

---

**SUBSTITUTE HOUSE BILL 2152**

---

**State of Washington**

**68th Legislature**

**2024 Regular Session**

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

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

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

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

17 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (22) "Professional person" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (6) The department shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (a) A psychiatrist;

5 (b) A licensed clinical psychologist;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (g) Announcements of executive clemency;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (i) The Washington state department of corrections;

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

39 (iii) The Washington state gambling commission;

40 (iv) The Washington state patrol;

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

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

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

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

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

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

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

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

24 (ii) Mental health hospitals;

25 (iii) Child study and treatment centers; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (iii) Resolution of internal grievances;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (35) "Payment" means:

9 (a) The activities undertaken by:

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

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

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

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

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

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

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

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

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

37 (A) Name and address;

38 (B) Date of birth;

39 (C) Social security number;

40 (D) Payment history;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (i) One thousand dollars; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (a) Provide the following services:

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

21 (ii) Clinical stabilization services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (e) The staff responsible for carrying out the plan;

32 (f) Where relevant in light of past criminal behavior and due  
33 consideration for public safety, the criteria for proposed movement  
34 to less-restrictive settings, criteria for proposed eventual  
35 discharge or release, and a projected possible date for discharge or  
36 release; and

37 (g) The type of residence immediately anticipated for the person  
38 and possible future types of residences;

1 (32) "Intoxicated person" means a person whose mental or physical  
2 functioning is substantially impaired as a result of the use of  
3 alcohol or other psychoactive chemicals;

4 (33) "Judicial commitment" means a commitment by a court pursuant  
5 to the provisions of this chapter;

6 (34) "Legal counsel" means attorneys and staff employed by county  
7 prosecutor offices or the state attorney general acting in their  
8 capacity as legal representatives of public behavioral health service  
9 providers under RCW 71.05.130;

10 (35) "Less restrictive alternative treatment" means a program of  
11 individualized treatment in a less restrictive setting than inpatient  
12 treatment that includes the services described in RCW 71.05.585. This  
13 term includes: Treatment pursuant to a less restrictive alternative  
14 treatment order under RCW 71.05.240 or 71.05.320; treatment pursuant  
15 to a conditional release under RCW 71.05.340; and treatment pursuant  
16 to an assisted outpatient treatment order under RCW 71.05.148;

17 (36) "Licensed physician" means a person licensed to practice  
18 medicine or osteopathic medicine and surgery in the state of  
19 Washington;

20 (37) "Likelihood of serious harm" means:

21 (a) A substantial risk that: (i) Physical harm will be inflicted  
22 by a person upon his or her own person, as evidenced by threats or  
23 attempts to commit suicide or inflict physical harm on oneself; (ii)  
24 physical harm will be inflicted by a person upon another, as  
25 evidenced by behavior which has caused harm, substantial pain, or  
26 which places another person or persons in reasonable fear of harm to  
27 themselves or others; or (iii) physical harm will be inflicted by a  
28 person upon the property of others, as evidenced by behavior which  
29 has caused substantial loss or damage to the property of others; or

30 (b) The person has threatened the physical safety of another and  
31 has a history of one or more violent acts;

32 (38) "Medical clearance" means a physician or other health care  
33 provider has determined that a person is medically stable and ready  
34 for referral to the designated crisis responder;

35 (39) "Mental disorder" means any organic, mental, or emotional  
36 impairment which has substantial adverse effects on a person's  
37 cognitive or volitional functions;

38 (40) "Mental health professional" means an individual practicing  
39 within the mental health professional's statutory scope of practice  
40 who is:

1 (a) A psychiatrist, psychologist, physician assistant working  
2 with a supervising psychiatrist, psychiatric advanced registered  
3 nurse practitioner, psychiatric nurse, or social worker, as defined  
4 in this chapter and chapter 71.34 RCW;

5 (b) A mental health counselor, mental health counselor associate,  
6 marriage and family therapist, or marriage and family therapist  
7 associate, as defined in chapter 18.225 RCW; or

8 (c) A certified or licensed agency affiliated counselor, as  
9 defined in chapter 18.19 RCW;

10 (41) "Peace officer" means a law enforcement official of a public  
11 agency or governmental unit, and includes persons specifically given  
12 peace officer powers by any state law, local ordinance, or judicial  
13 order of appointment;

14 (42) "Physician assistant" means a person licensed as a physician  
15 assistant under chapter 18.71A RCW;

16 (43) "Private agency" means any person, partnership, corporation,  
17 or association that is not a public agency, whether or not financed  
18 in whole or in part by public funds, which constitutes an evaluation  
19 and treatment facility or private institution, or hospital, or  
20 approved substance use disorder treatment program, which is conducted  
21 for, or includes a department or ward conducted for, the care and  
22 treatment of persons with behavioral health disorders;

23 (44) "Professional person" means a mental health professional,  
24 substance use disorder professional, or designated crisis responder  
25 and shall also mean a physician, physician assistant, psychiatric  
26 advanced registered nurse practitioner, registered nurse, and such  
27 others as may be defined by rules adopted by the secretary pursuant  
28 to the provisions of this chapter;

29 (45) "Psychiatric advanced registered nurse practitioner" means a  
30 person who is licensed as an advanced registered nurse practitioner  
31 pursuant to chapter 18.79 RCW; and who is board certified in advanced  
32 practice psychiatric and mental health nursing;

33 (46) "Psychiatrist" means a person having a license as a  
34 physician and surgeon in this state who has in addition completed  
35 three years of graduate training in psychiatry in a program approved  
36 by the American medical association or the American osteopathic  
37 association and is certified or eligible to be certified by the  
38 American board of psychiatry and neurology;

39 (47) "Psychologist" means a person who has been licensed as a  
40 psychologist pursuant to chapter 18.83 RCW;

1 (48) "Public agency" means any evaluation and treatment facility  
2 or institution, secure withdrawal management and stabilization  
3 facility, approved substance use disorder treatment program, or  
4 hospital which is conducted for, or includes a department or ward  
5 conducted for, the care and treatment of persons with behavioral  
6 health disorders, if the agency is operated directly by federal,  
7 state, county, or municipal government, or a combination of such  
8 governments;

9 (49) "Release" means legal termination of the commitment under  
10 the provisions of this chapter;

11 (50) "Resource management services" has the meaning given in  
12 chapter 71.24 RCW;

13 (51) "Secretary" means the secretary of the department of health,  
14 or his or her designee;

15 (52) "Secure withdrawal management and stabilization facility"  
16 means a facility operated by either a public or private agency or by  
17 the program of an agency which provides care to voluntary individuals  
18 and individuals involuntarily detained and committed under this  
19 chapter for whom there is a likelihood of serious harm or who are  
20 gravely disabled due to the presence of a substance use disorder.  
21 Secure withdrawal management and stabilization facilities must:

22 (a) Provide the following services:

23 (i) Assessment and treatment, provided by certified substance use  
24 disorder professionals or co-occurring disorder specialists;

25 (ii) Clinical stabilization services;

26 (iii) Acute or subacute detoxification services for intoxicated  
27 individuals; and

28 (iv) Discharge assistance provided by certified substance use  
29 disorder professionals or co-occurring disorder specialists,  
30 including facilitating transitions to appropriate voluntary or  
31 involuntary inpatient services or to less restrictive alternatives as  
32 appropriate for the individual;

33 (b) Include security measures sufficient to protect the patients,  
34 staff, and community; and

35 (c) Be licensed or certified as such by the department of health;

36 (53) "Severe deterioration from safe behavior" means that a  
37 person will, if not treated, suffer or continue to suffer severe and  
38 abnormal mental, emotional, or physical distress, and this distress  
39 is associated with significant impairment of judgment, reason, or  
40 behavior;

1 (54) "Social worker" means a person with a master's or further  
2 advanced degree from a social work educational program accredited and  
3 approved as provided in RCW 18.320.010;

4 (55) "Substance use disorder" means a cluster of cognitive,  
5 behavioral, and physiological symptoms indicating that an individual  
6 continues using the substance despite significant substance-related  
7 problems. The diagnosis of a substance use disorder is based on a  
8 pathological pattern of behaviors related to the use of the  
9 substances;

10 (56) "Substance use disorder professional" means a person  
11 certified as a substance use disorder professional by the department  
12 of health under chapter 18.205 RCW;

13 (57) "Therapeutic court personnel" means the staff of a mental  
14 health court or other therapeutic court which has jurisdiction over  
15 defendants who are dually diagnosed with mental disorders, including  
16 court personnel, probation officers, a court monitor, prosecuting  
17 attorney, or defense counsel acting within the scope of therapeutic  
18 court duties;

19 (58) "Treatment records" include registration and all other  
20 records concerning persons who are receiving or who at any time have  
21 received services for behavioral health disorders, which are  
22 maintained by the department of social and health services, the  
23 department, the authority, behavioral health administrative services  
24 organizations and their staffs, managed care organizations and their  
25 staffs, and by treatment facilities. Treatment records include mental  
26 health information contained in a medical bill including but not  
27 limited to mental health drugs, a mental health diagnosis, provider  
28 name, and dates of service stemming from a medical service. Treatment  
29 records do not include notes or records maintained for personal use  
30 by a person providing treatment services for the department of social  
31 and health services, the department, the authority, behavioral health  
32 administrative services organizations, managed care organizations, or  
33 a treatment facility if the notes or records are not available to  
34 others;

35 (59) "Video," unless the context clearly indicates otherwise,  
36 means the delivery of behavioral health services through the use of  
37 interactive audio and video technology, permitting real-time  
38 communication between a person and a designated crisis responder, for  
39 the purpose of evaluation. "Video" does not include the use of audio-  
40 only telephone, facsimile, email, or store and forward technology.

1 "Store and forward technology" means use of an asynchronous  
2 transmission of a person's medical information from a mental health  
3 service provider to the designated crisis responder which results in  
4 medical diagnosis, consultation, or treatment;

5 (60) "Violent act" means behavior that resulted in homicide,  
6 attempted suicide, injury, or substantial loss or damage to property.

7 **Sec. 44.** RCW 71.05.212 and 2022 c 210 s 9 are each amended to  
8 read as follows:

9 (1) Whenever a designated crisis responder or professional person  
10 is conducting an evaluation under this chapter, consideration shall  
11 include all reasonably available information from credible witnesses  
12 and records regarding:

13 (a) Prior recommendations for evaluation of the need for civil  
14 commitments when the recommendation is made pursuant to an evaluation  
15 conducted under chapter 10.77 RCW;

16 (b) Historical behavior, including history of one or more violent  
17 acts;

18 (c) Prior determinations of (~~incompetency~~) inability to proceed  
19 or insanity under chapter 10.77 RCW; and

20 (d) Prior commitments under this chapter.

21 (2) Credible witnesses may include family members, landlords,  
22 neighbors, or others with significant contact and history of  
23 involvement with the person. If the designated crisis responder  
24 relies upon information from a credible witness in reaching his or  
25 her decision to detain the individual, then he or she must provide  
26 contact information for any such witness to the prosecutor. The  
27 designated crisis responder or prosecutor shall provide notice of the  
28 date, time, and location of the probable cause hearing to such a  
29 witness.

30 (3) Symptoms and behavior of the respondent which standing alone  
31 would not justify civil commitment may support a finding of grave  
32 disability or likelihood of serious harm, or a finding that the  
33 person is in need of assisted outpatient treatment, when:

34 (a) Such symptoms or behavior are closely associated with  
35 symptoms or behavior which preceded and led to a past incident of  
36 involuntary hospitalization, severe deterioration, or one or more  
37 violent acts;

38 (b) These symptoms or behavior represent a marked and concerning  
39 change in the baseline behavior of the respondent; and

1 (c) Without treatment, the continued deterioration of the  
2 respondent is probable.

3 (4) When conducting an evaluation for offenders identified under  
4 RCW 72.09.370, the designated crisis responder or professional person  
5 shall consider an offender's history of judicially required or  
6 administratively ordered antipsychotic medication while in  
7 confinement.

8 **Sec. 45.** RCW 71.05.212 and 2022 c 210 s 10 are each amended to  
9 read as follows:

10 (1) Whenever a designated crisis responder or professional person  
11 is conducting an evaluation under this chapter, consideration shall  
12 include all reasonably available information from credible witnesses  
13 and records regarding:

14 (a) Prior recommendations for evaluation of the need for civil  
15 commitments when the recommendation is made pursuant to an evaluation  
16 conducted under chapter 10.77 RCW;

17 (b) Historical behavior, including history of one or more violent  
18 acts;

19 (c) Prior determinations of (~~incompetency~~) inability to proceed  
20 or insanity under chapter 10.77 RCW; and

21 (d) Prior commitments under this chapter.

22 (2) Credible witnesses may include family members, landlords,  
23 neighbors, or others with significant contact and history of  
24 involvement with the person. If the designated crisis responder  
25 relies upon information from a credible witness in reaching his or  
26 her decision to detain the individual, then he or she must provide  
27 contact information for any such witness to the prosecutor. The  
28 designated crisis responder or prosecutor shall provide notice of the  
29 date, time, and location of the probable cause hearing to such a  
30 witness.

31 (3) Symptoms and behavior of the respondent which standing alone  
32 would not justify civil commitment may support a finding of grave  
33 disability or likelihood of serious harm, or a finding that the  
34 person is in need of assisted outpatient treatment, when:

35 (a) Such symptoms or behavior are closely associated with  
36 symptoms or behavior which preceded and led to a past incident of  
37 involuntary hospitalization, severe deterioration from safe behavior,  
38 or one or more violent acts;

1 (b) These symptoms or behavior represent a marked and concerning  
2 change in the baseline behavior of the respondent; and

3 (c) Without treatment, the continued deterioration of the  
4 respondent is probable.

5 (4) When conducting an evaluation for offenders identified under  
6 RCW 72.09.370, the designated crisis responder or professional person  
7 shall consider an offender's history of judicially required or  
8 administratively ordered antipsychotic medication while in  
9 confinement.

10 **Sec. 46.** RCW 71.05.217 and 2020 c 302 s 32 are each amended to  
11 read as follows:

12 (1) Insofar as danger to the individual or others is not created,  
13 each person involuntarily detained, treated in a less restrictive  
14 alternative course of treatment, or committed for treatment and  
15 evaluation pursuant to this chapter shall have, in addition to other  
16 rights not specifically withheld by law, the following rights, a list  
17 of which shall be prominently posted in all facilities, institutions,  
18 and hospitals providing such services:

19 (a) To wear his or her own clothes and to keep and use his or her  
20 own personal possessions, except when deprivation of same is  
21 essential to protect the safety of the resident or other persons;

22 (b) To keep and be allowed to spend a reasonable sum of his or  
23 her own money for canteen expenses and small purchases;

24 (c) To have access to individual storage space for his or her  
25 private use;

26 (d) To have visitors at reasonable times;

27 (e) To have reasonable access to a telephone, both to make and  
28 receive confidential calls;

29 (f) To have ready access to letter writing materials, including  
30 stamps, and to send and receive uncensored correspondence through the  
31 mails;

32 (g) To have the right to individualized care and adequate  
33 treatment;

34 (h) To discuss treatment plans and decisions with professional  
35 persons;

36 (i) To not be denied access to treatment by spiritual means  
37 through prayer in accordance with the tenets and practices of a  
38 church or religious denomination in addition to the treatment  
39 otherwise proposed;

1 (j) Not to consent to the administration of antipsychotic  
2 medications beyond the hearing conducted pursuant to RCW 71.05.320(4)  
3 or the performance of electroconvulsant therapy or surgery, except  
4 emergency lifesaving surgery, unless ordered by a court of competent  
5 jurisdiction pursuant to the following standards and procedures:

6 (i) The administration of antipsychotic medication or  
7 electroconvulsant therapy shall not be ordered unless the petitioning  
8 party proves by clear, cogent, and convincing evidence that there  
9 exists a compelling state interest that justifies overriding the  
10 patient's lack of consent to the administration of antipsychotic  
11 medications or electroconvulsant therapy, that the proposed treatment  
12 is necessary and effective, and that medically acceptable alternative  
13 forms of treatment are not available, have not been successful, or  
14 are not likely to be effective.

15 (ii) The court shall make specific findings of fact concerning:  
16 (A) The existence of one or more compelling state interests; (B) the  
17 necessity and effectiveness of the treatment; and (C) the person's  
18 desires regarding the proposed treatment. If the patient is unable to  
19 make a rational and informed decision about consenting to or refusing  
20 the proposed treatment, the court shall make a substituted judgment  
21 for the patient as if he or she were competent to make such a  
22 determination.

23 (iii) The person shall be present at any hearing on a request to  
24 administer antipsychotic medication or electroconvulsant therapy  
25 filed pursuant to this subsection. The person has the right: (A) To  
26 be represented by an attorney; (B) to present evidence; (C) to cross-  
27 examine witnesses; (D) to have the rules of evidence enforced; (E) to  
28 remain silent; (F) to view and copy all petitions and reports in the  
29 court file; and (G) to be given reasonable notice and an opportunity  
30 to prepare for the hearing. The court may appoint a psychiatrist,  
31 physician assistant working with a supervising psychiatrist,  
32 psychiatric advanced registered nurse practitioner, psychologist  
33 within their scope of practice, physician assistant, or physician to  
34 examine and testify on behalf of such person. The court shall appoint  
35 a psychiatrist, physician assistant working with a supervising  
36 psychiatrist, psychiatric advanced registered nurse practitioner,  
37 psychologist within their scope of practice, physician assistant, or  
38 physician designated by such person or the person's counsel to  
39 testify on behalf of the person in cases where an order for  
40 electroconvulsant therapy is sought.

1 (iv) An order for the administration of antipsychotic medications  
2 entered following a hearing conducted pursuant to this section shall  
3 be effective for the period of the current involuntary treatment  
4 order, and any interim period during which the person is awaiting  
5 trial or hearing on a new petition for involuntary treatment or  
6 involuntary medication.

7 (v) Any person detained pursuant to RCW 71.05.320(4), who  
8 subsequently refuses antipsychotic medication, shall be entitled to  
9 the procedures set forth in this subsection.

10 (vi) Antipsychotic medication may be administered to a  
11 nonconsenting person detained or committed pursuant to this chapter  
12 without a court order pursuant to RCW 71.05.215(2) or under the  
13 following circumstances:

14 (A) A person presents an imminent likelihood of serious harm;

15 (B) Medically acceptable alternatives to administration of  
16 antipsychotic medications are not available, have not been  
17 successful, or are not likely to be effective; and

18 (C) In the opinion of the physician, physician assistant, or  
19 psychiatric advanced registered nurse practitioner with  
20 responsibility for treatment of the person, or his or her designee,  
21 the person's condition constitutes an emergency requiring the  
22 treatment be instituted before a judicial hearing as authorized  
23 pursuant to this section can be held.

24 If antipsychotic medications are administered over a person's  
25 lack of consent pursuant to this subsection, a petition for an order  
26 authorizing the administration of antipsychotic medications shall be  
27 filed on the next judicial day. The hearing shall be held within two  
28 judicial days. If deemed necessary by the physician, physician  
29 assistant, or psychiatric advanced registered nurse practitioner with  
30 responsibility for the treatment of the person, administration of  
31 antipsychotic medications may continue until the hearing is held;

32 (k) To dispose of property and sign contracts unless such person  
33 has been adjudicated (~~(an incompetent)~~) unable to proceed in a court  
34 proceeding directed to that particular issue;

35 (1) Not to have psychosurgery performed on him or her under any  
36 circumstances.

37 (2) Every person involuntarily detained or committed under the  
38 provisions of this chapter is entitled to all the rights set forth in  
39 this chapter and retains all rights not denied him or her under this  
40 chapter except as limited by chapter 9.41 RCW.

1 (3) No person may be presumed (~~incompetent~~) unable to proceed  
2 as a consequence of receiving evaluation or treatment for a  
3 behavioral health disorder. (~~Competency~~) Ability to proceed may not  
4 be determined or withdrawn except under the provisions of chapter  
5 10.77 or 11.88 RCW.

6 (4) Subject to RCW 71.05.745 and related regulations, persons  
7 receiving evaluation or treatment under this chapter must be given a  
8 reasonable choice of an available physician, physician assistant,  
9 psychiatric advanced registered nurse practitioner, or other  
10 professional person qualified to provide such services.

11 (5) Whenever any person is detained under this chapter, the  
12 person must be advised that unless the person is released or  
13 voluntarily admits himself or herself for treatment within one  
14 hundred twenty hours of the initial detention, a judicial hearing  
15 must be held in a superior court within one hundred twenty hours to  
16 determine whether there is probable cause to detain the person for up  
17 to an additional fourteen days based on an allegation that because of  
18 a behavioral health disorder the person presents a likelihood of  
19 serious harm or is gravely disabled, and that at the probable cause  
20 hearing the person has the following rights:

21 (a) To communicate immediately with an attorney; to have an  
22 attorney appointed if the person is indigent; and to be told the name  
23 and address of the attorney that has been designated;

24 (b) To remain silent, and to know that any statement the person  
25 makes may be used against him or her;

26 (c) To present evidence on the person's behalf;

27 (d) To cross-examine witnesses who testify against him or her;

28 (e) To be proceeded against by the rules of evidence;

29 (f) To have the court appoint a reasonably available independent  
30 professional person to examine the person and testify in the hearing,  
31 at public expense unless the person is able to bear the cost;

32 (g) To view and copy all petitions and reports in the court file;  
33 and

34 (h) To refuse psychiatric medications, including antipsychotic  
35 medication beginning twenty-four hours prior to the probable cause  
36 hearing.

37 (6) The judicial hearing described in subsection (5) of this  
38 section must be held according to the provisions of subsection (5) of  
39 this section and rules promulgated by the supreme court.

1 (7) (a) Privileges between patients and physicians, physician  
2 assistants, psychologists, or psychiatric advanced registered nurse  
3 practitioners are deemed waived in proceedings under this chapter  
4 relating to the administration of antipsychotic medications. As to  
5 other proceedings under this chapter, the privileges are waived when  
6 a court of competent jurisdiction in its discretion determines that  
7 such waiver is necessary to protect either the detained person or the  
8 public.

9 (b) The waiver of a privilege under this section is limited to  
10 records or testimony relevant to evaluation of the detained person  
11 for purposes of a proceeding under this chapter. Upon motion by the  
12 detained person or on its own motion, the court shall examine a  
13 record or testimony sought by a petitioner to determine whether it is  
14 within the scope of the waiver.

15 (c) The record maker may not be required to testify in order to  
16 introduce medical or psychological records of the detained person so  
17 long as the requirements of RCW 5.45.020 are met except that portions  
18 of the record which contain opinions as to the detained person's  
19 mental state must be deleted from such records unless the person  
20 making such conclusions is available for cross-examination.

21 (8) Nothing contained in this chapter prohibits the patient from  
22 petitioning by writ of habeas corpus for release.

23 (9) Nothing in this section permits any person to knowingly  
24 violate a no-contact order or a condition of an active judgment and  
25 sentence or an active condition of supervision by the department of  
26 corrections.

27 (10) The rights set forth under this section apply equally to  
28 ninety-day or one hundred eighty-day hearings under RCW 71.05.310.

29 **Sec. 47.** RCW 71.05.280 and 2023 c 453 s 22 are each amended to  
30 read as follows:

31 At the expiration of the fourteen-day period of intensive  
32 treatment, a person may be committed for further treatment pursuant  
33 to RCW 71.05.320 if:

34 (1) Such person after having been taken into custody for  
35 evaluation and treatment has threatened, attempted, or inflicted: (a)  
36 Physical harm upon the person of another or himself or herself, or  
37 substantial damage upon the property of another, and (b) as a result  
38 of a behavioral health disorder presents a likelihood of serious  
39 harm; or

1 (2) Such person was taken into custody as a result of conduct in  
2 which he or she attempted or inflicted physical harm upon the person  
3 of another or himself or herself, or substantial damage upon the  
4 property of others, and continues to present, as a result of a  
5 behavioral health disorder, a likelihood of serious harm; or

6 (3) Such person has been determined to be (~~incompetent~~) unable  
7 to proceed and criminal charges have been dismissed pursuant to RCW  
8 10.77.086(7), and has committed acts constituting a felony, and as a  
9 result of a behavioral health disorder, presents a substantial  
10 likelihood of repeating similar acts.

11 (a) In any proceeding pursuant to this subsection it shall not be  
12 necessary to show intent, willfulness, or state of mind as an element  
13 of the crime;

14 (b) For any person subject to commitment under this subsection  
15 where the charge underlying the finding of (~~incompetence~~) inability  
16 to proceed is for a felony classified as violent under RCW 9.94A.030,  
17 the court shall determine whether the acts the person committed  
18 constitute a violent offense under RCW 9.94A.030; or

19 (4) Such person is gravely disabled.

20 **Sec. 48.** RCW 71.05.290 and 2023 c 453 s 23 are each amended to  
21 read as follows:

22 (1) At any time during a person's 14-day intensive treatment  
23 period, the professional person in charge of a treatment facility or  
24 his or her professional designee or the designated crisis responder  
25 may petition the superior court for an order requiring such person to  
26 undergo an additional period of treatment. Such petition must be  
27 based on one or more of the grounds set forth in RCW 71.05.280.

28 (2)(a)(i) The petition shall summarize the facts which support  
29 the need for further commitment and shall be supported by affidavits  
30 based on an examination of the patient and signed by:

31 (A) One physician, physician assistant, or psychiatric advanced  
32 registered nurse practitioner; and

33 (B) One physician, physician assistant, psychiatric advanced  
34 registered nurse practitioner, or mental health professional.

35 (ii) If the petition is for substance use disorder treatment, the  
36 petition may be signed by a substance use disorder professional  
37 instead of a mental health professional and by an advanced registered  
38 nurse practitioner instead of a psychiatric advanced registered nurse  
39 practitioner.

1 (b) The affidavits shall describe in detail the behavior of the  
2 detained person which supports the petition and shall explain what,  
3 if any, less restrictive treatments which are alternatives to  
4 detention are available to such person, and shall state the  
5 willingness of the affiant to testify to such facts in subsequent  
6 judicial proceedings under this chapter. If less restrictive  
7 alternative treatment is sought, the petition shall set forth any  
8 recommendations for less restrictive alternative treatment services.

9 (3) If a person has been determined to be (~~incompetent~~) unable  
10 to proceed pursuant to RCW 10.77.086(7), then the professional person  
11 in charge of the treatment facility or his or her professional  
12 designee or the designated crisis responder may directly file a  
13 petition for 180-day treatment under RCW 71.05.280(3), or for 90-day  
14 treatment under RCW 71.05.280 (1), (2), or (4). No petition for  
15 initial detention or 14-day detention is required before such a  
16 petition may be filed.

17 **Sec. 49.** RCW 71.05.300 and 2023 c 453 s 24 are each amended to  
18 read as follows:

19 (1) The petition for ninety day treatment shall be filed with the  
20 clerk of the superior court at least three days before expiration of  
21 the fourteen-day period of intensive treatment. The clerk shall set a  
22 trial setting date as provided in RCW 71.05.310 on the next judicial  
23 day after the date of filing the petition and notify the designated  
24 crisis responder. The designated crisis responder shall immediately  
25 notify the person detained, his or her attorney, if any, and his or  
26 her guardian or conservator, if any, the prosecuting attorney, and  
27 the behavioral health administrative services organization  
28 administrator, and provide a copy of the petition to such persons as  
29 soon as possible. The behavioral health administrative services  
30 organization administrator or designee may review the petition and  
31 may appear and testify at the full hearing on the petition.

32 (2) The attorney for the detained person shall advise him or her  
33 of his or her right to be represented by an attorney, his or her  
34 right to a jury trial, and, if the petition is for commitment for  
35 mental health treatment, his or her loss of firearm rights if  
36 involuntarily committed. If the detained person is not represented by  
37 an attorney, or is indigent or is unwilling to retain an attorney,  
38 the court shall immediately appoint an attorney to represent him or  
39 her. The court shall, if requested, appoint a reasonably available

1 licensed physician, physician assistant, psychiatric advanced  
2 registered nurse practitioner, psychologist, psychiatrist, or other  
3 professional person, designated by the detained person to examine and  
4 testify on behalf of the detained person.

5 (3) The court may, if requested, also appoint a professional  
6 person as defined in RCW 71.05.020 to seek less restrictive  
7 alternative courses of treatment and to testify on behalf of the  
8 detained person. In the case of a person with a developmental  
9 disability who has been determined to be (~~incompetent~~) unable to  
10 proceed pursuant to RCW 10.77.086(7), the appointed professional  
11 person under this section shall be a developmental disabilities  
12 professional.

13 **Sec. 50.** RCW 71.05.940 and 2018 c 201 s 3037 are each amended to  
14 read as follows:

15 The provisions of chapter 420, Laws of 1989 shall apply equally  
16 to persons in the custody of the department of social and health  
17 services on May 13, 1989, who were found by a court to be not guilty  
18 by reason of insanity or (~~incompetent to stand~~) unable to proceed  
19 to trial due to a mental health condition, or who have been found to  
20 have committed acts constituting a felony pursuant to RCW  
21 71.05.280(3) and present a substantial likelihood of repeating  
22 similar acts, and the secretary of the department of social and  
23 health services shall cause such persons to be evaluated to ascertain  
24 if such persons have a developmental disability for placement in a  
25 program specifically reserved for the treatment and training of  
26 persons with developmental disabilities.

27 **Sec. 51.** RCW 71.09.010 and 2001 c 286 s 3 are each amended to  
28 read as follows:

29 The legislature finds that a small but extremely dangerous group  
30 of sexually violent predators exist who do not have a mental  
31 (~~disease or defect~~) disorder that renders them appropriate for the  
32 existing involuntary treatment act, chapter 71.05 RCW, which is  
33 intended to be a short-term civil commitment system that is primarily  
34 designed to provide short-term treatment to individuals with serious  
35 mental disorders and then return them to the community. In contrast  
36 to persons appropriate for civil commitment under chapter 71.05 RCW,  
37 sexually violent predators generally have personality disorders  
38 and/or mental abnormalities which are unamenable to existing mental

1 illness treatment modalities and those conditions render them likely  
2 to engage in sexually violent behavior. The legislature further finds  
3 that sex offenders' likelihood of engaging in repeat acts of  
4 predatory sexual violence is high. The existing involuntary  
5 commitment act, chapter 71.05 RCW, is inadequate to address the risk  
6 to reoffend because during confinement these offenders do not have  
7 access to potential victims and therefore they will not engage in an  
8 overt act during confinement as required by the involuntary treatment  
9 act for continued confinement. The legislature further finds that the  
10 prognosis for curing sexually violent offenders is poor, the  
11 treatment needs of this population are very long term, and the  
12 treatment modalities for this population are very different than the  
13 traditional treatment modalities for people appropriate for  
14 commitment under the involuntary treatment act.

15 **Sec. 52.** RCW 71.09.025 and 2023 c 453 s 26 are each amended to  
16 read as follows:

17 (1)(a) When it appears that a person may meet the criteria of a  
18 sexually violent predator as defined in RCW 71.09.020, the agency  
19 with jurisdiction shall refer the person in writing to the  
20 prosecuting attorney of the county in which an action under this  
21 chapter may be filed pursuant to RCW 71.09.030 and the attorney  
22 general, three months prior to:

23 (i) The anticipated release from total confinement of a person  
24 who has been convicted of a sexually violent offense;

25 (ii) The anticipated release from total confinement of a person  
26 found to have committed a sexually violent offense as a juvenile;

27 (iii) Release of a person who has been charged with a sexually  
28 violent offense and who has been determined to be (~~incompetent to~~  
29 ~~stand trial~~) unable to proceed pursuant to RCW 10.77.086(7); or

30 (iv) Release of a person who has been found not guilty by reason  
31 of insanity of a sexually violent offense pursuant to RCW  
32 10.77.020(3).

33 (b) The agency shall provide the prosecuting agency with all  
34 relevant information including but not limited to the following  
35 information:

36 (i) A complete copy of the institutional records compiled by the  
37 department of corrections relating to the person, and any such out-  
38 of-state department of corrections' records, if available;

1 (ii) A complete copy, if applicable, of any file compiled by the  
2 indeterminate sentence review board relating to the person;

3 (iii) All records relating to the psychological or psychiatric  
4 evaluation and/or treatment of the person;

5 (iv) A current record of all prior arrests and convictions, and  
6 full police case reports relating to those arrests and convictions;  
7 and

8 (v) A current mental health evaluation or mental health records  
9 review.

10 (c) The prosecuting agency has the authority, consistent with RCW  
11 72.09.345(4), to obtain all records relating to the person if the  
12 prosecuting agency deems such records are necessary to fulfill its  
13 duties under this chapter. The prosecuting agency may only disclose  
14 such records in the course of performing its duties pursuant to this  
15 chapter, unless otherwise authorized by law.

16 (d) The prosecuting agency has the authority to utilize the  
17 inquiry judge procedures of chapter 10.27 RCW prior to the filing of  
18 any action under this chapter to seek the issuance of compulsory  
19 process for the production of any records necessary for a  
20 determination of whether to seek the civil commitment of a person  
21 under this chapter. Any records obtained pursuant to this process may  
22 only be disclosed by the prosecuting agency in the course of  
23 performing its duties pursuant to this chapter, or unless otherwise  
24 authorized by law.

25 (2) The agency, its employees, and officials shall be immune from  
26 liability for any good-faith conduct under this section.

27 (3) As used in this section, "agency with jurisdiction" means  
28 that agency with the authority to direct the release of a person  
29 serving a sentence or term of confinement and includes the department  
30 of corrections, the indeterminate sentence review board, and the  
31 department of social and health services.

32 **Sec. 53.** RCW 71.09.030 and 2023 c 453 s 27 are each amended to  
33 read as follows:

34 (1) A petition may be filed alleging that a person is a sexually  
35 violent predator and stating sufficient facts to support such  
36 allegation when it appears that: (a) A person who at any time  
37 previously has been convicted of a sexually violent offense is about  
38 to be released from total confinement; (b) a person found to have  
39 committed a sexually violent offense as a juvenile is about to be

1 released from total confinement; (c) a person who has been charged  
2 with a sexually violent offense and who has been determined to be  
3 (~~incompetent to stand~~) unable to proceed to trial is about to be  
4 released, or has been released, pursuant to RCW 10.77.086(7); (d) a  
5 person who has been found not guilty by reason of insanity of a  
6 sexually violent offense is about to be released, or has been  
7 released, pursuant to RCW 10.77.020(~~(3)~~), 10.77.110 (1) or (3), or  
8 10.77.150; or (e) a person who at any time previously has been  
9 convicted of a sexually violent offense and has since been released  
10 from total confinement and has committed a recent overt act.

11 (2) The petition may be filed by:

12 (a) The prosecuting attorney of a county in which:

13 (i) The person has been charged or convicted with a sexually  
14 violent offense;

15 (ii) A recent overt act occurred involving a person covered under  
16 subsection (1)(e) of this section; or

17 (iii) The person committed a recent overt act, or was charged or  
18 convicted of a criminal offense that would qualify as a recent overt  
19 act, if the only sexually violent offense charge or conviction  
20 occurred in a jurisdiction other than Washington; or

21 (b) The attorney general, if requested by the county prosecuting  
22 attorney identified in (a) of this subsection. If the county  
23 prosecuting attorney requests that the attorney general file and  
24 prosecute a case under this chapter, then the county shall charge the  
25 attorney general only the fees, including filing and jury fees, that  
26 would be charged and paid by the county prosecuting attorney, if the  
27 county prosecuting attorney retained the case.

28 **Sec. 54.** RCW 71.09.060 and 2023 c 453 s 28 are each amended to  
29 read as follows:

30 (1) The court or jury shall determine whether, beyond a  
31 reasonable doubt, the person is a sexually violent predator. In  
32 determining whether or not the person would be likely to engage in  
33 predatory acts of sexual violence if not confined in a secure  
34 facility, the fact finder may consider only placement conditions and  
35 voluntary treatment options that would exist for the person if  
36 unconditionally released from detention on the sexually violent  
37 predator petition. The community protection program under RCW  
38 71A.12.230 may not be considered as a placement condition or  
39 treatment option available to the person if unconditionally released

1 from detention on a sexually violent predator petition. When the  
2 determination is made by a jury, the verdict must be unanimous.

3 If, on the date that the petition is filed, the person was living  
4 in the community after release from custody, the state must also  
5 prove beyond a reasonable doubt that the person had committed a  
6 recent overt act. If the state alleges that the prior sexually  
7 violent offense that forms the basis for the petition for commitment  
8 was an act that was sexually motivated as provided in RCW  
9 71.09.020(18)(c), the state must prove beyond a reasonable doubt that  
10 the alleged sexually violent act was sexually motivated as defined in  
11 RCW 9.94A.030.

12 If the court or jury determines that the person is a sexually  
13 violent predator, the person shall be committed to the custody of the  
14 department of social and health services for placement in a secure  
15 facility operated by the department of social and health services for  
16 control, care, and treatment until such time as: (a) The person's  
17 condition has so changed that the person no longer meets the  
18 definition of a sexually violent predator; or (b) conditional release  
19 to a less restrictive alternative as set forth in RCW 71.09.092 is in  
20 the best interest of the person and conditions can be imposed that  
21 would adequately protect the community.

22 If the court or unanimous jury decides that the state has not met  
23 its burden of proving that the person is a sexually violent predator,  
24 the court shall direct the person's release.

25 If the jury is unable to reach a unanimous verdict, the court  
26 shall declare a mistrial and set a retrial within forty-five days of  
27 the date of the mistrial unless the prosecuting agency earlier moves  
28 to dismiss the petition. The retrial may be continued upon the  
29 request of either party accompanied by a showing of good cause, or by  
30 the court on its own motion in the due administration of justice  
31 provided that the respondent will not be substantially prejudiced. In  
32 no event may the person be released from confinement prior to retrial  
33 or dismissal of the case.

34 (2) If the person charged with a sexually violent offense has  
35 been found (~~incompetent to stand~~) unable to proceed to trial due to  
36 a mental health condition, and is about to be or has been released  
37 pursuant to RCW 10.77.086(7), and his or her commitment is sought  
38 pursuant to subsection (1) of this section, the court shall first  
39 hear evidence and determine whether the person did commit the act or  
40 acts charged if the court did not enter a finding prior to dismissal

1 under RCW 10.77.086(7) that the person committed the act or acts  
2 charged. The hearing on this issue must comply with all the  
3 procedures specified in this section. In addition, the rules of  
4 evidence applicable in criminal cases shall apply, and all  
5 constitutional rights available to defendants at criminal trials,  
6 other than the right not to be tried while (~~incompetent~~) unable to  
7 proceed, shall apply. After hearing evidence on this issue, the court  
8 shall make specific findings on whether the person did commit the act  
9 or acts charged, the extent to which the person's (~~incompetence~~)  
10 inability to proceed or developmental disability affected the outcome  
11 of the hearing, including its effect on the person's ability to  
12 consult with and assist counsel and to testify on his or her own  
13 behalf, the extent to which the evidence could be reconstructed  
14 without the assistance of the person, and the strength of the  
15 prosecution's case. If, after the conclusion of the hearing on this  
16 issue, the court finds, beyond a reasonable doubt, that the person  
17 did commit the act or acts charged, it shall enter a final order,  
18 appealable by the person, on that issue, and may proceed to consider  
19 whether the person should be committed pursuant to this section.

20 (3) Except as otherwise provided in this chapter, the state shall  
21 comply with RCW 10.77.220 while confining the person. During all  
22 court proceedings where the person is present, the person shall be  
23 detained in a secure facility. If the proceedings last more than one  
24 day, the person may be held in the county jail for the duration of  
25 the proceedings, except the person may be returned to the  
26 department's custody on weekends and court holidays if the court  
27 deems such a transfer feasible. The county shall be entitled to  
28 reimbursement for the cost of housing and transporting the person  
29 pursuant to rules adopted by the secretary. The department shall not  
30 place the person, even temporarily, in a facility on the grounds of  
31 any state mental facility or regional habilitation center because  
32 these institutions are insufficiently secure for this population.

33 (4) A court has jurisdiction to order a less restrictive  
34 alternative placement only after a hearing ordered pursuant to RCW  
35 71.09.090 following initial commitment under this section and in  
36 accord with the provisions of this chapter.

37 **Sec. 55.** RCW 71A.12.025 and 1998 c 297 s 5 are each amended to  
38 read as follows:

1 The legislature finds that among those persons who endanger the  
2 safety of others by committing crimes are a small number of persons  
3 with developmental disabilities. While their conduct is not typical  
4 of the vast majority of persons with developmental disabilities who  
5 are responsible citizens, for their own welfare and for the safety of  
6 others the state may need to exercise control over those few  
7 dangerous individuals who are ~~((developmentally—disabled))~~  
8 individuals with developmental disabilities, have been charged with  
9 crimes that involve a threat to public safety or security, and have  
10 been found either ~~((incompetent to stand))~~ unable to proceed to trial  
11 due to a mental health condition or not guilty by reason of insanity.

12 The legislature finds, however, that the use of civil commitment  
13 procedures under chapter 71.05 RCW to effect state control over  
14 dangerous ~~((developmentally—disabled—persons))~~ individuals with  
15 developmental disabilities has resulted in their commitment to  
16 institutions for the ~~((mentally—ill))~~ individuals with mental  
17 illness. The legislature finds that existing programs in mental  
18 institutions may be inappropriate for persons who are  
19 ~~((developmentally—disabled))~~ individuals with developmental  
20 disabilities because the services provided in mental institutions are  
21 oriented to persons with mental illness, a condition not necessarily  
22 associated with developmental disabilities.

23 Therefore, the legislature believes that, where appropriate, and  
24 subject to available funds, persons with developmental disabilities  
25 who have been charged with crimes that involve a threat to public  
26 safety or security and have been found ~~((incompetent to stand))~~  
27 unable to proceed to trial due to a mental health condition or not  
28 guilty by reason of insanity should receive state services addressing  
29 their needs, that such services must be provided in conformance with  
30 an individual habilitation plan, and that their initial treatment  
31 should be separate and discrete from treatment for persons involved  
32 in any other treatment or habilitation program in a manner consistent  
33 with the needs of public safety.

34 **Sec. 56.** RCW 74.13.075 and 2009 c 520 s 61 and 2009 c 250 s 2  
35 are each reenacted and amended to read as follows:

36 (1) For the purposes of funds appropriated for the treatment of  
37 sexually aggressive youth, the term "sexually aggressive youth" means  
38 those juveniles who:

1 (a) Have been abused and have committed a sexually aggressive act  
2 or other violent act that is sexual in nature; and

3 (i) Are in the care and custody of the state or a federally  
4 recognized Indian tribe located within the state; or

5 (ii) Are the subject of a proceeding under chapter 13.34 RCW or a  
6 child welfare proceeding held before a tribal court located within  
7 the state; or

8 (b) Cannot be detained under the juvenile justice system due to  
9 being under age twelve and (~~incompetent to stand~~) unable to proceed  
10 to trial due to a mental health condition for acts that could be  
11 prosecuted as sex offenses as defined by RCW 9.94A.030 if the  
12 juvenile was over twelve years of age, or (~~competent to stand~~) able  
13 to proceed to trial if under twelve years of age.

14 (2) The department may offer appropriate available services and  
15 treatment to a sexually aggressive youth and his or her parents or  
16 legal guardians as provided in this section and may refer the child  
17 and his or her parents to appropriate treatment and services  
18 available within the community, regardless of whether the child is  
19 the subject of a proceeding under chapter 13.34 RCW.

20 (3) In expending these funds, the department shall establish in  
21 each region a case review committee to review all cases for which the  
22 funds are used. In determining whether to use these funds in a  
23 particular case, the committee shall consider:

24 (a) The age of the juvenile;

25 (b) The extent and type of abuse to which the juvenile has been  
26 subjected;

27 (c) The juvenile's past conduct;

28 (d) The benefits that can be expected from the treatment;

29 (e) The cost of the treatment; and

30 (f) The ability of the juvenile's parent or guardian to pay for  
31 the treatment.

32 (4) The department may provide funds, under this section, for  
33 youth in the care and custody of a tribe or through a tribal court,  
34 for the treatment of sexually aggressive youth only if: (a) The tribe  
35 uses the same or equivalent definitions and standards for determining  
36 which youth are sexually aggressive; and (b) the department seeks to  
37 recover any federal funds available for the treatment of youth.

38 (5) A juvenile's status as a sexually aggressive youth, and any  
39 protective plan, services, and treatment plans and progress reports  
40 provided with these funds are confidential and not subject to public

1 disclosure by the department. This information shall be shared with  
2 relevant juvenile care agencies, law enforcement agencies, and  
3 schools, but remains confidential and not subject to public  
4 disclosure by those agencies.

5 NEW SECTION. **Sec. 57.** The amendments in this act are not  
6 intended to change the substantive meaning of the underlying concepts  
7 involved, and do not change the applicability or effect of prior case  
8 law related to criminal insanity or inability to proceed to trial due  
9 to a mental health condition.

10 NEW SECTION. **Sec. 58.** Sections 43 and 45 of this act take  
11 effect when sections 2 and 10, chapter 210, Laws of 2022 take effect.

--- END ---