

SHB 2152 - H AMD 1055

By Representative Thai

1 Strike everything after the enacting clause and insert the
2 following:

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

5 As used in this chapter:

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

8 (2) "Authority" means the Washington state health care authority.

9 (3) "Clinical intervention specialist" means a licensed
10 professional with prescribing authority who is employed by or
11 contracted with the department to provide direct services, enhanced
12 oversight and monitoring of the behavioral health status of in-
13 custody defendants who have been referred for evaluation or
14 restoration services related to (~~competency to stand~~) capacity to
15 proceed to trial and who coordinate treatment options with forensic
16 navigators, the department, and jail health services.

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

20 (5) "Community behavioral health agency" has the same meaning as
21 "licensed or certified behavioral health agency" defined in RCW
22 71.24.025.

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

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

31 (8) "Department" means the state department of social and health
32 services.

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

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

5 (11) "Developmental disabilities professional" means a person who
6 has specialized training and experience in directly treating or
7 working with persons with developmental disabilities and is a
8 psychiatrist or psychologist, or a social worker, and such other
9 developmental disabilities professionals as may be defined by rules
10 adopted by the secretary.

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

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

16 (14) "Furlough" means an authorized leave of absence for a
17 resident of a state institution operated by the department designated
18 for the custody, care, and treatment of the criminally insane,
19 consistent with an order of conditional release from the court under
20 this chapter, without any requirement that the resident be
21 accompanied by, or be in the custody of, any law enforcement or
22 institutional staff, while on such unescorted leave.

23 (15) "Genuine doubt as to (~~competency~~) capacity to proceed"
24 means that there is reasonable cause to believe, based upon actual
25 interactions with or observations of the defendant or information
26 provided by counsel, that a defendant (~~is incompetent to stand~~)
27 lacks capacity to proceed to trial.

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

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

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

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

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

11 (~~(21)~~) (20) "Individualized service plan" means a plan prepared
12 by a developmental disabilities professional with other professionals
13 as a team, for an individual with developmental disabilities, which
14 shall state:

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

17 (b) The conditions and strategies necessary to achieve the
18 purposes of habilitation;

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

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

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

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

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

30 (~~(22)~~) (21) "Professional person" means:

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

38 (b) A psychologist licensed as a psychologist pursuant to chapter
39 18.83 RCW;

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

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

6 ~~((23))~~ (22) "Release" means legal termination of the court-
7 ordered commitment under the provisions of this chapter.

8 ~~((24))~~ (23) "Secretary" means the secretary of the department
9 of social and health services or his or her designee.

10 ~~((25))~~ (24) "Treatment" means any currently standardized
11 medical or mental health procedure including medication.

12 ~~((26))~~ (25) "Treatment records" include registration and all
13 other records concerning persons who are receiving or who at any time
14 have received services for mental illness, which are maintained by
15 the department, by behavioral health administrative services
16 organizations and their staffs, by managed care organizations and
17 their staffs, and by treatment facilities. Treatment records do not
18 include notes or records maintained for personal use by a person
19 providing treatment services for the department, behavioral health
20 administrative services organizations, managed care organizations, or
21 a treatment facility if the notes or records are not available to
22 others.

23 ~~((27))~~ (26) "Violent act" means behavior that: (a) (i) Resulted
24 in; (ii) if completed as intended would have resulted in; or (iii)
25 was threatened to be carried out by a person who had the intent and
26 opportunity to carry out the threat and would have resulted in,
27 homicide, nonfatal injuries, or substantial damage to property; or
28 (b) recklessly creates an immediate risk of serious physical injury
29 to another person. As used in this subsection, "nonfatal injuries"
30 means physical pain or injury, illness, or an impairment of physical
31 condition. "Nonfatal injuries" shall be construed to be consistent
32 with the definition of "bodily injury," as defined in RCW 9A.04.110.

33 (27) "Capacity to proceed" refers to the capacity of a person to
34 understand the nature of the criminal proceedings against him or her
35 or to assist in his or her own defense.

36 (28) "Restoration" or "restoration treatment" means a process by
37 which a defendant adjudicated as lacking capacity to proceed
38 undergoes court-ordered mental health treatment combined with
39 didactic instruction for the purpose of rendering the defendant
40 amenable to trial.

1 (29) "Lacks capacity to proceed" means a person lacks the
2 capacity to understand the nature of the proceedings against him or
3 her or to assist in his or her own defense as a result of a mental
4 health condition.

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

7 No (~~(incompetent)~~) person who lacks capacity to proceed shall be
8 tried, convicted, or sentenced for the commission of an offense so
9 long as such (~~(incapacity)~~) lack of capacity continues.

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

12 (1)(a) Whenever a defendant has pleaded not guilty by reason of
13 insanity, the court on its own motion or on the motion of any party
14 shall either appoint or request the secretary to designate a
15 qualified expert or professional person, who shall be approved by the
16 prosecuting attorney, to evaluate and report upon the mental
17 condition of the defendant.

18 (b)(i) Whenever there is a doubt as to (~~(competency)~~) capacity to
19 proceed, the court on its own motion or on the motion of any party
20 shall first review the allegations of (~~(incompetency)~~) lack of
21 capacity to proceed. The court shall make a determination of whether
22 sufficient facts have been provided to form a genuine doubt as to
23 (~~(competency)~~) capacity to proceed based on information provided by
24 counsel, judicial colloquy, or direct observation of the defendant.
25 If a genuine doubt as to (~~(competency)~~) capacity to proceed exists,
26 the court shall either appoint or request the secretary to designate
27 a qualified expert or professional person, who shall be approved by
28 the prosecuting attorney, to evaluate and report upon the mental
29 condition of the defendant.

30 (ii) Nothing in this subsection (1)(b) is intended to require a
31 waiver of attorney-client privilege. Defense counsel may meet the
32 requirements under this subsection (1)(b) by filing a declaration
33 stating that they have reason to believe that (~~(a—competency)~~) a
34 capacity to proceed evaluation is necessary, and stating the basis on
35 which the defendant is believed to (~~(be incompetent)~~) lack capacity
36 to proceed.

37 (c) The signed order of the court shall serve as authority for
38 the evaluator to be given access to all records held by any mental

1 health, medical, long-term services or supports, educational, or
2 correctional facility that relate to the present or past mental,
3 emotional, or physical condition of the defendant. If the court is
4 advised by any party that the defendant may have a developmental
5 disability, the evaluation must be performed by a developmental
6 disabilities professional and the evaluator shall have access to
7 records of the developmental disabilities administration of the
8 department. If the court is advised by any party that the defendant
9 may have dementia or another relevant neurocognitive disorder, the
10 evaluator shall have access to records of the aging and long-term
11 support administration of the department.

12 (d) The evaluator shall assess the defendant in a jail, detention
13 facility, in the community, or in court to determine whether a period
14 of inpatient commitment will be necessary to complete an accurate
15 evaluation. If inpatient commitment is needed, the signed order of
16 the court shall serve as authority for the evaluator to request the
17 jail or detention facility to transport the defendant to a hospital
18 or secure mental health facility for a period of commitment not to
19 exceed fifteen days from the time of admission to the facility.
20 Otherwise, the evaluator shall complete the evaluation.

21 (e) The court may commit the defendant for evaluation to a
22 hospital or secure mental health facility without an assessment if:
23 (i) The defendant is charged with murder in the first or second
24 degree; (ii) the court finds that it is more likely than not that an
25 evaluation in the jail will be inadequate to complete an accurate
26 evaluation; or (iii) the court finds that an evaluation outside the
27 jail setting is necessary for the health, safety, or welfare of the
28 defendant. The court shall not order an initial inpatient evaluation
29 for any purpose other than a ((competency)) capacity to proceed
30 evaluation.

31 (f) The order shall indicate whether, in the event the defendant
32 is committed to a hospital or secure mental health facility for
33 evaluation, all parties agree to waive the presence of the defendant
34 or to the defendant's remote participation at a subsequent
35 ((competency)) capacity to proceed hearing or presentation of an
36 agreed order if the recommendation of the evaluator is for
37 continuation of the stay of criminal proceedings, or if the opinion
38 of the evaluator is that the defendant ((remains incompetent))
39 continues to lack capacity to proceed and there is no remaining

1 restoration period, and the hearing is held prior to the expiration
2 of the authorized commitment period.

3 (g) When a defendant is ordered to be evaluated under this
4 subsection (1), or when a party or the court determines at first
5 appearance that an order for evaluation under this subsection will be
6 requested or ordered if charges are pursued, the court may delay
7 granting bail until the defendant has been evaluated for
8 (~~competency~~) capacity to proceed or sanity and appears before the
9 court. Following the evaluation, in determining bail the court shall
10 consider: (i) Recommendations of the evaluator regarding the
11 defendant's (~~competency~~) capacity to proceed, sanity, or diminished
12 capacity; (ii) whether the defendant has a recent history of one or
13 more violent acts; (iii) whether the defendant has previously been
14 acquitted by reason of insanity or found (~~incompetent~~) to lack
15 capacity to proceed; (iv) whether it is reasonably likely the
16 defendant will fail to appear for a future court hearing; and (v)
17 whether the defendant is a threat to public safety.

18 (h) If the defendant ordered to be evaluated under this
19 subsection (1) is charged with a serious traffic offense under RCW
20 9.94A.030, or a felony version of a serious traffic offense, the
21 prosecutor may make a motion to modify the defendant's conditions of
22 release to include a condition prohibiting the defendant from driving
23 during the pendency of the (~~competency~~) capacity to proceed
24 evaluation period.

25 (2) The court may direct that a qualified expert or professional
26 person retained by or appointed for the defendant be permitted to
27 witness the evaluation authorized by subsection (1) of this section,
28 and that the defendant shall have access to all information obtained
29 by the court appointed experts or professional persons. The
30 defendant's expert or professional person shall have the right to
31 file his or her own report following the guidelines of subsection (3)
32 of this section. If the defendant is indigent, the court shall upon
33 the request of the defendant assist him or her in obtaining an expert
34 or professional person.

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

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

37 (b) A diagnosis or description of the current mental status of
38 the defendant;

1 (c) If the defendant has a mental (~~(disease or defect)~~) health
2 condition, or has a developmental disability, an opinion as to
3 (~~(competency)~~) capacity to proceed;

4 (d) If the defendant has indicated his or her intention to rely
5 on the defense of insanity pursuant to RCW 10.77.030, and an
6 evaluation and report by an expert or professional person has been
7 provided concluding that the defendant was criminally insane at the
8 time of the alleged offense, an opinion as to the defendant's sanity
9 at the time of the act, and an opinion as to whether the defendant
10 presents a substantial danger to other persons, or presents a
11 substantial likelihood of committing criminal acts jeopardizing
12 public safety or security, unless kept under further control by the
13 court or other persons or institutions, provided that no opinion
14 shall be rendered under this subsection (3)(d) unless the evaluator
15 or court determines that the defendant (~~(is competent to stand~~
16 ~~trial)~~) has capacity to proceed to trial;

17 (e) When directed by the court, if an evaluation and report by an
18 expert or professional person has been provided concluding that the
19 defendant lacked the capacity at the time of the offense to form the
20 mental state necessary to commit the charged offense, an opinion as
21 to the capacity of the defendant to have a particular state of mind
22 which is an element of the offense charged;

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

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

28 (5) In the event that a person remains in jail more than 21 days
29 after service on the department of a court order to transport the
30 person to a facility designated by the department for inpatient
31 (~~(competency)~~) restoration treatment, upon the request of any party
32 and with notice to all parties, the department shall perform a
33 (~~(competency to stand)~~) capacity to proceed to trial status check to
34 determine if the circumstances of the person have changed such that
35 the court should authorize an updated (~~(competency)~~) capacity to
36 proceed evaluation. The status update shall be provided to the
37 parties and the court. Status updates may be provided at reasonable
38 intervals.

39 (6) If a finding of the (~~(competency)~~) capacity to proceed
40 evaluation under this section or under RCW 10.77.084 is that the

1 individual (~~is not competent~~) lacks capacity to proceed due to an
2 intellectual or developmental disability, dementia, or traumatic
3 brain injury, the evaluator shall notify the department, which shall
4 refer the individual to the developmental disabilities administration
5 or the aging and long-term support administration of the department
6 for review of eligibility for services. The department shall inform
7 the forensic navigator about availability of services.

8 (7) If the expert or professional person appointed to perform a
9 (~~competency~~) capacity to proceed evaluation in the community is not
10 able to complete the evaluation after two attempts at scheduling with
11 the defendant, the department shall submit a report to the court and
12 parties and include a date and time for another evaluation which must
13 be at least four weeks later. The court shall provide notice to the
14 defendant of the date and time of the evaluation. If the defendant
15 fails to appear at that appointment, the court shall recall the order
16 for (~~competency~~) a capacity to proceed evaluation and may issue a
17 warrant for the failure to appear.

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

20 (1)(a)(i) The expert conducting the evaluation shall provide his
21 or her report and recommendation to the court in which the criminal
22 proceeding is pending. For a (~~competency~~) capacity to proceed
23 evaluation of a defendant who is released from custody, if the
24 evaluation cannot be completed within twenty-one days due to a lack
25 of cooperation by the defendant, the evaluator shall notify the court
26 that he or she is unable to complete the evaluation because of such
27 lack of cooperation.

28 (ii) A copy of the report and recommendation shall be provided to
29 the designated crisis responder, the prosecuting attorney, the
30 defense attorney, and the professional person at the local
31 correctional facility where the defendant is being held, or if there
32 is no professional person, to the person designated under (a)(iv) of
33 this subsection. Upon request, the evaluator shall also provide
34 copies of any source documents relevant to the evaluation to the
35 designated crisis responder.

36 (iii) Any facility providing inpatient services related to
37 (~~competency~~) capacity to proceed shall discharge the defendant as
38 soon as the facility determines that the defendant (~~is competent to~~
39 ~~stand trial~~) has capacity to proceed. Discharge shall not be

1 postponed during the writing and distribution of the evaluation
2 report. Distribution of an evaluation report by a facility providing
3 inpatient services shall ordinarily be accomplished within two
4 working days or less following the final evaluation of the defendant.
5 If the defendant is discharged to the custody of a local correctional
6 facility, the local correctional facility must continue the
7 medication regimen prescribed by the facility, when clinically
8 appropriate, unless the defendant refuses to cooperate with
9 medication and an involuntary medication order by the court has not
10 been entered.

11 (iv) If there is no professional person at the local correctional
12 facility, the local correctional facility shall designate a
13 professional person as defined in RCW 71.05.020 or, in cooperation
14 with the behavioral health administrative services organization, a
15 professional person at the behavioral health administrative services
16 organization to receive the report and recommendation.

17 (v) Upon commencement of a defendant's evaluation in the local
18 correctional facility, the local correctional facility must notify
19 the evaluator of the name of the professional person, or person
20 designated under (a)(iv) of this subsection, to receive the report
21 and recommendation.

22 (b) If the evaluator concludes, under RCW 10.77.060(3)(f), the
23 person should be evaluated by a designated crisis responder under
24 chapter 71.05 RCW, the court shall order such evaluation be conducted
25 prior to release from confinement when the person is acquitted or
26 convicted and sentenced to confinement for twenty-four months or
27 less, or when charges are dismissed pursuant to a finding of
28 (~~incompetent to stand~~) lack of capacity to proceed to trial.

29 (2) The designated crisis responder shall provide written
30 notification within twenty-four hours of the results of the
31 determination whether to commence proceedings under chapter 71.05
32 RCW. The notification shall be provided to the persons identified in
33 subsection (1)(a) of this section.

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

37 (4) A facility conducting a civil commitment evaluation under RCW
38 10.77.086(7) or 10.77.088(6)(b) that makes a determination to release
39 the person instead of filing a civil commitment petition must provide
40 written notice to the prosecutor and defense attorney at least

1 twenty-four hours prior to release. The notice may be given by email,
2 facsimile, or other means reasonably likely to communicate the
3 information immediately.

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

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

11 (1)(a) The legislature establishes a performance target of seven
12 days or fewer to extend an offer of admission to a defendant in
13 pretrial custody for inpatient (~~competency~~) capacity to proceed
14 evaluation or inpatient (~~competency~~) restoration services, when
15 access to the services is legally authorized.

16 (b) The legislature establishes a performance target of 14 days
17 or fewer for the following services related to (~~competency to stand~~
18 ~~trial~~) capacity to proceed, when access to the services is legally
19 authorized:

20 (i) To complete a (~~competency~~) capacity to proceed evaluation
21 in jail and distribute the evaluation report; and

22 (ii) To extend an offer of admission to a defendant ordered to be
23 committed to the department for placement in a facility operated by
24 or contracted by the department following dismissal of charges based
25 on (~~incompetency to stand~~) lack of capacity to proceed to trial
26 under RCW 10.77.086.

27 (c) The legislature establishes a performance target of 21 days
28 or fewer to complete a (~~competency~~) capacity to proceed evaluation
29 in the community and distribute the evaluation report.

30 (2)(a) A maximum time limit of seven days as measured from the
31 department's receipt of the court order, or a maximum time limit of
32 14 days as measured from signature of the court order, whichever is
33 shorter, is established to complete the services specified in
34 subsection (1)(a) of this section, subject to the limitations under
35 subsection (9) of this section.

36 (b) A maximum time limit of 14 days as measured from the
37 department's receipt of the court order, or a maximum time limit of
38 21 days as measured from signature of the court order, whichever is
39 shorter, is established to complete the services specified in

1 subsection (1)(b) of this section, subject to the limitations under
2 subsection (9) of this section.

3 (3) The legislature recognizes that these targets may not be
4 achievable in all cases, but intends for the department to manage,
5 allocate, and request appropriations for resources in order to meet
6 these targets whenever possible without sacrificing the accuracy and
7 quality of ((~~competency~~)) capacity to proceed services.

8 (4) It shall be a defense to an allegation that the department
9 has exceeded the maximum time limits for completion of ((~~competency~~))
10 capacity to proceed services described in subsection (2) of this
11 section if the department can demonstrate by a preponderance of the
12 evidence that the reason for exceeding the maximum time limits was
13 outside of the department's control including, but not limited to,
14 the following circumstances:

15 (a) Despite a timely request, the department has not received
16 necessary medical information regarding the current medical status of
17 a defendant;

18 (b) The individual circumstances of the defendant make accurate
19 completion of an evaluation of ((~~competency to stand~~)) capacity to
20 proceed to trial dependent upon review of mental health, substance
21 use disorder, or medical history information which is in the custody
22 of a third party and cannot be immediately obtained by the
23 department, provided that completion shall not be postponed for
24 procurement of information which is merely supplementary;

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

28 (d) The defendant is medically unavailable for ((~~competency~~))
29 capacity to proceed evaluation or admission to a facility for
30 ((~~competency~~)) restoration treatment;

31 (e) Completion of the referral requires additional time to
32 accommodate the availability or participation of counsel, court
33 personnel, interpreters, or the defendant;

34 (f) The defendant asserts legal rights that result in a delay in
35 the provision of ((~~competency~~)) capacity to proceed services; or

36 (g) An unusual spike in the receipt of evaluation referrals or in
37 the number of defendants requiring restoration services has occurred,
38 causing temporary delays until the unexpected excess demand for
39 ((~~competency~~)) capacity to proceed services can be resolved.

1 (5) The department shall provide written notice to the court when
2 it will not be able to meet the maximum time limits under subsection
3 (2) of this section and identify the reasons for the delay and
4 provide a reasonable estimate of the time necessary to complete the
5 (~~competency~~) capacity to proceed service. Good cause for an
6 extension for the additional time estimated by the department shall
7 be presumed absent a written response from the court or a party
8 received by the department within seven days.

9 (6) The department shall:

10 (a) Develop, document, and implement procedures to monitor the
11 clinical status of defendants admitted to a state hospital for
12 (~~competency~~) capacity to proceed services that allow the state
13 hospital to accomplish early discharge for defendants for whom
14 clinical objectives have been achieved or may be achieved before
15 expiration of the commitment period;

16 (b) Investigate the extent to which patients admitted to a state
17 hospital under this chapter overstay time periods authorized by law
18 and take reasonable steps to limit the time of commitment to
19 authorized periods; and

20 (c) Establish written standards for the productivity of forensic
21 evaluators and utilize these standards to internally review the
22 performance of forensic evaluators.

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

30 (8) The department shall report annually to the legislature and
31 the executive on the timeliness of services related to (~~competency~~
32 ~~to stand~~) capacity to proceed to trial and the timeliness with which
33 court referrals accompanied by charging documents, discovery, and
34 criminal history information are provided to the department relative
35 to the signature date of the court order. The report must be in a
36 form that is accessible to the public and that breaks down
37 performance by county.

38 (9) This section does not create any new entitlement or cause of
39 action related to the timeliness of (~~competency to stand~~) capacity
40 to proceed to trial services, nor can it form the basis for contempt

1 sanctions under chapter 7.21 RCW or a motion to dismiss criminal
2 charges.

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

5 (1) In counties with a forensic navigator program, a forensic
6 navigator shall:

7 (a) Meet, interview, and observe all defendants charged with a
8 nonfelony, or a class C felony other than assault in the third degree
9 under RCW 9A.36.031(1) (d) or (f), felony physical control of a
10 vehicle under RCW 46.61.504(6), felony hit and run resulting in
11 injury under RCW 46.52.020(4)(b), a hate crime offense under RCW
12 9A.36.080, a class C felony with a domestic violence designation, a
13 class C felony sex offense as defined in RCW 9.94A.030, or a class C
14 felony with a sexual motivation allegation, who have had two or more
15 cases dismissed due to a finding of (~~incompetency to stand~~) lack of
16 capacity to proceed to trial in the preceding 24 months and who are
17 at risk for a finding of (~~incompetency~~) lack of capacity to proceed
18 under their current charge. The forensic navigator shall determine
19 the defendants' willingness to engage with services under this
20 section; and

21 (b) Provide a diversion program plan to the parties in each case
22 that includes a recommendation for a diversion program to defense
23 counsel and the prosecuting attorney. Services under a diversion
24 program may include a referral for assisted outpatient treatment
25 under chapter 71.05 RCW.

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

29 (3)(a) For defendants charged with a nonfelony, the court may
30 order the defendant to a diversion program if recommended by the
31 forensic navigator. Upon engagement with the diversion program, the
32 defense may move to dismiss the charges without prejudice. The court
33 shall hold a hearing on this motion within 10 days. The court shall
34 grant the defense motion if it finds by a preponderance of the
35 evidence that the defendant is amenable to the services described in
36 the diversion program and can safely receive services in the
37 community.

38 (b) For defendants charged with a class C felony other than
39 assault in the third degree under RCW 9A.36.031(1) (d) or (f), felony

1 physical control of a vehicle under RCW 46.61.504(6), felony hit and
2 run resulting in injury under RCW 46.52.020(4)(b), a hate crime
3 offense under RCW 9A.36.080, a class C felony with a domestic
4 violence designation, a class C felony sex offense as defined in RCW
5 9.94A.030, or a class C felony with a sexual motivation allegation,
6 the defense may move for dismissal of the charges without prejudice
7 if the defendant is currently subject to a civil commitment order
8 under chapter 71.05 RCW. The court shall grant the defense motion
9 upon confirmation of an available treatment plan under chapter 71.05
10 RCW.

11 (4) Individuals who are referred to a diversion program described
12 in this section shall have a forensic navigator assigned to assist
13 them for up to six months while engaging in the services described in
14 the diversion program.

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

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

20 (1)(a) If at any time during the pendency of an action and prior
21 to judgment the court finds, following a report as provided in RCW
22 10.77.060, a defendant (~~is incompetent~~) lacks capacity to proceed,
23 the court shall order the proceedings against the defendant be stayed
24 except as provided in subsection (4) of this section. Beginning
25 October 1, 2023, if the defendant is charged with a serious traffic
26 offense under RCW 9.94A.030, or a felony version of a serious traffic
27 offense, the court may order the clerk to transmit an order to the
28 department of licensing for revocation of the defendant's driver's
29 license for a period of one year.

30 (b) The court may order a defendant who has been found to (~~be~~
31 ~~incompetent~~) lack capacity to proceed to undergo (~~competency~~)
32 restoration treatment at a facility designated by the department if
33 the defendant is eligible under RCW 10.77.086 or 10.77.088. At the
34 end of each (~~competency~~) restoration period or at any time a
35 professional person determines (~~competency~~) capacity to proceed has
36 been, or is unlikely to be, restored, the defendant shall be returned
37 to court for a hearing, except that if the opinion of the
38 professional person is that the defendant (~~remains incompetent~~)
39 continues to lack capacity to proceed and the hearing is held before

1 the expiration of the current ((competency)) restoration period, the
2 parties may agree to waive the defendant's presence, to remote
3 participation by the defendant at a hearing, or to presentation of an
4 agreed order in lieu of a hearing. The facility shall promptly notify
5 the court and all parties of the date on which the ((competency))
6 restoration period commences and expires so that a timely hearing
7 date may be scheduled.

8 (c) If, following notice and hearing or entry of an agreed order
9 under (b) of this subsection, the court finds that ((competency))
10 capacity to proceed has been restored, the court shall lift the stay
11 entered under (a) of this subsection. If the court finds that
12 ((competency)) capacity to proceed has not been restored, the court
13 shall dismiss the proceedings without prejudice, except that the
14 court may order a further period of ((competency)) restoration
15 treatment if it finds that further treatment within the time limits
16 established by RCW 10.77.086 or 10.77.088 is likely to restore
17 ((competency)) capacity to proceed, and a further period of treatment
18 is allowed under RCW 10.77.086 or 10.77.088.

19 (d) If at any time during the proceeding the court finds,
20 following notice and hearing, a defendant is not likely to regain
21 ((competency)) capacity to proceed, the court shall dismiss the
22 proceedings without prejudice and refer the defendant for civil
23 commitment evaluation or proceedings if appropriate under RCW
24 10.77.065, 10.77.086, or 10.77.088.

25 (e) Beginning October 1, 2023, if the court issues an order
26 directing revocation of the defendant's driver's license under (a) of
27 this subsection, and the court subsequently finds that the
28 defendant's ((competency)) capacity to proceed has been restored, the
29 court shall order the clerk to transmit an order to the department of
30 licensing for reinstatement of the defendant's driver's license. The
31 court may direct the clerk to transmit an order reinstating the
32 defendant's driver's license before the end of one year for good
33 cause upon the petition of the defendant.

34 (2) If the defendant is referred for evaluation by a designated
35 crisis responder under this chapter, the designated crisis responder
36 shall provide prompt written notification of the results of the
37 evaluation and whether the person was detained. The notification
38 shall be provided to the court in which the criminal action was
39 pending, the prosecutor, the defense attorney in the criminal action,

1 and the facility that evaluated the defendant for (~~competency~~)
2 capacity to proceed.

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

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

12 (5) At or before the conclusion of any commitment period provided
13 for by this section, the facility providing evaluation and treatment
14 shall provide to the court a written report of evaluation which meets
15 the requirements of RCW 10.77.060(3). For defendants charged with a
16 felony, the report following the second (~~competency~~) restoration
17 period or first (~~competency~~) restoration period if the defendant's
18 (~~incompetence~~) lack of capacity to proceed is determined to be
19 solely due to a developmental disability or the evaluator concludes
20 that the defendant is not likely to regain (~~competency~~) capacity to
21 proceed must include an assessment of the defendant's future
22 dangerousness which is evidence-based regarding predictive validity.

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

25 (1) A defendant found (~~incompetent~~) to lack capacity to proceed
26 by the court under RCW 10.77.084 must be evaluated at the direction
27 of the secretary and a determination made whether the defendant is an
28 individual with a developmental disability. Such evaluation and
29 determination must be accomplished as soon as possible following the
30 court's placement of the defendant in the custody of the secretary.

31 (2) When appropriate, and subject to available funds, if the
32 defendant is determined to be an individual with a developmental
33 disability, he or she may be placed in a program specifically
34 reserved for the treatment and training of persons with developmental
35 disabilities where the defendant has the right to habilitation
36 according to an individualized service plan specifically developed
37 for the particular needs of the defendant. A copy of the evaluation
38 must be sent to the program.

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

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

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

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

13 (4) The department may establish admission priorities in the
14 event that the number of eligible persons exceeds the limits set by
15 the department.

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

18 (1)(a) Except as otherwise provided in this section, if the
19 defendant is charged with a felony and determined to (~~be~~
20 ~~incompetent~~)) lack capacity to proceed, until he or she has regained
21 the (~~competency~~)) capacity to proceed necessary to understand the
22 proceedings against him or her and assist in his or her own defense,
23 but in any event for a period of no longer than 90 days, the court
24 shall commit the defendant to the custody of the secretary for
25 inpatient (~~competency~~)) restoration, or may alternatively order the
26 defendant to receive outpatient (~~competency~~)) restoration based on a
27 recommendation from a forensic navigator and input from the parties.

28 (b) For a defendant who is determined to (~~be incompetent~~)) lack
29 capacity to proceed and whose highest charge is a class C felony
30 other than assault in the third degree under RCW 9A.36.031(1) (d) or
31 (f), felony physical control of a vehicle under RCW 46.61.504(6),
32 felony hit and run resulting in injury under RCW 46.52.020(4)(b), a
33 hate crime offense under RCW 9A.36.080, a class C felony with a
34 domestic violence designation, a class C felony sex offense as
35 defined in RCW 9.94A.030, or a class C felony with a sexual
36 motivation allegation, the court shall first consider all available
37 and appropriate alternatives to inpatient (~~competency~~)) restoration.
38 The court shall dismiss the proceedings without prejudice upon
39 agreement of the parties if the forensic navigator has found an

1 appropriate and available diversion program willing to accept the
2 defendant.

3 (2) (a) To be eligible for an order for outpatient (~~competency~~)
4 restoration, a defendant must be clinically appropriate and be
5 willing to:

6 (i) Adhere to medications or receive prescribed intramuscular
7 medication;

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

9 (iii) Comply with urinalysis or breathalyzer monitoring if
10 needed.

11 (b) If the court orders inpatient (~~competency~~) restoration, the
12 department shall place the defendant in an appropriate facility of
13 the department for (~~competency~~) restoration.

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

28 (d) If a defendant fails to comply with the restrictions of the
29 outpatient restoration program such that restoration is no longer
30 appropriate in that setting or the defendant is no longer clinically
31 appropriate for outpatient (~~competency~~) restoration, the director
32 of the outpatient (~~competency~~) restoration program shall notify the
33 authority and the department of the need to terminate the outpatient
34 (~~competency~~) restoration placement and intent to request placement
35 for the defendant in an appropriate facility of the department for
36 inpatient (~~competency~~) restoration. The outpatient (~~competency~~)
37 restoration program shall coordinate with the authority, the
38 department, and any law enforcement personnel under (d)(i) of this
39 subsection to ensure that the time period between termination and
40 admission into the inpatient facility is as minimal as possible. The

1 time period for inpatient ((competency)) restoration shall be reduced
2 by the time period spent in active treatment within the outpatient
3 ((competency)) restoration program, excluding time periods in which
4 the defendant was absent from the program and all time from notice of
5 termination of the outpatient ((competency)) restoration period
6 through the defendant's admission to the facility. The department
7 shall obtain a placement for the defendant within seven days of the
8 notice of intent to terminate the outpatient ((competency))
9 restoration placement.

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

24 (ii) The department shall notify the court and parties of the
25 defendant's admission for inpatient ((competency)) restoration before
26 the close of the next judicial day. The court shall schedule a
27 hearing within five days to review the conditions of release of the
28 defendant and anticipated release from treatment and issue
29 appropriate orders.

30 (e) The court may not issue an order for outpatient
31 ((competency)) restoration unless the department certifies that there
32 is an available appropriate outpatient ((competency)) restoration
33 program that has adequate space for the person at the time the order
34 is issued or the court places the defendant under the guidance and
35 control of a professional person identified in the court order.

36 (3) For a defendant whose highest charge is a class C felony, or
37 a class B felony that is not classified as violent under RCW
38 9.94A.030, the maximum time allowed for the initial ((competency))
39 restoration period is 45 days if the defendant is referred for
40 inpatient ((competency)) restoration, or 90 days if the defendant is

1 referred for outpatient ((competency)) restoration, provided that if
2 the outpatient ((competency)) restoration placement is terminated and
3 the defendant is subsequently admitted to an inpatient facility, the
4 period of inpatient treatment during the first ((competency))
5 restoration period under this subsection shall not exceed 45 days.

6 (4) When any defendant whose highest charge is a class C felony
7 other than assault in the third degree under RCW 9A.36.031(1) (d) or
8 (f), felony physical control of a vehicle under RCW 46.61.504(6),
9 felony hit and run resulting in injury under RCW 46.52.020(4)(b), a
10 hate crime offense under RCW 9A.36.080, a class C felony with a
11 domestic violence designation, a class C felony sex offense as
12 defined in RCW 9.94A.030, or a class C felony with a sexual
13 motivation allegation is admitted for inpatient ((competency))
14 restoration with an accompanying court order for involuntary
15 medication under RCW 10.77.092, and the defendant is found ((not
16 competent to stand)) to lack capacity to proceed to trial following
17 that period of ((competency)) restoration, the court shall dismiss
18 the charges pursuant to subsection (7) of this section.

19 (5) If the court determines or the parties agree before the
20 initial ((competency)) restoration period or at any subsequent stage
21 of the proceedings that the defendant is unlikely to regain
22 ((competency)) capacity to proceed, the court may dismiss the charges
23 without prejudice without ordering the defendant to undergo an
24 initial or further period of ((competency)) restoration treatment, in
25 which case the court shall order that the defendant be referred for
26 evaluation for civil commitment in the manner provided in subsection
27 (7) of this section.

28 (6) On or before expiration of the initial ((competency))
29 restoration period the court shall conduct a hearing to determine
30 whether the defendant ((is)) now ((competent to stand)) has capacity
31 to proceed to trial. If the court finds by a preponderance of the
32 evidence that the defendant ((is incompetent to stand)) lacks
33 capacity to proceed to trial, the court may order an extension of the
34 ((competency)) restoration period for an additional period of 90
35 days, but the court must at the same time set a date for a new
36 hearing to determine the defendant's ((competency to stand)) capacity
37 to proceed to trial before the expiration of this second restoration
38 period. The defendant, the defendant's attorney, and the prosecutor
39 have the right to demand that the hearing be before a jury. No
40 extension shall be ordered for a second or third ((competency))

1 restoration period if the defendant is ineligible for a subsequent
2 ((competency)) restoration period under subsection (4) of this
3 section or the defendant's ((incompetence)) lack of capacity to
4 proceed has been determined by the secretary to be solely the result
5 of an intellectual or developmental disability, dementia, or
6 traumatic brain injury which is such that ((competence)) capacity to
7 proceed is not reasonably likely to be regained during an extension.

8 (7)(a) Except as provided in (b) of this subsection, at the
9 hearing upon the expiration of the second ((competency)) restoration
10 period, or at the end of the first ((competency)) restoration period
11 if the defendant is ineligible for a second or third ((competency))
12 restoration period under subsection (3) or (6) of this section, if
13 the jury or court finds that the defendant ((is incompetent to stand
14 trial)) lacks capacity to proceed, the court shall dismiss the
15 charges without prejudice and order the defendant to be committed to
16 the department for placement in a facility operated or contracted by
17 the department for up to 120 hours if the defendant has not undergone
18 ((competency)) restoration services or has engaged in outpatient
19 ((competency)) restoration services, and up to 72 hours if the
20 defendant engaged in inpatient ((competency)) restoration services
21 starting from admission to the facility, excluding Saturdays,
22 Sundays, and holidays, for evaluation for the purpose of filing a
23 civil commitment petition under chapter 71.05 RCW. If at the time the
24 order to dismiss the charges without prejudice is entered by the
25 court the defendant is already in a facility operated or contracted
26 by the department, the 72-hour or 120-hour period shall instead begin
27 upon department receipt of the court order.

28 (b) The court shall not dismiss the charges if the defendant is
29 eligible for a second or third ((competency)) restoration period
30 under subsection (6) of this section and the court or jury finds
31 that: (i) The defendant (A) is a substantial danger to other persons;
32 or (B) presents a substantial likelihood of committing criminal acts
33 jeopardizing public safety or security; and (ii) there is a
34 substantial probability that the defendant will regain ((competency))
35 capacity to proceed within a reasonable period of time. If the court
36 or jury makes such a finding, the court may extend the period of
37 commitment for up to an additional six months.

38 (8) Any period of ((competency)) restoration treatment under this
39 section includes only the time the defendant is actually at the
40 facility or is actively participating in an outpatient ((competency))

1 restoration program and is in addition to reasonable time for
2 transport to or from the facility.

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

5 (1) Subject to the limitations described in subsection (2) of
6 this section, a court may appoint an impartial forensic navigator
7 employed by or contracted by the department to assist individuals who
8 have been referred for ~~((competency))~~ capacity to proceed evaluation
9 and shall appoint a forensic navigator in circumstances described
10 under RCW 10.77.072.

11 (2) A forensic navigator must assist the individual to access
12 services related to diversion and community outpatient ~~((competency))~~
13 restoration. The forensic navigator must assist the individual,
14 prosecuting attorney, defense attorney, and the court to understand
15 the options available to the individual and be accountable as an
16 officer of the court for faithful execution of the responsibilities
17 outlined in this section.

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

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

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

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

27 (d) To present information to the court in order to assist the
28 court in understanding the treatment options available to the
29 individual to support the entry of orders for diversion from the
30 forensic mental health system or for community outpatient
31 ~~((competency))~~ restoration, to facilitate that transition;

32 (e) To provide regular updates to the court and parties of the
33 status of the individual's participation in diversion or outpatient
34 services and be responsive to inquiries by the parties about
35 treatment status;

36 (f) When the individual is ordered to receive community
37 outpatient restoration, to provide services to the individual
38 including:

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

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

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

5 (iv) Providing information to the court concerning the
6 individual's progress and compliance with court-ordered conditions of
7 release, which may include appearing at court hearings to provide
8 information to the court;

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

11 (vi) Assisting the individual with obtaining prescribed
12 medication and encouraging adherence with prescribed medication;

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

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

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

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

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

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

33 (4) Forensic navigators may submit recommendations to the court
34 regarding treatment and restoration options for the individual, which
35 the court may consider and weigh in conjunction with the
36 recommendations of all of the parties.

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

39 (6) The signed order for (~~competency~~) a capacity to proceed
40 evaluation from the court shall serve as authority for the forensic

1 navigator to be given access to all records held by a behavioral
2 health, educational, or law enforcement agency or a correctional
3 facility that relates to an individual. Information that is protected
4 by state or federal law, including health information, shall not be
5 entered into the court record without the consent of the individual
6 or their defense attorney.

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

10 (8) A court may not issue an order appointing a forensic
11 navigator unless the department certifies that there is adequate
12 forensic navigator capacity to provide these services at the time the
13 order is issued.

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

16 Within twenty-four hours of the signing of a court order
17 requesting the secretary to provide a (~~competency~~) capacity to
18 proceed evaluation or (~~competency~~) restoration treatment:

19 (1) The clerk of the court shall provide the court order and the
20 charging documents, including the request for bail and certification
21 of probable cause, to the state hospital. If the order is for
22 (~~competency~~) restoration treatment and the (~~competency~~) capacity
23 to proceed evaluation was provided by a qualified expert or
24 professional person who was not designated by the secretary, the
25 clerk shall also provide the state hospital with a copy of all
26 previous court orders related to (~~competency~~) capacity to proceed
27 or criminal insanity and a copy of any of the evaluation reports;

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

31 (3) If the court order requires transportation of the defendant
32 to a state hospital, the jail administrator shall provide the
33 defendant's medical clearance information to the state hospital
34 admission staff.

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

37 (1) A city or county jail shall transport a defendant to a state
38 hospital or other secure facility designated by the department within

1 one day of receipt of an offer of admission of the defendant for
2 ((competency)) a capacity to proceed evaluation or restoration
3 services.

4 (2) City and county jails must cooperate with ((competency))
5 capacity to proceed evaluators and the department to arrange for
6 ((competency)) capacity to proceed evaluators to have reasonable,
7 timely, and appropriate access to defendants for the purpose of
8 performing evaluations under this chapter to accommodate the seven-
9 day performance target for completing ((competency)) capacity to
10 proceed evaluations for defendants in custody.

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

13 (1) If the defendant is charged with a nonfelony crime which is a
14 serious offense as identified in RCW 10.77.092 and found by the court
15 to ((be not competent)) lack capacity to proceed, the court shall
16 first consider all available and appropriate alternatives to
17 inpatient ((competency)) restoration. If the parties agree that there
18 is an appropriate diversion program available to accept the
19 defendant, the court shall dismiss the proceedings without prejudice
20 and refer the defendant to the recommended diversion program. If the
21 parties do not agree that there is an appropriate diversion program
22 available to accept the defendant, then the court:

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

28 (b) At the hearing, the prosecuting attorney must establish that
29 there is a compelling state interest to order ((competency))
30 restoration treatment for the defendant. The court may consider prior
31 criminal history, prior history in treatment, prior history of
32 violence, the quality and severity of the pending charges, any
33 history that suggests whether ((competency)) restoration treatment is
34 likely to be successful, in addition to the factors listed under RCW
35 10.77.092. If the defendant is subject to an order under chapter
36 71.05 RCW or proceedings under chapter 71.05 RCW have been initiated,
37 there is a rebuttable presumption that there is no compelling state
38 interest in ordering ((competency)) restoration treatment. If the
39 prosecuting attorney proves by a preponderance of the evidence that

1 there is a compelling state interest in ordering ((competency))
2 restoration treatment, then the court shall issue an order in
3 accordance with subsection (2) of this section.

4 (2)(a) If a court finds pursuant to subsection (1)(b) of this
5 section that there is a compelling state interest in pursuing
6 ((competency)) restoration treatment, the court shall order the
7 defendant to receive outpatient ((competency)) restoration consistent
8 with the recommendation of the forensic navigator, unless the court
9 finds that an order for outpatient ((competency)) restoration is
10 inappropriate considering the health and safety of the defendant and
11 risks to public safety.

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

14 (i) Adhere to medications or receive prescribed intramuscular
15 medication;

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

17 (iii) Comply with urinalysis or breathalyzer monitoring if
18 needed.

19 (c) If the court orders inpatient ((competency)) restoration, the
20 department shall place the defendant in an appropriate facility of
21 the department for ((competency)) restoration under subsection (3) of
22 this section.

23 (d) If the court orders outpatient ((competency)) restoration,
24 the court shall modify conditions of release as needed to authorize
25 the department to place the person in approved housing, which may
26 include access to supported housing, affiliated with a contracted
27 outpatient ((competency)) restoration program. The department, in
28 conjunction with the health care authority, must establish rules for
29 conditions of participation in the outpatient ((competency))
30 restoration program, which must include the defendant being subject
31 to medication management. The court may order regular urinalysis
32 testing. The outpatient ((competency)) restoration program shall
33 monitor the defendant during the defendant's placement in the program
34 and report any noncompliance or significant changes with respect to
35 the defendant to the department and, if applicable, the forensic
36 navigator.

37 (e) If a defendant fails to comply with the restrictions of the
38 outpatient ((competency)) restoration program such that restoration
39 is no longer appropriate in that setting or the defendant is no
40 longer clinically appropriate for outpatient ((competency))

1 restoration, the director of the outpatient ((competency))
2 restoration program shall notify the authority and the department of
3 the need to terminate the outpatient ((competency)) restoration
4 placement and intent to request placement for the defendant in an
5 appropriate facility of the department for inpatient ((competency))
6 restoration. The outpatient ((competency)) restoration program shall
7 coordinate with the authority, the department, and any law
8 enforcement personnel under (e)(i) of this subsection to ensure that
9 the time period between termination and admission into the inpatient
10 facility is as minimal as possible. The time period for inpatient
11 ((competency)) restoration shall be reduced by the time period spent
12 in active treatment within the outpatient ((competency)) restoration
13 program, excluding time periods in which the defendant was absent
14 from the program and all time from notice of termination of the
15 outpatient ((competency)) restoration period through the defendant's
16 admission to the facility. The department shall obtain a placement
17 for the defendant within seven days of the notice of intent to
18 terminate the outpatient ((competency)) restoration placement.

19 (i) The department may authorize a peace officer to detain the
20 defendant into emergency custody for transport to the designated
21 inpatient ((competency)) restoration facility. If medical clearance
22 is required by the designated ((competency)) restoration facility
23 before admission, the peace officer must transport the defendant to a
24 crisis stabilization unit, evaluation and treatment facility, or
25 emergency department of a local hospital for medical clearance once a
26 bed is available at the designated inpatient ((competency))
27 restoration facility. The signed outpatient ((competency))
28 restoration order of the court shall serve as authority for the
29 detention of the defendant under this subsection. This subsection
30 does not preclude voluntary transportation of the defendant to a
31 facility for inpatient ((competency)) restoration or for medical
32 clearance, or authorize admission of the defendant into jail.

33 (ii) The department shall notify the court and parties of the
34 defendant's admission for inpatient ((competency)) restoration before
35 the close of the next judicial day. The court shall schedule a
36 hearing within five days to review the conditions of release of the
37 defendant and anticipated release from treatment and issue
38 appropriate orders.

39 (f) The court may not issue an order for outpatient
40 ((competency)) restoration unless the department certifies that there

1 is an available appropriate outpatient restoration program that has
2 adequate space for the person at the time the order is issued or the
3 court places the defendant under the guidance and control of a
4 professional person identified in the court order.

5 (g) If the court does not order the defendant to receive
6 outpatient ((competency)) restoration under (a) of this subsection,
7 the court shall commit the defendant to the department for placement
8 in a facility operated or contracted by the department for inpatient
9 ((competency)) restoration.

10 (3) The placement under subsection (2) of this section shall not
11 exceed 29 days if the defendant is ordered to receive inpatient
12 ((competency)) restoration, and shall not exceed 90 days if the
13 defendant is ordered to receive outpatient ((competency))
14 restoration. The court may order any combination of this subsection,
15 but the total period of inpatient ((competency)) restoration may not
16 exceed 29 days.

17 (4) Beginning October 1, 2023, if the defendant is charged with a
18 serious traffic offense under RCW 9.94A.030, the court may order the
19 clerk to transmit an order to the department of licensing for
20 revocation of the defendant's driver's license for a period of one
21 year. The court shall direct the clerk to transmit an order to the
22 department of licensing reinstating the defendant's driver's license
23 if the ((defendant)) defendant's capacity to proceed is subsequently
24 restored ((to competency)), and may do so at any time before the end
25 of one year for good cause upon the petition of the defendant.

26 (5) If the court has determined or the parties agree that the
27 defendant is unlikely to regain ((competency)) capacity to proceed,
28 the court may dismiss the charges without prejudice without ordering
29 the defendant to undergo ((competency)) restoration treatment, in
30 which case the court shall order that the defendant be referred for
31 evaluation for civil commitment in the manner provided in subsection
32 (6) of this section.

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

39 (b) If the defendant was in custody and not on conditional
40 release at the time of dismissal, the defendant shall be detained and

1 sent to an evaluation and treatment facility for up to 120 hours if
2 the defendant has not undergone (~~competency~~) restoration services
3 or has engaged in outpatient (~~competency~~) restoration services and
4 up to 72 hours if the defendant engaged in inpatient (~~competency~~)
5 restoration services, excluding Saturdays, Sundays, and holidays, for
6 evaluation for purposes of filing a petition under chapter 71.05 RCW.
7 The 120-hour or 72-hour period shall commence upon the next
8 nonholiday weekday following the court order and shall run to the end
9 of the last nonholiday weekday within the 120-hour or 72-hour period.

10 (7) If the defendant is charged with a nonfelony crime that is
11 not a serious offense as defined in RCW 10.77.092 and found by the
12 court to (~~be not competent~~) lack capacity to proceed, the court may
13 stay or dismiss proceedings and detain the defendant for sufficient
14 time to allow the designated crisis responder to evaluate the
15 defendant and consider initial detention proceedings under chapter
16 71.05 RCW. The court must give notice to all parties at least 24
17 hours before the dismissal of any proceeding under this subsection,
18 and provide an opportunity for a hearing on whether to dismiss the
19 proceedings.

20 (8) If at any time the court dismisses charges under subsections
21 (1) through (7) of this section, the court shall make a finding as to
22 whether the defendant has a history of one or more violent acts. If
23 the court so finds, the defendant is barred from the possession of
24 firearms until a court restores his or her right to possess a firearm
25 under RCW 9.41.047. The court shall state to the defendant and
26 provide written notice that the defendant is barred from the
27 possession of firearms and that the prohibition remains in effect
28 until a court restores his or her right to possess a firearm under
29 RCW 9.41.047.

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

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

37 An outpatient (~~competency~~) restoration program must include
38 access to a prescriber.

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

3 The authority shall report annually to the governor and relevant
4 committees of the legislature, beginning November 1, 2022, and shall
5 make the report public, describing:

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

8 (2) The length of stay of individuals in outpatient
9 (~~competency~~) restoration programs;

10 (3) The number of individuals who are revoked from an outpatient
11 (~~competency~~) restoration program into inpatient treatment, and the
12 outcomes of other individuals, if any, whose participation in an
13 outpatient (~~competency~~) restoration program were terminated before
14 the completion of the program; and

15 (4) For individuals who were revoked from an outpatient
16 (~~competency~~) restoration program into an inpatient (~~competency~~)
17 restoration program, how many days the individuals spent in
18 outpatient (~~competency~~) restoration treatment and inpatient
19 (~~competency~~) restoration treatment, and whether the restoration
20 programs resulted in a finding of (~~competent to stand~~) capacity to
21 proceed to trial or another outcome.

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

24 (1) For purposes of determining whether a court may authorize
25 involuntary medication for the purpose of (~~competency~~) restoration
26 treatment pursuant to RCW 10.77.084 and for maintaining the level of
27 restoration in the jail following the restoration period, a pending
28 charge involving any one or more of the following crimes is a serious
29 offense per se in the context of (~~competency~~) restoration
30 treatment:

31 (a) Any violent offense, sex offense, serious traffic offense,
32 and most serious offense, as those terms are defined in RCW
33 9.94A.030;

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

36 (c) Any offense contained in chapter 9.41 RCW (firearms and
37 dangerous weapons);

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

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

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

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

7 (2) Any time a petition is filed seeking a court order
8 authorizing the involuntary medication for purposes of ((competency))
9 restoration treatment pursuant to RCW 10.77.084, the petition must
10 also seek authorization to continue involuntary medication for
11 purposes of maintaining the level of restoration in the jail or
12 juvenile detention facility following the restoration period.

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

19 (b) To determine that the particular case is a serious offense
20 within the context of ((competency)) restoration treatment, the court
21 must consider the following factors and determine that one or more of
22 the following factors creates a situation in which the offense is
23 serious:

24 (i) The charge includes an allegation that the defendant actually
25 inflicted bodily or emotional harm on another person or that the
26 defendant created a reasonable apprehension of bodily or emotional
27 harm to another;

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

30 (iii) The number and nature of related charges pending against
31 the defendant;

32 (iv) The length of potential confinement if the defendant is
33 convicted; and

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

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

38 When the court must make a determination whether to order
39 involuntary medications for the purpose of ((competency)) restoration

1 or for maintenance of (~~competency~~) capacity to proceed, the court
2 shall inquire, and shall be told, and to the extent that the
3 prosecutor or defense attorney is aware, whether the defendant is the
4 subject of a pending civil commitment proceeding or has been ordered
5 into involuntary treatment pursuant to a civil commitment proceeding.

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

8 (1) When an individual has a prescription for an antipsychotic,
9 antidepressant, antiepileptic, or other drug prescribed to the
10 individual to treat a serious mental illness by a state hospital or
11 other state facility or a behavioral health agency or other certified
12 medical provider, and the individual is medically stable on the drug,
13 a jail or juvenile detention facility shall continue prescribing the
14 prescribed drug and may not require the substitution of a different
15 drug in a given therapeutic class, except under the following
16 circumstances:

17 (a) The substitution is for a generic version of a name brand
18 drug and the generic version is chemically identical to the name
19 brand drug; or

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

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

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

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

34 The legislature finds that among those persons who endanger the
35 safety of others by committing crimes are a small number of persons
36 with developmental disabilities. While their conduct is not typical
37 of the vast majority of persons with developmental disabilities who
38 are responsible citizens, for their own welfare and for the safety of

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

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

30 (1) No person committed to the custody of the department for the
31 determination of ~~((competency to stand))~~ capacity to proceed to trial
32 under RCW 10.77.060, the restoration ~~((of competency for trial))~~
33 treatment under RCW 10.77.084, 10.77.086, or 10.77.088, or following
34 an acquittal by reason of insanity shall be authorized to leave the
35 facility where the person is confined, except in the following
36 circumstances:

37 (a) In accordance with conditional release or furlough authorized
38 by a court;

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

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

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

7 (2) Unless ordered otherwise by a court, no leave under
8 subsection (1) of this section shall be authorized unless the person
9 who is the subject of the authorization is escorted by a person
10 approved by the secretary. During the authorized leave, the person
11 approved by the secretary must be in visual or auditory contact at
12 all times with the person on authorized leave.

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

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

19 (1) Upon application by the committed or conditionally released
20 person, the secretary shall determine whether or not reasonable
21 grounds exist for release. In making this determination, the
22 secretary may consider the reports filed under RCW 10.77.060,
23 10.77.110, 10.77.140, and 10.77.160, and other reports and
24 evaluations provided by professionals familiar with the case. If the
25 secretary approves the release he or she then shall authorize the
26 person to petition the court.

27 (2) In instances in which persons have not made application for
28 release, but the secretary believes, after consideration of the
29 reports filed under RCW 10.77.060, 10.77.110, 10.77.140, and
30 10.77.160, and other reports and evaluations provided by
31 professionals familiar with the case, that reasonable grounds exist
32 for release, the secretary may petition the court. If the secretary
33 petitions the court for release under this subsection, notice of the
34 petition must be provided to the person who is the subject of the
35 petition and to his or her attorney.

36 (3) The petition shall be served upon the court and the
37 prosecuting attorney. The court, upon receipt of the petition for
38 release, shall within 45 days order a hearing. Continuance of the
39 hearing date shall only be allowed for good cause shown. The

1 prosecuting attorney shall represent the state, and shall have the
2 right to have the person who is the subject of the petition examined
3 by an expert or professional person of the prosecuting attorney's
4 choice. If the secretary is the petitioner, the attorney general
5 shall represent the secretary. If the person who is the subject of
6 the petition is indigent, and the person so requests, the court shall
7 assist the person in obtaining a qualified expert or professional
8 person to examine him or her. An expert or professional person
9 obtained by an indigent person who was committed to state psychiatric
10 care following acquittal by reason of insanity shall be compensated
11 out of funds of the office of public defense as provided in policies
12 and procedures under chapter 2.70 RCW, in a manner consistent with
13 the rules of professional conduct and the standards for indigent
14 defense. If the person who is the subject of the petition has a
15 developmental disability, the examination shall be performed by a
16 developmental disabilities professional. The hearing shall be before
17 a jury if demanded by either the petitioner or the prosecuting
18 attorney. The burden of proof shall be upon the petitioner to show by
19 a preponderance of the evidence that the person who is the subject of
20 the petition no longer presents, as a result of a mental (~~disease or~~
21 ~~defect~~) health condition, a substantial danger to other persons, or
22 a substantial likelihood of committing criminal acts jeopardizing
23 public safety or security, unless kept under further control by the
24 court or other persons or institutions. If the person who is the
25 subject of the petition will be transferred to a state correctional
26 institution or facility upon release to serve a sentence for any
27 class A felony, the petitioner must show that the person's mental
28 (~~disease or defect~~) health condition is manageable within a state
29 correctional institution or facility, but must not be required to
30 prove that the person does not present either a substantial danger to
31 other persons, or a substantial likelihood of committing criminal
32 acts jeopardizing public safety or security, if released.

33 (4) For purposes of this section, a person affected by a mental
34 (~~disease or defect~~) health condition in a state of remission is
35 considered to have a mental (~~disease or defect~~) health condition
36 requiring supervision when the (~~disease~~) condition may, with
37 reasonable medical probability, occasionally become active and, when
38 active, render the person a danger to others. Upon a finding that the
39 person who is the subject of the petition has a mental (~~disease or~~
40 ~~defect~~) health condition in a state of remission under this

1 subsection, the court may deny release, or place or continue such a
2 person on conditional release.

3 (5) Nothing contained in this chapter shall prohibit the patient
4 from petitioning the court for release or conditional release from
5 the institution in which he or she is committed. The petition shall
6 be served upon the court, the prosecuting attorney, and the
7 secretary. Upon receipt of such petition, the secretary shall develop
8 a recommendation as provided in subsection (1) of this section and
9 provide the secretary's recommendation to all parties and the court.
10 The issue to be determined on such proceeding is whether the patient,
11 as a result of a mental (~~(disease or defect)~~) health condition, is a
12 substantial danger to other persons, or presents a substantial
13 likelihood of committing criminal acts jeopardizing public safety or
14 security, unless kept under further control by the court or other
15 persons or institutions.

16 (6) Nothing contained in this chapter shall prohibit the
17 committed person from petitioning for release by writ of habeas
18 corpus.

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

21 (1) Following a (~~(competency)~~) capacity to proceed evaluation
22 under RCW 10.77.060, individuals who are found (~~(not competent to~~
23 ~~stand trial)~~) to lack capacity to proceed and not restorable due to
24 an intellectual or developmental disability, dementia, or traumatic
25 brain injury, shall not be referred for (~~(competency)~~) restoration
26 services.

27 (2) The department shall develop a process for connecting
28 individuals who have been found (~~(not competent to stand)~~) to lack
29 capacity to proceed to trial due to an intellectual or developmental
30 disability, dementia, or traumatic brain injury to available
31 wraparound services and supports in community-based settings, which
32 may include residential supports. The process shall include
33 provisions for individuals who are current clients of the
34 department's developmental disabilities administration or aging and
35 long-term support administration and for individuals who are not
36 current clients of the department.

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

1 (i) Coordinate with the individual's services providers to
2 determine if the individual can return to the same or like services,
3 or determine appropriate new community-based services. This shall
4 include updating the individual's service plan and identifying and
5 coordinating potential funding for any additional supports to
6 stabilize the individual in community-based settings funded by the
7 developmental disabilities administration or aging and long-term
8 support administration so that the individual does not lose existing
9 services, including submitting any exceptions to rule for additional
10 services;

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

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

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

20 (i) Conduct an eligibility determination for services and send
21 referral packets to service providers for all relevant community-
22 based services for which the individual is eligible. This process
23 must include identifying and coordinating funding for any additional
24 supports that are needed to stabilize the individual in any
25 community-based setting funded by the developmental disabilities
26 administration or aging and long-term support administration,
27 including submitting any necessary exceptions to rule for additional
28 services; and

29 (ii) 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, if additional specialized services are available to
33 supplement diversion program services, and assist the individual to
34 access these services.

35 (3) The department shall offer to transition the individual in
36 services either directly from the jail or as soon thereafter as may
37 be practicable, without maintaining the individual at an inpatient
38 facility for longer than is clinically necessary. Nothing in this
39 subsection prohibits the department from returning the individual to
40 their home or to another less restrictive setting if such setting is

1 appropriate, which may include provision of supportive services to
2 help the person maintain stability. The individual is not required to
3 accept developmental disabilities administration, aging and long-term
4 support administration, or other diversionary services as a condition
5 of having the individual's criminal case dismissed without prejudice,
6 provided the individual meets the criteria of subsection (1) of this
7 section.

8 (4) Subject to the availability of funds appropriated for this
9 specific purpose, the department shall develop a program for
10 individuals who have been involved with the criminal justice system
11 and who have been found under RCW 10.77.084 (~~as incompetent to stand~~
12 ~~trial~~) to lack capacity to proceed due to an intellectual or
13 developmental disability, traumatic brain injury, or dementia and who
14 do not meet criteria under other programs in this section. The
15 program must involve wraparound services and housing supports
16 appropriate to the needs of the individual. It is sufficient to meet
17 the criteria for participation in this program if the individual has
18 recently been the subject of criminal charges and was found
19 (~~incompetent to stand trial~~) to lack capacity to proceed due to an
20 intellectual or developmental disability, traumatic brain injury, or
21 dementia.

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

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

30 (2) Within amounts appropriated, the authority shall be
31 responsible for all costs relating to outpatient (~~competency~~)
32 restoration programs.

33 (3) The office of public defense shall be responsible for costs
34 of public defense services, including defense expert and professional
35 services, for indigent persons acquitted by reason of insanity
36 throughout the term of their commitment to state psychiatric care,
37 including during any period of conditional release, until legal
38 termination of commitment and final unconditional release.

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

3 (1) The department shall coordinate with cities, counties,
4 hospitals, and other public and private entities to identify
5 locations that may be commissioned or renovated for use in treating
6 clients committed to the department for ((competency)) capacity to
7 proceed evaluation, ((competency)) restoration, civil conversion, or
8 treatment following acquittal by reason of insanity.

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

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

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

19 The panel shall provide advice regarding all recommendations to the
20 secretary, decisions by the secretary, or actions pending in court:

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

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

29 (a) A psychiatrist;

30 (b) A licensed clinical psychologist;

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

32 (d) A prosecutor or a representative of a prosecutor's
33 association;

34 (e) A representative of law enforcement or a law enforcement
35 association;

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

37 (g) A public defender or a representative of a defender's
38 association.

1 (3) Thirty days prior to issuing a recommendation for conditional
2 release under RCW 10.77.150 or forty-five days prior to issuing a
3 recommendation for release under RCW 10.77.200, the secretary shall
4 submit its recommendation with the committed person's application and
5 the department's risk assessment to the public safety review panel.
6 The public safety review panel shall complete an independent
7 assessment of the public safety risk entailed by the secretary's
8 proposed conditional release recommendation or release recommendation
9 and provide this assessment in writing to the secretary. The public
10 safety review panel may, within funds appropriated for this purpose,
11 request additional evaluations of the committed person. The public
12 safety review panel may indicate whether it is in agreement with the
13 secretary's recommendation, or whether it would issue a different
14 recommendation. The secretary shall provide the panel's assessment
15 when it is received along with any supporting documentation,
16 including all previous reports of evaluations of the committed person
17 in the person's hospital record, to the court, prosecutor in the
18 county that ordered the person's commitment, and counsel for the
19 committed person.

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

28 (5) The department shall provide administrative and financial
29 support to the public safety review panel. The department, in
30 consultation with the public safety review panel, may adopt rules to
31 implement this section.

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

34 (a) Whether the public safety review panel has observed a change
35 in statewide consistency of evaluations and decisions concerning
36 changes in the commitment status of persons found not guilty by
37 reason of insanity;

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

1 (c) Whether further changes in the law are necessary to enhance
2 public safety when (~~incompetency~~) lack of capacity to proceed
3 prevents operation of the criminal justice system and long-term
4 commitment of the criminally insane; and

5 (d) Any other issues the public safety review panel deems
6 relevant.

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

9 Subject to the availability of funds appropriated for this
10 specific purpose, the health care authority shall require the
11 programs it contracts with to increase compensation for staff in
12 outpatient (~~competency~~) restoration programs to provide
13 compensation at competitive levels to improve recruitment and allow
14 for the full implementation of outpatient (~~competency~~) restoration
15 programs.

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

18 (1) Subject to the security and background investigation
19 requirements of the jail, jails shall allow clinical intervention
20 specialists to have access to individuals who are referred to receive
21 services under this chapter and to all records relating to the health
22 or conduct of the individual while incarcerated. Clinical
23 intervention specialists shall support jail health services in
24 providing direct services, enhanced oversight and monitoring of the
25 behavioral health status of participating individuals. Clinical
26 intervention specialists shall work collaboratively with jail health
27 services to ensure appropriate prescriptions, medication compliance
28 monitoring, and access to supportive behavioral health services to
29 the individuals. Clinical intervention specialists shall coordinate
30 with forensic navigators and the department to assist forensic
31 navigators in making recommendations for appropriate placements,
32 which may include recommendations for participation in an outpatient
33 (~~competency~~) restoration program or a diversion program designed
34 for the needs of the individual. The clinical intervention specialist
35 shall notify the department if a participating individual appears to
36 have stabilized in their behavioral health such that a new
37 (~~competency~~) capacity to proceed evaluation is appropriate to

1 reassess the individual's need for (~~competency~~) restoration
2 treatment.

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

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

9 The provisions of chapter 420, Laws of 1989 shall apply equally
10 to persons in the custody of the department on May 13, 1989, who were
11 found by a court to be not guilty by reason of insanity or
12 (~~incompetent to stand~~) to lack capacity to proceed to trial, or who
13 have been found to have committed acts constituting a felony pursuant
14 to RCW 71.05.280(3) and present a substantial likelihood of repeating
15 similar acts, and the secretary shall cause such persons to be
16 evaluated to ascertain if such persons are developmentally disabled
17 for placement in a program specifically reserved for the treatment
18 and training of persons with developmental disabilities.

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

21 For purposes of this chapter, the definitions of terms in this
22 section shall apply.

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

30 (2) "Conviction or other disposition adverse to the subject"
31 means any disposition of charges other than: (a) A decision not to
32 prosecute; (b) a dismissal; or (c) acquittal; with the following
33 exceptions, which shall be considered dispositions adverse to the
34 subject: An acquittal due to a finding of not guilty by reason of
35 insanity and a dismissal by reason of (~~incompetency~~) lack of
36 capacity to proceed, pursuant to chapter 10.77 RCW; and a dismissal
37 entered after a period of probation, suspension, or deferral of
38 sentence.

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

4 (4) "Criminal history record information" means information
5 contained in records collected by criminal justice agencies, other
6 than courts, on individuals, consisting of identifiable descriptions
7 and notations of arrests, detentions, indictments, informations, or
8 other formal criminal charges, and any disposition arising therefrom,
9 including acquittals by reason of insanity, dismissals based on
10 (~~lack of competency~~) lack of capacity to proceed due to a mental
11 health condition, sentences, correctional supervision, and release.

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

18 (a) Posters, announcements, or lists for identifying or
19 apprehending fugitives or wanted persons;

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

23 (c) Court indices and records of public judicial proceedings,
24 court decisions, and opinions, and information disclosed during
25 public judicial proceedings;

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

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

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

35 (g) Announcements of executive clemency;

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

37 (5) "Criminal justice agency" means: (a) A court; or (b) a
38 government agency which performs the administration of criminal
39 justice pursuant to a statute or executive order and which allocates

1 a substantial part of its annual budget to the administration of
2 criminal justice.

3 (6) "Disposition" means the formal conclusion of a criminal
4 proceeding at whatever stage it occurs in the criminal justice
5 system.

6 (7) "Dissemination" means disclosing criminal history record
7 information or disclosing the absence of criminal history record
8 information to any person or agency outside the agency possessing the
9 information, subject to the following exceptions:

10 (a) When criminal justice agencies jointly participate in the
11 maintenance of a single recordkeeping department as an alternative to
12 maintaining separate records, the furnishing of information by that
13 department to personnel of any participating agency is not a
14 dissemination;

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

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

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

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

31 (1) In addition to the disclosure under subsection (5) of this
32 section, public agencies are authorized to release information to the
33 public regarding sex offenders and kidnapping offenders when the
34 agency determines that disclosure of the information is relevant and
35 necessary to protect the public and counteract the danger created by
36 the particular offender. This authorization applies to information
37 regarding: (a) Any person adjudicated or convicted of a sex offense
38 as defined in RCW 9A.44.128 or a kidnapping offense as defined by RCW
39 9A.44.128; (b) any person under the jurisdiction of the indeterminate

1 sentence review board as the result of a sex offense or kidnapping
2 offense; (c) any person committed as a sexually violent predator
3 under chapter 71.09 RCW or as a sexual psychopath under chapter 71.06
4 RCW; (d) any person found not guilty of a sex offense or kidnapping
5 offense by reason of insanity under chapter 10.77 RCW; and (e) any
6 person found (~~incompetent to stand~~) to lack capacity to proceed to
7 trial due to a mental health condition for a sex offense or
8 kidnapping offense and subsequently committed under chapter 71.05 or
9 71.34 RCW.

10 (2) Except for the information specifically required under
11 subsection (5) of this section, the extent of the public disclosure
12 of relevant and necessary information shall be rationally related to:

13 (a) The level of risk posed by the offender to the community; (b) the
14 locations where the offender resides, expects to reside, or is
15 regularly found; and (c) the needs of the affected community members
16 for information to enhance their individual and collective safety.

17 (3) Except for the information specifically required under
18 subsection (5) of this section, local law enforcement agencies shall
19 consider the following guidelines in determining the extent of a
20 public disclosure made under this section: (a) For offenders
21 classified as risk level I, the agency shall share information with
22 other appropriate law enforcement agencies and, if the offender is a
23 student, the public or private school regulated under Title 28A RCW
24 or chapter 72.40 RCW which the offender is attending, or planning to
25 attend. The agency may disclose, upon request, relevant, necessary,
26 and accurate information to any victim or witness to the offense, any
27 individual community member who lives near the residence where the
28 offender resides, expects to reside, or is regularly found, and any
29 individual who requests information regarding a specific offender;
30 (b) for offenders classified as risk level II, the agency may also
31 disclose relevant, necessary, and accurate information to public and
32 private schools, child day care centers, family day care providers,
33 public libraries, businesses and organizations that serve primarily
34 children, women, or vulnerable adults, and neighbors and community
35 groups near the residence where the offender resides, expects to
36 reside, or is regularly found; (c) for offenders classified as risk
37 level III, the agency may also disclose relevant, necessary, and
38 accurate information to the public at large; and (d) because more
39 localized notification is not feasible and homeless and transient
40 offenders may present unique risks to the community, the agency may

1 also disclose relevant, necessary, and accurate information to the
2 public at large for offenders registered as homeless or transient.

3 (4) The county sheriff with whom an offender classified as risk
4 level III is registered shall release a sex offender community
5 notification that conforms to the guidelines established under RCW
6 4.24.5501.

7 (5)(a) When funded by federal grants or other sources, the
8 Washington association of sheriffs and police chiefs shall create and
9 maintain a statewide registered kidnapping and sex offender website,
10 which shall be available to the public. The website shall post all
11 level III and level II registered sex offenders, level I registered
12 sex offenders only during the time they are out of compliance with
13 registration requirements under RCW 9A.44.130 or if lacking a fixed
14 residence as provided in RCW 9A.44.130, and all registered kidnapping
15 offenders in the state of Washington.

16 (i) For level III offenders, the website shall contain, but is
17 not limited to, the registered sex offender's name, relevant criminal
18 convictions, address by hundred block, physical description, and
19 photograph. The website shall provide mapping capabilities that
20 display the sex offender's address by hundred block on a map. The
21 website shall allow citizens to search for registered sex offenders
22 within the state of Washington by county, city, zip code, last name,
23 and address by hundred block.

24 (ii) For level II offenders, and level I sex offenders during the
25 time they are out of compliance with registration requirements under
26 RCW 9A.44.130, the website shall contain, but is not limited to, the
27 same information and functionality as described in (a)(i) of this
28 subsection, provided that it is permissible under state and federal
29 law. If it is not permissible, the website shall be limited to the
30 information and functionality that is permissible under state and
31 federal law.

32 (iii) For kidnapping offenders, the website shall contain, but is
33 not limited to, the same information and functionality as described
34 in (a)(i) of this subsection, provided that it is permissible under
35 state and federal law. If it is not permissible, the website shall be
36 limited to the information and functionality that is permissible
37 under state and federal law.

38 (b) Law enforcement agencies must provide information requested
39 by the Washington association of sheriffs and police chiefs to

1 administer the statewide registered kidnapping and sex offender
2 website.

3 (c) (i) Within five business days of the Washington association of
4 sheriffs and police chiefs receiving any public record request under
5 chapter 42.56 RCW for sex offender and kidnapping offender
6 information, records or website data it holds or maintains pursuant
7 to this section or a unified sex offender registry, the Washington
8 association of sheriffs and police chiefs shall refer the requester
9 in writing to the appropriate law enforcement agency or agencies for
10 submission of such a request. The Washington association of sheriffs
11 and police chiefs shall have no further obligation under chapter
12 42.56 RCW for responding to such a request.

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

15 (6) (a) Law enforcement agencies responsible for the registration
16 and dissemination of information regarding offenders required to
17 register under RCW 9A.44.130 shall assign a risk level classification
18 to all offenders after consideration of: (i) Any available risk level
19 classifications provided by the department of corrections, the
20 department of social and health services, and the indeterminate
21 sentence review board; (ii) the agency's own application of a sex
22 offender risk assessment tool; and (iii) other information and
23 aggravating or mitigating factors known to the agency and deemed
24 rationally related to the risk posed by the offender to the community
25 at large.

26 (b) A sex offender shall be classified as a risk level I if his
27 or her risk assessment and other information or factors deemed
28 relevant by the law enforcement agency indicate he or she is at a low
29 risk to sexually reoffend within the community at large. A sex
30 offender shall be classified as a risk level II if his or her risk
31 assessment and other information or factors deemed relevant by the
32 law enforcement agency indicate he or she is at a moderate risk to
33 sexually reoffend within the community at large. A sex offender shall
34 be classified as a risk level III if his or her risk assessment and
35 other information or factors deemed relevant by the law enforcement
36 agency indicate he or she is at a high risk to sexually reoffend
37 within the community at large.

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

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

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

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

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

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

37 (11) As used in this section, "law enforcement agency" means a
38 general authority Washington law enforcement agency as defined in RCW
39 10.93.020.

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

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

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

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

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

16 (2)(a) A person, whether an adult or juvenile, is guilty of the
17 crime of unlawful possession of a firearm in the second degree, if
18 the person does not qualify under subsection (1) of this section for
19 the crime of unlawful possession of a firearm in the first degree and
20 the person owns, accesses, has in the person's custody, control, or
21 possession, or receives any firearm:

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

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

26 (B) Any of the following crimes when committed by one family or
27 household member against another or by one intimate partner against
28 another, as those terms are defined by the statutes in effect at the
29 time of the commission of the crime, committed on or after July 1,
30 1993: Assault in the fourth degree, coercion, stalking, reckless
31 endangerment, criminal trespass in the first degree, or violation of
32 the provisions of a protection order or no-contact order restraining
33 the person or excluding the person from a residence (RCW 10.99.040 or
34 any of the former RCW 26.50.060, 26.50.070, and 26.50.130);

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

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

12 (E) A violation of the provisions of a protection order under
13 chapter 7.105 RCW restraining the person or excluding the person from
14 a residence, when committed by one family or household member against
15 another or by one intimate partner against another, committed on or
16 after July 1, 2022; or

17 (F) A violation of the provisions of an order to surrender and
18 prohibit weapons, an extreme risk protection order, or the provisions
19 of any other protection order or no-contact order not included under
20 (a)(i) (B) or (E) of this subsection restraining the person or
21 excluding the person from a residence, committed on or after July 23,
22 2023;

23 (ii) During any period of time that the person is subject to a
24 protection order, no-contact order, or restraining order by a court
25 issued under chapter 7.105, 9A.40, 9A.44, 9A.46, 9A.88, 10.99, 26.09,
26 26.26A, or 26.26B RCW or any of the former chapters 7.90, 7.92,
27 10.14, and 26.50 RCW that:

28 (A) Was issued after a hearing for which the person received
29 actual notice, and at which the person had an opportunity to
30 participate, whether the court then issues a full order or reissues a
31 temporary order. If the court enters an agreed order by the parties
32 without a hearing, such an order meets the requirements of this
33 subsection;

34 (B) Restrains the person from harassing, stalking, or threatening
35 the person protected under the order or child of the person or
36 protected person, or others identified in the order, or engaging in
37 other conduct that would place the protected person in reasonable
38 fear of bodily injury to the protected person or child or others
39 identified in the order; and

1 (C) (I) Includes a finding that the person represents a credible
2 threat to the physical safety of the protected person or child or
3 others identified in the order, or by its terms explicitly prohibits
4 the use, attempted use, or threatened use of physical force against
5 the protected person or child or other persons that would reasonably
6 be expected to cause bodily injury; or

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

11 (iii) After having previously been involuntarily committed based
12 on a mental disorder under RCW 71.05.240, 71.05.320, 71.34.740,
13 71.34.750, chapter 10.77 RCW, or equivalent statutes of another
14 jurisdiction, unless his or her right to possess a firearm has been
15 restored as provided in RCW 9.41.047;

16 (iv) After dismissal of criminal charges based on (~~incompetency~~
17 ~~to stand~~) lack of capacity to proceed to trial under RCW 10.77.088
18 when the court has made a finding indicating that the defendant has a
19 history of one or more violent acts, unless his or her right to
20 possess a firearm has been restored as provided in RCW 9.41.047;

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

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

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

27 (3) A person shall not be precluded from possession of a firearm
28 if the conviction has been the subject of a pardon, annulment,
29 certificate of rehabilitation, or other equivalent procedure based on
30 a finding of the rehabilitation of the person convicted or the
31 conviction or disposition has been the subject of a pardon,
32 annulment, or other equivalent procedure based on a finding of
33 innocence. Where no record of the court's disposition of the charges
34 can be found, there shall be a rebuttable presumption that the person
35 was not convicted of the charge.

36 (4) Notwithstanding subsection (1) or (2) of this section, a
37 person convicted or found not guilty by reason of insanity of an
38 offense prohibiting the possession of a firearm under this section
39 other than murder, manslaughter, robbery, rape, indecent liberties,
40 arson, assault, kidnapping, extortion, burglary, or violations with

1 respect to controlled substances under RCW 69.50.401 and 69.50.410,
2 who received a probationary sentence under RCW 9.95.200, and who
3 received a dismissal of the charge under RCW 9.95.240, shall not be
4 precluded from possession of a firearm as a result of the conviction
5 or finding of not guilty by reason of insanity.

6 (5) In addition to any other penalty provided for by law, if a
7 person under the age of 18 years is found by a court to have
8 possessed a firearm in a vehicle in violation of subsection (1) or
9 (2) of this section or to have committed an offense while armed with
10 a firearm during which offense a motor vehicle served an integral
11 function, the court shall notify the department of licensing within
12 24 hours and the person's privilege to drive shall be revoked under
13 RCW 46.20.265, unless the offense is the juvenile's first offense in
14 violation of this section and has not committed an offense while
15 armed with a firearm, an unlawful possession of a firearm offense, or
16 an offense in violation of chapter 66.44, 69.52, 69.41, or 69.50 RCW.

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

29 (7)(a) A person, whether an adult or a juvenile, commits the
30 civil infraction of unlawful possession of a firearm if the person
31 has in the person's possession or has in the person's control a
32 firearm after the person files a voluntary waiver of firearm rights
33 under RCW 9.41.350 and the form has been accepted by the clerk of the
34 court and the voluntary waiver has not been lawfully revoked.

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

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

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

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

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

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

10 (1)(a) At the time a person is convicted or found not guilty by
11 reason of insanity of an offense making the person ineligible to
12 possess a firearm under state or federal law, including if the person
13 was convicted of possession under RCW 69.50.4011, 69.50.4013,
14 69.50.4014, or 69.41.030, or at the time a person is committed by
15 court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or
16 chapter 10.77 RCW for treatment for a mental disorder, or at the time
17 that charges are dismissed based on (~~incompetency to stand~~) lack of
18 capacity to proceed to trial under RCW 10.77.088 and the court makes
19 a finding that the person has a history of one or more violent acts,
20 the court shall notify the person, orally and in writing, that the
21 person must immediately surrender all firearms and any concealed
22 pistol license and that the person may not possess a firearm unless
23 the person's right to do so is restored by the superior court that
24 issued the order.

25 (b) The court shall forward within three judicial days after
26 conviction, finding of not guilty by reason of insanity, entry of the
27 commitment order, or dismissal of charges, a copy of the person's
28 driver's license or identicard, or comparable information such as the
29 person's name, address, and date of birth, along with the date of
30 conviction or commitment, or date charges are dismissed, to the
31 department of licensing and to the Washington state patrol firearms
32 background check program. When a person is committed by court order
33 under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter
34 10.77 RCW, for treatment for a mental disorder, or when a person's
35 charges are dismissed based on (~~incompetency to stand trial~~) lack
36 of capacity to proceed to trial under RCW 10.77.088 and the court
37 makes a finding that the person has a history of one or more violent
38 acts, the court also shall forward, within three judicial days after
39 entry of the commitment order, or dismissal of charges, a copy of the

1 person's driver's license, or comparable information, along with the
2 date of commitment or date charges are dismissed, to the national
3 instant criminal background check system index, denied persons file,
4 created by the federal Brady handgun violence prevention act (P.L.
5 103-159) and to the Washington state patrol. The petitioning party
6 shall provide the court with the information required. If more than
7 one commitment order is entered under one cause number, only one
8 notification to the department of licensing, the Washington state
9 patrol firearms background check program, and the national instant
10 criminal background check system is required.

11 (2) Upon receipt of the information provided for by subsection
12 (1) of this section, the department of licensing shall determine if
13 the person has a concealed pistol license. If the person has a
14 concealed pistol license, the department of licensing shall
15 immediately notify the license-issuing authority which, upon receipt
16 of such notification, shall immediately revoke the license.

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

30 (b) The petition must be brought in the superior court that
31 ordered the involuntary commitment or dismissed the charges based on
32 (~~(incompetency to stand)~~) lack of capacity to proceed to trial or the
33 superior court of the county in which the petitioner resides.

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

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

1 (ii) The person petitioning for restoration of firearm rights has
2 successfully managed the condition related to the commitment or
3 detention or (~~incompetency~~) lack of capacity to proceed due to a
4 mental health condition;

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

7 (iv) The symptoms related to the commitment or detention or
8 (~~incompetency~~) lack of capacity to proceed due to a mental health
9 condition are not reasonably likely to recur.

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

18 (e) If the person seeking restoration of firearm rights seeks
19 restoration after having been detained under RCW 71.05.150 or
20 71.05.153, the state shall bear the burden of proof to show, by a
21 preponderance of the evidence, that the person does not meet the
22 restoration criteria in (c) of this subsection.

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

38 (4) No person who has been found not guilty by reason of insanity
39 may petition a court for restoration of the right to possess a

1 firearm unless the person meets the requirements for the restoration
2 of the right to possess a firearm under RCW 9.41.041.

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

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

7 (a) Found concealed on a person not authorized by RCW 9.41.060 or
8 9.41.070 to carry a concealed pistol: PROVIDED, That it is an
9 absolute defense to forfeiture if the person possessed a valid
10 Washington concealed pistol license within the preceding two years
11 and has not become ineligible for a concealed pistol license in the
12 interim. Before the firearm may be returned, the person must pay the
13 past due renewal fee and the current renewal fee;

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

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

18 (d) In the possession or under the control of a person at the
19 time the person committed or was arrested for committing a felony or
20 committing a nonfelony crime in which a firearm was used or
21 displayed;

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

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

31 (g) In the possession of a person found to have (~~been mentally~~
32 ~~incompetent~~)) lacked capacity to proceed due to a mental health
33 condition while in possession of a firearm when apprehended or who is
34 thereafter committed pursuant to chapter 10.77 RCW or committed for
35 mental health treatment under chapter 71.05 RCW;

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

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

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

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

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

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

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

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

38 (c) Antique firearms and firearms recognized as curios, relics,
39 and firearms of particular historical significance by the United
40 States treasury department bureau of alcohol, tobacco, firearms, and

1 explosives are exempt from destruction and shall be disposed of by
2 auction or trade to licensed dealers.

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

12 (3) The court shall order the firearm returned to the owner upon
13 a showing that there is no probable cause to believe a violation of
14 subsection (1) of this section existed or the firearm was stolen from
15 the owner or the owner neither had knowledge of nor consented to the
16 act or omission involving the firearm which resulted in its
17 forfeiture.

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

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

29 The court may order an offender whose sentence includes community
30 placement or community supervision to undergo a mental status
31 evaluation and to participate in available outpatient mental health
32 treatment, if the court finds that reasonable grounds exist to
33 believe that the offender is a mentally ill person as defined in RCW
34 71.24.025, and that this condition is likely to have influenced the
35 offense. An order requiring mental status evaluation or treatment may
36 be based on a presentence report and, if applicable, mental status
37 evaluations that have been filed with the court to determine the
38 offender's (~~competency~~) capacity to stand trial or eligibility for

1 a defense of insanity. The court may order additional evaluations at
2 a later date if deemed appropriate.

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

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

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

20 (b) Proceedings related to (~~competency to stand~~) capacity to
21 proceed to trial on the pending charge, from the entry of an
22 evaluation order to the entry of a court order finding the person
23 (~~competent~~) has capacity to proceed; and

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

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

37 (3) For good cause shown in open court, with the person or his or
38 her counsel having the right to be present, the court having

1 jurisdiction of the matter may grant any necessary or reasonable
2 continuance.

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (3) The court shall not order a defendant to pay costs if the
40 defendant at the time of sentencing is indigent. In determining the

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

12 (4) A defendant who has been ordered to pay costs and who has not
13 willfully failed to pay the obligation, as described in RCW
14 9.94A.6333, 9.94B.040, and 10.01.180, may at any time petition the
15 sentencing court for remission of the payment of costs or of any
16 unpaid portion thereof. If it appears to the satisfaction of the
17 court that payment of the amount due will impose manifest hardship on
18 the defendant or the defendant's immediate family, the court may
19 remit all or part of the amount due in costs, modify the method of
20 payment under RCW 10.01.170, or convert the unpaid costs to community
21 restitution hours, if the jurisdiction operates a community
22 restitution program, at the rate of no less than the state minimum
23 wage established in RCW 49.46.020 for each hour of community
24 restitution. Manifest hardship exists where the defendant is indigent
25 as defined in subsection (3) of this section.

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

1 defendant receives at a state hospital or other facility are not a
2 cost of prosecution and shall be recoverable under RCW 10.77.250 and
3 70.48.130, chapter 43.20B RCW, and any other applicable statute.

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

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

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

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

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

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

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

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

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

35 (ii) Any compensation forgone by a member employed by the state
36 or a local government employer during the 2011-2013 fiscal biennium
37 as a result of reduced work hours, mandatory leave without pay,
38 temporary layoffs, or reductions to current pay if the reduced
39 compensation is an integral part of the employer's expenditure

1 reduction efforts, as certified by the employer. Reductions to
2 current pay shall not include elimination of previously agreed upon
3 future salary increases; and

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

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

15 (7)(a) "Compensation earnable" for members, means salaries or
16 wages earned by a member during a payroll period for personal
17 services, including overtime payments, and shall include wages and
18 salaries deferred under provisions established pursuant to sections
19 403(b), 414(h), and 457 of the United States internal revenue code,
20 but shall exclude nonmoney maintenance compensation and lump sum or
21 other payments for deferred annual sick leave, unused accumulated
22 vacation, unused accumulated annual leave, or any form of severance
23 pay.

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

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

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

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

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

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

10 (iv) Compensation that a member would have received but for a
11 disability occurring in the line of duty only as authorized by RCW
12 41.37.060;

13 (v) Compensation that a member receives due to participation in
14 the leave sharing program only as authorized by RCW 41.04.650 through
15 41.04.670; and

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

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

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

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

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

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

32 (i) The Washington state department of corrections;

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

34 (iii) The Washington state gambling commission;

35 (iv) The Washington state patrol;

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

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

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

39 (viii) The Washington state department of children, youth, and
40 families;

1 (ix) The Washington state department of social and health
2 services;

3 (x) Any county corrections department;

4 (xi) Any city corrections department not covered under chapter
5 41.28 RCW;

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

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

14 (b) Except as otherwise specifically provided in this chapter,
15 "employer" does not include a government contractor. For purposes of
16 this subsection, a "government contractor" is any entity, including a
17 partnership, limited liability company, for-profit or nonprofit
18 corporation, or person, that provides services pursuant to a contract
19 with an employer. The determination whether an employer-employee
20 relationship has been established is not based on the relationship
21 between a government contractor and an employer, but is based solely
22 on the relationship between a government contractor's employee and an
23 employer under this chapter.

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

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

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

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

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

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

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

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

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

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

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

17 (i) Juvenile rehabilitation administration institutions, not
18 including community facilities;

19 (ii) Mental health hospitals;

20 (iii) Child study and treatment centers; or

21 (iv) Institutions or residential sites that serve developmentally
22 disabled patients or offenders, or perform ((competency)) restoration
23 treatment services, except for state-operated living alternatives
24 facilities;

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

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

36 (g) Whose primary responsibility is to supervise members eligible
37 under this subsection.

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

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

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

6 (23) "Regular interest" means such rate as the director may
7 determine.

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

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

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

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

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

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

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

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

33 (b) A member shall receive a total of not more than twelve
34 service credit months of service for such calendar year. If an
35 individual is employed in an eligible position by one or more
36 employers the individual shall receive no more than one service
37 credit month during any calendar month in which multiple service for
38 ninety or more hours is rendered.

39 (c) Reduction efforts such as furloughs, reduced work hours,
40 mandatory leave without pay, temporary layoffs, or other similar

1 situations as contemplated by subsection (5)(b)(iii) of this section
2 do not result in a reduction in service credit that otherwise would
3 have been earned for that month of work, and the member shall receive
4 the full service credit for the hours that were scheduled to be
5 worked before the reduction.

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

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

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

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

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

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

19 The definitions in this section apply throughout this chapter
20 unless the context clearly requires otherwise.

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

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

25 (a) Statutory, regulatory, fiscal, medical, or scientific
26 standards;

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

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

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

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

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

33 (6) "Deidentified" means health information that does not
34 identify an individual and with respect to which there is no
35 reasonable basis to believe that the information can be used to
36 identify an individual.

37 (7) "Department" means the department of social and health
38 services.

1 (8) "Designated crisis responder" has the same meaning as in RCW
2 71.05.020 or 71.34.020, as applicable.

3 (9) "Detention" or "detain" has the same meaning as in RCW
4 71.05.020.

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

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

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

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

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

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

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

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

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

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

39 (18) "Health care operations" means any of the following
40 activities of a health care provider, health care facility, or third-

1 party payor to the extent that the activities are related to
2 functions that make an entity a health care provider, a health care
3 facility, or a third-party payor:

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

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

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

26 (d) Conducting or arranging for medical review, legal services,
27 and auditing functions, including fraud and abuse detection and
28 compliance programs;

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

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

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

39 (ii) Customer service, including the provision of data analyses
40 for policyholders, plan sponsors, or other customers, provided that

1 health care information is not disclosed to such policyholder, plan
2 sponsor, or customer;

3 (iii) Resolution of internal grievances;

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

10 (v) Consistent with applicable legal requirements, creating
11 deidentified health care information or a limited data set for the
12 benefit of the health care provider, health care facility, or third-
13 party payor.

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

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

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

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

23 (23) "Information and records related to mental health services"
24 means a type of health care information that relates to all
25 information and records compiled, obtained, or maintained in the
26 course of providing services by a mental health service agency or
27 mental health professional to persons who are receiving or have
28 received services for mental illness. The term includes mental health
29 information contained in a medical bill, registration records, as
30 defined in RCW 70.97.010, and all other records regarding the person
31 maintained by the department, by the authority, by behavioral health
32 administrative services organizations and their staff, managed care
33 organizations contracted with the authority under chapter 74.09 RCW
34 and their staff, and by treatment facilities. The term further
35 includes documents of legal proceedings under chapter 71.05, 71.34,
36 or 10.77 RCW, or somatic health care information. For health care
37 information maintained by a hospital as defined in RCW 70.41.020 or a
38 health care facility or health care provider that participates with a
39 hospital in an organized health care arrangement defined under
40 federal law, "information and records related to mental health

1 services" is limited to information and records of services provided
2 by a mental health professional or information and records of
3 services created by a hospital-operated community behavioral health
4 program as defined in RCW 71.24.025. The term does not include
5 psychotherapy notes.

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

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

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

18 (27) "Local public health officer" has the same meaning as in RCW
19 70.24.017.

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

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

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

30 (31) "Mental health service agency" means a public or private
31 agency that provides services to persons with mental disorders as
32 defined under RCW 71.05.020 or 71.34.020 and receives funding from
33 public sources. This includes evaluation and treatment facilities as
34 defined in RCW 71.34.020, community mental health service delivery
35 systems, or community behavioral health programs, as defined in RCW
36 71.24.025, and facilities conducting (~~competency~~) capacity to
37 proceed evaluations and restoration under chapter 10.77 RCW.

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

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

1 (34) "Patient" means an individual who receives or has received
2 health care. The term includes a deceased individual who has received
3 health care.

4 (35) "Payment" means:

5 (a) The activities undertaken by:

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

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

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

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

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

20 (iii) Billing, claims management, collection activities,
21 obtaining payment under a contract for reinsurance, including stop-
22 loss insurance and excess of loss insurance, and related health care
23 data processing;

24 (iv) Review of health care services with respect to medical
25 necessity, coverage under a health plan, appropriateness of care, or
26 justification of charges;

27 (v) Utilization review activities, including precertification and
28 preauthorization of services, and concurrent and retrospective review
29 of services; and

30 (vi) Disclosure to consumer reporting agencies of any of the
31 following health care information relating to collection of premiums
32 or reimbursement:

33 (A) Name and address;

34 (B) Date of birth;

35 (C) Social security number;

36 (D) Payment history;

37 (E) Account number; and

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

1 (36) "Person" means an individual, corporation, business trust,
2 estate, trust, partnership, association, joint venture, government,
3 governmental subdivision or agency, or any other legal or commercial
4 entity.

5 (37) "Professional person" has the same meaning as in RCW
6 71.05.020.

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

9 (39) "Psychotherapy notes" means notes recorded, in any medium,
10 by a mental health professional documenting or analyzing the contents
11 of conversations during a private counseling session or group, joint,
12 or family counseling session, and that are separated from the rest of
13 the individual's medical record. The term excludes mediation
14 prescription and monitoring, counseling session start and stop times,
15 the modalities and frequencies of treatment furnished, results of
16 clinical tests, and any summary of the following items: Diagnosis,
17 functional status, the treatment plan, symptoms, prognosis, and
18 progress to date.

19 (40) "Reasonable fee" means the charges for duplicating or
20 searching the record, but shall not exceed sixty-five cents per page
21 for the first thirty pages and fifty cents per page for all other
22 pages. In addition, a clerical fee for searching and handling may be
23 charged not to exceed fifteen dollars. These amounts shall be
24 adjusted biennially in accordance with changes in the consumer price
25 index, all consumers, for Seattle-Tacoma metropolitan statistical
26 area as determined by the secretary of health. However, where editing
27 of records by a health care provider is required by statute and is
28 done by the provider personally, the fee may be the usual and
29 customary charge for a basic office visit.

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

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

33 (43) "Serious violent offense" has the same meaning as in RCW
34 9.94A.030.

35 (44) "Sexually transmitted infection" or "sexually transmitted
36 disease" has the same meaning as "sexually transmitted disease" in
37 RCW 70.24.017.

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

1 (46) "Third-party payor" means an insurer regulated under Title
2 48 RCW authorized to transact business in this state or other
3 jurisdiction, including a health care service contractor, and health
4 maintenance organization; or an employee welfare benefit plan,
5 excluding fitness or wellness plans; or a state or federal health
6 benefit program.

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

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

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

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

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

33 (i) Employed by the facility;

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

35 (iii) Who is a designated crisis responder;

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

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

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

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

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

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

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

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

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

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

29 (ii) To a court or its designee in which a motion under chapter
30 10.77 RCW has been made for involuntary medication of a defendant for
31 the purpose of (~~competency~~) restoration treatment.

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

35 (e)(i) When a mental health professional or designated crisis
36 responder is requested by a representative of a law enforcement or
37 corrections agency, including a police officer, sheriff, community
38 corrections officer, a municipal attorney, or prosecuting attorney to
39 undertake an investigation or provide treatment under RCW 71.05.150,
40 10.31.110, or 71.05.153, the mental health professional or designated

1 crisis responder shall, if requested to do so, advise the
2 representative in writing of the results of the investigation
3 including a statement of reasons for the decision to detain or
4 release the person investigated. The written report must be submitted
5 within seventy-two hours of the completion of the investigation or
6 the request from the law enforcement or corrections representative,
7 whichever occurs later.

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

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

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

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

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

37 (i)(i) To appropriate corrections and law enforcement agencies
38 all necessary and relevant information in the event of a crisis or
39 emergent situation that poses a significant and imminent risk to the
40 public. The mental health service agency or its employees are not

1 civilly liable for the decision to disclose or not so long as the
2 decision was reached in good faith and without gross negligence.

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

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

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

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

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

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

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

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

38 (iii) Disclosure under this subsection is mandatory for the
39 purposes of the federal health insurance portability and
40 accountability act;

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

12 (p) Pursuant to lawful order of a court, including a tribal
13 court;

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

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

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

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

38 (u) To a licensed physician or psychiatric advanced registered
39 nurse practitioner who has determined that the life or health of the
40 person is in danger and that treatment without the information and

1 records related to mental health services could be injurious to the
2 patient's health. Disclosure must be limited to the portions of the
3 records necessary to meet the medical emergency;

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

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

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

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

19 (iii) Psychotherapy notes may not be released without
20 authorization of the patient who is the subject of the request for
21 release of information;

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

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

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

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

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

32 (bb)(i) To the secretary of social and health services and the
33 director of the health care authority for either program evaluation
34 or research, or both so long as the secretary or director, where
35 applicable, adopts rules for the conduct of the evaluation or
36 research, or both. Such rules must include, but need not be limited
37 to, the requirement that all evaluators and researchers sign an oath
38 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~~) lack of capacity to proceed, in a civil commitment
3 proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor,
4 a 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~~) capacity 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~~) capacity 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~~) lack of capacity to
19 proceed 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~~) lack of capacity to
20 proceed 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)~~) as lacking capacity to
34 proceed in a court 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~~) to lack capacity to
2 proceed as a consequence of receiving evaluation or treatment for a
3 behavioral health disorder. (~~Competency~~) Capacity to proceed may
4 not 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)~~) lack
7 capacity to proceed and criminal charges have been dismissed pursuant
8 to RCW 10.77.086(7), and has committed acts constituting a felony,
9 and as a result of a behavioral health disorder, presents a
10 substantial 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)~~) lack of
16 capacity to proceed is for a felony classified as violent under RCW
17 9.94A.030, the court shall determine whether the acts the person
18 committed 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~~) lack
10 capacity to proceed pursuant to RCW 10.77.086(7), then the
11 professional person in charge of the treatment facility or his or her
12 professional designee or the designated crisis responder may directly
13 file a petition for 180-day treatment under RCW 71.05.280(3), or for
14 90-day treatment under RCW 71.05.280 (1), (2), or (4). No petition
15 for 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))~~ lack
10 capacity to proceed pursuant to RCW 10.77.086(7), the appointed
11 professional person under this section shall be a developmental
12 disabilities 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))~~ to lack capacity to
19 proceed to trial due to a mental health condition, or who have been
20 found to 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~~) lack capacity to proceed pursuant to RCW 10.77.086(7);
30 or

31 (iv) Release of a person who has been found not guilty by reason
32 of insanity of a sexually violent offense pursuant to RCW
33 10.77.020(3).

34 (b) The agency shall provide the prosecuting agency with all
35 relevant information including but not limited to the following
36 information:

37 (i) A complete copy of the institutional records compiled by the
38 department of corrections relating to the person, and any such out-
39 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~~) lack capacity to proceed to trial is about to
4 be released, or has been released, pursuant to RCW 10.77.086(7); (d)
5 a 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~~) to lack capacity to proceed to
36 trial due to a mental health condition, and is about to be or has
37 been released pursuant to RCW 10.77.086(7), and his or her commitment
38 is sought pursuant to subsection (1) of this section, the court shall
39 first hear evidence and determine whether the person did commit the
40 act or acts charged if the court did not enter a finding prior to

1 dismissal under RCW 10.77.086(7) that the person committed the act or
2 acts 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~~) lacking
7 capacity to proceed, shall apply. After hearing evidence on this
8 issue, the court shall make specific findings on whether the person
9 did commit the act or acts charged, the extent to which the person's
10 (~~incompetence~~) lack of capacity to proceed or developmental
11 disability affected the outcome of the hearing, including its effect
12 on the person's ability to consult with and assist counsel and to
13 testify on his or her own behalf, the extent to which the evidence
14 could be reconstructed without the assistance of the person, and the
15 strength of the prosecution's case. If, after the conclusion of the
16 hearing on this issue, the court finds, beyond a reasonable doubt,
17 that the person did commit the act or acts charged, it shall enter a
18 final order, appealable by the person, on that issue, and may proceed
19 to consider whether the person should be committed pursuant to this
20 section.

21 (3) Except as otherwise provided in this chapter, the state shall
22 comply with RCW 10.77.220 while confining the person. During all
23 court proceedings where the person is present, the person shall be
24 detained in a secure facility. If the proceedings last more than one
25 day, the person may be held in the county jail for the duration of
26 the proceedings, except the person may be returned to the
27 department's custody on weekends and court holidays if the court
28 deems such a transfer feasible. The county shall be entitled to
29 reimbursement for the cost of housing and transporting the person
30 pursuant to rules adopted by the secretary. The department shall not
31 place the person, even temporarily, in a facility on the grounds of
32 any state mental facility or regional habilitation center because
33 these institutions are insufficiently secure for this population.

34 (4) A court has jurisdiction to order a less restrictive
35 alternative placement only after a hearing ordered pursuant to RCW
36 71.09.090 following initial commitment under this section and in
37 accord with the provisions of this chapter.

38 **Sec. 55.** RCW 71A.12.025 and 1998 c 297 s 5 are each amended to
39 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))~~ to lack capacity to
11 proceed to trial due to a mental health condition or not guilty by
12 reason of insanity.

13 The legislature finds, however, that the use of civil commitment
14 procedures under chapter 71.05 RCW to effect state control over
15 dangerous ~~((developmentally—disabled—persons))~~ individuals with
16 developmental disabilities has resulted in their commitment to
17 institutions for the ~~((mentally—ill))~~ individuals with mental
18 illness. The legislature finds that existing programs in mental
19 institutions may be inappropriate for persons who are
20 ~~((developmentally—disabled))~~ individuals with developmental
21 disabilities because the services provided in mental institutions are
22 oriented to persons with mental illness, a condition not necessarily
23 associated with developmental disabilities.

24 Therefore, the legislature believes that, where appropriate, and
25 subject to available funds, persons with developmental disabilities
26 who have been charged with crimes that involve a threat to public
27 safety or security and have been found ~~((incompetent to stand))~~ to
28 lack capacity to proceed to trial due to a mental health condition or
29 not guilty by reason of insanity should receive state services
30 addressing their needs, that such services must be provided in
31 conformance with an individual habilitation plan, and that their
32 initial treatment should be separate and discrete from treatment for
33 persons involved in any other treatment or habilitation program in a
34 manner consistent with the needs of public safety.

35 **Sec. 56.** RCW 74.13.075 and 2009 c 520 s 61 and 2009 c 250 s 2
36 are each reenacted and amended to read as follows:

37 (1) For the purposes of funds appropriated for the treatment of
38 sexually aggressive youth, the term "sexually aggressive youth" means
39 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~~) lacking capacity
10 to proceed to trial due to a mental health condition for acts that
11 could be prosecuted as sex offenses as defined by RCW 9.94A.030 if
12 the juvenile was over twelve years of age, or (~~competent to stand~~)
13 having capacity 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 lack of capacity to proceed to
9 trial due 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
12 effect."

13 Correct the title.

EFFECT: Changes terminology throughout the bill as follows:

- (1) "Ability to proceed" is changed to "capacity to proceed";
- (2) "Inability to proceed" is changed to "lack of capacity to proceed";
- (3) "Able to proceed" is changed to "has capacity to proceed";
- (4) "Unable to proceed" is changed to "lacks capacity to proceed"; and
- (5) "Ability to proceed evaluation" is changed to "capacity to proceed evaluation."

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