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**SENATE BILL 6008**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** Senators Trudeau, Torres, Frame, Nguyen, Salomon, Valdez, and C. Wilson

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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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