RCW for sex offender and kidnapping offender
25 information, records or website data it holds or maintains pursuant
26 to this section or a unified sex offender registry, the Washington
27 association of sheriffs and police chiefs shall refer the requester
28 in writing to the appropriate law enforcement agency or agencies for
29 submission of such a request. The Washington association of sheriffs
30 and police chiefs shall have no further obligation under chapter
31 42.56 RCW for responding to such a request.

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

34 (6)(a) Law enforcement agencies responsible for the registration
35 and dissemination of information regarding offenders required to
36 register under RCW 9A.44.130 shall assign a risk level classification
37 to all offenders after consideration of: (i) Any available risk level
38 classifications provided by the department of corrections, the
39 department of social and health services, and the indeterminate
40 sentence review board; (ii) the agency's own application of a sex

1 offender risk assessment tool; and (iii) other information and
2 aggravating or mitigating factors known to the agency and deemed
3 rationally related to the risk posed by the offender to the community
4 at large.

5 (b) A sex offender shall be classified as a risk level I if his
6 or her risk assessment and other information or factors deemed
7 relevant by the law enforcement agency indicate he or she is at a low
8 risk to sexually reoffend within the community at large. A sex
9 offender shall be classified as a risk level II if his or her risk
10 assessment and other information or factors deemed relevant by the
11 law enforcement agency indicate he or she is at a moderate risk to
12 sexually reoffend within the community at large. A sex offender shall
13 be classified as a risk level III if his or her risk assessment and
14 other information or factors deemed relevant by the law enforcement
15 agency indicate he or she is at a high risk to sexually reoffend
16 within the community at large.

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

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

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

1 necessary information to other public officials, public employees, or
2 public agencies, and to the general public.

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

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

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

16 (11) As used in this section, "law enforcement agency" means a
17 general authority Washington law enforcement agency as defined in RCW
18 10.93.020.

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

21 For purposes of this act, a person found not guilty as a result
22 of ((the)) a defense of mental ((disease or defect)) disorder shall
23 be deemed to be a convicted person.

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

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

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

34 (2)(a) A person, whether an adult or juvenile, is guilty of the
35 crime of unlawful possession of a firearm in the second degree, if
36 the person does not qualify under subsection (1) of this section for
37 the crime of unlawful possession of a firearm in the first degree and

1 the person owns, accesses, has in the person's custody, control, or
2 possession, or receives any firearm:

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

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

7 (B) Any of the following crimes when committed by one family or
8 household member against another or by one intimate partner against
9 another, as those terms are defined by the statutes in effect at the
10 time of the commission of the crime, committed on or after July 1,
11 1993: Assault in the fourth degree, coercion, stalking, reckless
12 endangerment, criminal trespass in the first degree, or violation of
13 the provisions of a protection order or no-contact order restraining
14 the person or excluding the person from a residence (RCW 10.99.040 or
15 any of the former RCW 26.50.060, 26.50.070, and 26.50.130);

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

20 (D) Any of the following misdemeanor or gross misdemeanor crimes
21 not included under (a) (i) (B) or (C) of this subsection, committed on
22 or after July 23, 2023: Domestic violence (RCW 10.99.020); stalking;
23 cyberstalking; cyber harassment, excluding cyber harassment committed
24 solely pursuant to the element set forth in RCW 9A.90.120(1)(a)(i);
25 harassment; aiming or discharging a firearm (RCW 9.41.230); unlawful
26 carrying or handling of a firearm (RCW 9.41.270); animal cruelty in
27 the second degree committed under RCW 16.52.207(1); or any prior
28 offense as defined in RCW 46.61.5055(14) if committed within seven
29 years of a conviction for any other prior offense under RCW
30 46.61.5055;

31 (E) A violation of the provisions of a protection order under
32 chapter 7.105 RCW restraining the person or excluding the person from
33 a residence, when committed by one family or household member against
34 another or by one intimate partner against another, committed on or
35 after July 1, 2022; or

36 (F) A violation of the provisions of an order to surrender and
37 prohibit weapons, an extreme risk protection order, or the provisions
38 of any other protection order or no-contact order not included under
39 (a) (i) (B) or (E) of this subsection restraining the person or

1 excluding the person from a residence, committed on or after July 23,
2 2023;

3 (ii) During any period of time that the person is subject to a
4 protection order, no-contact order, or restraining order by a court
5 issued under chapter 7.105, 9A.40, 9A.44, 9A.46, 9A.88, 10.99, 26.09,
6 26.26A, or 26.26B RCW or any of the former chapters 7.90, 7.92,
7 10.14, and 26.50 RCW that:

8 (A) Was issued after a hearing for which the person received
9 actual notice, and at which the person had an opportunity to
10 participate, whether the court then issues a full order or reissues a
11 temporary order. If the court enters an agreed order by the parties
12 without a hearing, such an order meets the requirements of this
13 subsection;

14 (B) Restrains the person from harassing, stalking, or threatening
15 the person protected under the order or child of the person or
16 protected person, or others identified in the order, or engaging in
17 other conduct that would place the protected person in reasonable
18 fear of bodily injury to the protected person or child or others
19 identified in the order; and

20 (C) (I) Includes a finding that the person represents a credible
21 threat to the physical safety of the protected person or child or
22 others identified in the order, or by its terms explicitly prohibits
23 the use, attempted use, or threatened use of physical force against
24 the protected person or child or other persons that would reasonably
25 be expected to cause bodily injury; or

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

30 (iii) After having previously been involuntarily committed based
31 on a mental disorder under RCW 71.05.240, 71.05.320, 71.34.740,
32 71.34.750, chapter 10.77 RCW, or equivalent statutes of another
33 jurisdiction, unless his or her right to possess a firearm has been
34 restored as provided in RCW 9.41.047;

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

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

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

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

7 (3) A person shall not be precluded from possession of a firearm
8 if the conviction has been the subject of a pardon, annulment,
9 certificate of rehabilitation, or other equivalent procedure based on
10 a finding of the rehabilitation of the person convicted or the
11 conviction or disposition has been the subject of a pardon,
12 annulment, or other equivalent procedure based on a finding of
13 innocence. Where no record of the court's disposition of the charges
14 can be found, there shall be a rebuttable presumption that the person
15 was not convicted of the charge.

16 (4) Notwithstanding subsection (1) or (2) of this section, a
17 person convicted or found not guilty by reason of insanity of an
18 offense prohibiting the possession of a firearm under this section
19 other than murder, manslaughter, robbery, rape, indecent liberties,
20 arson, assault, kidnapping, extortion, burglary, or violations with
21 respect to controlled substances under RCW 69.50.401 and 69.50.410,
22 who received a probationary sentence under RCW 9.95.200, and who
23 received a dismissal of the charge under RCW 9.95.240, shall not be
24 precluded from possession of a firearm as a result of the conviction
25 or finding of not guilty by reason of insanity.

26 (5) In addition to any other penalty provided for by law, if a
27 person under the age of 18 years is found by a court to have
28 possessed a firearm in a vehicle in violation of subsection (1) or
29 (2) of this section or to have committed an offense while armed with
30 a firearm during which offense a motor vehicle served an integral
31 function, the court shall notify the department of licensing within
32 24 hours and the person's privilege to drive shall be revoked under
33 RCW 46.20.265, unless the offense is the juvenile's first offense in
34 violation of this section and has not committed an offense while
35 armed with a firearm, an unlawful possession of a firearm offense, or
36 an offense in violation of chapter 66.44, 69.52, 69.41, or 69.50 RCW.

37 (6) Nothing in chapter 129, Laws of 1995 shall ever be construed
38 or interpreted as preventing an offender from being charged and
39 subsequently convicted for the separate felony crimes of theft of a
40 firearm or possession of a stolen firearm, or both, in addition to

1 being charged and subsequently convicted under this section for
2 unlawful possession of a firearm in the first or second degree.
3 Notwithstanding any other law, if the offender is convicted under
4 this section for unlawful possession of a firearm in the first or
5 second degree and for the felony crimes of theft of a firearm or
6 possession of a stolen firearm, or both, then the offender shall
7 serve consecutive sentences for each of the felony crimes of
8 conviction listed in this subsection.

9 (7) (a) A person, whether an adult or a juvenile, commits the
10 civil infraction of unlawful possession of a firearm if the person
11 has in the person's possession or has in the person's control a
12 firearm after the person files a voluntary waiver of firearm rights
13 under RCW 9.41.350 and the form has been accepted by the clerk of the
14 court and the voluntary waiver has not been lawfully revoked.

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

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

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

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

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

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

28 (1) (a) At the time a person is convicted or found not guilty by
29 reason of insanity of an offense making the person ineligible to
30 possess a firearm under state or federal law, including if the person
31 was convicted of possession under RCW 69.50.4011, 69.50.4013,
32 69.50.4014, or 69.41.030, or at the time a person is committed by
33 court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or
34 chapter 10.77 RCW for treatment for a mental disorder, or at the time
35 that charges are dismissed based on (~~incompetency to stand~~)
36 inability to proceed to trial under RCW 10.77.088 and the court makes
37 a finding that the person has a history of one or more violent acts,
38 the court shall notify the person, orally and in writing, that the
39 person must immediately surrender all firearms and any concealed

1 pistol license and that the person may not possess a firearm unless
2 the person's right to do so is restored by the superior court that
3 issued the order.

4 (b) The court shall forward within three judicial days after
5 conviction, finding of not guilty by reason of insanity, entry of the
6 commitment order, or dismissal of charges, a copy of the person's
7 driver's license or identicard, or comparable information such as the
8 person's name, address, and date of birth, along with the date of
9 conviction or commitment, or date charges are dismissed, to the
10 department of licensing and to the Washington state patrol firearms
11 background check program. When a person is committed by court order
12 under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter
13 10.77 RCW, for treatment for a mental disorder, or when a person's
14 charges are dismissed based on (~~incompetency to stand trial~~)
15 inability to proceed to trial under RCW 10.77.088 and the court makes
16 a finding that the person has a history of one or more violent acts,
17 the court also shall forward, within three judicial days after entry
18 of the commitment order, or dismissal of charges, a copy of the
19 person's driver's license, or comparable information, along with the
20 date of commitment or date charges are dismissed, to the national
21 instant criminal background check system index, denied persons file,
22 created by the federal Brady handgun violence prevention act (P.L.
23 103-159) and to the Washington state patrol. The petitioning party
24 shall provide the court with the information required. If more than
25 one commitment order is entered under one cause number, only one
26 notification to the department of licensing, the Washington state
27 patrol firearms background check program, and the national instant
28 criminal background check system is required.

29 (2) Upon receipt of the information provided for by subsection
30 (1) of this section, the department of licensing shall determine if
31 the person has a concealed pistol license. If the person has a
32 concealed pistol license, the department of licensing shall
33 immediately notify the license-issuing authority which, upon receipt
34 of such notification, shall immediately revoke the license.

35 (3) (a) A person who is prohibited from possessing a firearm, by
36 reason of having been involuntarily committed for treatment for a
37 mental disorder under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750,
38 chapter 10.77 RCW, or equivalent statutes of another jurisdiction, or
39 by reason of having been detained under RCW 71.05.150 or 71.05.153,
40 or because the person's charges were dismissed based on

1 ((~~incompetency to stand~~)) inability to proceed to trial under RCW
2 10.77.088 and the court made a finding that the person has a history
3 of one or more violent acts, may, upon discharge, petition the
4 superior court to have his or her right to possess a firearm
5 restored, except that a person found not guilty by reason of insanity
6 may not petition for restoration of the right to possess a firearm
7 until one year after discharge.

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

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

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

18 (ii) The person petitioning for restoration of firearm rights has
19 successfully managed the condition related to the commitment or
20 detention or ((~~incompetency~~)) inability to proceed due to a mental
21 disorder;

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

24 (iv) The symptoms related to the commitment or detention or
25 ((~~incompetency~~)) inability to proceed due to a mental disorder are
26 not reasonably likely to recur.

27 (d) If a preponderance of the evidence in the record supports a
28 finding that the person petitioning for restoration of firearm rights
29 has engaged in violence and that it is more likely than not that the
30 person will engage in violence after the person's right to possess a
31 firearm is restored, the person petitioning for restoration of
32 firearm rights shall bear the burden of proving by clear, cogent, and
33 convincing evidence that the person does not present a substantial
34 danger to the safety of others.

35 (e) If the person seeking restoration of firearm rights seeks
36 restoration after having been detained under RCW 71.05.150 or
37 71.05.153, the state shall bear the burden of proof to show, by a
38 preponderance of the evidence, that the person does not meet the
39 restoration criteria in (c) of this subsection.

1 (f) When a person's right to possess a firearm has been restored
2 under this subsection, the court shall forward, within three judicial
3 days after entry of the restoration order, notification that the
4 person's right to possess a firearm has been restored to the
5 department of licensing and the Washington state patrol criminal
6 records division, with a copy of the person's driver's license or
7 identicard, or comparable identification such as the person's name,
8 address, and date of birth, and to the health care authority, and the
9 national instant criminal background check system index, denied
10 persons file. In the case of a person whose right to possess a
11 firearm has been suspended for six months as provided in RCW
12 71.05.182, the department of licensing shall forward notification of
13 the restoration order to the licensing authority, which, upon receipt
14 of such notification, shall immediately lift the suspension,
15 restoring the person's concealed pistol license.

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

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

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

24 (a) Found concealed on a person not authorized by RCW 9.41.060 or
25 9.41.070 to carry a concealed pistol: PROVIDED, That it is an
26 absolute defense to forfeiture if the person possessed a valid
27 Washington concealed pistol license within the preceding two years
28 and has not become ineligible for a concealed pistol license in the
29 interim. Before the firearm may be returned, the person must pay the
30 past due renewal fee and the current renewal fee;

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

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

35 (d) In the possession or under the control of a person at the
36 time the person committed or was arrested for committing a felony or
37 committing a nonfelony crime in which a firearm was used or
38 displayed;

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

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

10 (g) In the possession of a person found to have been (~~mentally~~
11 ~~incompetent~~) unable to proceed due to a mental disorder while in
12 possession of a firearm when apprehended or who is thereafter
13 committed pursuant to chapter 10.77 RCW or committed for mental
14 health treatment under chapter 71.05 RCW;

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

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

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

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

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

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

1 (i) Comply with the provisions for the auction of firearms in
2 ((RCW 9.41.098)) this section that were in effect immediately
3 preceding May 7, 1993; or

4 (ii) Trade, auction, or arrange for the auction of, rifles and
5 shotguns. In addition, the law enforcement agency shall either trade,
6 auction, or arrange for the auction of, short firearms, or shall pay
7 a fee of twenty-five dollars to the state treasurer for every short
8 firearm neither auctioned nor traded, to a maximum of fifty thousand
9 dollars. The fees shall be accompanied by an inventory, under oath,
10 of every short firearm listed in the inventory required by (a) of
11 this subsection, that has been neither traded nor auctioned. The
12 state treasurer shall credit the fees to the firearms range account
13 established in RCW 79A.25.210. All trades or auctions of firearms
14 under this subsection shall be to licensed dealers. Proceeds of any
15 auction less costs, including actual costs of storage and sale, shall
16 be forwarded to the firearms range account established in RCW
17 79A.25.210.

18 (c) Antique firearms and firearms recognized as curios, relics,
19 and firearms of particular historical significance by the United
20 States treasury department bureau of alcohol, tobacco, firearms, and
21 explosives are exempt from destruction and shall be disposed of by
22 auction or trade to licensed dealers.

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

32 (3) The court shall order the firearm returned to the owner upon
33 a showing that there is no probable cause to believe a violation of
34 subsection (1) of this section existed or the firearm was stolen from
35 the owner or the owner neither had knowledge of nor consented to the
36 act or omission involving the firearm which resulted in its
37 forfeiture.

38 (4) A law enforcement officer of the state or of any county or
39 municipality may confiscate a firearm found to be in the possession
40 of a person under circumstances specified in subsection (1) of this

1 section. After confiscation, the firearm shall not be surrendered
2 except: (a) To the prosecuting attorney for use in subsequent legal
3 proceedings; (b) for disposition according to an order of a court
4 having jurisdiction as provided in subsection (1) of this section; or
5 (c) to the owner if the proceedings are dismissed or as directed in
6 subsection (3) of this section.

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

9 The court may order an offender whose sentence includes community
10 placement or community supervision to undergo a mental status
11 evaluation and to participate in available outpatient mental health
12 treatment, if the court finds that reasonable grounds exist to
13 believe that the offender is a mentally ill person as defined in RCW
14 71.24.025, and that this condition is likely to have influenced the
15 offense. An order requiring mental status evaluation or treatment may
16 be based on a presentence report and, if applicable, mental status
17 evaluations that have been filed with the court to determine the
18 offender's (~~competency~~) ability to stand trial or eligibility for a
19 defense of insanity. The court may order additional evaluations at a
20 later date if deemed appropriate.

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

23 (1) Whenever a person has entered upon a term of imprisonment in
24 a penal, correctional, or juvenile rehabilitation institution of this
25 state, and whenever during the continuance of the term of
26 imprisonment there is pending in this state any untried indictment,
27 information, or complaint against the person, he or she shall be
28 brought to trial within 120 days after he or she shall have caused to
29 be delivered to the prosecuting attorney and the court in which the
30 indictment, information, or complaint is pending written notice of
31 the place of his or her imprisonment and his or her request for a
32 final disposition to be made of the indictment, information, or
33 complaint. The following time periods shall be excluded from the 120-
34 day calculation:

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

1 (b) Proceedings related to (~~competency to stand~~) ability to
2 proceed to trial on the pending charge, from the entry of an
3 evaluation order to the entry of a court order finding the person
4 (~~competent~~) able to proceed; and

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

8 (2) The superintendent or the superintendent's designee who
9 provides the certificate under subsection (4) of this section shall
10 inform any prosecuting attorney or court requesting transportation of
11 the person to resolve an untried indictment, information, or
12 complaint of the person's current location and availability for
13 trial. If the person is unavailable for transportation due to court
14 proceedings in another county, the superintendent shall inform the
15 prosecuting attorney or court when the person becomes available for
16 transportation and provide a new certificate containing the
17 information under subsection (4) of this section.

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

22 (4) The request of the person shall be accompanied by a
23 certificate of the superintendent or the superintendent's designee
24 having custody of the person, stating the term of commitment under
25 which the person is being held, the time already served, the time
26 remaining to be served on the sentence, the amount of good time
27 earned, the earned release date of the person, and any decisions of
28 the indeterminate sentence review board relating to the person.

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

36 (6) The superintendent or the superintendent's designee having
37 custody of the person shall promptly inform him or her in writing of
38 the source and contents of any untried indictment, information, or
39 complaint against him or her concerning which the superintendent or

1 the superintendent's designee has knowledge and of his or her right
2 to make a request for final disposition thereof.

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

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

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

9 (1) At the time of the commission of the offense, as a result of
10 (~~mental disease or defect~~) a mental disorder, the mind of the actor
11 was affected to such an extent that:

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

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

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

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

20 (1) Except as provided in subsection (3) of this section, the
21 court may require a defendant to pay costs. Costs may be imposed only
22 upon a convicted defendant, except for costs imposed upon a
23 defendant's entry into a deferred prosecution program, costs imposed
24 upon a defendant for pretrial supervision, or costs imposed upon a
25 defendant for preparing and serving a warrant for failure to appear.

26 (2) Costs shall be limited to expenses specially incurred by the
27 state in prosecuting the defendant or in administering the deferred
28 prosecution program under chapter 10.05 RCW or pretrial supervision.
29 They cannot include expenses inherent in providing a constitutionally
30 guaranteed jury trial or expenditures in connection with the
31 maintenance and operation of government agencies that must be made by
32 the public irrespective of specific violations of law. Expenses
33 incurred for serving of warrants for failure to appear and jury fees
34 under RCW 10.46.190 may be included in costs the court may require a
35 defendant to pay. Costs for administering a deferred prosecution may
36 not exceed \$250. Costs for administering a pretrial supervision other
37 than a pretrial electronic alcohol monitoring program, drug
38 monitoring program, or 24/7 sobriety program may not exceed \$150.

1 Costs for preparing and serving a warrant for failure to appear may
2 not exceed \$100. Costs of incarceration imposed on a defendant
3 convicted of a misdemeanor or a gross misdemeanor may not exceed the
4 actual cost of incarceration. In no case may the court require the
5 offender to pay more than \$100 per day for the cost of incarceration.
6 Payment of other court-ordered financial obligations, including all
7 legal financial obligations and costs of supervision take precedence
8 over the payment of the cost of incarceration ordered by the court.
9 All funds received from defendants for the cost of incarceration in
10 the county or city jail must be remitted for criminal justice
11 purposes to the county or city that is responsible for the
12 defendant's jail costs. Costs imposed constitute a judgment against a
13 defendant and survive a dismissal of the underlying action against
14 the defendant. However, if the defendant is acquitted on the
15 underlying action, the costs for preparing and serving a warrant for
16 failure to appear do not survive the acquittal, and the judgment that
17 such costs would otherwise constitute shall be vacated.

18 (3) The court shall not order a defendant to pay costs if the
19 defendant at the time of sentencing is indigent. In determining the
20 amount and method of payment of costs for defendants who are not
21 indigent, the court shall take account of the financial resources of
22 the defendant and the nature of the burden that payment of costs will
23 impose. For the purposes of this section, a defendant is "indigent"
24 if the defendant: (a) Meets the criteria defined in RCW 10.101.010(3)
25 (a) through (c); (b) is homeless or mentally ill as defined in RCW
26 71.24.025; (c) has household income above 125 percent of the federal
27 poverty guidelines and has recurring basic living costs, as defined
28 in RCW 10.101.010, that render the defendant without the financial
29 ability to pay; or (d) has other compelling circumstances that exist
30 that demonstrate an inability to pay.

31 (4) A defendant who has been ordered to pay costs and who has not
32 willfully failed to pay the obligation, as described in RCW
33 9.94A.6333, 9.94B.040, and 10.01.180, may at any time petition the
34 sentencing court for remission of the payment of costs or of any
35 unpaid portion thereof. If it appears to the satisfaction of the
36 court that payment of the amount due will impose manifest hardship on
37 the defendant or the defendant's immediate family, the court may
38 remit all or part of the amount due in costs, modify the method of
39 payment under RCW 10.01.170, or convert the unpaid costs to community
40 restitution hours, if the jurisdiction operates a community

1 restitution program, at the rate of no less than the state minimum
2 wage established in RCW 49.46.020 for each hour of community
3 restitution. Manifest hardship exists where the defendant is indigent
4 as defined in subsection (3) of this section.

5 (5) Except for direct costs relating to evaluating and reporting
6 to the court, prosecutor, or defense counsel regarding a defendant's
7 (~~competency to stand~~) ability to proceed to trial as provided in
8 RCW 10.77.060, this section shall not apply to costs related to
9 medical or mental health treatment or services a defendant receives
10 while in custody of the secretary of the department of social and
11 health services or other governmental units. This section shall not
12 prevent the secretary of the department of social and health services
13 or other governmental units from imposing liability and seeking
14 reimbursement from a defendant committed to an appropriate facility
15 as provided in RCW 10.77.084 while criminal proceedings are stayed.
16 This section shall also not prevent governmental units from imposing
17 liability on defendants for costs related to providing medical or
18 mental health treatment while the defendant is in the governmental
19 unit's custody. Medical or mental health treatment and services a
20 defendant receives at a state hospital or other facility are not a
21 cost of prosecution and shall be recoverable under RCW 10.77.250 and
22 70.48.130, chapter 43.20B RCW, and any other applicable statute.

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

25 The definitions in this section apply throughout this chapter
26 unless the context clearly requires otherwise.

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

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

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

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

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

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

9 (i) Any compensation forgone by a member employed by a state
10 agency or institution during the 2009-2011 fiscal biennium as a
11 result of reduced work hours, mandatory or voluntary leave without
12 pay, temporary reduction in pay implemented prior to December 11,
13 2010, or temporary layoffs if the reduced compensation is an integral
14 part of the employer's expenditure reduction efforts, as certified by
15 the employer;

16 (ii) Any compensation forgone by a member employed by the state
17 or a local government employer during the 2011-2013 fiscal biennium
18 as a result of reduced work hours, mandatory leave without pay,
19 temporary layoffs, or reductions to current pay if the reduced
20 compensation is an integral part of the employer's expenditure
21 reduction efforts, as certified by the employer. Reductions to
22 current pay shall not include elimination of previously agreed upon
23 future salary increases; and

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

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

35 (7) (a) "Compensation earnable" for members, means salaries or
36 wages earned by a member during a payroll period for personal
37 services, including overtime payments, and shall include wages and
38 salaries deferred under provisions established pursuant to sections
39 403(b), 414(h), and 457 of the United States internal revenue code,
40 but shall exclude nonmoney maintenance compensation and lump sum or

1 other payments for deferred annual sick leave, unused accumulated
2 vacation, unused accumulated annual leave, or any form of severance
3 pay.

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

7 (i) Retroactive payments to an individual by an employer on
8 reinstatement of the employee in a position, or payments by an
9 employer to an individual in lieu of reinstatement, which are awarded
10 or granted as the equivalent of the salary or wage which the
11 individual would have earned during a payroll period shall be
12 considered compensation earnable to the extent provided in this
13 subsection, and the individual shall receive the equivalent service
14 credit;

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

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

20 (B) Such member's actual compensation earnable received for
21 nonlegislative public employment and legislative service combined.
22 Any additional contributions to the retirement system required
23 because compensation earnable under (b)(ii)(A) of this subsection is
24 greater than compensation earnable under (b)(ii)(B) of this
25 subsection shall be paid by the member for both member and employer
26 contributions;

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

29 (iv) Compensation that a member would have received but for a
30 disability occurring in the line of duty only as authorized by RCW
31 41.37.060;

32 (v) Compensation that a member receives due to participation in
33 the leave sharing program only as authorized by RCW 41.04.650 through
34 41.04.670; and

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

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

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

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

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

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

12 (i) The Washington state department of corrections;

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

14 (iii) The Washington state gambling commission;

15 (iv) The Washington state patrol;

16 (v) The Washington state department of natural resources;

17 (vi) The Washington state liquor and cannabis board;

18 (vii) The Washington state department of veterans affairs;

19 (viii) The Washington state department of children, youth, and
20 families;

21 (ix) The Washington state department of social and health
22 services;

23 (x) Any county corrections department;

24 (xi) Any city corrections department not covered under chapter
25 41.28 RCW;

26 (xii) Any public corrections entity created under RCW 39.34.030
27 by counties, cities not covered under chapter 41.28 RCW, or both; and

28 (xiii) Any employer participating in the public employees'
29 retirement system in chapter 41.40 RCW, some or all of whose
30 employees' primary responsibility is to receive, process, transmit,
31 or dispatch 911 emergency and nonemergency calls for law enforcement,
32 fire, emergency medical, or other public safety services that is not
33 already covered by the provisions of this subsection.

34 (b) Except as otherwise specifically provided in this chapter,
35 "employer" does not include a government contractor. For purposes of
36 this subsection, a "government contractor" is any entity, including a
37 partnership, limited liability company, for-profit or nonprofit
38 corporation, or person, that provides services pursuant to a contract
39 with an employer. The determination whether an employer-employee
40 relationship has been established is not based on the relationship

1 between a government contractor and an employer, but is based solely
2 on the relationship between a government contractor's employee and an
3 employer under this chapter.

4 (13) "Final compensation" means the annual rate of compensation
5 earnable by a member at the time of termination of employment.

6 (14) "Index" means, for any calendar year, that year's annual
7 average consumer price index, Seattle, Washington area, for urban
8 wage earners and clerical workers, all items, compiled by the bureau
9 of labor statistics, United States department of labor.

10 (15) "Index A" means the index for the year prior to the
11 determination of a postretirement adjustment.

12 (16) "Index B" means the index for the year prior to index A.

13 (17) "Ineligible position" means any position which does not
14 conform with the requirements set forth in subsection (10) of this
15 section.

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

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

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

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

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

30 (d) Whose primary responsibility is to provide nursing care to,
31 or to ensure the custody and safety of, offender, adult probationary,
32 or patient populations; and who is in a position that requires
33 completion of defensive tactics training or de-escalation training;
34 and who is employed by one of the following state institutions or
35 centers operated by the department of social and health services or
36 the department of children, youth, and families:

37 (i) Juvenile rehabilitation administration institutions, not
38 including community facilities;

39 (ii) Mental health hospitals;

40 (iii) Child study and treatment centers; or

1 (iv) Institutions or residential sites that serve developmentally
2 disabled patients or offenders, or perform ((competency)) restoration
3 treatment services, except for state-operated living alternatives
4 facilities;

5 (e) Whose primary responsibility is to provide nursing care to
6 offender and patient populations in institutions and centers operated
7 by the following employers: A city or county corrections department
8 as set forth in subsection (12) of this section, a public corrections
9 entity as set forth in subsection (12) of this section, the
10 Washington state department of corrections, or the Washington state
11 department of veterans affairs;

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

16 (g) Whose primary responsibility is to supervise members eligible
17 under this subsection.

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

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

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

24 (23) "Regular interest" means such rate as the director may
25 determine.

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

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

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

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

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

37 (29) "Service" means periods of employment by a member on or
38 after July 1, 2006, for one or more employers for which compensation
39 earnable is paid. Compensation earnable earned for ninety or more
40 hours in any calendar month shall constitute one service credit

1 month. Compensation earnable earned for at least seventy hours but
2 less than ninety hours in any calendar month shall constitute one-
3 half service credit month of service. Compensation earnable earned
4 for less than seventy hours in any calendar month shall constitute
5 one-quarter service credit month of service. Time spent in standby
6 status, whether compensated or not, is not service.

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

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

11 (b) A member shall receive a total of not more than twelve
12 service credit months of service for such calendar year. If an
13 individual is employed in an eligible position by one or more
14 employers the individual shall receive no more than one service
15 credit month during any calendar month in which multiple service for
16 ninety or more hours is rendered.

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

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

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

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

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

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

35 **Sec. 40.** RCW 46.20.031 and 2002 c 279 s 3 are each amended to
36 read as follows:

37 The department shall not issue a driver's license to a person:

38 (1) Who is under the age of sixteen years;

1 (2) Whose driving privilege has been withheld unless and until
2 the department may authorize the driving privilege under RCW
3 46.20.311;

4 (3) Who has been classified as an alcoholic, drug addict, alcohol
5 abuser, or drug abuser by a program approved by the department of
6 social and health services. The department may, however, issue a
7 license if the person:

8 (a) Has been granted a deferred prosecution under chapter 10.05
9 RCW; or

10 (b) Is satisfactorily participating in or has successfully
11 completed an alcohol or drug abuse treatment program approved by the
12 department of social and health services and has established control
13 of his or her alcohol or drug abuse problem;

14 (4) Who has previously been (~~adjudged to be mentally ill~~)
15 adjudicated as a person with a mental disorder or to be criminally
16 insane, or to be (~~incompetent~~) unable to proceed due to a mental
17 (~~disability or disease~~) disorder. The department shall, however,
18 issue a license to the person if he or she otherwise qualifies and:

19 (~~Has been restored to competency by the methods provided by~~
20 ~~law~~) His or her ability to proceed has been restored; or

21 (b) The superior court finds the person able to operate a motor
22 vehicle with safety upon the highways (~~during such incompetency~~)
23 while unable to proceed;

24 (5) Who has not passed the driver's licensing examination
25 required by RCW 46.20.120 and 46.20.305, if applicable;

26 (6) Who is required under the laws of this state to deposit proof
27 of financial responsibility and who has not deposited such proof;

28 (7) Who is unable to safely operate a motor vehicle upon the
29 highways due to a physical or mental disability. The department's
30 conclusion that a person is barred from licensing under this
31 subsection must be reasonable and be based upon good and substantial
32 evidence. This determination is subject to review by a court of
33 competent jurisdiction.

34 **Sec. 41.** RCW 70.02.010 and 2020 c 302 s 112 and 2020 c 256 s 401
35 are each reenacted and amended to read as follows:

36 The definitions in this section apply throughout this chapter
37 unless the context clearly requires otherwise.

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

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

4 (a) Statutory, regulatory, fiscal, medical, or scientific
5 standards;

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

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

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

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

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

12 (6) "Deidentified" means health information that does not
13 identify an individual and with respect to which there is no
14 reasonable basis to believe that the information can be used to
15 identify an individual.

16 (7) "Department" means the department of social and health
17 services.

18 (8) "Designated crisis responder" has the same meaning as in RCW
19 71.05.020 or 71.34.020, as applicable.

20 (9) "Detention" or "detain" has the same meaning as in RCW
21 71.05.020.

22 (10) "Directory information" means information disclosing the
23 presence, and for the purpose of identification, the name, location
24 within a health care facility, and the general health condition of a
25 particular patient who is a patient in a health care facility or who
26 is currently receiving emergency health care in a health care
27 facility.

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

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

31 (13) "Federal, state, or local law enforcement authorities" means
32 an officer of any agency or authority in the United States, a state,
33 a tribe, a territory, or a political subdivision of a state, a tribe,
34 or a territory who is empowered by law to: (a) Investigate or conduct
35 an official inquiry into a potential criminal violation of law; or
36 (b) prosecute or otherwise conduct a criminal proceeding arising from
37 an alleged violation of law.

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

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

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

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

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

9 (17) "Health care information" means any information, whether
10 oral or recorded in any form or medium, that identifies or can
11 readily be associated with the identity of a patient and directly
12 relates to the patient's health care, including a patient's
13 deoxyribonucleic acid and identified sequence of chemical base pairs.
14 The term includes any required accounting of disclosures of health
15 care information.

16 (18) "Health care operations" means any of the following
17 activities of a health care provider, health care facility, or third-
18 party payor to the extent that the activities are related to
19 functions that make an entity a health care provider, a health care
20 facility, or a third-party payor:

21 (a) Conducting: Quality assessment and improvement activities,
22 including outcomes evaluation and development of clinical guidelines,
23 if the obtaining of generalizable knowledge is not the primary
24 purpose of any studies resulting from such activities; population-
25 based activities relating to improving health or reducing health care
26 costs, protocol development, case management and care coordination,
27 contacting of health care providers and patients with information
28 about treatment alternatives; and related functions that do not
29 include treatment;

30 (b) Reviewing the competence or qualifications of health care
31 professionals, evaluating practitioner and provider performance and
32 third-party payor performance, conducting training programs in which
33 students, trainees, or practitioners in areas of health care learn
34 under supervision to practice or improve their skills as health care
35 providers, training of nonhealth care professionals, accreditation,
36 certification, licensing, or credentialing activities;

37 (c) Underwriting, premium rating, and other activities relating
38 to the creation, renewal, or replacement of a contract of health
39 insurance or health benefits, and ceding, securing, or placing a
40 contract for reinsurance of risk relating to claims for health care,

1 including stop-loss insurance and excess of loss insurance, if any
2 applicable legal requirements are met;

3 (d) Conducting or arranging for medical review, legal services,
4 and auditing functions, including fraud and abuse detection and
5 compliance programs;

6 (e) Business planning and development, such as conducting cost-
7 management and planning-related analyses related to managing and
8 operating the health care facility or third-party payor, including
9 formulary development and administration, development, or improvement
10 of methods of payment or coverage policies; and

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

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

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

20 (iii) Resolution of internal grievances;

21 (iv) The sale, transfer, merger, or consolidation of all or part
22 of a health care provider, health care facility, or third-party payor
23 with another health care provider, health care facility, or third-
24 party payor or an entity that following such activity will become a
25 health care provider, health care facility, or third-party payor, and
26 due diligence related to such activity; and

27 (v) Consistent with applicable legal requirements, creating
28 deidentified health care information or a limited data set for the
29 benefit of the health care provider, health care facility, or third-
30 party payor.

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

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

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

38 (22) "Indian health care provider" has the same meaning as in RCW
39 43.71B.010(11).

1 (23) "Information and records related to mental health services"
2 means a type of health care information that relates to all
3 information and records compiled, obtained, or maintained in the
4 course of providing services by a mental health service agency or
5 mental health professional to persons who are receiving or have
6 received services for mental illness. The term includes mental health
7 information contained in a medical bill, registration records, as
8 defined in RCW 70.97.010, and all other records regarding the person
9 maintained by the department, by the authority, by behavioral health
10 administrative services organizations and their staff, managed care
11 organizations contracted with the authority under chapter 74.09 RCW
12 and their staff, and by treatment facilities. The term further
13 includes documents of legal proceedings under chapter 71.05, 71.34,
14 or 10.77 RCW, or somatic health care information. For health care
15 information maintained by a hospital as defined in RCW 70.41.020 or a
16 health care facility or health care provider that participates with a
17 hospital in an organized health care arrangement defined under
18 federal law, "information and records related to mental health
19 services" is limited to information and records of services provided
20 by a mental health professional or information and records of
21 services created by a hospital-operated community behavioral health
22 program as defined in RCW 71.24.025. The term does not include
23 psychotherapy notes.

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

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

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

36 (27) "Local public health officer" has the same meaning as in RCW
37 70.24.017.

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

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

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

9 (31) "Mental health service agency" means a public or private
10 agency that provides services to persons with mental disorders as
11 defined under RCW 71.05.020 or 71.34.020 and receives funding from
12 public sources. This includes evaluation and treatment facilities as
13 defined in RCW 71.34.020, community mental health service delivery
14 systems, or community behavioral health programs, as defined in RCW
15 71.24.025, and facilities conducting (~~competency~~) ability to
16 proceed evaluations and restoration under chapter 10.77 RCW.

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

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

19 (34) "Patient" means an individual who receives or has received
20 health care. The term includes a deceased individual who has received
21 health care.

22 (35) "Payment" means:

23 (a) The activities undertaken by:

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

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

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

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

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

38 (iii) Billing, claims management, collection activities,
39 obtaining payment under a contract for reinsurance, including stop-

1 loss insurance and excess of loss insurance, and related health care
2 data processing;

3 (iv) Review of health care services with respect to medical
4 necessity, coverage under a health plan, appropriateness of care, or
5 justification of charges;

6 (v) Utilization review activities, including precertification and
7 preauthorization of services, and concurrent and retrospective review
8 of services; and

9 (vi) Disclosure to consumer reporting agencies of any of the
10 following health care information relating to collection of premiums
11 or reimbursement:

12 (A) Name and address;

13 (B) Date of birth;

14 (C) Social security number;

15 (D) Payment history;

16 (E) Account number; and

17 (F) Name and address of the health care provider, health care
18 facility, and/or third-party payor.

19 (36) "Person" means an individual, corporation, business trust,
20 estate, trust, partnership, association, joint venture, government,
21 governmental subdivision or agency, or any other legal or commercial
22 entity.

23 (37) "Professional person" has the same meaning as in RCW
24 71.05.020.

25 (38) "Psychiatric advanced registered nurse practitioner" has the
26 same meaning as in RCW 71.05.020.

27 (39) "Psychotherapy notes" means notes recorded, in any medium,
28 by a mental health professional documenting or analyzing the contents
29 of conversations during a private counseling session or group, joint,
30 or family counseling session, and that are separated from the rest of
31 the individual's medical record. The term excludes mediation
32 prescription and monitoring, counseling session start and stop times,
33 the modalities and frequencies of treatment furnished, results of
34 clinical tests, and any summary of the following items: Diagnosis,
35 functional status, the treatment plan, symptoms, prognosis, and
36 progress to date.

37 (40) "Reasonable fee" means the charges for duplicating or
38 searching the record, but shall not exceed sixty-five cents per page
39 for the first thirty pages and fifty cents per page for all other
40 pages. In addition, a clerical fee for searching and handling may be

1 charged not to exceed fifteen dollars. These amounts shall be
2 adjusted biennially in accordance with changes in the consumer price
3 index, all consumers, for Seattle-Tacoma metropolitan statistical
4 area as determined by the secretary of health. However, where editing
5 of records by a health care provider is required by statute and is
6 done by the provider personally, the fee may be the usual and
7 customary charge for a basic office visit.

8 (41) "Release" has the same meaning as in RCW 71.05.020.

9 (42) "Resource management services" has the same meaning as in
10 RCW 71.05.020.

11 (43) "Serious violent offense" has the same meaning as in RCW
12 9.94A.030.

13 (44) "Sexually transmitted infection" or "sexually transmitted
14 disease" has the same meaning as "sexually transmitted disease" in
15 RCW 70.24.017.

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

18 (46) "Third-party payor" means an insurer regulated under Title
19 48 RCW authorized to transact business in this state or other
20 jurisdiction, including a health care service contractor, and health
21 maintenance organization; or an employee welfare benefit plan,
22 excluding fitness or wellness plans; or a state or federal health
23 benefit program.

24 (47) "Treatment" means the provision, coordination, or management
25 of health care and related services by one or more health care
26 providers or health care facilities, including the coordination or
27 management of health care by a health care provider or health care
28 facility with a third party; consultation between health care
29 providers or health care facilities relating to a patient; or the
30 referral of a patient for health care from one health care provider
31 or health care facility to another.

32 **Sec. 42.** RCW 70.02.230 and 2023 c 295 s 12 are each amended to
33 read as follows:

34 (1) The fact of admission to a provider for mental health
35 services and all information and records compiled, obtained, or
36 maintained in the course of providing mental health services to
37 either voluntary or involuntary recipients of services at public or
38 private agencies may not be disclosed except as provided in this
39 section, RCW 70.02.050, 71.05.445, 74.09.295, 70.02.210, 70.02.240,

1 70.02.250, 70.02.260, and 70.02.265, or pursuant to a valid
2 authorization under RCW 70.02.030.

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

6 (a) In communications between qualified professional persons to
7 meet the requirements of chapter 71.05 RCW, including Indian health
8 care providers, in the provision of services or appropriate
9 referrals, or in the course of guardianship proceedings if provided
10 to a professional person:

11 (i) Employed by the facility;

12 (ii) Who has medical responsibility for the patient's care;

13 (iii) Who is a designated crisis responder;

14 (iv) Who is providing services under chapter 71.24 RCW;

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

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

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

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

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

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

32 (B) A statement evaluating the mental and physical condition of
33 the patient, and a statement of the probable duration of the
34 patient's confinement, if such information is requested by the next
35 of kin, attorney, personal representative, guardian, or conservator;
36 and

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

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

6 (ii) To a court or its designee in which a motion under chapter
7 10.77 RCW has been made for involuntary medication of a defendant for
8 the purpose of (~~competency~~) restoration treatment.

9 (iii) Disclosure under this subsection is mandatory for the
10 purpose of the federal health insurance portability and
11 accountability act;

12 (e)(i) When a mental health professional or designated crisis
13 responder is requested by a representative of a law enforcement or
14 corrections agency, including a police officer, sheriff, community
15 corrections officer, a municipal attorney, or prosecuting attorney to
16 undertake an investigation or provide treatment under RCW 71.05.150,
17 10.31.110, or 71.05.153, the mental health professional or designated
18 crisis responder shall, if requested to do so, advise the
19 representative in writing of the results of the investigation
20 including a statement of reasons for the decision to detain or
21 release the person investigated. The written report must be submitted
22 within seventy-two hours of the completion of the investigation or
23 the request from the law enforcement or corrections representative,
24 whichever occurs later.

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

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

29 (g) To the prosecuting attorney as necessary to carry out the
30 responsibilities of the office under RCW 71.05.330(2),
31 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided
32 access to records regarding the committed person's treatment and
33 prognosis, medication, behavior problems, and other records relevant
34 to the issue of whether treatment less restrictive than inpatient
35 treatment is in the best interest of the committed person or others.
36 Information must be disclosed only after giving notice to the
37 committed person and the person's counsel;

38 (h)(i) To appropriate law enforcement agencies and to a person,
39 when the identity of the person is known to the public or private
40 agency, whose health and safety has been threatened, or who is known

1 to have been repeatedly harassed, by the patient. The person may
2 designate a representative to receive the disclosure. The disclosure
3 must be made by the professional person in charge of the public or
4 private agency or his or her designee and must include the dates of
5 commitment, admission, discharge, or release, authorized or
6 unauthorized absence from the agency's facility, and only any other
7 information that is pertinent to the threat or harassment. The agency
8 or its employees are not civilly liable for the decision to disclose
9 or not, so long as the decision was reached in good faith and without
10 gross negligence.

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

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

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

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

24 (k) By a care coordinator under RCW 71.05.585 or 10.77.175
25 assigned to a person ordered to receive less restrictive alternative
26 treatment for the purpose of sharing information to parties necessary
27 for the implementation of proceedings under chapter 71.05 or 10.77
28 RCW;

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

37 (m) To mark headstones or otherwise memorialize patients interred
38 at state hospital cemeteries. The department of social and health
39 services shall make available the name, date of birth, and date of

1 death of patients buried in state hospital cemeteries fifty years
2 after the death of a patient;

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

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

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

16 (iii) Disclosure under this subsection is mandatory for the
17 purposes of the federal health insurance portability and
18 accountability act;

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

30 (p) Pursuant to lawful order of a court, including a tribal
31 court;

32 (q) To qualified staff members of the department, to the
33 authority, to behavioral health administrative services
34 organizations, to managed care organizations, to resource management
35 services responsible for serving a patient, or to service providers
36 designated by resource management services as necessary to determine
37 the progress and adequacy of treatment and to determine whether the
38 person should be transferred to a less restrictive or more
39 appropriate treatment modality or facility;

1 (r) Within the mental health service agency or Indian health care
2 provider facility where the patient is receiving treatment,
3 confidential information may be disclosed to persons employed,
4 serving in bona fide training programs, or participating in
5 supervised volunteer programs, at the facility when it is necessary
6 to perform their duties;

7 (s) Within the department and the authority as necessary to
8 coordinate treatment for mental illness, developmental disabilities,
9 or substance use disorder of persons who are under the supervision of
10 the department;

11 (t) Between the department of social and health services, the
12 department of children, youth, and families, and the health care
13 authority as necessary to coordinate treatment for mental illness,
14 developmental disabilities, or substance use disorder of persons who
15 are under the supervision of the department of social and health
16 services or the department of children, youth, and families;

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

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

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

28 (B) Any other person who is working in a care coordinator role
29 for a health care facility, health care provider, or Indian health
30 care provider, or is under an agreement pursuant to the federal
31 health insurance portability and accountability act with a health
32 care facility or a health care provider and requires the information
33 and records to assure coordinated care and treatment of that patient.

34 (ii) A person authorized to use or disclose information and
35 records related to mental health services under this subsection
36 (2)(v) must take appropriate steps to protect the information and
37 records relating to mental health services.

38 (iii) Psychotherapy notes may not be released without
39 authorization of the patient who is the subject of the request for
40 release of information;

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

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

14 (y) To the person's counsel or guardian ad litem, without
15 modification, at any time in order to prepare for involuntary
16 commitment or recommitment proceedings, reexaminations, appeals, or
17 other actions relating to detention, admission, commitment, or
18 patient's rights under chapter 71.05 RCW;

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

37 (aa) To all current treating providers, including Indian health
38 care providers, of the patient with prescriptive authority who have
39 written a prescription for the patient within the last twelve months.
40 For purposes of coordinating health care, the department or the

1 authority may release without written authorization of the patient,
2 information acquired for billing and collection purposes as described
3 in RCW 70.02.050(1)(d). The department, or the authority, if
4 applicable, shall notify the patient that billing and collection
5 information has been released to named providers, and provide the
6 substance of the information released and the dates of such release.
7 Neither the department nor the authority may release counseling,
8 inpatient psychiatric hospitalization, or drug and alcohol treatment
9 information without a signed written release from the client;

10 (bb)(i) To the secretary of social and health services and the
11 director of the health care authority for either program evaluation
12 or research, or both so long as the secretary or director, where
13 applicable, adopts rules for the conduct of the evaluation or
14 research, or both. Such rules must include, but need not be limited
15 to, the requirement that all evaluators and researchers sign an oath
16 of confidentiality substantially as follows:

17 "As a condition of conducting evaluation or research concerning
18 persons who have received services from (fill in the facility,
19 agency, or person) I,, agree not to divulge, publish, or
20 otherwise make known to unauthorized persons or the public any
21 information obtained in the course of such evaluation or research
22 regarding persons who have received services such that the person who
23 received such services is identifiable.

24 I recognize that unauthorized release of confidential information
25 may subject me to civil liability under the provisions of state law.
26 /s/"

27 (ii) Nothing in this chapter may be construed to prohibit the
28 compilation and publication of statistical data for use by government
29 or researchers under standards, including standards to assure
30 maintenance of confidentiality, set forth by the secretary, or
31 director, where applicable;

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

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

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

37 (3) Whenever federal law or federal regulations restrict the
38 release of information contained in the information and records
39 related to mental health services of any patient who receives

1 treatment for a substance use disorder, the department or the
2 authority may restrict the release of the information as necessary to
3 comply with federal law and regulations.

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

9 (5) The fact of admission to a provider of mental health
10 services, as well as all records, files, evidence, findings, or
11 orders made, prepared, collected, or maintained pursuant to chapter
12 71.05 RCW are not admissible as evidence in any legal proceeding
13 outside that chapter without the written authorization of the person
14 who was the subject of the proceeding except as provided in RCW
15 70.02.260, in a subsequent criminal prosecution of a person committed
16 pursuant to RCW 71.05.280(3) or 71.05.320(4)(c) on charges that were
17 dismissed pursuant to chapter 10.77 RCW due to (~~incompetency to~~
18 ~~stand trial~~) inability to proceed, in a civil commitment proceeding
19 pursuant to chapter 71.09 RCW, or, in the case of a minor, a
20 guardianship or dependency proceeding. The records and files
21 maintained in any court proceeding pursuant to chapter 71.05 RCW must
22 be confidential and available subsequent to such proceedings only to
23 the person who was the subject of the proceeding or his or her
24 attorney. In addition, the court may order the subsequent release or
25 use of such records or files only upon good cause shown if the court
26 finds that appropriate safeguards for strict confidentiality are and
27 will be maintained.

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

33 (i) One thousand dollars; or

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

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

38 (c) Any person may bring an action to enjoin the release of
39 confidential information or records concerning him or her or his or

1 her ward, in violation of the provisions of this section, and may in
2 the same action seek damages as provided in this subsection.

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

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

8 **Sec. 43.** RCW 70.74.360 and 2009 c 39 s 1 are each amended to
9 read as follows:

10 (1) The director of labor and industries shall require, as a
11 condition precedent to the original issuance and upon renewal every
12 three years thereafter of any explosive license, fingerprinting and
13 criminal history record information checks of every applicant. In the
14 case of a corporation, fingerprinting and criminal history record
15 information checks shall be required for the management officials
16 directly responsible for the operations where explosives are used if
17 such persons have not previously had their fingerprints recorded with
18 the department of labor and industries. In the case of a partnership,
19 fingerprinting and criminal history record information checks shall
20 be required of all general partners. Such fingerprints as are
21 required by the department of labor and industries shall be submitted
22 on forms provided by the department to the identification section of
23 the Washington state patrol and to the identification division of the
24 federal bureau of investigation in order that these agencies may
25 search their records for prior convictions of the individuals
26 fingerprinted. The Washington state patrol shall provide to the
27 director of labor and industries such criminal record information as
28 the director may request. The applicant shall give full cooperation
29 to the department of labor and industries and shall assist the
30 department of labor and industries in all aspects of the
31 fingerprinting and criminal history record information check. The
32 applicant shall be required to pay the current federal and state fee
33 for fingerprint-based criminal history background checks.

34 (2) The director of labor and industries shall not issue a
35 license to manufacture, purchase, store, use, or deal with explosives
36 to:

37 (a) Any person under twenty-one years of age;

38 (b) Any person whose license is suspended or whose license has
39 been revoked, except as provided in RCW 70.74.370;

1 (c) Any person who has been convicted in this state or elsewhere
2 of a violent offense as defined in RCW 9.94A.030, perjury, false
3 swearing, or bomb threats or a crime involving a schedule I or II
4 controlled substance, or any other drug or alcohol related offense,
5 unless such other drug or alcohol related offense does not reflect a
6 drug or alcohol dependency. However, the director of labor and
7 industries may issue a license if the person suffering a drug or
8 alcohol related dependency is participating in or has completed an
9 alcohol or drug recovery program acceptable to the department of
10 labor and industries and has established control of their alcohol or
11 drug dependency. The director of labor and industries shall require
12 the applicant to provide proof of such participation and control; or

13 (d) Any person who has previously been adjudged to be mentally
14 ill or insane, or to be (~~incompetent~~) unable to proceed due to
15 (~~any~~) a mental (~~(disability or disease)~~) disorder and who has not
16 at the time of application (~~been~~) had their ability to proceed
17 restored (~~(to competency)~~).

18 (3) The director of labor and industries may establish reasonable
19 licensing fees for the manufacture, dealing, purchase, use, and
20 storage of explosives.

21 **Sec. 44.** RCW 70.74.370 and 1997 c 58 s 872 are each amended to
22 read as follows:

23 (1) The department of labor and industries shall revoke and not
24 renew the license of any person holding a manufacturer, dealer,
25 purchaser, user, or storage license upon conviction of any of the
26 following offenses, which conviction has become final:

27 (a) A violent offense as defined in RCW 9.94A.030;

28 (b) A crime involving perjury or false swearing, including the
29 making of a false affidavit or statement under oath to the department
30 of labor and industries in an application or report made pursuant to
31 this title;

32 (c) A crime involving bomb threats;

33 (d) A crime involving a schedule I or II controlled substance, or
34 any other drug or alcohol related offense, unless such other drug or
35 alcohol related offense does not reflect a drug or alcohol
36 dependency. However, the department of labor and industries may
37 condition renewal of the license to any convicted person suffering a
38 drug or alcohol dependency who is participating in an alcoholism or
39 drug recovery program acceptable to the department of labor and

1 industries and has established control of their alcohol or drug
2 dependency. The department of labor and industries shall require the
3 licensee to provide proof of such participation and control;

4 (e) A crime relating to possession, use, transfer, or sale of
5 explosives under this chapter or any other chapter of the Revised
6 Code of Washington.

7 (2) The department of labor and industries shall revoke the
8 license of any person (~~((adjudged to be mentally ill or))~~) adjudicated
9 to have a mental disorder or to be criminally insane, or to be
10 (~~((incompetent))~~) unable to proceed due to (~~((any mental disability or~~
11 ~~disease))~~) a mental disorder. The director shall not renew the license
12 until the (~~((person))~~) person's ability to proceed has been restored
13 (~~((to competency))~~).

14 (3) The department of labor and industries is authorized to
15 suspend, for a period of time not to exceed six months, the license
16 of any person who has violated this chapter or the rules promulgated
17 pursuant to this chapter.

18 (4) The department of labor and industries may revoke the license
19 of any person who has repeatedly violated this chapter or the rules
20 promulgated pursuant to this chapter, or who has twice had his or her
21 license suspended under this chapter.

22 (5) The department of labor and industries shall immediately
23 suspend the license or certificate of a person who has been certified
24 pursuant to RCW 74.20A.320 by the department of social and health
25 services as a person who is not in compliance with a support order or
26 a residential or visitation order. If the person has continued to
27 meet all other requirements for reinstatement during the suspension,
28 reissuance of the license or certificate shall be automatic upon the
29 department of labor and industries' receipt of a release issued by
30 the department of social and health services stating that the
31 licensee is in compliance with the order.

32 (6) Upon receipt of notification by the department of labor and
33 industries of revocation or suspension, a licensee must surrender
34 immediately to the department any or all such licenses revoked or
35 suspended.

36 **Sec. 45.** RCW 71.05.020 and 2023 c 433 s 3 and 2023 c 425 s 20
37 are each reenacted and amended to read as follows:

38 The definitions in this section apply throughout this chapter
39 unless the context clearly requires otherwise.

- 1 (1) "23-hour crisis relief center" has the same meaning as under
2 RCW 71.24.025;
- 3 (2) "Admission" or "admit" means a decision by a physician,
4 physician assistant, or psychiatric advanced registered nurse
5 practitioner that a person should be examined or treated as a patient
6 in a hospital;
- 7 (3) "Alcoholism" means a disease, characterized by a dependency
8 on alcoholic beverages, loss of control over the amount and
9 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 (4) "Antipsychotic medications" means that class of drugs
14 primarily used to treat serious manifestations of mental illness
15 associated with thought disorders, which includes, but is not limited
16 to atypical antipsychotic medications;
- 17 (5) "Approved substance use disorder treatment program" means a
18 program for persons with a substance use disorder provided by a
19 treatment program certified by the department as meeting standards
20 adopted under chapter 71.24 RCW;
- 21 (6) "Attending staff" means any person on the staff of a public
22 or private agency having responsibility for the care and treatment of
23 a patient;
- 24 (7) "Authority" means the Washington state health care authority;
- 25 (8) "Behavioral health disorder" means either a mental disorder
26 as defined in this section, a substance use disorder as defined in
27 this section, or a co-occurring mental disorder and substance use
28 disorder;
- 29 (9) "Behavioral health service provider" means a public or
30 private agency that provides mental health, substance use disorder,
31 or co-occurring disorder services to persons with behavioral health
32 disorders as defined under this section and receives funding from
33 public sources. This includes, but is not limited to: Hospitals
34 licensed under chapter 70.41 RCW; evaluation and treatment facilities
35 as defined in this section; community mental health service delivery
36 systems or community behavioral health programs as defined in RCW
37 71.24.025; licensed or certified behavioral health agencies under RCW
38 71.24.037; facilities conducting (~~competency~~) ability to proceed
39 evaluations and restoration under chapter 10.77 RCW; approved
40 substance use disorder treatment programs as defined in this section;

1 secure withdrawal management and stabilization facilities as defined
2 in this section; and correctional facilities operated by state and
3 local governments;

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

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

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

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

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

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

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

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

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

36 (19) "Developmental disabilities professional" means a person who
37 has specialized training and three years of experience in directly
38 treating or working with persons with developmental disabilities and
39 is a psychiatrist, physician assistant working with a supervising
40 psychiatrist, psychologist, psychiatric advanced registered nurse

1 practitioner, or social worker, and such other developmental
2 disabilities professionals as may be defined by rules adopted by the
3 secretary of the department of social and health services;

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

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

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

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

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

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

37 (26) "Habilitative services" means those services provided by
38 program personnel to assist persons in acquiring and maintaining life
39 skills and in raising their levels of physical, mental, social, and
40 vocational functioning. Habilitative services include education,

1 training for employment, and therapy. The habilitative process shall
2 be undertaken with recognition of the risk to the public safety
3 presented by the person being assisted as manifested by prior charged
4 criminal conduct;

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

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

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

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

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

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

23 (b) The conditions and strategies necessary to achieve the
24 purposes of habilitation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (a) A psychiatrist, psychologist, physician assistant working
39 with a supervising psychiatrist, psychiatric advanced registered

1 nurse practitioner, psychiatric nurse, or social worker, as defined
2 in this chapter and chapter 71.34 RCW;

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

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

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

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

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

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

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

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

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

39 (48) "Public agency" means any evaluation and treatment facility
40 or institution, secure withdrawal management and stabilization

1 facility, approved substance use disorder treatment program, or
2 hospital which is conducted for, or includes a department or ward
3 conducted for, the care and treatment of persons with behavioral
4 health disorders, if the agency is operated directly by federal,
5 state, county, or municipal government, or a combination of such
6 governments;

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

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

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

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

20 (a) Provide the following services:

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

23 (ii) Clinical stabilization services;

24 (iii) Acute or subacute detoxification services for intoxicated
25 individuals; and

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

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

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

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

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

1 pathological pattern of behaviors related to the use of the
2 substances;

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

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

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

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

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

1 **Sec. 46.** RCW 71.05.020 and 2023 c 433 s 4 and 2023 c 425 s 21
2 are each reenacted and amended to read as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

5 (1) "23-hour crisis relief center" has the same meaning as under
6 RCW 71.24.025;

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

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

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

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

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

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

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

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

1 71.24.025; licensed or certified behavioral health agencies under RCW
2 71.24.037; facilities conducting (~~competency~~) ability to proceed
3 evaluations and restoration under chapter 10.77 RCW; approved
4 substance use disorder treatment programs as defined in this section;
5 secure withdrawal management and stabilization facilities as defined
6 in this section; and correctional facilities operated by state and
7 local governments;

8 (10) "Co-occurring disorder specialist" means an individual
9 possessing an enhancement granted by the department of health under
10 chapter 18.205 RCW that certifies the individual to provide substance
11 use disorder counseling subject to the practice limitations under RCW
12 18.205.105;

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

16 (12) "Community behavioral health agency" has the same meaning as
17 "licensed or certified behavioral health agency" defined in RCW
18 71.24.025;

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

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

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

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

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

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

1 (19) "Developmental disabilities professional" means a person who
2 has specialized training and three years of experience in directly
3 treating or working with persons with developmental disabilities and
4 is a psychiatrist, physician assistant working with a supervising
5 psychiatrist, psychologist, psychiatric advanced registered nurse
6 practitioner, or social worker, and such other developmental
7 disabilities professionals as may be defined by rules adopted by the
8 secretary of the department of social and health services;

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

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

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

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

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

34 (25) "Gravely disabled" means a condition in which a person, as a
35 result of a behavioral health disorder: (a) Is in danger of serious
36 physical harm resulting from a failure to provide for his or her
37 essential human needs of health or safety; or (b) manifests severe
38 deterioration from safe behavior evidenced by repeated and escalating
39 loss of cognitive or volitional control over his or her actions and

1 is not receiving such care as is essential for his or her health or
2 safety;

3 (26) "Habilitative services" means those services provided by
4 program personnel to assist persons in acquiring and maintaining life
5 skills and in raising their levels of physical, mental, social, and
6 vocational functioning. Habilitative services include education,
7 training for employment, and therapy. The habilitative process shall
8 be undertaken with recognition of the risk to the public safety
9 presented by the person being assisted as manifested by prior charged
10 criminal conduct;

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

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

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

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

23 (31) "Individualized service plan" means a plan prepared by a
24 developmental disabilities professional with other professionals as a
25 team, for a person with developmental disabilities, which shall
26 state:

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

29 (b) The conditions and strategies necessary to achieve the
30 purposes of habilitation;

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

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

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

36 (f) Where relevant in light of past criminal behavior and due
37 consideration for public safety, the criteria for proposed movement
38 to less-restrictive settings, criteria for proposed eventual
39 discharge or release, and a projected possible date for discharge or
40 release; and

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

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

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

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

12 (35) "Less restrictive alternative treatment" means a program of
13 individualized treatment in a less restrictive setting than inpatient
14 treatment that includes the services described in RCW 71.05.585. This
15 term includes: Treatment pursuant to a less restrictive alternative
16 treatment order under RCW 71.05.240 or 71.05.320; treatment pursuant
17 to a conditional release under RCW 71.05.340; and treatment pursuant
18 to an assisted outpatient treatment order under RCW 71.05.148;

19 (36) "Licensed physician" means a person licensed to practice
20 medicine or osteopathic medicine and surgery in the state of
21 Washington;

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

23 (a) A substantial risk that: (i) Physical harm will be inflicted
24 by a person upon his or her own person, as evidenced by threats or
25 attempts to commit suicide or inflict physical harm on oneself; (ii)
26 physical harm will be inflicted by a person upon another, as
27 evidenced by behavior which has caused harm, substantial pain, or
28 which places another person or persons in reasonable fear of harm to
29 themselves or others; or (iii) physical harm will be inflicted by a
30 person upon the property of others, as evidenced by behavior which
31 has caused substantial loss or damage to the property of others; or

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

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

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

1 (40) "Mental health professional" means an individual practicing
2 within the mental health professional's statutory scope of practice
3 who is:

4 (a) A psychiatrist, psychologist, physician assistant working
5 with a supervising psychiatrist, psychiatric advanced registered
6 nurse practitioner, psychiatric nurse, or social worker, as defined
7 in this chapter and chapter 71.34 RCW;

8 (b) A mental health counselor, mental health counselor associate,
9 marriage and family therapist, or marriage and family therapist
10 associate, as defined in chapter 18.225 RCW; or

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

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

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

19 (43) "Private agency" means any person, partnership, corporation,
20 or association that is not a public agency, whether or not financed
21 in whole or in part by public funds, which constitutes an evaluation
22 and treatment facility or private institution, or hospital, or
23 approved substance use disorder treatment program, which is conducted
24 for, or includes a department or ward conducted for, the care and
25 treatment of persons with behavioral health disorders;

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

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

36 (46) "Psychiatrist" means a person having a license as a
37 physician and surgeon in this state who has in addition completed
38 three years of graduate training in psychiatry in a program approved
39 by the American medical association or the American osteopathic

1 association and is certified or eligible to be certified by the
2 American board of psychiatry and neurology;

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

5 (48) "Public agency" means any evaluation and treatment facility
6 or institution, secure withdrawal management and stabilization
7 facility, approved substance use disorder treatment program, or
8 hospital which is conducted for, or includes a department or ward
9 conducted for, the care and treatment of persons with behavioral
10 health disorders, if the agency is operated directly by federal,
11 state, county, or municipal government, or a combination of such
12 governments;

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

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

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

19 (52) "Secure withdrawal management and stabilization facility"
20 means a facility operated by either a public or private agency or by
21 the program of an agency which provides care to voluntary individuals
22 and individuals involuntarily detained and committed under this
23 chapter for whom there is a likelihood of serious harm or who are
24 gravely disabled due to the presence of a substance use disorder.
25 Secure withdrawal management and stabilization facilities must:

26 (a) Provide the following services:

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

29 (ii) Clinical stabilization services;

30 (iii) Acute or subacute detoxification services for intoxicated
31 individuals; and

32 (iv) Discharge assistance provided by certified substance use
33 disorder professionals or co-occurring disorder specialists,
34 including facilitating transitions to appropriate voluntary or
35 involuntary inpatient services or to less restrictive alternatives as
36 appropriate for the individual;

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

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

1 (53) "Severe deterioration from safe behavior" means that a
2 person will, if not treated, suffer or continue to suffer severe and
3 abnormal mental, emotional, or physical distress, and this distress
4 is associated with significant impairment of judgment, reason, or
5 behavior;

6 (54) "Social worker" means a person with a master's or further
7 advanced degree from a social work educational program accredited and
8 approved as provided in RCW 18.320.010;

9 (55) "Substance use disorder" means a cluster of cognitive,
10 behavioral, and physiological symptoms indicating that an individual
11 continues using the substance despite significant substance-related
12 problems. The diagnosis of a substance use disorder is based on a
13 pathological pattern of behaviors related to the use of the
14 substances;

15 (56) "Substance use disorder professional" means a person
16 certified as a substance use disorder professional by the department
17 of health under chapter 18.205 RCW;

18 (57) "Therapeutic court personnel" means the staff of a mental
19 health court or other therapeutic court which has jurisdiction over
20 defendants who are dually diagnosed with mental disorders, including
21 court personnel, probation officers, a court monitor, prosecuting
22 attorney, or defense counsel acting within the scope of therapeutic
23 court duties;

24 (58) "Treatment records" include registration and all other
25 records concerning persons who are receiving or who at any time have
26 received services for behavioral health disorders, which are
27 maintained by the department of social and health services, the
28 department, the authority, behavioral health administrative services
29 organizations and their staffs, managed care organizations and their
30 staffs, and by treatment facilities. Treatment records include mental
31 health information contained in a medical bill including but not
32 limited to mental health drugs, a mental health diagnosis, provider
33 name, and dates of service stemming from a medical service. Treatment
34 records do not include notes or records maintained for personal use
35 by a person providing treatment services for the department of social
36 and health services, the department, the authority, behavioral health
37 administrative services organizations, managed care organizations, or
38 a treatment facility if the notes or records are not available to
39 others;

1 (59) "Video," unless the context clearly indicates otherwise,
2 means the delivery of behavioral health services through the use of
3 interactive audio and video technology, permitting real-time
4 communication between a person and a designated crisis responder, for
5 the purpose of evaluation. "Video" does not include the use of audio-
6 only telephone, facsimile, email, or store and forward technology.
7 "Store and forward technology" means use of an asynchronous
8 transmission of a person's medical information from a mental health
9 service provider to the designated crisis responder which results in
10 medical diagnosis, consultation, or treatment;

11 (60) "Violent act" means behavior that resulted in homicide,
12 attempted suicide, injury, or substantial loss or damage to property.

13 **Sec. 47.** RCW 71.05.212 and 2022 c 210 s 9 are each amended to
14 read as follows:

15 (1) Whenever a designated crisis responder or professional person
16 is conducting an evaluation under this chapter, consideration shall
17 include all reasonably available information from credible witnesses
18 and records regarding:

19 (a) Prior recommendations for evaluation of the need for civil
20 commitments when the recommendation is made pursuant to an evaluation
21 conducted under chapter 10.77 RCW;

22 (b) Historical behavior, including history of one or more violent
23 acts;

24 (c) Prior determinations of (~~incompetency~~) inability to proceed
25 or insanity under chapter 10.77 RCW; and

26 (d) Prior commitments under this chapter.

27 (2) Credible witnesses may include family members, landlords,
28 neighbors, or others with significant contact and history of
29 involvement with the person. If the designated crisis responder
30 relies upon information from a credible witness in reaching his or
31 her decision to detain the individual, then he or she must provide
32 contact information for any such witness to the prosecutor. The
33 designated crisis responder or prosecutor shall provide notice of the
34 date, time, and location of the probable cause hearing to such a
35 witness.

36 (3) Symptoms and behavior of the respondent which standing alone
37 would not justify civil commitment may support a finding of grave
38 disability or likelihood of serious harm, or a finding that the
39 person is in need of assisted outpatient treatment, when:

1 (a) Such symptoms or behavior are closely associated with
2 symptoms or behavior which preceded and led to a past incident of
3 involuntary hospitalization, severe deterioration, or one or more
4 violent acts;

5 (b) These symptoms or behavior represent a marked and concerning
6 change in the baseline behavior of the respondent; and

7 (c) Without treatment, the continued deterioration of the
8 respondent is probable.

9 (4) When conducting an evaluation for offenders identified under
10 RCW 72.09.370, the designated crisis responder or professional person
11 shall consider an offender's history of judicially required or
12 administratively ordered antipsychotic medication while in
13 confinement.

14 **Sec. 48.** RCW 71.05.212 and 2022 c 210 s 10 are each amended to
15 read as follows:

16 (1) Whenever a designated crisis responder or professional person
17 is conducting an evaluation under this chapter, consideration shall
18 include all reasonably available information from credible witnesses
19 and records regarding:

20 (a) Prior recommendations for evaluation of the need for civil
21 commitments when the recommendation is made pursuant to an evaluation
22 conducted under chapter 10.77 RCW;

23 (b) Historical behavior, including history of one or more violent
24 acts;

25 (c) Prior determinations of (~~incompetency~~) inability to proceed
26 or insanity under chapter 10.77 RCW; and

27 (d) Prior commitments under this chapter.

28 (2) Credible witnesses may include family members, landlords,
29 neighbors, or others with significant contact and history of
30 involvement with the person. If the designated crisis responder
31 relies upon information from a credible witness in reaching his or
32 her decision to detain the individual, then he or she must provide
33 contact information for any such witness to the prosecutor. The
34 designated crisis responder or prosecutor shall provide notice of the
35 date, time, and location of the probable cause hearing to such a
36 witness.

37 (3) Symptoms and behavior of the respondent which standing alone
38 would not justify civil commitment may support a finding of grave

1 disability or likelihood of serious harm, or a finding that the
2 person is in need of assisted outpatient treatment, when:

3 (a) Such symptoms or behavior are closely associated with
4 symptoms or behavior which preceded and led to a past incident of
5 involuntary hospitalization, severe deterioration from safe behavior,
6 or one or more violent acts;

7 (b) These symptoms or behavior represent a marked and concerning
8 change in the baseline behavior of the respondent; and

9 (c) Without treatment, the continued deterioration of the
10 respondent is probable.

11 (4) When conducting an evaluation for offenders identified under
12 RCW 72.09.370, the designated crisis responder or professional person
13 shall consider an offender's history of judicially required or
14 administratively ordered antipsychotic medication while in
15 confinement.

16 **Sec. 49.** RCW 71.05.217 and 2020 c 302 s 32 are each amended to
17 read as follows:

18 (1) Insofar as danger to the individual or others is not created,
19 each person involuntarily detained, treated in a less restrictive
20 alternative course of treatment, or committed for treatment and
21 evaluation pursuant to this chapter shall have, in addition to other
22 rights not specifically withheld by law, the following rights, a list
23 of which shall be prominently posted in all facilities, institutions,
24 and hospitals providing such services:

25 (a) To wear his or her own clothes and to keep and use his or her
26 own personal possessions, except when deprivation of same is
27 essential to protect the safety of the resident or other persons;

28 (b) To keep and be allowed to spend a reasonable sum of his or
29 her own money for canteen expenses and small purchases;

30 (c) To have access to individual storage space for his or her
31 private use;

32 (d) To have visitors at reasonable times;

33 (e) To have reasonable access to a telephone, both to make and
34 receive confidential calls;

35 (f) To have ready access to letter writing materials, including
36 stamps, and to send and receive uncensored correspondence through the
37 mails;

38 (g) To have the right to individualized care and adequate
39 treatment;

1 (h) To discuss treatment plans and decisions with professional
2 persons;

3 (i) To not be denied access to treatment by spiritual means
4 through prayer in accordance with the tenets and practices of a
5 church or religious denomination in addition to the treatment
6 otherwise proposed;

7 (j) Not to consent to the administration of antipsychotic
8 medications beyond the hearing conducted pursuant to RCW 71.05.320(4)
9 or the performance of electroconvulsant therapy or surgery, except
10 emergency lifesaving surgery, unless ordered by a court of competent
11 jurisdiction pursuant to the following standards and procedures:

12 (i) The administration of antipsychotic medication or
13 electroconvulsant therapy shall not be ordered unless the petitioning
14 party proves by clear, cogent, and convincing evidence that there
15 exists a compelling state interest that justifies overriding the
16 patient's lack of consent to the administration of antipsychotic
17 medications or electroconvulsant therapy, that the proposed treatment
18 is necessary and effective, and that medically acceptable alternative
19 forms of treatment are not available, have not been successful, or
20 are not likely to be effective.

21 (ii) The court shall make specific findings of fact concerning:
22 (A) The existence of one or more compelling state interests; (B) the
23 necessity and effectiveness of the treatment; and (C) the person's
24 desires regarding the proposed treatment. If the patient is unable to
25 make a rational and informed decision about consenting to or refusing
26 the proposed treatment, the court shall make a substituted judgment
27 for the patient as if he or she were competent to make such a
28 determination.

29 (iii) The person shall be present at any hearing on a request to
30 administer antipsychotic medication or electroconvulsant therapy
31 filed pursuant to this subsection. The person has the right: (A) To
32 be represented by an attorney; (B) to present evidence; (C) to cross-
33 examine witnesses; (D) to have the rules of evidence enforced; (E) to
34 remain silent; (F) to view and copy all petitions and reports in the
35 court file; and (G) to be given reasonable notice and an opportunity
36 to prepare for the hearing. The court may appoint a psychiatrist,
37 physician assistant working with a supervising psychiatrist,
38 psychiatric advanced registered nurse practitioner, psychologist
39 within their scope of practice, physician assistant, or physician to
40 examine and testify on behalf of such person. The court shall appoint

1 a psychiatrist, physician assistant working with a supervising
2 psychiatrist, psychiatric advanced registered nurse practitioner,
3 psychologist within their scope of practice, physician assistant, or
4 physician designated by such person or the person's counsel to
5 testify on behalf of the person in cases where an order for
6 electroconvulsant therapy is sought.

7 (iv) An order for the administration of antipsychotic medications
8 entered following a hearing conducted pursuant to this section shall
9 be effective for the period of the current involuntary treatment
10 order, and any interim period during which the person is awaiting
11 trial or hearing on a new petition for involuntary treatment or
12 involuntary medication.

13 (v) Any person detained pursuant to RCW 71.05.320(4), who
14 subsequently refuses antipsychotic medication, shall be entitled to
15 the procedures set forth in this subsection.

16 (vi) Antipsychotic medication may be administered to a
17 nonconsenting person detained or committed pursuant to this chapter
18 without a court order pursuant to RCW 71.05.215(2) or under the
19 following circumstances:

20 (A) A person presents an imminent likelihood of serious harm;

21 (B) Medically acceptable alternatives to administration of
22 antipsychotic medications are not available, have not been
23 successful, or are not likely to be effective; and

24 (C) In the opinion of the physician, physician assistant, or
25 psychiatric advanced registered nurse practitioner with
26 responsibility for treatment of the person, or his or her designee,
27 the person's condition constitutes an emergency requiring the
28 treatment be instituted before a judicial hearing as authorized
29 pursuant to this section can be held.

30 If antipsychotic medications are administered over a person's
31 lack of consent pursuant to this subsection, a petition for an order
32 authorizing the administration of antipsychotic medications shall be
33 filed on the next judicial day. The hearing shall be held within two
34 judicial days. If deemed necessary by the physician, physician
35 assistant, or psychiatric advanced registered nurse practitioner with
36 responsibility for the treatment of the person, administration of
37 antipsychotic medications may continue until the hearing is held;

38 (k) To dispose of property and sign contracts unless such person
39 has been adjudicated (~~(an incompetent)~~) unable to proceed in a court
40 proceeding directed to that particular issue;

1 (1) Not to have psychosurgery performed on him or her under any
2 circumstances.

3 (2) Every person involuntarily detained or committed under the
4 provisions of this chapter is entitled to all the rights set forth in
5 this chapter and retains all rights not denied him or her under this
6 chapter except as limited by chapter 9.41 RCW.

7 (3) No person may be presumed (~~(incompetent)~~) unable to proceed
8 as a consequence of receiving evaluation or treatment for a
9 behavioral health disorder. (~~(Competency)~~) Ability to proceed may not
10 be determined or withdrawn except under the provisions of chapter
11 10.77 or 11.88 RCW.

12 (4) Subject to RCW 71.05.745 and related regulations, persons
13 receiving evaluation or treatment under this chapter must be given a
14 reasonable choice of an available physician, physician assistant,
15 psychiatric advanced registered nurse practitioner, or other
16 professional person qualified to provide such services.

17 (5) Whenever any person is detained under this chapter, the
18 person must be advised that unless the person is released or
19 voluntarily admits himself or herself for treatment within one
20 hundred twenty hours of the initial detention, a judicial hearing
21 must be held in a superior court within one hundred twenty hours to
22 determine whether there is probable cause to detain the person for up
23 to an additional fourteen days based on an allegation that because of
24 a behavioral health disorder the person presents a likelihood of
25 serious harm or is gravely disabled, and that at the probable cause
26 hearing the person has the following rights:

27 (a) To communicate immediately with an attorney; to have an
28 attorney appointed if the person is indigent; and to be told the name
29 and address of the attorney that has been designated;

30 (b) To remain silent, and to know that any statement the person
31 makes may be used against him or her;

32 (c) To present evidence on the person's behalf;

33 (d) To cross-examine witnesses who testify against him or her;

34 (e) To be proceeded against by the rules of evidence;

35 (f) To have the court appoint a reasonably available independent
36 professional person to examine the person and testify in the hearing,
37 at public expense unless the person is able to bear the cost;

38 (g) To view and copy all petitions and reports in the court file;
39 and

1 (h) To refuse psychiatric medications, including antipsychotic
2 medication beginning twenty-four hours prior to the probable cause
3 hearing.

4 (6) The judicial hearing described in subsection (5) of this
5 section must be held according to the provisions of subsection (5) of
6 this section and rules promulgated by the supreme court.

7 (7)(a) Privileges between patients and physicians, physician
8 assistants, psychologists, or psychiatric advanced registered nurse
9 practitioners are deemed waived in proceedings under this chapter
10 relating to the administration of antipsychotic medications. As to
11 other proceedings under this chapter, the privileges are waived when
12 a court of competent jurisdiction in its discretion determines that
13 such waiver is necessary to protect either the detained person or the
14 public.

15 (b) The waiver of a privilege under this section is limited to
16 records or testimony relevant to evaluation of the detained person
17 for purposes of a proceeding under this chapter. Upon motion by the
18 detained person or on its own motion, the court shall examine a
19 record or testimony sought by a petitioner to determine whether it is
20 within the scope of the waiver.

21 (c) The record maker may not be required to testify in order to
22 introduce medical or psychological records of the detained person so
23 long as the requirements of RCW 5.45.020 are met except that portions
24 of the record which contain opinions as to the detained person's
25 mental state must be deleted from such records unless the person
26 making such conclusions is available for cross-examination.

27 (8) Nothing contained in this chapter prohibits the patient from
28 petitioning by writ of habeas corpus for release.

29 (9) Nothing in this section permits any person to knowingly
30 violate a no-contact order or a condition of an active judgment and
31 sentence or an active condition of supervision by the department of
32 corrections.

33 (10) The rights set forth under this section apply equally to
34 ninety-day or one hundred eighty-day hearings under RCW 71.05.310.

35 **Sec. 50.** RCW 71.05.280 and 2023 c 453 s 22 are each amended to
36 read as follows:

37 At the expiration of the fourteen-day period of intensive
38 treatment, a person may be committed for further treatment pursuant
39 to RCW 71.05.320 if:

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

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

12 (3) Such person has been determined to be (~~(incompetent)~~) unable
13 to proceed and criminal charges have been dismissed pursuant to RCW
14 10.77.086(7), and has committed acts constituting a felony, and as a
15 result of a behavioral health disorder, presents a substantial
16 likelihood of repeating similar acts.

17 (a) In any proceeding pursuant to this subsection it shall not be
18 necessary to show intent, willfulness, or state of mind as an element
19 of the crime;

20 (b) For any person subject to commitment under this subsection
21 where the charge underlying the finding of (~~(incompetence)~~) inability
22 to proceed is for a felony classified as violent under RCW 9.94A.030,
23 the court shall determine whether the acts the person committed
24 constitute a violent offense under RCW 9.94A.030; or

25 (4) Such person is gravely disabled.

26 **Sec. 51.** RCW 71.05.290 and 2023 c 453 s 23 are each amended to
27 read as follows:

28 (1) At any time during a person's 14-day intensive treatment
29 period, the professional person in charge of a treatment facility or
30 his or her professional designee or the designated crisis responder
31 may petition the superior court for an order requiring such person to
32 undergo an additional period of treatment. Such petition must be
33 based on one or more of the grounds set forth in RCW 71.05.280.

34 (2) (a) (i) The petition shall summarize the facts which support
35 the need for further commitment and shall be supported by affidavits
36 based on an examination of the patient and signed by:

37 (A) One physician, physician assistant, or psychiatric advanced
38 registered nurse practitioner; and

1 (B) One physician, physician assistant, psychiatric advanced
2 registered nurse practitioner, or mental health professional.

3 (ii) If the petition is for substance use disorder treatment, the
4 petition may be signed by a substance use disorder professional
5 instead of a mental health professional and by an advanced registered
6 nurse practitioner instead of a psychiatric advanced registered nurse
7 practitioner.

8 (b) The affidavits shall describe in detail the behavior of the
9 detained person which supports the petition and shall explain what,
10 if any, less restrictive treatments which are alternatives to
11 detention are available to such person, and shall state the
12 willingness of the affiant to testify to such facts in subsequent
13 judicial proceedings under this chapter. If less restrictive
14 alternative treatment is sought, the petition shall set forth any
15 recommendations for less restrictive alternative treatment services.

16 (3) If a person has been determined to be (~~incompetent~~) unable
17 to proceed pursuant to RCW 10.77.086(7), then the professional person
18 in charge of the treatment facility or his or her professional
19 designee or the designated crisis responder may directly file a
20 petition for 180-day treatment under RCW 71.05.280(3), or for 90-day
21 treatment under RCW 71.05.280 (1), (2), or (4). No petition for
22 initial detention or 14-day detention is required before such a
23 petition may be filed.

24 **Sec. 52.** RCW 71.05.300 and 2023 c 453 s 24 are each amended to
25 read as follows:

26 (1) The petition for ninety day treatment shall be filed with the
27 clerk of the superior court at least three days before expiration of
28 the fourteen-day period of intensive treatment. The clerk shall set a
29 trial setting date as provided in RCW 71.05.310 on the next judicial
30 day after the date of filing the petition and notify the designated
31 crisis responder. The designated crisis responder shall immediately
32 notify the person detained, his or her attorney, if any, and his or
33 her guardian or conservator, if any, the prosecuting attorney, and
34 the behavioral health administrative services organization
35 administrator, and provide a copy of the petition to such persons as
36 soon as possible. The behavioral health administrative services
37 organization administrator or designee may review the petition and
38 may appear and testify at the full hearing on the petition.

1 (2) The attorney for the detained person shall advise him or her
2 of his or her right to be represented by an attorney, his or her
3 right to a jury trial, and, if the petition is for commitment for
4 mental health treatment, his or her loss of firearm rights if
5 involuntarily committed. If the detained person is not represented by
6 an attorney, or is indigent or is unwilling to retain an attorney,
7 the court shall immediately appoint an attorney to represent him or
8 her. The court shall, if requested, appoint a reasonably available
9 licensed physician, physician assistant, psychiatric advanced
10 registered nurse practitioner, psychologist, psychiatrist, or other
11 professional person, designated by the detained person to examine and
12 testify on behalf of the detained person.

13 (3) The court may, if requested, also appoint a professional
14 person as defined in RCW 71.05.020 to seek less restrictive
15 alternative courses of treatment and to testify on behalf of the
16 detained person. In the case of a person with a developmental
17 disability who has been determined to be ~~((incompetent))~~ unable to
18 proceed pursuant to RCW 10.77.086(7), the appointed professional
19 person under this section shall be a developmental disabilities
20 professional.

21 **Sec. 53.** RCW 71.05.940 and 2018 c 201 s 3037 are each amended to
22 read as follows:

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

35 **Sec. 54.** RCW 71.09.010 and 2001 c 286 s 3 are each amended to
36 read as follows:

37 The legislature finds that a small but extremely dangerous group
38 of sexually violent predators exist who do not have a mental

1 ((~~disease or defect~~)) disorder that renders them appropriate for the
2 existing involuntary treatment act, chapter 71.05 RCW, which is
3 intended to be a short-term civil commitment system that is primarily
4 designed to provide short-term treatment to individuals with serious
5 mental disorders and then return them to the community. In contrast
6 to persons appropriate for civil commitment under chapter 71.05 RCW,
7 sexually violent predators generally have personality disorders
8 and/or mental abnormalities which are unamenable to existing mental
9 illness treatment modalities and those conditions render them likely
10 to engage in sexually violent behavior. The legislature further finds
11 that sex offenders' likelihood of engaging in repeat acts of
12 predatory sexual violence is high. The existing involuntary
13 commitment act, chapter 71.05 RCW, is inadequate to address the risk
14 to reoffend because during confinement these offenders do not have
15 access to potential victims and therefore they will not engage in an
16 overt act during confinement as required by the involuntary treatment
17 act for continued confinement. The legislature further finds that the
18 prognosis for curing sexually violent offenders is poor, the
19 treatment needs of this population are very long term, and the
20 treatment modalities for this population are very different than the
21 traditional treatment modalities for people appropriate for
22 commitment under the involuntary treatment act.

23 **Sec. 55.** RCW 71.09.025 and 2023 c 453 s 26 are each amended to
24 read as follows:

25 (1)(a) When it appears that a person may meet the criteria of a
26 sexually violent predator as defined in RCW 71.09.020, the agency
27 with jurisdiction shall refer the person in writing to the
28 prosecuting attorney of the county in which an action under this
29 chapter may be filed pursuant to RCW 71.09.030 and the attorney
30 general, three months prior to:

31 (i) The anticipated release from total confinement of a person
32 who has been convicted of a sexually violent offense;

33 (ii) The anticipated release from total confinement of a person
34 found to have committed a sexually violent offense as a juvenile;

35 (iii) Release of a person who has been charged with a sexually
36 violent offense and who has been determined to be (~~incompetent to~~
37 ~~stand trial~~) unable to proceed pursuant to RCW 10.77.086(7); or

1 (iv) Release of a person who has been found not guilty by reason
2 of insanity of a sexually violent offense pursuant to RCW
3 10.77.020(3).

4 (b) The agency shall provide the prosecuting agency with all
5 relevant information including but not limited to the following
6 information:

7 (i) A complete copy of the institutional records compiled by the
8 department of corrections relating to the person, and any such out-
9 of-state department of corrections' records, if available;

10 (ii) A complete copy, if applicable, of any file compiled by the
11 indeterminate sentence review board relating to the person;

12 (iii) All records relating to the psychological or psychiatric
13 evaluation and/or treatment of the person;

14 (iv) A current record of all prior arrests and convictions, and
15 full police case reports relating to those arrests and convictions;
16 and

17 (v) A current mental health evaluation or mental health records
18 review.

19 (c) The prosecuting agency has the authority, consistent with RCW
20 72.09.345(4), to obtain all records relating to the person if the
21 prosecuting agency deems such records are necessary to fulfill its
22 duties under this chapter. The prosecuting agency may only disclose
23 such records in the course of performing its duties pursuant to this
24 chapter, unless otherwise authorized by law.

25 (d) The prosecuting agency has the authority to utilize the
26 inquiry judge procedures of chapter 10.27 RCW prior to the filing of
27 any action under this chapter to seek the issuance of compulsory
28 process for the production of any records necessary for a
29 determination of whether to seek the civil commitment of a person
30 under this chapter. Any records obtained pursuant to this process may
31 only be disclosed by the prosecuting agency in the course of
32 performing its duties pursuant to this chapter, or unless otherwise
33 authorized by law.

34 (2) The agency, its employees, and officials shall be immune from
35 liability for any good-faith conduct under this section.

36 (3) As used in this section, "agency with jurisdiction" means
37 that agency with the authority to direct the release of a person
38 serving a sentence or term of confinement and includes the department
39 of corrections, the indeterminate sentence review board, and the
40 department of social and health services.

1 **Sec. 56.** RCW 71.09.030 and 2023 c 453 s 27 are each amended to
2 read as follows:

3 (1) A petition may be filed alleging that a person is a sexually
4 violent predator and stating sufficient facts to support such
5 allegation when it appears that: (a) A person who at any time
6 previously has been convicted of a sexually violent offense is about
7 to be released from total confinement; (b) a person found to have
8 committed a sexually violent offense as a juvenile is about to be
9 released from total confinement; (c) a person who has been charged
10 with a sexually violent offense and who has been determined to be
11 (~~incompetent to stand~~) unable to proceed to trial is about to be
12 released, or has been released, pursuant to RCW 10.77.086(7); (d) a
13 person who has been found not guilty by reason of insanity of a
14 sexually violent offense is about to be released, or has been
15 released, pursuant to RCW 10.77.020(~~(3)~~), 10.77.110 (1) or (3), or
16 10.77.150; or (e) a person who at any time previously has been
17 convicted of a sexually violent offense and has since been released
18 from total confinement and has committed a recent overt act.

19 (2) The petition may be filed by:

20 (a) The prosecuting attorney of a county in which:

21 (i) The person has been charged or convicted with a sexually
22 violent offense;

23 (ii) A recent overt act occurred involving a person covered under
24 subsection (1) (e) of this section; or

25 (iii) The person committed a recent overt act, or was charged or
26 convicted of a criminal offense that would qualify as a recent overt
27 act, if the only sexually violent offense charge or conviction
28 occurred in a jurisdiction other than Washington; or

29 (b) The attorney general, if requested by the county prosecuting
30 attorney identified in (a) of this subsection. If the county
31 prosecuting attorney requests that the attorney general file and
32 prosecute a case under this chapter, then the county shall charge the
33 attorney general only the fees, including filing and jury fees, that
34 would be charged and paid by the county prosecuting attorney, if the
35 county prosecuting attorney retained the case.

36 **Sec. 57.** RCW 71.09.060 and 2023 c 453 s 28 are each amended to
37 read as follows:

38 (1) The court or jury shall determine whether, beyond a
39 reasonable doubt, the person is a sexually violent predator. In

1 determining whether or not the person would be likely to engage in
2 predatory acts of sexual violence if not confined in a secure
3 facility, the fact finder may consider only placement conditions and
4 voluntary treatment options that would exist for the person if
5 unconditionally released from detention on the sexually violent
6 predator petition. The community protection program under RCW
7 71A.12.230 may not be considered as a placement condition or
8 treatment option available to the person if unconditionally released
9 from detention on a sexually violent predator petition. When the
10 determination is made by a jury, the verdict must be unanimous.

11 If, on the date that the petition is filed, the person was living
12 in the community after release from custody, the state must also
13 prove beyond a reasonable doubt that the person had committed a
14 recent overt act. If the state alleges that the prior sexually
15 violent offense that forms the basis for the petition for commitment
16 was an act that was sexually motivated as provided in RCW
17 71.09.020(18)(c), the state must prove beyond a reasonable doubt that
18 the alleged sexually violent act was sexually motivated as defined in
19 RCW 9.94A.030.

20 If the court or jury determines that the person is a sexually
21 violent predator, the person shall be committed to the custody of the
22 department of social and health services for placement in a secure
23 facility operated by the department of social and health services for
24 control, care, and treatment until such time as: (a) The person's
25 condition has so changed that the person no longer meets the
26 definition of a sexually violent predator; or (b) conditional release
27 to a less restrictive alternative as set forth in RCW 71.09.092 is in
28 the best interest of the person and conditions can be imposed that
29 would adequately protect the community.

30 If the court or unanimous jury decides that the state has not met
31 its burden of proving that the person is a sexually violent predator,
32 the court shall direct the person's release.

33 If the jury is unable to reach a unanimous verdict, the court
34 shall declare a mistrial and set a retrial within forty-five days of
35 the date of the mistrial unless the prosecuting agency earlier moves
36 to dismiss the petition. The retrial may be continued upon the
37 request of either party accompanied by a showing of good cause, or by
38 the court on its own motion in the due administration of justice
39 provided that the respondent will not be substantially prejudiced. In

1 no event may the person be released from confinement prior to retrial
2 or dismissal of the case.

3 (2) If the person charged with a sexually violent offense has
4 been found (~~(incompetent to stand)~~) unable to proceed to trial due to
5 a mental disorder, and is about to be or has been released pursuant
6 to RCW 10.77.086(7), and his or her commitment is sought pursuant to
7 subsection (1) of this section, the court shall first hear evidence
8 and determine whether the person did commit the act or acts charged
9 if the court did not enter a finding prior to dismissal under RCW
10 10.77.086(7) that the person committed the act or acts charged. The
11 hearing on this issue must comply with all the procedures specified
12 in this section. In addition, the rules of evidence applicable in
13 criminal cases shall apply, and all constitutional rights available
14 to defendants at criminal trials, other than the right not to be
15 tried while (~~(incompetent)~~) unable to proceed, shall apply. After
16 hearing evidence on this issue, the court shall make specific
17 findings on whether the person did commit the act or acts charged,
18 the extent to which the person's (~~(incompetence)~~) inability to
19 proceed or developmental disability affected the outcome of the
20 hearing, including its effect on the person's ability to consult with
21 and assist counsel and to testify on his or her own behalf, the
22 extent to which the evidence could be reconstructed without the
23 assistance of the person, and the strength of the prosecution's case.
24 If, after the conclusion of the hearing on this issue, the court
25 finds, beyond a reasonable doubt, that the person did commit the act
26 or acts charged, it shall enter a final order, appealable by the
27 person, on that issue, and may proceed to consider whether the person
28 should be committed pursuant to this section.

29 (3) Except as otherwise provided in this chapter, the state shall
30 comply with RCW 10.77.220 while confining the person. During all
31 court proceedings where the person is present, the person shall be
32 detained in a secure facility. If the proceedings last more than one
33 day, the person may be held in the county jail for the duration of
34 the proceedings, except the person may be returned to the
35 department's custody on weekends and court holidays if the court
36 deems such a transfer feasible. The county shall be entitled to
37 reimbursement for the cost of housing and transporting the person
38 pursuant to rules adopted by the secretary. The department shall not
39 place the person, even temporarily, in a facility on the grounds of

1 any state mental facility or regional habilitation center because
2 these institutions are insufficiently secure for this population.

3 (4) A court has jurisdiction to order a less restrictive
4 alternative placement only after a hearing ordered pursuant to RCW
5 71.09.090 following initial commitment under this section and in
6 accord with the provisions of this chapter.

7 **Sec. 58.** RCW 71A.12.025 and 1998 c 297 s 5 are each amended to
8 read as follows:

9 The legislature finds that among those persons who endanger the
10 safety of others by committing crimes are a small number of persons
11 with developmental disabilities. While their conduct is not typical
12 of the vast majority of persons with developmental disabilities who
13 are responsible citizens, for their own welfare and for the safety of
14 others the state may need to exercise control over those few
15 dangerous individuals who are ~~((developmentally—disabled))~~
16 individuals with developmental disabilities, have been charged with
17 crimes that involve a threat to public safety or security, and have
18 been found either ~~((incompetent to stand))~~ unable to proceed to trial
19 due to a mental disorder or not guilty by reason of insanity.

20 The legislature finds, however, that the use of civil commitment
21 procedures under chapter 71.05 RCW to effect state control over
22 dangerous ~~((developmentally—disabled—persons))~~ individuals with
23 developmental disabilities has resulted in their commitment to
24 institutions for the ~~((mentally—ill))~~ individuals with mental
25 illness. The legislature finds that existing programs in mental
26 institutions may be inappropriate for persons who are
27 ~~((developmentally—disabled))~~ individuals with developmental
28 disabilities because the services provided in mental institutions are
29 oriented to persons with mental illness, a condition not necessarily
30 associated with developmental disabilities.

31 Therefore, the legislature believes that, where appropriate, and
32 subject to available funds, persons with developmental disabilities
33 who have been charged with crimes that involve a threat to public
34 safety or security and have been found ~~((incompetent to stand))~~
35 unable to proceed to trial due to a mental disorder or not guilty by
36 reason of insanity should receive state services addressing their
37 needs, that such services must be provided in conformance with an
38 individual habilitation plan, and that their initial treatment should
39 be separate and discrete from treatment for persons involved in any

1 other treatment or habilitation program in a manner consistent with
2 the needs of public safety.

3 **Sec. 59.** RCW 74.13.075 and 2009 c 520 s 61 and 2009 c 250 s 2
4 are each reenacted and amended to read as follows:

5 (1) For the purposes of funds appropriated for the treatment of
6 sexually aggressive youth, the term "sexually aggressive youth" means
7 those juveniles who:

8 (a) Have been abused and have committed a sexually aggressive act
9 or other violent act that is sexual in nature; and

10 (i) Are in the care and custody of the state or a federally
11 recognized Indian tribe located within the state; or

12 (ii) Are the subject of a proceeding under chapter 13.34 RCW or a
13 child welfare proceeding held before a tribal court located within
14 the state; or

15 (b) Cannot be detained under the juvenile justice system due to
16 being under age twelve and (~~incompetent to stand~~) unable to proceed
17 to trial due to a mental disorder for acts that could be prosecuted
18 as sex offenses as defined by RCW 9.94A.030 if the juvenile was over
19 twelve years of age, or (~~competent to stand~~) able to proceed to
20 trial if under twelve years of age.

21 (2) The department may offer appropriate available services and
22 treatment to a sexually aggressive youth and his or her parents or
23 legal guardians as provided in this section and may refer the child
24 and his or her parents to appropriate treatment and services
25 available within the community, regardless of whether the child is
26 the subject of a proceeding under chapter 13.34 RCW.

27 (3) In expending these funds, the department shall establish in
28 each region a case review committee to review all cases for which the
29 funds are used. In determining whether to use these funds in a
30 particular case, the committee shall consider:

31 (a) The age of the juvenile;

32 (b) The extent and type of abuse to which the juvenile has been
33 subjected;

34 (c) The juvenile's past conduct;

35 (d) The benefits that can be expected from the treatment;

36 (e) The cost of the treatment; and

37 (f) The ability of the juvenile's parent or guardian to pay for
38 the treatment.

1 (4) The department may provide funds, under this section, for
2 youth in the care and custody of a tribe or through a tribal court,
3 for the treatment of sexually aggressive youth only if: (a) The tribe
4 uses the same or equivalent definitions and standards for determining
5 which youth are sexually aggressive; and (b) the department seeks to
6 recover any federal funds available for the treatment of youth.

7 (5) A juvenile's status as a sexually aggressive youth, and any
8 protective plan, services, and treatment plans and progress reports
9 provided with these funds are confidential and not subject to public
10 disclosure by the department. This information shall be shared with
11 relevant juvenile care agencies, law enforcement agencies, and
12 schools, but remains confidential and not subject to public
13 disclosure by those agencies.

14 NEW SECTION. **Sec. 60.** The amendments in this act are not
15 intended to change the substantive meaning of the underlying concepts
16 involved, and do not change the applicability or effect of prior case
17 law related to criminal insanity or inability to proceed to trial due
18 to a mental disorder.

19 NEW SECTION. **Sec. 61.** Sections 46 and 48 of this act take
20 effect when sections 2 and 10, chapter 210, Laws of 2022 take effect.

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