

## SIXTY SEVENTH LEGISLATURE - REGULAR SESSION

## SEVENTY FIFTH DAY

House Chamber, Olympia, Friday, March 26, 2021

The House was called to order at 9:55 a.m. by the Speaker (Representative Lovick presiding).

Reading of the Journal of the previous day was dispensed with and it was ordered to stand approved.

There being no objection, the House advanced to the eighth order of business.

## MOTION

There being no objection, the Committee on Rules was relieved of the following bills and the bills were placed on the second reading calendar:

HOUSE BILL NO. 1157  
 SENATE BILL NO. 5016  
 SENATE BILL NO. 5015  
 SENATE BILL NO. 5018  
 SENATE BILL NO. 5027  
 ENGROSSED SUBSTITUTE SENATE BILL NO.  
 5038  
 SUBSTITUTE SENATE BILL NO. 5068  
 SUBSTITUTE SENATE BILL NO. 5185  
 ENGROSSED SUBSTITUTE SENATE BILL NO.  
 5193  
 ENGROSSED SUBSTITUTE SENATE BILL NO.  
 5235  
 SUBSTITUTE SENATE BILL NO. 5267  
 ENGROSSED SUBSTITUTE SENATE BILL NO.  
 5284  
 SENATE BILL NO. 5296  
 SENATE BILL NO. 5303  
 SENATE BILL NO. 5347  
 SENATE BILL NO. 5385

The Speaker (Representative Lovick presiding) called upon Representative Orwall to preside.

There being no objection, the House reverted to the fifth order of business.

## REPORTS OF STANDING COMMITTEES

March 25, 2021

2SSB 5000 Prime Sponsor, Committee on Ways & Means: Concerning hydrogen fuel cell electric vehicles. Reported by Committee on Finance

MAJORITY recommendation: Do pass. Signed by Representatives Frame, Chair; Berg, Vice Chair; Orcutt, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Chase; Chopp; Harris-Talley;

Morgan; Orwall; Ramel; Springer; Thai; Vick; Wylie and Young.

MINORITY recommendation: Without recommendation. Signed by Representatives Walen, Vice Chair and Stokesbary.

Referred to Committee on Transportation.

March 25, 2021

SSB 5003 Prime Sponsor, Committee on Health & Long Term Care: Enacting the living donor act. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 48.02 RCW to read as follows:

(1) Notwithstanding any other provision of law, all insurers, fraternal benefit societies, health carriers including disability, health maintenance organizations, health care service contractors, and limited licensed carriers may not:

(a) Decline or limit coverage of a person under a policy or contract solely due to the status of the person as a living organ donor;

(b) Preclude a person from donating all or part of an organ as a condition of receiving or continuing to receive a policy or contract; or

(c) Otherwise discriminate in the offering, issuance, cancellation, amount of coverage, price, or any other condition of a policy or contract for a person based solely and without any additional actuarial risks upon the status of the person as a living organ donor. Except as provided in RCW 48.43.0128, 48.44.220, or 48.46.370, this subsection does not prohibit fair discrimination on the basis of sex, or marital status, or the presence of any sensory, mental, or physical handicap

when bona fide statistical differences in risk or exposure have been substantiated.

(2) The commissioner shall make educational materials available to the health plans and the public on the access of living organ donors to insurance.

(3) The commissioner may adopt rules to implement this section.

(4) For purposes of this section, "living organ donor" means an individual who has donated all or part of an organ and is not deceased."

Correct the title.

Signed by Representatives Cody, Chair; Bateman, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Bronoske; Davis; Harris; Macri; Maycumber; Riccelli; Rude; Simmons; Stonier; Tharinger and Ybarra.

Referred to Committee on Rules for second reading.

March 25, 2021

**SSB 5004** Prime Sponsor, Committee on Ways & Means: Providing a tax exemption for medical marijuana patients. Reported by Committee on Finance

MAJORITY recommendation: Do pass as amended.

On page 1, line 20, after "Until" strike "January 1" and insert "June 30"

Signed by Representatives Frame, Chair; Berg, Vice Chair; Walen, Vice Chair; Orcutt, Ranking Minority Member; Chase; Chopp; Harris-Talley; Morgan; Orwall; Ramel; Springer; Stokesbary; Thai; Vick; Wylie and Young.

MINORITY recommendation: Do not pass. Signed by Representative Dufault, Assistant Ranking Minority Member.

Referred to Committee on Appropriations.

March 24, 2021

**SSB 5009** Prime Sponsor, Committee on Law & Justice: Enacting the uniform public expression protection act. Reported by Committee on Civil Rights & Judiciary

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. SHORT TITLE. This chapter may be known and cited as the uniform public expression protection act.

NEW SECTION. Sec. 2. SCOPE. (1) In this section:

(a) "Goods or services" does not include the creation, dissemination, exhibition, or advertisement or similar promotion of a dramatic, literary, musical, political, journalistic, or artistic work.

(b) "Governmental unit" means a public corporation or government or governmental subdivision, agency, or instrumentality.

(c) "Person" means an individual, estate, trust, partnership, business or nonprofit entity, governmental unit, or other legal entity.

(2) Except as otherwise provided in subsection (3) of this section, this chapter applies to a cause of action asserted in a civil action against a person based on the person's:

(a) Communication in a legislative, executive, judicial, administrative, or other governmental proceeding;

(b) Communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding;

(c) Exercise of the right of freedom of speech or of the press, the right of assemble or petition, or the right of association, guaranteed by the United States Constitution or Washington state Constitution, on a matter of public concern.

(3)(a) Except when (b) of this subsection applies, this chapter does not apply to a cause of action asserted:

(i) Against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official capacity;

(ii) By a governmental unit or an employee or agent of a governmental unit acting in an official capacity to enforce a law to protect against an imminent threat to public health or safety;

(iii) Against a person primarily engaged in the business of selling or leasing goods or services if the cause of action arises out of a communication

related to the person's sale or lease of the goods or services;

(iv) Against a person named in a civil suit brought by a victim of a crime against a perpetrator;

(v) Against a person named in a civil suit brought to establish or declare real property possessory rights, use of real property, recovery of real property, quiet title to real property, or related claims relating to real property;

(vi) Seeking recovery for bodily injury, wrongful death, or survival or to statements made regarding that legal action, unless the claims involve damage to reputation;

(vii) Brought under the insurance code or arising out of an insurance contract;

(viii) Based on a common law fraud claim;

(ix) Brought under Title 26 RCW, or counterclaims based on a criminal no-contact order pursuant to chapter 10.99 RCW, for or based on an antiharassment order under chapter 10.14 RCW or RCW 9A.46.050, for or based on a sexual assault protection order under chapter 7.90 RCW, or for or based on a vulnerable adult protection order under chapter 74.34 RCW;

(x) Brought under Title 49 RCW; negligent supervision, retention, or infliction of emotional distress unless the claims involve damage to reputation; wrongful discharge in violation of public policy; whistleblowing, including chapters 42.40 and 42.41 RCW; or enforcement of employee rights under civil service, collective bargaining, or handbooks and policies;

(xi) Brought under the consumer protection act, chapter 19.86 RCW; or

(xii) Any claim brought under federal law.

(b) This chapter applies to a cause of action asserted under (a)(iii), (viii), or (xi) of this subsection when the cause of action is:

(i) A legal action against a person arising from any act of that person, whether public or private, related to the gathering, receiving, posting, or processing of information for communication to the public, whether or not the information is actually communicated to the public, for the creation, dissemination, exhibition, or

advertisement or other similar promotion of a dramatic, literary, musical, political, journalistic, or otherwise artistic work, including audio-visual work regardless of the means of distribution, a motion picture, a television or radio program, or an article published in a newspaper, website, magazine, or other platform, no matter the method or extent of distribution; or

(ii) A legal action against a person related to the communication, gathering, receiving, posting, or processing of consumer opinions or commentary, evaluations of consumer complaints, or reviews or ratings of businesses.

**NEW SECTION. Sec. 3. SPECIAL MOTION FOR EXPEDITED RELIEF.** (1) Prior to filing a special motion for expedited relief under subsection (2) of this section, the moving party shall provide written notice to the responding party of its intent to file the motion at least 14 days prior to filing the motion. During that time, the responding party may withdraw or amend the pleading in accordance with applicable court rules, but shall otherwise comply with the stay obligations listed in section 4 of this act. If the moving party fails to provide the notice required under this subsection, such failure shall not affect the moving party's right to relief under this act, but the moving party shall not be entitled to recover reasonable attorneys' fees under section 10 of this act.

(2) Not later than sixty days after a party is served with a complaint, cross-claim, counterclaim, third-party claim, or other pleading that asserts a cause of action to which this chapter applies, or at a later time on a showing of good cause, the party may file a special motion for expedited relief to dismiss the cause of action or part of the cause of action.

**NEW SECTION. Sec. 4. STAY.** (1) Except as otherwise provided in subsections (4) through (7) of this section, on the earlier of the giving of notice of intent to file a motion under section 3(1) of this act or the filing of a motion under section 3(2) of this act:

(a) All other proceedings between the moving party and responding party, including discovery and a pending hearing or motion, are stayed; and

(b) On motion by the moving party, the court may stay a hearing or motion involving another party, or discovery by another party, if the hearing or ruling on the motion would adjudicate, or the discovery would relate to, an issue material to the motion under section 3 of this act.

(2) A stay under subsection (1) of this section remains in effect until entry of an order ruling on the motion under section 3 of this act and expiration of the time under section 9 of this act for the moving party to appeal the order.

(3) Except as otherwise provided in subsections (5), (6), and (7) of this section, if a party appeals from an order ruling on a motion under section 3 of this act, all proceedings between all parties in the action are stayed. The stay remains in effect until the conclusion of the appeal.

(4) During a stay under subsection (1) of this section, the court may allow limited discovery if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy a burden under section 7(1) of this act and the information is not reasonably available unless discovery is allowed.

(5) A motion under section 10 of this act for costs, attorneys' fees, and expenses is not subject to a stay under this section.

(6) A stay under this section does not affect a party's ability voluntarily to dismiss a cause of action or part of a cause of action or move to sever a cause of action.

(7) During a stay under this section, the court for good cause may hear and rule on:

(a) A motion unrelated to the motion under section 3 of this act; and

(b) A motion seeking a special or preliminary injunction to protect against an imminent threat to public health or safety.

**NEW SECTION. Sec. 5. HEARING.** (1) The court shall hear a motion under section 3 of this act not later than sixty days after filing of the motion, unless the court orders a later hearing:

(a) To allow discovery under section 4(4) of this act; or

(b) For other good cause.

(2) If the court orders a later hearing under subsection (1)(a) of this section, the court shall hear the motion under section 3 of this act not later than sixty days after the court order allowing the discovery, unless the court orders a later hearing under subsection (1)(b) of this section.

**NEW SECTION. Sec. 6. PROOF.** In ruling on a motion under section 3 of this act, the court shall consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment under superior court civil rule 56.

**NEW SECTION. Sec. 7. DISMISSAL OF CAUSE OF ACTION IN WHOLE OR PART.** (1) In ruling on a motion under section 3 of this act, the court shall dismiss with prejudice a cause of action, or part of a cause of action, if:

(a) The moving party establishes under section 2(2) of this act that this chapter applies;

(b) The responding party fails to establish under section 2(3) of this act that this chapter does not apply; and

(c) Either:

(i) The responding party fails to establish a prima facie case as to each essential element of the cause of action; or

(ii) The moving party establishes that:

(A) The responding party failed to state a cause of action upon which relief can be granted; or

(B) There is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.

(2) A voluntary dismissal without prejudice of a responding party's cause of action, or part of a cause of action, that is the subject of a motion under section 3 of this act does not affect a moving party's right to obtain a ruling on the motion and seek costs, attorneys' fees, and expenses under section 10 of this act.

(3) A voluntary dismissal with prejudice of a responding party's cause of action, or part of a cause of action, that is the subject of a motion under section 3 of this act establishes for the

purpose of section 10 of this act that the moving party prevailed on the motion.

NEW SECTION. Sec. 8. RULING. The court shall rule on a motion under section 3 of this act not later than sixty days after a hearing under section 5 of this act.

NEW SECTION. Sec. 9. APPEAL. A moving party may appeal as a matter of right from an order denying, in whole or in part, a motion under section 3 of this act. The appeal must be filed not later than twenty-one days after entry of the order.

NEW SECTION. Sec. 10. COSTS, ATTORNEYS' FEES, AND EXPENSES. On a motion under section 3 of this act, the court shall award court costs, reasonable attorneys' fees, and reasonable litigation expenses related to the motion:

(1) To the moving party if the moving party prevails on the motion; or

(2) To the responding party if the responding party prevails on the motion and the court finds that the motion was not substantially justified or filed solely with intent to delay the proceeding.

NEW SECTION. Sec. 11. CONSTRUCTION. This chapter must be broadly construed and applied to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association, guaranteed by the United States Constitution or the Washington state Constitution.

NEW SECTION. Sec. 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

NEW SECTION. Sec. 13. TRANSITIONAL PROVISION. This chapter applies to a civil action filed or cause of action asserted in a civil action on or after the effective date of this section.

NEW SECTION. Sec. 14. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 15. RCW 4.24.525 (Public participation lawsuits—Special motion to strike claim—Damages, costs, attorneys' fees, other relief—Definitions) and 2010 c 118 s 2 are each repealed.

NEW SECTION. Sec. 16. Sections 1 through 13 of this act constitute a new chapter in Title 4 RCW."

Correct the title.

Signed by Representatives Hansen, Chair; Simmons, Vice Chair; Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Davis; Entenman; Goodman; Kirby; Klippert; Orwall; Peterson; Thai; Valdez; Walen and Ybarra.

Referred to Committee on Rules for second reading.

March 24, 2021

ESSB 5115 Prime Sponsor, Committee on Labor, Commerce & Tribal Affairs: Establishing health emergency labor standards. Reported by Committee on Labor & Workplace Standards

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 51.32 RCW to read as follows:

(1) For frontline employees who are covered under this title, there exists a prima facie presumption that any infectious or contagious diseases that are transmitted through respiratory droplets or aerosols, or through contact with contaminated surfaces and are the subject of a public health emergency are occupational diseases under RCW 51.08.140 during a public health emergency.

(2) The frontline employee must provide verification, as required by the department by rule, to the department and the self-insured employer that the employee has contracted the infectious or contagious disease that is the subject of the public health emergency.

(3) This presumption of occupational disease may be rebutted by a preponderance of the evidence that:

(a) The exposure to the infectious or contagious disease which is the subject

of the public health emergency occurred from other employment or nonemployment activities; or

(b) The employee was working from the employee's home, on leave from the employee's employment, or some combination thereof, for the period of quarantine consistent with recommended guidance from state and federal health officials for the disease immediately prior to the employee's injury, occupational disease, or period of incapacity that resulted from exposure to the disease which is the subject of the public health emergency.

(4) (a) RCW 51.32.090(7) does not apply to an occupational disease under this section except that no worker shall receive compensation for or during the day on which the occupational disease was contracted. For the purposes of this subsection (4), the day on which the occupational disease was contracted is whichever date occurs first of the following:

(i) The date that the worker first missed work due to symptoms of the infectious or contagious disease;

(ii) The date the worker was quarantined by a medical provider or public health official; or

(iii) The date the worker received a positive test result confirming contraction of the infectious or contagious disease.

(b) If leave or similar benefits are paid to the frontline employee as part of a federal or state program for these employees during the public health emergency, temporary total disability benefits are not payable for the same period of time covered by the federal or state program.

(5) (a) When a determination involving the presumption established in this section is appealed to the board of industrial insurance appeals and the final decision allows the claim of benefits, the board of industrial insurance appeals shall order that all reasonable costs of the appeal, including attorneys' fees and witness fees, be paid to the worker or the worker's beneficiary by the opposing party. If the opposing party is a state fund employer or retrospective rating group, the costs and fees are paid by the employer or retrospective rating group.

(b) When a determination involving the presumption established in this section is appealed to any court and the final decision allows the claim for benefits, the court shall order that all reasonable costs of appeal, including attorneys' fees and witness fees, be paid to the worker or the worker's beneficiary by the opposing party. If the opposing party is a state fund employer or retrospective rating group, the costs and fees are paid by the employer or retrospective rating group.

(c) When reasonable costs of the appeal must be paid by the department under this section in a state fund case, the costs shall be paid from the accident fund and charged to the costs of the claim.

(d) When calculating assessments due to the department for which total claim costs are the basis, self-insured employers and self-insurance hospital groups formed under RCW 51.14.150 and 51.14.160 may deduct the cost of payments made under this section from the total of all claim costs reported.

(6) Costs of the payments under this section shall not affect the experience rating of employers insured by the state fund.

(7) As used in this section:

(a) "Assisted living facility" has the same meaning as in RCW 18.20.020.

(b) "Farm work" means work performed on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment. For the purposes of this subsection, "farm work" includes floriculture.

(c) "Food distribution work" means work where the primary duties include transporting food from food producers or manufacturers to food warehouses or food service operators and retailers.

(d) "Food manufacturing work" means work performed for an employer whose

North American industry classification code is within "311."

(e) "Food processing work" means work handling or processing of any food in any manner of preparation for sale for an employer required to be licensed by the department of agriculture under chapter 69.07 RCW.

(f) "Frontline employee" includes the following employees:

(i) First responders, including law enforcement officers, firefighters, emergency medical service providers, paramedics, and ambulance drivers. "Firefighters" includes wildland firefighters when performing wildfire suppression or other emergency duties under the incident command system if the firefighter has in-person interaction with the general public or other firefighters as part of their job duties;

(ii) Employees performing food processing, food manufacturing, food distribution, farm, and meat packing work;

(iii) Maintenance, janitorial, and food service workers at any facility treating patients diagnosed with the infectious or contagious disease that is the subject of the public health emergency;

(iv) Drivers and operators employed by a transit agency or any other public entity authorized under state law to provide mass transportation services to the general public;

(v) Employees working at a child care facility licensed by the department of children, youth, and families under chapter 43.216 RCW, if the employee has in-person interaction with children or other members of the general public as part of their job duties;

(vi) Employees employed by a retail store that remains open to the general public during the public health emergency, if the employee has in-person interaction with the general public as part of their job duties or has in-person interaction with other employees. For the purposes of this subsection, "retail store" means a business whose North American industry classification code is within "44-45";

(vii) Employees employed by a hotel, motel, or other transient accommodation licensed under chapter 70.62 RCW that remains open to the general public during

the public health emergency, if the employee has in-person interaction with the general public as part of their job duties or has in-person interaction with other employees;

(viii) Employees employed by a restaurant, if the employee has in-person interaction with the general public as part of their job duties or works in the kitchen of the restaurant and has in-person interaction with other employees. For the purposes of this subsection, "restaurant" has the same meaning as in RCW 66.04.010;

(ix) Home care aides certified under chapter 18.88B RCW and home health aides that provide services under chapter 70.126 RCW that primarily work in the home of the individual receiving care;

(x) (A) Corrections officers and correctional support employees working at a correctional institution.

(B) For the purposes of this subsection (7) (f) (x):

(I) "Correctional institution" has the same meaning as in RCW 9.94.049.

(II) "Corrections officer" means any corrections agency employee whose primary job function is to provide custody, safety, and security of prisoners in jails and detention facilities.

(III) "Correctional support employee" means any employee who provides food services or janitorial services in a correctional institution;

(xi) Educational employees, including classroom teachers, paraeducators, principals, librarians, school bus drivers, and other educational support staff, of any school district, or a contractor of a school district, that are required to be physically present at a school or on the grounds of a school where classes are being taught in person, in a transportation vehicle necessary for school operations, or in the home of a student as part of their job duties, if the employee has in-person interaction with students, a student's family members, or other employees as part of their job duties;

(xii) Employees of institutions of higher education that are required to be physically present on campus when classes are being taught in person, if the employee has in-person interaction with students or the general public as part of

their job duties. For the purposes of this subsection, "institution of higher education" has the same meaning as in RCW 28B.10.016;

(xiii) Employees employed by a public library that remains open to the general public during the public health emergency, if the employee has in-person interaction with the general public as part of their job duties or has in-person interaction with other employees. For the purposes of this subsection, "public library" means a library covered by chapter 27.12 RCW.

(g) "Meat packing work" means work slaughtering animals and processing and packaging meat products for sale and the rendering of animal by-products.

(h) "Nursing home" means a nursing home licensed under chapter 18.51 RCW.

(i) "Public health emergency" means a declaration or order concerning any infectious or contagious diseases, including a pandemic and is issued as follows:

(i) The president of the United States has declared a national or regional emergency that covers every county in the state of Washington; or

(ii) The governor of Washington has declared a state of emergency under RCW 43.06.010(12).

(j) "School" has the same meaning as in RCW 28A.210.070.

**NEW SECTION. Sec. 2.** A new section is added to chapter 49.17 RCW to read as follows:

(1) During a public health emergency:

(a) An employer with more than 50 employees at a workplace or worksite, within 24 hours of confirming that 10 or more of their employees at the workplace or worksite in this state have tested positive for the infectious or contagious disease that is the subject of the public health emergency, must report the positive tests to the department in a form prescribed by the department.

(b) The department must consult with the department of health on the infectious or contagious disease that is the subject of the public health emergency:

(i) Before issuing regulatory guidance, rules, directives, or orders

for health care facilities under this section; and

(ii) When investigating health care entities and issuing citations under this section.

(c) The report required in (a) of this subsection may not include any employee names or personal identifying information.

(2) The department may use the reports in subsection (1) of this section to identify potential clusters of infections at specific workplaces or industries and investigate workplaces for violations of this chapter.

(3) During a public health emergency, the name, email and residential addresses, license plate number, and other personally identifiable information regarding employees of the department are exempt from disclosure under chapter 42.56 RCW to the extent that the disclosure would violate their right to privacy or pose a risk to their personal safety or security.

(4) This section does not require an employee to disclose any medical condition or diagnosis to their employer.

(5) This section does not alter or eliminate any other reporting obligations an employer has under state or federal law.

(6)(a) During a public health emergency, no employer may discharge, permanently replace, or in any manner discriminate against an employee who is high risk as a result of the employee:

(i) Seeking accommodation that protects them from the risk of exposure to the infectious or contagious disease; or

(ii) If no accommodation is reasonable, utilizing all available leave options, including but not limited to leave without pay and unemployment insurance, until completion of the public health emergency or accommodation is made available.

(b) This subsection (6) does not alter or diminish any existing remedy available to the worker under current state or federal law.

(c) For the purposes of this subsection (6), "an employee who is high risk" means an employee who:



(i) Due to age or an underlying health condition, is at a high risk of severe illness from the disease that is the subject of the public health emergency, as defined by the centers for disease control and prevention; or

(ii) A medical provider has recommended the employee's removal from the workforce because of their high risk of severe illness.

(7) For the purposes of this section, "public health emergency" means a declaration or order concerning any infectious or contagious diseases, including a pandemic and is issued as follows:

(a) The president of the United States has declared a national or regional emergency that covers every county in the state of Washington; or

(b) The governor of Washington has declared a state of emergency under RCW 43.06.010(12) in every county in the state.

NEW SECTION. **Sec. 3.** A new section is added to chapter 49.17 RCW to read as follows:

(1) During a public health emergency, if an employer receives a notice of potential exposure to the infectious or contagious disease that is the subject of the public health emergency, the employer must, within one business day of potential exposure:

(a) Provide written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the qualifying individual that they may have been exposed to the infectious or contagious disease. The written notice must be made in a manner the employer normally uses to communicate employment-related information. Written notice may include, but is not limited to, personal service, email, or text message if it can reasonably be anticipated to be received by the employee within one business day of sending and must be in both English and the language understood by the majority of the employees; and

(b) Provide a written notice to the exclusive representative, if any, of employees under this subsection (1).

(2) The written notice under subsection (1) of this section may not include any employee names or personal identifying information.

(3) This section does not alter or eliminate any other reporting obligations an employer has under state or federal law.

(4) This section does not require an employee to disclose any medical condition or diagnosis to their employer.

(5) This section does not apply to employers who are health care facilities as defined in RCW 9A.50.010. For employees of health care facilities with known or suspected high-risk exposure, notification to the employee, and with the employee's authorization, to their union representative, if any, by the facility must occur within 24 hours of confirmed exposure.

(6) For the purposes of this section:

(a) "Notice of potential exposure" means any of the following:

(i) Notification to the employer from a public health official or licensed medical provider that an employee was exposed to a qualifying individual at the worksite;

(ii) Notification to the employer from an employee, or their emergency contact, that the employee is a qualifying individual;

(iii) Notification through a testing protocol of the employer that the employee is a qualifying individual.

(b) "Public health emergency" means a declaration or order concerning any infectious or contagious diseases, including a pandemic and is issued as follows:

(i) The president of the United States has declared a national or regional emergency that covers every county in the state of Washington; or

(ii) The governor of Washington has declared a state of emergency under RCW 43.06.010(12) in every county in the state.

(c) "Qualifying individual" means any person who has:

(i) A positive laboratory test for the infectious or contagious disease that is the subject of the public health emergency;

(ii) A positive diagnosis of the infectious or contagious disease that is the subject of the public health

emergency by a licensed health care provider;

(iii) An order to isolate by a public health official related to the infectious or contagious disease that is the subject of the public health emergency; or

(iv) Died due to the infectious or contagious disease that is the subject of the public health emergency, in the determination of a local health department.

(d) "Worksite" means the building, store, facility, agricultural field, or other location where the qualifying individual worked. "Worksite" does not include any buildings, floors, or other locations of the employer that the qualifying individual did not enter.

NEW SECTION. Sec. 4. This act may be known and cited as the health emergency labor standards act.

NEW SECTION. Sec. 5. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

Correct the title.

Signed by Representatives Sells, Chair; Berry, Vice Chair; Hoff, Ranking Minority Member; Bronoske; Harris and Ortiz-Self.

MINORITY recommendation: Without recommendation. Signed by Representative Mosbrucker, Assistant Ranking Minority Member.

Referred to Committee on Rules for second reading.

March 25, 2021

SB 5124 Prime Sponsor, Senator Cleveland: Concerning the practice of colon hydrotherapy. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass. Signed by Representatives Cody, Chair; Bateman, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Bronoske; Davis; Harris; Macri; Maycumber; Riccelli; Rude; Simmons; Stonier; Tharinger and Ybarra.

Referred to Committee on Rules for second reading.

March 25, 2021

SSB 5157

Prime Sponsor, Committee on Behavioral Health Subcommittee to Health & Long Term Care: Providing incentives to reduce involvement by persons with behavioral disorders in the criminal justice system. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

NEW SECTION. Sec. 1. The legislature finds that in 2013 the legislature adopted outcome expectations for entities that contract with the state to provide health services in order to guide purchasing strategies by the health care authority and department of social and health services. Since then, the health care authority has established a performance measures coordinating committee and implemented performance terms in managed care contracts including, but not limited to, performance measurement requirements, mandatory performance improvement projects, and value-based purchasing terms.

The legislature finds that two outcomes established by chapter 320, Laws of 2013 (Engrossed Substitute House Bill No. 1519) and chapter 338, Laws of 2013 (Second Substitute Senate Bill No. 5732) which are key to the integration of behavioral health into primary health networks are (1) reduction in client involvement with the criminal justice system; and (2) reduction in avoidable costs in jails and prisons. These outcomes reflect Washington's priorities to incentivize cross-system collaboration between health networks, government entities, and the criminal justice system; to emphasize prevention over crisis response; and to remove individuals whose offending is driven primarily by health status instead of criminality from the criminal justice system.

The legislature further finds that indicators since 2013 show worsening trends for interaction between persons with behavioral health disorders and the criminal justice system. According to data presented in October 2018 by the research and data administration of the department of social and health services, arrests of persons enrolled in public health with an identified mental health or substance use disorder condition

increased by 67 percent during this five-year period, while the overall rate of arrest declined by 11 percent. According to the same data source, referrals for state mental health services related to competency to stand trial have increased by 64 percent, incurring substantial liability for the state in the case of *Trueblood v. Department of Social and Health Services*. The purpose of this act is to focus the health care authority's purchasing efforts on providing incentives to its contractors to reverse these trends and achieve the outcome of reduced criminal justice system involvement for public health system clients with behavioral health disorders.

**Sec. 2.** RCW 70.320.020 and 2017 c 226 s 8 are each amended to read as follows:

(1) The authority and the department shall base contract performance measures developed under RCW 70.320.030 on the following outcomes when contracting with service contracting entities: Improvements in client health status and wellness; increases in client participation in meaningful activities; reductions in client involvement with criminal justice systems; reductions in avoidable costs in hospitals, emergency rooms, crisis services, and jails and prisons; increases in stable housing in the community; improvements in client satisfaction with quality of life; and reductions in population-level health disparities.

(2) The performance measures must demonstrate the manner in which the following principles are achieved within each of the outcomes under subsection (1) of this section:

(a) Maximization of the use of evidence-based practices will be given priority over the use of research-based and promising practices, and research-based practices will be given priority over the use of promising practices. The agencies will develop strategies to identify programs that are effective with ethnically diverse clients and to consult with tribal governments, experts within ethnically diverse communities and community organizations that serve diverse communities;

(b) The maximization of the client's independence, recovery, and employment;

(c) The maximization of the client's participation in treatment decisions; and

(d) The collaboration between consumer-based support programs in providing services to the client.

(3) In developing performance measures under RCW 70.320.030, the authority and the department shall consider expected outcomes relevant to the general populations that each agency serves. The authority and the department may adapt the outcomes to account for the unique needs and characteristics of discrete subcategories of populations receiving services, including ethnically diverse communities.

(4) The authority and the department shall coordinate the establishment of the expected outcomes and the performance measures between each agency as well as each program to identify expected outcomes and performance measures that are common to the clients enrolled in multiple programs and to eliminate conflicting standards among the agencies and programs.

(5)(a) The authority and the department shall establish timelines and mechanisms for service contracting entities to report data related to performance measures and outcomes, including phased implementation of public reporting of outcome and performance measures in a form that allows for comparison of performance measures and levels of improvement between geographic regions of Washington.

(b) The authority and the department may not release any public reports of client outcomes unless the data has been deidentified and aggregated in such a way that the identity of individual clients cannot be determined through directly identifiable data or the combination of multiple data elements.

(6)(a) ~~The ((authority and department))~~ performance measures coordinating committee must establish ~~((a))~~: (i) A performance measure to be integrated into the statewide common measure set which tracks effective integration practices of behavioral health services in primary care settings; (ii) performance measures which track rates of criminal justice system involvement among public health system clients with an identified behavioral health need including, but not limited to, rates of arrest and incarceration; and (iii) improvement targets related to these measures.

(b) The performance measures coordinating committee must report to the governor and appropriate committees of the legislature regarding the implementation of this subsection by July 1, 2022.

(c) For purposes of establishing performance measures as specified in (a)(ii) and (iii) of this subsection, the performance measures coordinating committee shall convene a work group of stakeholders including the authority, medicaid managed care organizations, the department of corrections, and others with expertise in criminal justice and behavioral health. The work group shall review current performance measures that have been adopted in other states or nationally to inform this effort.

(7) The authority must report to the governor and appropriate committees of the legislature by October 1, 2022, regarding options and recommendations for integrating value-based purchasing terms and a performance improvement project into managed health care contracts relating to the criminal justice outcomes specified under subsection (1) of this section.

**Sec. 3.** RCW 70.320.030 and 2015 c 209 s 1 are each amended to read as follows:

~~((By September 1, 2014:))~~

(1) The authority shall adopt performance measures to determine whether service contracting entities are achieving the outcomes described in RCW 70.320.020 and 41.05.690 for clients enrolled in medical managed care programs operated according to Title XIX or XXI of the federal social security act.

(2) The ~~((department))~~ authority shall adopt performance measures to determine whether service contracting entities are achieving the outcomes described in RCW 70.320.020 for clients receiving mental health, long-term care, or chemical dependency services."

Correct the title.

Signed by Representatives Cody, Chair; Bateman, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Bronoske; Davis; Harris; Macri; Maycumber; Riccelli; Rude; Simmons; Stonier; Tharinger and Ybarra.

Referred to Committee on Rules for second reading.

March 25, 2021

**ESSB 5178** Prime Sponsor, Committee on Health & Long Term Care: Establishing automatic waivers of select state health care laws to enable timely response by the health care system during a governor-declared statewide state of emergency. (REVISED FOR ENGROSSED: Establishing timely considerations of waivers of select state health care laws to enable timely response by the health care system during a governor-declared statewide state of emergency.) Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 43.06 RCW to read as follows:

(1) (a) If when declaring or amending a statewide state of emergency pursuant to RCW 43.06.010, the governor determines that the emergency demands immediate action by hospitals to prevent critical health system failures and ensure hospitals' ability to work with emergency management in responding to the emergency, the governor shall, either simultaneously or within five days of that determination, specify within the emergency order or amended emergency order which of the following health care related statutes and substantially equivalent regulations shall be waived or suspended based on the nature of the declared emergency:

(i) RCW 70.38.105(4) (a), (e), and (h);

(ii) RCW 70.41.110, the following language only: "premises and";

(iii) RCW 70.41.230;

(iv) RCW 70.41.090 (3), (4), and (5);

(v) RCW 18.64.043(1), the following language only: "of location, which shall entitle the owner to operate such pharmacy at the location specified, or such other temporary location as the secretary may approve,";

(vi) RCW 18.64.043(2) (a), the following language only: "of location";

(vii) RCW 18.64.043(3), the following language only: "and to keep the license of location or the renewal thereof properly exhibited in said pharmacy.";

(viii) RCW 43.70.280(2), the following language only: "Such extension, reduction, or other modification of a licensing, certification, or registration period shall be by rule or regulation of the department of health adopted in accordance with the provisions of chapter 34.05 RCW. Such rules and regulations may provide a method for imposing and collecting such additional proportional fee as may be required for the extended or modified period."; and

(ix) RCW 18.360.010(11), the following language only: "physically present and is" and "in the facility. The health care practitioner does not need to be present during procedures to withdraw blood, but must be immediately available.".

(b) Hospitals that rely on waiver or suspension under (a) of this subsection shall notify the department within 14 days of initiating such reliance.

(c) Nothing in this section prevents the governor from waiving or suspending any statutes and substantially equivalent regulations outside the time frames established in this section. Additionally, the governor may waive or suspend any additional statutes, without limitation, as the governor deems necessary to address the emergency.

(2) Waivers and suspensions in subsection (1) of this section do not apply except to projects undertaken to provide or respond to surge capacity, including temporary increases in bed capacity, during the governor's declaration of a statewide state of emergency. Such projects and increases in bed capacity must comply with these statutory and regulatory provisions after the termination of the state of emergency."

Correct the title.

Signed by Representatives Cody, Chair; Bateman, Vice Chair; Schmick, Ranking Minority Member; Bronoske; Davis; Harris; Macri; Riccelli; Rude; Simmons; Stonier and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representatives Caldier, Assistant Ranking Minority Member; Maycumber and Ybarra.

Referred to Committee on Rules for second reading.

March 25, 2021

**E2SSB 5188** Prime Sponsor, Committee on Ways & Means: Concerning creation of the Washington state public financial cooperative. Reported by Committee on Consumer Protection & Business

**MAJORITY recommendation:** Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** FINDINGS AND INTENT. The legislature finds that there exists in the state of Washington billions of dollars of critical local projects for the planning, acquisition, construction, repair, replacement, rehabilitation, or improvement of streets and roads, bridges, water systems, storm and sanitary sewage systems, solid waste handling, communications systems, housing, and other public infrastructure and economic development projects. But while some local governments successfully borrow for infrastructure and economic development capital projects through private sector lenders and the bond markets, other government entities do not have the same access to capital at attractive rates to be used in building out public infrastructure.

It is the policy of the state of Washington to encourage self-reliance by local and tribal governments in meeting their public works and economic development needs, and to assist in the financing of critical public works and economic development projects by providing effective mechanisms for making and financing loans and providing financing guarantees that do not create state debt. It is also the policy of the state to provide technical assistance to government entities for these projects.

It is further the policy of the state to foster and promote by all reasonable means the provision of adequate capital markets and facilities for borrowing money by local governments in the state to finance infrastructure improvements, and to the greatest extent possible to reduce costs of borrowed money to taxpayers and residents of the state.

The legislature finds that a Washington state public financial cooperative would provide opportunities for local and tribal government entities to competitively finance a broad array of public infrastructure and economic development projects, including housing, at competitive rates with low

administrative costs. A state public financial cooperative will complement the existing banking system by filling gaps that the system cannot or will not fill, and it will be uniquely positioned to provide specialized technical assistance to the diverse needs of local and tribal government entities.

It is the purpose of this chapter to establish a Washington state public financial cooperative to act as a financial conduit that, without creating state debt, can receive funds from state, local, and tribal government entities, issue and make loans to those entities, and issue bonds in a manner that does not create state debt, to help facilitate access to needed capital by local and tribal government entities on reasonable terms and rates.

The state public financial cooperative will have full powers to borrow money and to issue its bonds and notes in a manner that does not create state debt in order to make capital funds available for borrowing by local and tribal government entities, and those powers will enable the state public financial cooperative to carry out the declared policies of this act, which are in the public interest of the state and its taxpayers and residents.

NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the operating board of the cooperative established in section 3 of this act.

(2) "Bonds" means any bonds, notes, debentures, interim certificates, conditional sales or lease financing agreements, lines of credit, forward purchase agreements, investment agreements, and other banking or financial arrangements, guaranties, or other obligations issued by or entered into by the cooperative, which does not create state debt. Such bonds may be issued on either a tax-exempt or taxable basis.

(3) "Borrower" means one or more local or tribal governments.

(4) "Cooperative" means the Washington state public financial cooperative established in section 3 of this act, or any board, body, commission, department, or officer succeeding to the principal functions of the cooperative or to whom

the powers conferred upon the cooperative are given by law.

(5) "Financial assistance" means the infusion of capital to a borrower for use in the planning, acquisition, construction, repair, replacement, rehabilitation, development, and expansion of infrastructure and economic development projects.

(6) "Financing agreements" means, and includes without limitation, a contractual arrangement with a borrower whereby the cooperative obtains rights from a borrower in exchange for the granting of financial assistance to the borrower.

(7) "Financing document" means an instrument executed by the cooperative and one or more borrowers pertaining to the issuance of or security for bonds, or the application of the proceeds of bonds or other funds of, or payable to, the cooperative. A financing document may include, but need not be limited to, a lease, installment sale agreement, conditional sale agreement, mortgage, loan agreement, trust agreement or indenture, security agreement, letter or line of credit, reimbursement agreement, insurance policy, guaranty agreement, or currency or interest rate swap agreement. A financing document also may be an agreement between the cooperative and an eligible banking organization which has agreed to make a loan to a borrower.

(8) "Infrastructure projects" means undertakings for the planning, acquisition, construction, repair, replacement, rehabilitation, or improvement of streets and roads, bridges, water systems, storm and sanitary sewage systems, solid waste handling, pollution control facilities, schools, communications systems, docks and wharves, mass transportation facilities and equipment, public housing, fire suppressing and emergency services equipment and facilities, energy generating, conservation, or transmission facilities, and other public infrastructure deemed eligible by the board.

(9) "Local government" means any Washington city, town, county, special purpose district, authority, instrumentality, or other local municipal or interlocal entity created pursuant to Washington law.

(10) "Member" means the state government, a local government, or a

tribal government that has joined the cooperative consistent with section 4 of this act.

(11) "Project costs" means costs of:

(a) Acquisition, lease, construction, reconstruction, remodeling, refurbishing, rehabilitation, extension, and enlargement of land, rights to land, buildings, structures, docks, wharves, fixtures, machinery, equipment, excavations, paving, landscaping, utilities, approaches, roadways and parking, handling and storage areas, and similar ancillary facilities, and any other real or personal property included in an infrastructure project;

(b) Architectural, engineering, consulting, accounting, and legal costs related directly to the development, financing, acquisition, lease, construction, reconstruction, remodeling, refurbishing, rehabilitation, extension, and enlargement of an infrastructure project, including costs of studies assessing the feasibility of an infrastructure project;

(c) Finance costs, including the costs of credit enhancement and discounts, if any, the costs of issuing revenue bonds, and the costs incurred in carrying out any financing document;

(d) Start-up costs, working capital, capitalized research and development costs, capitalized interest during construction and during the 18 months after estimated completion of construction, and capitalized debt service or repair and replacement or other appropriate reserves;

(e) The refunding of any outstanding obligations incurred for any of the costs outlined in this subsection; and

(f) Other costs incidental to any of the costs listed in this subsection.

(12) "State" means the state of Washington and any department, agency, or instrumentality thereof other than the cooperative.

(13) "Tribal government" means the governing body of a federally recognized Indian tribe.

**NEW SECTION. Sec. 3. ESTABLISHMENT.**

(1) The Washington state public financial cooperative is established as a public body corporate and politic, with perpetual corporate succession,

constituting an instrumentality of the state of Washington exercising essential governmental functions. The cooperative is a public body within the meaning of RCW 39.53.010.

(2)(a) The cooperative is activated when:

(i) The state treasurer completes a study that provides recommendations on staffing and operational needs for the cooperative to be administered by the Washington state housing finance commission. The state treasurer shall contract with a consultant with expertise in developing detailed operating plans for financial institutions using an appropriation from the general fund to complete the study. The study must ensure that the administration of the cooperative does not interfere with the core mission of the Washington state housing finance commission;

(ii) An appropriation that is sufficient to capitalize the cooperative so that it can issue debt with a competitive rating is provided; and

(iii) Executed articles of activation in a form approved by the state finance committee are filed with the secretary of state.

(b) The cooperative is deemed to have been formed as of the date of filing articles of activation under (a)(iii) of this subsection. The articles of activation must be approved by the legislative authority of each of the member local or tribal governments that subsequently becomes a member. Each member local or tribal government must provide to the cooperative a contribution of an amount approved by the state finance committee, and the board may subsequently adjust the minimum contribution level for current and new members. Any amendments to the articles of activation must be filed with the secretary of state and will become effective on the date of filing.

(3) A duplicate of the original articles of activation and amended articles of activation must be filed with the department of financial institutions. The filing of amended articles of activation must include the text of each amendment adopted and the date of its adoption. The cooperative must also file the following with the department of financial institutions:

(a) The address of the location of the main office of the cooperative;

(b) The names and places of residence of the persons who are directors under this section;

(c) The name and place of residence of the executive director hired by the board in accordance with this section;

(d) Bylaws and regulations adopted and amended by the board under section 4 of this act; and

(e) Any other information the director of the department of financial institutions deems necessary to perform a review of the funds placed with the cooperative and the accounts and transactions of the cooperative in carrying out the cooperative's duties, as provided in this section.

(4)(a) The operating board of the cooperative consists of nine directors. Terms of directors are four years, with half of the initial directors other than the initial chair serving two-year terms as determined by lot, with those positions being filled for four-year terms thereafter.

(b) Five member-appointed directors must be selected by a majority of the members of the cooperative. Member-appointed directors must be elected local or tribal government officials. Three public directors must be appointed by the governor and confirmed by the senate. The public directors must be residents of the state appointed by the governor on the basis of their interest and expertise in finance, accounting, budgeting, economic development, infrastructure planning, design, construction, or project management. The state treasurer shall serve as an ex officio director.

(c) One of the public members shall be appointed by the governor as chair of the board and shall serve as chair at the pleasure of the governor. The initial chair must serve a full four-year term. The cooperative may select from its membership such other officers of the cooperative as it deems appropriate, including without limitation a secretary and a treasurer.

(d) In the event of a vacancy on the board due to death, resignation, lack of qualification to serve as a director, or otherwise, a successor for the remainder of the unexpired term shall be selected in the same manner as the selection of

the director whose position has become vacant. Any independent member of the cooperative may be removed by the governor for misfeasance, malfeasance, or willful neglect of duty after notice and a public hearing, unless such notice and hearing are expressly waived in writing by the affected public member.

(e) The state treasurer may designate an employee to act on his or her behalf in all respects with regard to any matter to come before the cooperative. Such designation must be made in writing in such manner as is specified by the rules of the cooperative.

(f) A majority of the directors constitutes a quorum.

(g) The directors of the cooperative serve without compensation but are entitled to reimbursement, solely from the funds of the cooperative, for expenses incurred in the discharge of their duties under this chapter.

(5) The state finance committee serves as the oversight board of the cooperative. In that capacity, the state finance committee must carry out the responsibilities specified in this chapter. In addition, the state finance committee may at its discretion require independent audits of the accounts and transactions of the cooperative and the methods, procedures, and operation of the cooperative in carrying out its duties.

(6) The cooperative is a state agency subject to audit by the state auditor under chapter 43.09 RCW. In addition, the department of financial institutions may, at the discretion of the director of financial institutions, review the funds placed with the cooperative and the accounts and transactions of the cooperative in carrying out the cooperative's duties. Nothing in this subsection establishes that the cooperative is an institution or entity otherwise subject to the jurisdiction of the department of financial institutions.

(7) The board has the authority to hire and fire an executive director. The executive director shall be funded in the Washington state housing finance commission budget and shall administer and operate the Washington state public financial cooperative.

(8) The cooperative's administration and operation must be performed by employees of the Washington state housing



finance commission, subject to the terms of one or more agreements between the cooperative and the commission concerning responsibilities of the commission's staff and compensation of the commission.

(9) The board must approve the budget of the cooperative annually.

(10) The board shall establish an internal audit committee.

(11) The cooperative shall have a goal of providing 35 percent of the amount it lends on an annual basis to support housing in low to moderate-income areas, beginning five years after the cooperative has been activated as provided in this section.

(12) The cooperative must not be or constitute a bank or trust company within the jurisdiction or under the control of the director of financial institutions, the comptroller of the currency of the United States of America, or the United States department of the treasury.

(13) The cooperative must not be or constitute a bank, broker, or dealer in securities within the meaning of, or subject to the provisions of, any securities, securities exchange, or securities dealers' law of the United States of America or this state.

(14) The cooperative is not a public depository for any purpose under chapter 39.58 RCW.

(15) The cooperative may not issue bonds in a manner that would create state debt.

NEW SECTION. **Sec. 4.** POWERS. The cooperative is authorized to:

(1) Sue and be sued in its own name, and plead and be impleaded;

(2) Adopt and alter an official seal;

(3) Make and enforce bylaws and regulations for the conduct of its business and for the use of its services and facilities;

(4) Engage such independent consultants, attorneys, and advisers as the cooperative deems necessary, useful, or convenient to accomplish its purposes, and, subject to section 5(6) of this act, contract with federal, state, and local or tribal governmental entities for services;

(5) Make and execute all manner of contracts, agreements, and instruments and financing documents with public and private parties as the cooperative deems necessary, useful, or convenient to accomplish its purposes;

(6) Acquire, hold, use, and dispose of real or personal property, or any interest therein, in the name of the cooperative, and to sell, assign, lease, encumber, mortgage, or otherwise dispose of the same in such manner as the cooperative deems necessary, useful, or convenient to accomplish its purposes;

(7) Acquire, hold, use, and dispose of its income, revenues, funds, and money;

(8) Receive funds from state, local, or tribal governments, invest those moneys in lawful funds, including without limitation investments in loans made by the cooperative to borrowers;

(9) Open and maintain accounts in qualified public depositories; in the federal reserve bank of San Francisco, in the national cooperative bank, in a federal home loan bank, or in any other federal financing entity, and otherwise provide for the investment of any funds not required for immediate disbursement and provide for the selection of investments. The cooperative may participate in and use the federal reserve banks payments systems and account services;

(10) Appear in its own behalf before boards, commissions, departments, or agencies of federal, state, local, or tribal governments;

(11) Procure such insurance of such types, in such amounts, and from such insurers as the cooperative deems desirable including, but not limited to, insurance against any loss or damage to its property or other assets, public liability insurance for injuries to persons or property, and directors and officers liability insurance;

(12) Accept gifts or grants from the United States, or from any governmental unit or person, firm, or corporation, carry out the terms or provisions or make agreements with respect to the gifts or grants, and do all things necessary, useful, desirable, or convenient in connection with procuring, accepting, or disposing of the gifts or grants;

(13) Apply for and accept grants, loans, advances, and contributions from

any source of money, property, labor, or other things of value, to be held, used, and applied as the cooperative deems necessary, useful, or convenient to accomplish its purposes;

(14) Borrow money and issue its bonds consistent with this chapter and provide for and secure their payment, provide for the rights of bond owners and purchasers, and hold and dispose of any of its bonds;

(15) For the purpose of facilitating the financing of infrastructure and economic development activity in the state of Washington by the state or local or tribal governments, develop and conduct a program or programs to make loans to borrowers for project costs of infrastructure and economic development projects. Those loans may be made from the proceeds of bonds issued by the cooperative, from funds held by the cooperative, and from other assets of the cooperative including contributions. The cooperative may develop and conduct a program that will stimulate and encourage the development of infrastructure and economic development projects by the infusion of financial assistance for state, local, or tribal governments;

(16) Establish guidelines for the engagement by state, local, or tribal governments in programs conducted by the cooperative under this chapter. The cooperative may prescribe the form of application or procedure required of a borrower for a loan, fix the terms and conditions of the loan or purchase, and enter into financing agreements and other financing documents with borrowers with respect to loans and other forms of financial assistance;

(17) Establish, revise, and collect such member contributions and such fees and charges as the cooperative deems necessary, useful, or convenient to accomplish its purposes. Members are authorized to make such contributions, and state, local, and tribal governments are authorized to pay such fees and charges;

(18) Make such expenditures as are appropriate for paying the administrative costs and expenses of the cooperative in carrying out the provisions of this chapter;

(19) Establish such reserves and special funds, including but not limited to debt service and sinking funds, reserve funds, project funds, and such other special funds as the cooperative

deems necessary, useful, or convenient, and controls on funds to and from them, as the cooperative deems necessary, useful, or convenient to accomplish its purposes;

(20) Provide financial assistance and other forms of assistance to state, local, or tribal governments by providing information, advice, guidelines, forms, and procedures for implementing their financing programs;

(21) When authorized by not less than two-thirds of the members of the board, make distributions to members of amounts that the board deems surplus to the needs of the cooperative;

(22) Engage outside legal counsel, while receiving counsel on a routine basis from the office of the attorney general;

(23) Adopt rules concerning its exercise of the powers authorized by this chapter; and

(24) Exercise any other power the cooperative deems necessary, useful, or convenient to accomplish its purposes and exercise the powers expressly granted in this chapter.

**NEW SECTION. Sec. 5. FINANCING POWERS.** (1) Bonds issued under this chapter must be issued in the name of the cooperative. The bonds are not obligations of the state of Washington, may not create state debt, and are obligations only of the cooperative payable from the special fund or funds created by the cooperative for their payment. Such funds are not public moneys or funds of the state of Washington and at all times must be kept segregated and set apart from other funds.

(2) Bonds issued under this chapter must contain a recital on their face to the effect that payment of the principal of, interest on, and prepayment premium, if any, on the bonds, is a valid claim only as against the special fund or funds relating thereto, that neither the faith and credit nor the taxing power of the state or any municipal corporation, subdivision, or agency of the state, other than the cooperative as set forth in this chapter, is pledged to the payment of the principal of, interest on, and prepayment premium, if any, on the bonds. Contracts entered into by the cooperative must be entered into in the name of the cooperative and not in the name of the state of Washington. The

obligations of the cooperative under the contracts must be obligations only of the cooperative and are not in any way obligations of the state of Washington.

(3) The cooperative's bonds must bear such date or dates, mature at such time or times, be in such denominations, be in such form, be registered or registrable in such manner, be made transferable, exchangeable, and interchangeable, be payable in such medium of payment, at such place or places, be subject to such terms of redemption, bear such fixed or variable rate or rates of interest, be payable at such time or times, and be sold in such manner and at such price or prices, as the cooperative determines. The bonds shall be executed by the chair, by either its duly elected secretary or its treasurer, and by the trustee or paying agent if the cooperative determines to use a trustee or paying agent for the bonds. Execution of the bonds may be by manual or facsimile signature. The bonds of the cooperative may be negotiable instruments under Title 62A RCW.

(4) The bonds of the cooperative are subject to such terms, conditions, covenants, and protective provisions as are found necessary or desirable by the cooperative including, but not limited to, pledges of the cooperative's assets, setting aside of reserves, limitations on additional forms of indebtedness, and the mortgaging of all or any part of the cooperative's real or personal property, then owned or thereafter acquired, and other provisions the cooperative finds are necessary or desirable for the security of bond owners.

(5) Any bonds issued under this chapter may be secured by a financing document between the cooperative and the purchasers or owners of such bonds or between the cooperative and a corporate trustee appointed by the cooperative, which may be any trust company or bank having the powers of a trust company within or without the state. The financing document may pledge or assign, in whole or in part, the revenues and funds held or to be received by the cooperative, any present or future contract or other rights to receive the same, and the proceeds thereof. The financing document must contain such provisions for protecting and enforcing the rights, security, and remedies of bond owners as may be reasonable and proper including, without limiting the

generality of the foregoing, provisions defining defaults and providing for remedies in the event of default which may include the acceleration of maturities, restrictions on the individual rights of action by bond owners, and covenants setting forth duties of and limitations on the cooperative in conduct of its programs and the management of its property. In addition to other security provided in this chapter or otherwise by law, bonds issued by the cooperative may be secured, in whole or in part, by a pledge of the assets of the cooperative, including contributions of the members, or by financial guaranties, insurance or letters of credit issued to the cooperative or a trustee or any other person, by any bank, trust company, insurance or surety company, or other financial institution, within or without the state. The cooperative may pledge or assign, in whole or in part, the revenues and funds held or to be received by the cooperative, any present or future contract or other rights to receive the same, and the proceeds thereof, as security for such guaranties or insurance or for the reimbursement by the cooperative to any issuer of such letter of credit of any payments made under such letter of credit. No individual member is liable to the cooperative, to the cooperative's trustee, or to any other person in amounts exceeding the member's contribution unless authorized by a majority of the members of the cooperative.

(6) The cooperative may enter into financing documents with borrowers regarding bonds issued by the cooperative that may provide for the payment by each borrower of amounts sufficient, together with other revenues available to the cooperative, if any, to:

(a) Pay the borrower's share of the fees established by the cooperative;

(b) Pay the principal of, premium, if any, and interest on outstanding bonds of the cooperative issued in respect of such borrower as the same shall become due and payable; and

(c) Create and maintain reserves required or provided for by the cooperative in connection with the issuance of such bonds. The payments are not subject to supervision or regulation by any department, committee, board, body, bureau, or agency of the state other than the cooperative.

(7) Any security interest created in the unexpended bond proceeds and in the special funds created by the cooperative must be immediately valid and binding against such moneys and any securities in which such moneys may be invested without cooperative or trustee possession thereof, and the security interest is prior to any party having any competing claim in such moneys or securities, without filing or recording pursuant to chapter 62A.9A RCW and regardless of whether the party has notice of the security interest.

(8) When issuing bonds, the cooperative may provide for the future issuance of additional bonds or parity debt on a parity with outstanding bonds, and the terms and conditions of their issuance. The cooperative may refund or advance refund any bond of the cooperative in accordance with chapter 39.53 RCW or issue bonds with a subordinate lien against the fund or funds securing outstanding bonds. Bonds issued for refunding purposes may be combined with bonds issued for the financing or refinancing of new projects. Pending the application of the proceeds of the refunding bonds to the redemption of the bonds to be redeemed, the cooperative may enter into an agreement or agreements with a corporate trustee regarding the interim investment of the proceeds and the application of the proceeds and the earnings on the proceeds to the payment of the principal of and interest on, and the redemption of, the bonds to be redeemed.

(9) All money received by or on behalf of the cooperative with respect to this issuance of its bonds are trust funds to be held and applied solely as provided in this chapter. The cooperative, in lieu of receiving and applying the moneys itself, may enter into a trust agreement or indenture with one or more banks, including the national cooperative bank, or trust companies having the power and bank to conduct trust business in the state to:

(a) Perform all or any part of the obligations of the cooperative with respect to: (i) Bonds issued by it; (ii) the receipt, investment, and application of the proceeds of the bonds and money paid by a participant or available from other sources for the payment of the bonds; (iii) the enforcement of the obligations of a borrower in connection with the financing or refinancing of any

project; and (iv) other matters relating to the exercise of the cooperative's powers under this chapter;

(b) Receive, hold, preserve, and enforce any security interest or evidence of security interest granted by a participant for purposes of securing the payment of the bonds; and

(c) Act on behalf of the cooperative or the owners of bonds of the cooperative for purposes of assuring or enforcing the payment of the bonds, when due.

(10) The cooperative may purchase its bonds with any of its funds available for the purchase. The cooperative may hold, pledge, cancel, or resell the bonds subject to and in accordance with agreements with bond owners.

(11) The chair of the state finance cooperative or the chair's designee must be notified in advance of the issuance of bonds by the cooperative in order to promote the orderly offering of obligations in the financial markets.

(12) Neither the members of the cooperative, nor its directors or agents, nor employees of the Washington state housing finance commission, nor any person executing the bonds, is personally liable on the bonds or subject to any personal liability or accountability by reason of the issuance of the bonds.

(13) The cooperative may, out of any fund available therefor, purchase its bonds in the open market.

(14) Any owner of bonds of the cooperative issued under this chapter, and the trustee under any trust agreement or indenture, may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any of their respective rights, and may become the purchaser at any foreclosure sale if the person is the highest bidder, except to the extent the rights given are restricted by the cooperative in any bond resolution or trust agreement or indenture authorizing the issuance of the bonds.

(15) The cooperative may charge for its costs and services in review or consideration of a proposed loan to a state, local, or tribal government, whether or not the loan is made.

(16) To the extent permitted under its contracts with the owners of bonds of the cooperative, the cooperative may consent to modification of the rate of interest,

time and payment of installment of principal or interest, security, or any other term of a bond or note, loan to a state, local, or tribal government, contract, or agreement of any kind to which the cooperative authority is a party.

(17) The bonds of the cooperative are securities in which all public officers and bodies of this state and all counties, cities, municipal corporations, and political subdivisions, all banks, eligible banking organizations, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, insurance companies and associations, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control.

(18) This section provides a complete, additional, and alternative method for accomplishing the purposes of this chapter and shall be regarded as supplemental and additional to powers conferred by other laws. The issuance of bonds and refunding bonds under this chapter need not comply with the requirements of any other law applicable to the issuance of bonds. Insofar as the provisions of this chapter are inconsistent with the provisions of any general or special law, or parts thereof, the provisions of this chapter are controlling.

NEW SECTION. **Sec. 6.** A new section is added to chapter 43.190 RCW to read as follows:

Employees of the Washington state housing finance commission shall primarily administer and operate the Washington state public financial cooperative, as provided by section 3(8) of this act. The cooperative may consult with other state agencies at its discretion and without the approval of the Washington state housing finance commission.

**Sec. 7.** RCW 39.59.040 and 2016 c 152 s 11 are each amended to read as follows:

Any local government in the state of Washington may invest in:

(1) Bonds of the state of Washington and any local government in the state of Washington;

(2) General obligation bonds of a state and general obligation bonds of a local government of a state, which bonds have at the time of investment one of the three highest credit ratings of a nationally recognized rating agency;

(3) Subject to compliance with RCW 39.56.030, registered warrants of a local government in the same county as the government making the investment;

(4) Certificates, notes, or bonds of the United States, or other obligations of the United States or its agencies, or of any corporation wholly owned by the government of the United States; or United States dollar denominated bonds, notes, or other obligations that are issued or guaranteed by supranational institutions, provided that, at the time of investment, the institution has the United States government as its largest shareholder;

(5) Federal home loan bank notes and bonds, federal land bank bonds and federal national mortgage association notes, debentures and guaranteed certificates of participation, or the obligations of any other government sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system;

(6) Bankers' acceptances purchased on the secondary market;

(7) Commercial paper purchased in the secondary market, provided that any local government of the state of Washington that invests in such commercial paper must adhere to the investment policies and procedures adopted by the state investment board; (~~and~~)

(8) Corporate notes purchased on the secondary market, provided that any local government of the state of Washington that invests in such notes must adhere to the investment policies and procedures adopted by the state investment board; and

(9) A cooperative as defined in section 2 of this act and bonds issued by such cooperative.

**Sec. 8.** RCW 42.56.270 and 2020 c 238 s 11 are each amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750; (b) highway construction or improvement as required by RCW 47.28.070; or (c) alternative public works contracting procedures as required by RCW 39.10.200 through 39.10.905;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, 43.--- (the new chapter created in section 15 of this act), and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications

for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10) (a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), marijuana producer, processor, or retailer license, liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(c) Valuable formulae or financial or proprietary commercial information records received during a consultative visit or while providing consultative services to a licensed marijuana business in accordance with RCW 69.50.561;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services or the health care authority for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12) (a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8); and

(ii) Financial or proprietary information collected from any person and

provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter ~~((70.95N))~~ 70A.500 RCW to implement chapter ~~((70.95N))~~ 70A.500 RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under RCW 43.330.502, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information;

(21) Market share data submitted by a manufacturer under RCW ~~((70.95N.190))~~ 70A.500.190(4);

(22) Financial information supplied to the department of financial institutions, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW 21.20.880 or when filed by or on behalf of an investor for the purpose of purchasing such securities;

(23) Unaggregated or individual notices of a transfer of crude oil that is financial, proprietary, or commercial information, submitted to the department of ecology pursuant to RCW 90.56.565(1)(a), and that is in the

possession of the department of ecology or any entity with which the department of ecology has shared the notice pursuant to RCW 90.56.565;

(24) Financial institution and retirement account information, and building security plan information, supplied to the liquor and cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345, when filed by or on behalf of a licensee or prospective licensee for the purpose of obtaining, maintaining, or renewing a license to produce, process, transport, or sell marijuana as allowed under chapter 69.50 RCW;

(25) Marijuana transport information, vehicle and driver identification data, and account numbers or unique access identifiers issued to private entities for traceability system access, submitted by an individual or business to the liquor and cannabis board under the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345 for the purpose of marijuana product traceability. Disclosure to local, state, and federal officials is not considered public disclosure for purposes of this section;

(26) Financial and commercial information submitted to or obtained by the retirement board of any city that is responsible for the management of an employees' retirement system pursuant to the authority of chapter 35.39 RCW, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the retirement fund or to result in private loss to the providers of this information except that (a) the names and commitment amounts of the private funds in which retirement funds are invested and (b) the aggregate quarterly performance results for a retirement fund's portfolio of investments in such funds are subject to disclosure;

(27) Proprietary financial, commercial, operations, and technical and research information and data submitted to or obtained by the liquor and cannabis board in applications for marijuana research licenses under RCW 69.50.372, or in reports submitted by marijuana research licensees in accordance with rules adopted by the liquor and cannabis board under RCW 69.50.372;

(28) Trade secrets, technology, proprietary information, and financial considerations contained in any agreements or contracts, entered into by a licensed marijuana business under RCW 69.50.395, which may be submitted to or obtained by the state liquor and cannabis board;

(29) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the Andy Hill cancer research endowment program in applications for, or delivery of, grants under chapter 43.348 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(30) Proprietary information filed with the department of health under chapter 69.48 RCW;

(31) Records filed with the department of ecology under chapter ~~((70.375))~~ 70A.515 RCW that a court has determined are confidential valuable commercial information under RCW ~~((70.375.130))~~ 70A.515.130; and

(32) Unaggregated financial, proprietary, or commercial information submitted to or obtained by the liquor and cannabis board in applications for licenses under RCW 66.24.140 or 66.24.145, or in any reports or remittances submitted by a person licensed under RCW 66.24.140 or 66.24.145 under rules adopted by the liquor and cannabis board under chapter 66.08 RCW.

**Sec. 9.** RCW 42.56.400 and 2020 c 243 s 4 are each amended to read as follows:

The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state



purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of either all owners or all insureds, or both, received by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30A.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from chapter 43.--- RCW (the new chapter created in section 15 of this act), from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Documents, materials, or information obtained or provided by the insurance commissioner under RCW 48.31B.015(2) (l) and (m), 48.31B.025, 48.31B.030, 48.31B.035, and 48.31B.036, all of which are confidential and privileged;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080;

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140;

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595;

(16) Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7) (a) (ii);

(17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver under RCW 48.31.025 and 48.99.017, which are records under the jurisdiction and control of the receivership court. The commissioner is not required to search for, log, produce, or otherwise comply with the public records act for any records that the commissioner obtains under chapters 48.31 and 48.99 RCW in the commissioner's capacity as a receiver, except as directed by the receivership court;

(18) Documents, materials, or information obtained by the insurance commissioner under RCW 48.13.151;

(19) Data, information, and documents provided by a carrier pursuant to section 1, chapter 172, Laws of 2010;

(20) Information in a filing of usage-based insurance about the usage-based component of the rate pursuant to RCW 48.19.040(5) (b);

(21) Data, information, and documents that are submitted to the office of the insurance commissioner by an entity providing health care coverage pursuant to RCW 28A.400.275;

(22) Data, information, and documents obtained by the insurance commissioner under RCW 48.29.017;

(23) Information not subject to public inspection or public disclosure under RCW 48.43.730(5);

(24) Documents, materials, or information obtained by the insurance commissioner under chapter 48.05A RCW;

(25) Documents, materials, or information obtained by the insurance commissioner under RCW 48.74.025, 48.74.028, 48.74.100(6), 48.74.110(2) (b) and (c), and 48.74.120 to the extent such documents, materials, or information independently qualify for exemption from disclosure as documents, materials, or information in possession of the commissioner pursuant to a financial conduct examination and exempt from disclosure under RCW 48.02.065;

(26) Nonpublic personal health information obtained by, disclosed to, or in the custody of the insurance commissioner, as provided in RCW 48.02.068;

(27) Data, information, and documents obtained by the insurance commissioner under RCW 48.02.230;

(28) Documents, materials, or other information, including the corporate annual disclosure obtained by the insurance commissioner under RCW 48.195.020;

(29) Findings and orders disapproving acquisition of a trust institution under RCW 30B.53.100(3); and

(30) All claims data, including health care and financial related data received under RCW 41.05.890, received and held by the health care authority.

**Sec. 10.** RCW 42.56.400 and 2020 c 243 s 4 and 2020 c 240 s 9 are each reenacted and amended to read as follows:

The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW

41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of either all owners or all insureds, or both, received by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30A.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from chapter 43.--- RCW (the new chapter created in section 15 of this act), from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Documents, materials, or information obtained or provided by the insurance commissioner under RCW 48.31B.015(2) (l) and (m), 48.31B.025, 48.31B.030, 48.31B.035, and 48.31B.036, all of which are confidential and privileged;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080;

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140;

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595;

(16) Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7) (a) (ii);

(17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver under RCW 48.31.025 and 48.99.017, which are records under the jurisdiction and control of the receivership court. The commissioner is not required to search for, log, produce, or otherwise comply with the public records act for any records that the commissioner obtains under chapters 48.31 and 48.99 RCW in the commissioner's capacity as a receiver, except as directed by the receivership court;

(18) Documents, materials, or information obtained by the insurance commissioner under RCW 48.13.151;

(19) Data, information, and documents provided by a carrier pursuant to section 1, chapter 172, Laws of 2010;

(20) Information in a filing of usage-based insurance about the usage-based component of the rate pursuant to RCW 48.19.040(5)(b);

(21) Data, information, and documents that are submitted to the office of the insurance commissioner by an entity providing health care coverage pursuant to RCW 28A.400.275;

(22) Data, information, and documents obtained by the insurance commissioner under RCW 48.29.017;

(23) Information not subject to public inspection or public disclosure under RCW 48.43.730(5);

(24) Documents, materials, or information obtained by the insurance commissioner under chapter 48.05A RCW;

(25) Documents, materials, or information obtained by the insurance commissioner under RCW 48.74.025, 48.74.028, 48.74.100(6), 48.74.110(2)(b) and (c), and 48.74.120 to the extent such documents, materials, or information independently qualify for exemption from disclosure as documents, materials, or information in possession of the commissioner pursuant to a financial conduct examination and exempt from disclosure under RCW 48.02.065;

(26) Nonpublic personal health information obtained by, disclosed to, or in the custody of the insurance commissioner, as provided in RCW 48.02.068;

(27) Data, information, and documents obtained by the insurance commissioner under RCW 48.02.230;

(28) Documents, materials, or other information, including the corporate annual disclosure obtained by the insurance commissioner under RCW 48.195.020;

(29) Findings and orders disapproving acquisition of a trust institution under RCW 30B.53.100(3);

(30) All claims data, including health care and financial related data received under RCW 41.05.890, received and held by the health care authority; and

(31) Contracts not subject to public disclosure under RCW 48.200.040 and 48.43.731.

**Sec. 11.** RCW 43.10.067 and 1997 c 41 s 9 are each amended to read as follows:

No officer, director, administrative agency, board, or commission of the state, other than the attorney general, shall employ, appoint or retain in employment any attorney for any

administrative body, department, commission, agency, or tribunal or any other person to act as attorney in any legal or quasi legal capacity in the exercise of any of the powers or performance of any of the duties specified by law to be performed by the attorney general, except where it is provided by law to be the duty of the judge of any court or the prosecuting attorney of any county to employ or appoint such persons: PROVIDED, That RCW 43.10.040, and 43.10.065 through 43.10.080 shall not apply to the administration of the commission on judicial conduct, the state law library, the law school of the state university, the administration of the state bar act by the Washington State Bar Association, ~~((or))~~ the representation of an estate administered by the director of the department of revenue or the director's designee pursuant to chapter 11.28 RCW, or the state public financial cooperative to the extent provided in section 4(22) of this act.

The authority granted by chapter 1.08 RCW, RCW 44.28.065, and 47.01.061 shall not be affected hereby.

**Sec. 12.** RCW 43.84.080 and 2016 c 152 s 18 are each amended to read as follows:

Wherever there is in any fund or in cash balances in the state treasury more than sufficient to meet the current expenditures properly payable therefrom, the state treasurer may invest or reinvest such portion of such funds or balances as the state treasurer deems expedient in the following:

(1) Certificates, notes, or bonds of the United States, or other obligations of the United States or its agencies, or of any corporation wholly owned by the government of the United States or United States dollar denominated bonds, notes, or other obligations that are issued or guaranteed by supranational institutions, provided that, at the time of investment, the institution has the United States government as its largest shareholder;

(2) In state, county, municipal, or school district bonds, notes, or in warrants of taxing districts of the state. Such bonds and warrants shall be only those found to be within the limit of indebtedness prescribed by law for the taxing district issuing them and to be general obligations. The state treasurer may purchase such bonds or warrants

directly from the taxing district or in the open market at such prices and upon such terms as it may determine, and may sell them at such times as it deems advisable;

(3) In federal home loan bank notes and bonds, federal land bank bonds and federal national mortgage association notes, debentures and guaranteed certificates of participation, or the obligations of any other government sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system;

(4) Bankers' acceptances purchased on the secondary market;

(5) Commercial paper purchased on the secondary market, provided that the state treasurer adheres to the investment policies and procedures adopted by the state investment board;

(6) General obligation bonds of any state and general obligation bonds of local governments of other states, which bonds have at the time of investment one of the three highest credit ratings of a nationally recognized rating agency; ~~((and))~~

(7) Corporate notes purchased on the secondary market, provided that the state treasurer adheres to the investment policies and procedures adopted by the state investment board; and

(8) Contributions to a cooperative as defined in section 2 of this act.

NEW SECTION. **Sec. 13.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 14.** This act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof.

NEW SECTION. **Sec. 15.** Sections 1 through 5 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. **Sec. 16.** Section 9 of this act expires January 1, 2022.

NEW SECTION. **Sec. 17.** Section 10 of this act takes effect January 1, 2022."

Correct the title.

Signed by Representatives Kirby, Chair; Walen, Vice Chair; Ryu and Santos.

MINORITY recommendation: Do not pass. Signed by Representatives Vick, Ranking Minority Member; Dufault, Assistant Ranking Minority Member and Corry.

Referred to Committee on Appropriations.

March 24, 2021

ESSB 5191 Prime Sponsor, Committee on Law & Justice: Regulating unfair business practices and prohibiting predatory price increases during states of emergency. Reported by Committee on Consumer Protection & Business

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature recognizes the need to protect Washingtonians from excessive and unjustified price increases implemented during or shortly after a declared state of emergency for essential goods and services that are vital and necessary for the health, safety, and welfare of consumers.

The legislature also recognizes the need to support businesses providing these goods in understanding their obligations to consumers during times of potential chaos and uncertainty in the marketplace.

**NEW SECTION. Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Building materials" means lumber, construction tools, windows, and anything else used in the building or rebuilding of property.

(2) "Consumer food item" means any article used or intended for use for food, drink, confection, or condiment by a person or animal.

(3) "Emergency supplies" includes, but is not limited to, water, flashlights, radios, batteries, candles, heating and cooking fuel, blankets, soap, diapers, temporary shelters, tape, toiletries, personal hygiene products, plywood, nails, and hammers.

(4) "Excessive price" means a price more than 15 percent greater than the price at which the person sold, rented, or offered for sale or rent the same product or service immediately prior to the state of emergency defined in subsection (13) of this section. If the seller did not sell, rent, or offer for sale or rent the product or service immediately prior to the onset of the state of emergency defined in subsection (13) of this section, or if the price charged by the person for the product or service prior to the onset of the state of emergency cannot be determined, an excessive price shall be presumed where the price is more than 15 percent greater than the price of the same product or service offered for sale or rent by other similarly situated sellers prior to the state of emergency defined in subsection (13) of this section. If a state of emergency as defined in subsection (13) of this section continues for more than one year, the price of the product or service on the anniversary of the state of emergency as defined in subsection (13) of this section must be the new baseline price for determining whether a price is excessive.

(5) "Gasoline" means any fuel used to power any motor vehicle or power tool.

(6) "Health care services" means services necessary to provide medical care that are provided or arranged by a temporary staffing services company including, but not limited to, services provided by physicians, physician assistants, nurses, and nursing assistants.

(7) "Housing" means a short-term stay commercial enterprise including, but not limited to, a hotel or motel. Housing does not mean any residence governed by the residential landlord-tenant act, chapter 59.18 RCW, or the manufactured/mobile home landlord-tenant act, chapter 59.20 RCW.

(8) "Medical supplies" includes, but is not limited to, prescription and nonprescription medications, pain relievers, infection control and prevention products, bandages, gauze, isopropyl alcohol, and antibacterial products.

(9) "Person" means any natural person, proprietorship, company, firm, corporation, limited liability company, partnership, independent contractor, group, unincorporated association,

trust, estate, community, agency, institution, joint venture, other business or government organization, or any other legal entity.

(10) "Personal protective equipment" means any protective equipment that protects against physical, electrical, heat, chemicals, biohazards, and airborne particulate matter including, but not limited to, clothing, helmets, goggles, or other garments or equipment designed to protect the wearer's body from injury or infection.

(11) "Repair or reconstruction services" means work, labor, or services performed by any person for repairs to residential or commercial property of any type that is damaged as a result of a natural or human-induced disaster or emergency resulting from an event described in subsection (13) of this section.

(12) "Seller" includes any person within the chain of distribution with authority or permission to adjust, set, or regulate a price of any product or service offered for sale or rent subject to section 3 of this act.

(13) "State of emergency" means an event for which a state of emergency has been declared by the governor of the state of Washington.

(14) "Temporary staffing services company" has the same meaning as set forth in RCW 50.04.245.

(15) "Transportation, freight, and storage services" means any service that is performed by a person that contracts to move, store, or transport personal or business property, or rents equipment for those purposes.

**NEW SECTION. Sec. 3.** (1) This section shall be automatically implemented when the governor declares a state of emergency pursuant to RCW 43.06.010 and 43.06.200 through 43.06.220. In the event of a state of emergency as defined in section 2 of this act, no person in the county or counties for which an emergency has been declared shall sell, rent, or offer to sell or rent, regardless of whether an actual sale or rental occurs, a good or service listed in this section at an excessive price. Goods and services to which this section applies are:

- (a) Building materials;
- (b) Consumer food items;

(c) Goods or services used for emergency cleanup, regardless of whether the goods or services are listed in this subsection;

- (d) Emergency supplies;
- (e) Gasoline;
- (f) Health care services;
- (g) Housing;
- (h) Medical supplies;
- (i) Repair or reconstruction services;
- (j) Transportation, freight, and storage services; and
- (k) Personal protective equipment.

(2) The governor shall have the authority to modify the list of goods and services under subsection (1) of this section in an executive order pursuant to RCW 43.06.220 where appropriate in the context of a particular emergency.

(3) A person who increases a price does not violate this section if the price increase is attributable to an additional cost imposed by a supplier of a good or service, or other costs of providing the good or service, including an additional cost for labor or materials used to provide a product or service.

(4) A person with authority or permission to adjust or regulate a price does not violate this section if that person undertakes commercially reasonable efforts to prevent or remove offers to sell or rent a good or service listed in this section at an excessive price.

(5) If, in the 60 days prior to the governor's implementation of this section, a person sold, rented, or offered for sale or rent a good or service listed in subsection (3) of this section at a reduced price which was lower than the price at which the person ordinarily sells, rents, or offers for sale or rent the good or service in the area for which the declaration was issued, then the price at which that person ordinarily sells, rents, or offers for sale or rent the good or service in the area for which the declaration was issued shall be used in determining if the person is in violation of this section.

(6) If the 60 days prior to the governor's implementation reflects quarter 4, November through January,

holiday pricing, then the price at which the person ordinarily sells, rents, or offers for sale or rent the good or service in the area in which the declaration was issued shall be based on quarter 3, August through October.

(7)(a) The restrictions imposed by this chapter expire upon termination of the state of emergency or 60 days after the state of emergency is declared, whichever comes first.

(b) Once restrictions are imposed under this chapter to respond to a specific emergency, the restrictions may only be extended, renewed, or reimposed with legislative approval through concurrent resolution. If the legislature is not in session, restrictions imposed under this chapter may be extended, renewed, or reimposed in writing by the leadership of the senate and the house of representatives until the legislature can extend the restrictions through concurrent resolution. For purposes of this section, "leadership of the senate and the house of representatives" means the majority and minority leaders of the senate and the speaker and the minority leader of the house of representatives.

(c) If restrictions imposed under this chapter expire and are not extended, renewed, or reimposed, this section does not affect any rights or remedies provided in the consumer protection act, chapter 19.86 RCW.

NEW SECTION. Sec. 4. (1) The attorney general may investigate violations of this chapter. The attorney general may issue subpoenas or civil investigative demands pursuant to RCW 19.86.110 to any person that the attorney general has reason to believe has violated this chapter or has information or knowledge pertaining to a violation of this chapter.

(2) The attorney general may issue a cease and desist letter to any person to restrain and prevent violations of this chapter. If the recipient of a cease and desist letter does not comply within five calendar days of receipt of the letter, the attorney general may file an action in superior court at any time thereafter to enforce the cease and desist letter. If the court finds that the person violated this chapter and failed to comply with a cease and desist letter, the court shall enjoin the person from engaging in conduct that violates this

chapter and shall impose a civil penalty of not more than \$10,000 per violation of the cease and desist letter. In any successful action to enforce a cease and desist letter under this chapter, the court shall award the attorney general the costs of bringing the action, including reasonable investigative costs and reasonable attorneys' fees. The remedies under this subsection are in addition to any other remedies a court may order under subsection (3) of this section.

(3) Every person who violates this chapter shall forfeit and pay a civil penalty of no more than \$25,000 per violation. No additional civil penalty shall be assessed for the same violation under the consumer protection act pursuant to RCW 19.86.140.

(4) The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest. A violation of this chapter, including, but not limited to, a violation of a cease and desist letter issued pursuant to subsection (2) of this section, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act.

(5) The remedies provided by this chapter are in addition to any other remedies provided by law.

NEW SECTION. Sec. 5. Upon application of this act, the office of the attorney general shall produce and maintain on its website translated versions of this act in the top 10 languages spoken in Washington state and, at the discretion of the office of the attorney general, other languages as requested or needed to support small businesses that are either owned or operated, or both, by individuals who have limited English language proficiency. The notice must be made available upon request in printed form on one letter size paper, eight and one-half by 11 inches, and in an easily readable font size.

NEW SECTION. Sec. 6. Sections 1 through 5 of this act constitute a new chapter in Title 19 RCW.

NEW SECTION. Sec. 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and

its existing public institutions, and takes effect immediately."

Correct the title.

Signed by Representatives Kirby, Chair; Walen, Vice Chair; Corry; Ryu and Santos.

MINORITY recommendation: Do not pass. Signed by Representatives Vick, Ranking Minority Member Dufault, Assistant Ranking Minority Member.

Referred to Committee on Rules for second reading.

March 24, 2021

**E2SSB 5194** Prime Sponsor, Committee on Ways & Means: Providing for equity and access in the community and technical colleges. (REVISED FOR ENGROSSED: Concerning equity and access in higher education. ) Reported by Committee on College & Workforce Development

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** INTENT. The legislature recognizes that student completion rates for workforce training certification and degree programs at community and technical colleges are far lower than desirable to ensure that students may utilize the opportunities of postsecondary education to lift themselves and their families out of poverty and to meet our state's student achievement council road map goals, including for 70 percent of Washington residents to have a postsecondary certification or degree to meet workforce needs. The legislature recognizes that first-generation college-attending students, students with disabilities, and underrepresented minority students face far greater obstacles to apply, remain in school, and complete programs. This disparate impact greatly affects our state's commitment to equity.

The legislature recognizes that offering tuition financial support to first-generation and underrepresented minority students is necessary for students to enroll and attend college but must also be accompanied by proven supports for them to complete their degrees or workforce training programs.

The legislature recognizes that there are mentorship and advising programs based on strong evidence that have been

proven to be successful in greatly increasing retention and degree or workforce training completion rates for first-generation students, underrepresented minority students, students with disabilities, and for all students at community and technical colleges. It is the legislature's intent that successful programs such as guided pathways be implemented at all community and technical colleges with the goal of doubling completion rates (as measured by completion in six years) for students in the next eight years. To accomplish this goal, the legislature intends to achieve full implementation of research-based programs to improve student outcomes, such as guided pathways. The legislature affirms that all students receiving Washington college grants, college bound scholarships, or federal Pell grants should receive the supports, including mentoring, that have been proven to increase completion rates.

The legislature further finds that research establishes that students from underrepresented minorities are far more likely to complete degrees or workforce training certification programs if the faculty and staff of the college reflect the diversity of the student body. Therefore, the legislature intends for the state's community and technical colleges to develop and implement plans to increase faculty and staff diversity.

**NEW SECTION. Sec. 2.** FINDINGS. The legislature finds that there is a need to expand investments in community and technical colleges for the purpose of guaranteeing both equitable access and educational success for all residents of the state, particularly for students from communities of color and low-income communities. The legislature finds further that equality of opportunity for all students requires investments to support services that are critical to: The success of students of color and low-income students; provide systemwide equity initiatives intended to make community and technical college campuses welcoming, benevolent places; overcome the digital divide for all students; and provide qualified and available counseling throughout the community and technical college system. The legislature also finds that a more full-time, stable, fairly compensated, and diverse community and technical college faculty is necessary to enhance student success and to improve the mentoring available for a diverse student body. The



legislature also finds that resources for student aid and workforce investment need to be adequate to meet the needs of all students in the state, particularly those from families of color and low-income families.

**NEW SECTION. Sec. 3. DIVERSITY, EQUITY, AND INCLUSION STRATEGIC PLAN.** (1) Beginning July 30, 2022, all community and technical colleges must submit, on a biennial basis, strategic plans to the state board for community and technical colleges for achieving diversity, equity, and inclusion of all races on their campuses.

(2) Colleges must create their strategic plans using an inclusive process of stakeholders including, but not limited to, classified staff, faculty, administrative exempt staff, students, and community organizations. Colleges are encouraged to use campus climate surveys to develop and update strategic plans for diversity, equity, and inclusion of all races.

(3) In addition to planning, each community and technical college shall include in its diversity program opportunities for students from historically marginalized communities to form student-based organizations, and to use community-based organizations, that permit students to work together to mentor and assist one another in navigating the educational system and to access trained mentors using evidence-based mentoring strategies.

(4) Each community and technical college shall establish a culturally appropriate outreach program. The outreach program may include communities of color, students with disabilities, neurodiverse communities, and low-income communities and be designed to assist potential students to understand the opportunities available in the community and technical college system. The outreach program may assist students with navigating the student aid system. Outreach programs may include partnerships with appropriate community-based organizations and use research and supports from the student achievement council.

(5) The state board for community and technical colleges shall develop a model faculty diversity program designed to provide for the retention and recruitment of faculty from all racial, ethnic, and cultural backgrounds. The faculty

diversity program must be based on proven practices in diversity hiring processes.

(6) Each community and technical college shall conspicuously post on its website and include in the strategic plans, programs, and reports definitions for key terms including: Diversity, equity, inclusion, culturally competent, culturally appropriate, historically marginalized communities, communities of color, low-income communities, and community organizations.

**NEW SECTION. Sec. 4. STUDENT SUCCESS SUPPORT PROGRAMS AND GUIDED PATHWAYS IMPLEMENTATION.** (1) Subject to availability of amounts appropriated for this specific purpose, each community and technical college shall fully implement guided pathways. At a minimum, guided pathways implementation must include:

(a) Comprehensive mapping of student educational pathways with student end goals in mind. These must include transparent and clear career paths that are tightly aligned to the skills sought by employers. Pathways must align course sequences to show clear paths for students, alignment with K-12 and university curriculum, and skill sets needed to enter the workforce;

(b) Dedicated advising and career counseling that helps students make informed program choices and develop completion plans. Advising services may include processes that help students explore possible career and educational choices while also emphasizing early planning. Advising must be culturally competent and with an emphasis on helping historically underserved, low-income, and students of color navigate their education;

(c) Data analysis of student learning as well as program and service outcomes. Data must be used to inform program development, the creation and further refinement of student pathways, and to provide opportunities for early intervention to help students succeed; and

(d) A student success support infrastructure using programs that the state board for community and technical colleges finds have been effective in closing equity gaps among historically underserved student populations and improve student completion rates. The student success support program must be based on research or documented evidence of success. In tandem with guided

pathways implementation, student success support programs may include evidence-based elements such as:

(i) Equity competent academic advising services;

(ii) Equity competent career development programming;

(iii) Clear information regarding financial aid and financial literacy; and

(iv) Inclusive curriculum and teaching practices.

(2) Each community and technical college shall post on its website and include in the guided pathways program documentation and reports definitions for key terms including: Diversity, equity, inclusion, culturally competent, culturally appropriate, historically marginalized communities, communities of color, low-income communities, and community organizations.

(3)(a) The Washington state institute for public policy, in consultation with the workforce education investment accountability and oversight board under RCW 28C.18.200, shall complete an evaluation of the guided pathways model. To the extent possible, the institute shall complete a preliminary report that evaluates the effect of the guided pathways model on early student outcomes including, but not limited to, student retention and persistence, college level English and math within the first year, and graduation and transfer rates. The preliminary report must review the implementation of the guided pathways model in Washington and any available evidence of the effectiveness of the guided pathways model. The preliminary report must be submitted by December 15, 2023.

(b) The Washington state institute for public policy shall complete a final report that evaluates the effect of the guided pathways on longer-term student outcomes including, but not limited to, degree completion, time to degree, transfer to four-year institutions, employment, and earnings, to the extent possible. The final report must be submitted by December 15, 2029.

(c) Both the preliminary and final reports must consider differences in outcomes by racial and ethnic subgroups and socioeconomic status.

NEW SECTION. Sec. 5. TENURE-TRACK FACULTY. (1) The legislature recognizes

that student outcomes and success, especially for first generation, underserved students, may be significantly improved by increasing the number of full-time faculty at community and technical colleges.

(a) The legislature's goal is that community and technical colleges increase the numbers of full-time tenured positions by adding 200 new full-time tenure-track positions in the 2021-2023 fiscal biennium.

(b) This goal is best accomplished through converting part-time faculty positions to full-time tenure-track positions and by hiring new full-time faculty through processes identified in each college's diversity, equity, and inclusion of all races strategic plan described in section 3 of this act. If specific funding for the purpose of conversion assignments proposed in this section is not provided in the omnibus appropriations act, the conversion assignments proposed must be delayed until such time as specific funding is provided.

(c) The college board must collect data and assess the impact of the 200 additional full-time tenure-track faculty on student completion rates. The college board must convene representatives of faculty, staff, and administration to report on outcomes as a result of increasing full-time tenure-track faculty. In consultation with representatives of faculty, staff, and administration, the college board must make recommendations about future steps to increase full-time tenure-track faculty that incorporate faculty diversity and historically underserved communities. The college board must report the results of its assessment, along with next step recommendations, to the legislature by December 15, 2023. The college board shall conspicuously post on its website and include in the report definitions for key terms including: Diversity, equity, inclusion, culturally competent, culturally appropriate, historically marginalized communities, communities of color, low-income communities, and community organizations.

(2) This section expires July 1, 2024.

NEW SECTION. Sec. 6. MENTAL HEALTH COUNSELOR PILOT PROGRAM. (1) Subject to the availability of amounts appropriated for this specific purpose, the college

board shall administer a pilot program to increase student access to mental health counseling and services.

(2) The college board, in collaboration with the selection committee, shall select community or technical colleges to participate in the pilot program. At least half of the participating colleges must be located outside of the Puget Sound area. For purposes of this section, "Puget Sound area" means Snohomish, King, Pierce, and Thurston counties. Each participating college must receive a grant to implement one or more strategies to increase student access to mental health counseling and services, including substance use disorder counseling and services.

(3)(a) A selection committee consisting of the following shall assist with the application selection process:

(i) One community or technical college president;

(ii) One community or technical college vice president for student services or student instruction;

(iii) Two faculty counselors employed at a community or technical college; and

(iv) One community or technical college student.

(b) The selection committee may consult with representatives of an entity within a college or university that has expertise in suicide prevention and the department of health in developing selection criteria.

(4) Community and technical colleges wishing to participate in the pilot program shall apply to the college board. Applicants must identify opportunities for expanding on-campus mental health counseling and services. Applicants must also show a commitment to further develop partnerships by engaging external community providers, including those who provide crisis services and substance use disorder treatment and counseling. Applications that demonstrate plans to include one or more of the following strategies recommended by the community and technical college counselors task force must be prioritized:

(a) Improve equity, diversity, and inclusion of all races in counseling services, such as by diversifying the counselor workforce by adopting equity-centered recruiting, training, and

retention practices or by providing equity training and awareness for all counselors;

(b) Meet mental health needs of students through an all-campus effort;

(c) Engage students to help increase mental health and counseling awareness and promote help-seeking behavior through student groups and other methods;

(d) Increase the visibility of counseling services on campus;

(e) Increase or expand external partnerships with community service providers;

(f) Adopt the use of telebehavioral health, especially in under resourced communities;

(g) Develop an assessment of counseling services to inform improvements and ensure counseling services are meeting student needs; or

(h) Implement counseling approaches grounded in theory that have evidence of being effective.

(5) Colleges selected to participate in the pilot program that use grant funding to hire additional mental health counselors must hire counselors who have specific graduate-level training for meeting the mental and behavioral health needs of students.

(6) Colleges selected to participate in the pilot program shall submit a joint report to the appropriate committees of the legislature and in accordance with RCW 43.01.036 by November 1, 2023. The report must include:

(a) Information on which colleges were selected for the pilot program, how much grant funding was received per college, and what strategies each implemented to increase student access to mental health counseling and services;

(b) Demographic data of students accessing mental health counseling and services, including those students who are considered underrepresented or traditionally have limited access to mental health counseling and services;

(c) Whether the mental health counseling and services provided are meeting the demand of students in terms of type and availability, and whether the various types of mental health counseling and services are being provided by

community providers versus on-campus services;

(d) Information and data on the effectiveness, including cost-effectiveness, of each strategy used to increase student access to mental health counseling and services, including substance use disorder counseling and services, such as the number of additional students served, reduced wait times for counseling appointments, or other data that reflects expanded access; and

(e) Lessons learned and recommendations for improving student access to mental health counseling and services at community and technical colleges and to community providers, including whether there were any strategies implemented that proved more effective than others in increasing access.

(7) Colleges selected for the pilot program shall conspicuously post on their websites and include in the report to the legislature the definitions for key terms including: Diversity, equity, inclusion, culturally competent, culturally appropriate, historically marginalized communities, communities of color, low-income communities, and community organizations.

(8) The pilot program expires July 1, 2025.

(9) This section expires January 1, 2026.

**NEW SECTION. Sec. 7. MINIMUM COUNSELOR STANDARDS.** (1) It is the intent of the legislature to provide clear minimum standards to ensure qualified faculty counselors while also providing flexibility to allow for differences in criteria required by hiring institutions. Within existing resources, and beginning September 1, 2021, the college board shall adopt rules regarding the minimum hiring standards for a faculty counselor. At a minimum, these must include:

(a) A graduate or professional degree in a related field;

(b) Completion of appropriate graduate coursework; and

(c) Standards established by the state board for community and technical colleges.

(2) The requirements and standards imposed through this section do not apply to an individual employed by a college district as a counselor before September 1, 2021. Counselors who began employment at one college district prior to September 1, 2021, and moved employment to a different college district after that date may carry the exemptions from the requirements and standards imposed through this section to their new place of employment.

**Sec. 8.** RCW 28B.96.010 and 2020 c 326 s 2 are each amended to read as follows:

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

(1) "Eligible student" means a student who:

(a) Is a resident student;

(b) Demonstrates financial need as defined in RCW 28B.92.030;

(c) Has indicated they will attend an institution of higher education or is making satisfactory progress in a program, as defined in rule by the office, at an institution of higher education;

(d) Fills out the Washington application for state financial aid; and

(e) Does not qualify for federally funded student financial aid because of their citizenship status.

(2) "Institution of higher education" has the same meaning as in RCW 28B.92.030.

(3) "Office" means the office of student financial assistance created in RCW 28B.76.090.

(4) "Participant" means an eligible student who has received an undocumented student support loan.

(5) "Resident student" means:

(a) A financially independent student who has had a domicile in the state of Washington for the period of one year immediately prior to the time of commencement of the first day of the semester or quarter for which the student has registered at any institution and has in fact established a bona fide domicile in this state primarily for purposes other than educational;

(b) A dependent student, if one or both of the student's parents or legal

guardians have maintained a bona fide domicile in the state of Washington for at least one year immediately prior to commencement of the semester or quarter for which the student has registered at any institution;

(c) Any student:

(i) Who has spent at least seventy-five percent of both his or her junior and senior years in high schools in this state;

(ii) Whose parents or legal guardians have been domiciled in the state for a period of at least one year within the five-year period before the student graduates from high school; and

(iii) Who enrolls in a public institution of higher education within six months of leaving high school, for as long as the student remains continuously enrolled for three quarters or two semesters in any calendar year; or

(d) Any person(~~+~~)

~~(i) Who has completed the full senior year of high school and obtained a high school diploma, both at a Washington public high school or private high school approved under chapter 28A.195 RCW, or a person who has received the equivalent of a diploma;~~

~~(ii) Who has lived in Washington for at least three years immediately prior to receiving the diploma or its equivalent;~~

~~(iii) Who has continuously lived in the state of Washington after receiving the diploma or its equivalent and until such time as the individual is admitted to an institution of higher education; and~~

~~(iv) Who provides to the institution an affidavit indicating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so and a willingness to engage in any other activities necessary to acquire citizenship, including but not limited to citizenship or civics review courses)) who meets the requirements under RCW 28B.15.012(2)(e).~~

**Sec. 9.** RCW 28B.15.012 and 2020 c 232 s 1 are each amended to read as follows:

Whenever used in this chapter:

(1) The term "institution" shall mean a public university, college, or

community or technical college within the state of Washington.

(2) The term "resident student" shall mean:

(a) A financially independent student who has had a domicile in the state of Washington for the period of one year immediately prior to the time of commencement of the first day of the semester or quarter for which the student has registered at any institution and has in fact established a bona fide domicile in this state primarily for purposes other than educational;

(b) A dependent student, if one or both of the student's parents or legal guardians have maintained a bona fide domicile in the state of Washington for at least one year immediately prior to commencement of the semester or quarter for which the student has registered at any institution;

(c) A student classified as a resident based upon domicile by an institution on or before May 31, 1982, who was enrolled at a state institution during any term of the 1982-1983 academic year, so long as such student's enrollment (excepting summer sessions) at an institution in this state is continuous;

(d) Any student who has spent at least seventy-five percent of both his or her junior and senior years in high schools in this state, whose parents or legal guardians have been domiciled in the state for a period of at least one year within the five-year period before the student graduates from high school, and who enrolls in a public institution of higher education within six months of leaving high school, for as long as the student remains continuously enrolled for three quarters or two semesters in any calendar year;

(e) Any person who has completed (~~the full senior year of high school~~) and obtained a high school diploma, (~~both at a Washington public high school or private high school approved under chapter 28A.195 RCW,~~) or a person who has received the equivalent of a diploma; (~~who has lived in Washington for at least three years immediately prior to receiving the diploma or its equivalent;~~) who has continuously lived in the state of Washington (~~after receiving the diploma or its equivalent and until such time as~~) for at least a year before the individual is admitted to an institution of higher education under

subsection (1) of this section; and who provides to the institution an affidavit indicating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so and a willingness to engage in any other activities necessary to acquire citizenship, including but not limited to citizenship or civics review courses;

(f) Any person who has lived in Washington, primarily for purposes other than educational, for at least one year immediately before the date on which the person has enrolled in an institution, and who holds lawful nonimmigrant status pursuant to 8 U.S.C. Sec. (a)(15)(E)(iii), (H)(i), or (L), or who holds lawful nonimmigrant status as the spouse or child of a person having nonimmigrant status under one of those subsections, or who, holding or having previously held such lawful nonimmigrant status as a principal or derivative, has filed an application for adjustment of status pursuant to 8 U.S.C. Sec. 1255(a);

(g) A student who is on active military duty stationed in the state or who is a member of the Washington national guard;

(h) A student who is on active military duty or a member of the Washington national guard who meets the following conditions:

(i) Entered service as a Washington resident;

(ii) Has maintained a Washington domicile; and

(iii) Is stationed out-of-state;

(i) A student who is the spouse or a dependent of a person defined in (g) of this subsection. If the person defined in (g) of this subsection is reassigned out-of-state, the student maintains the status as a resident student so long as the student is either:

(i) Admitted to an institution before the reassignment and enrolls in that institution for the term the student was admitted; or

(ii) Enrolled in an institution and remains continuously enrolled at the institution;

(j) A student who is the spouse or a dependent of a person defined in (h) of this subsection;

(k) A student who is eligible or entitled to transferred federal post-

9/11 veterans educational assistance act of 2008 (38 U.S.C. Sec. 3301 et seq.) benefits based on the student's relationship as a spouse, former spouse, or child to an individual who is on active duty in the uniformed services;

(l) A student who resides in the state of Washington and is the spouse or a dependent of a person who is a member of the Washington national guard;

(m) A student who has separated from the uniformed services with any period of honorable service after at least ninety days of active duty service; is eligible for educational assistance benefits under Title 38 U.S.C.; and enters an institution of higher education in Washington within three years of the date of separation;

(n) A student who is on terminal, transition, or separation leave pending separation, or release from active duty, from the uniformed services with any period of honorable service after at least ninety days of active duty service and is eligible for educational assistance benefits under Title 38 U.S.C.;

(o) A student who is entitled to veterans administration educational assistance benefits based on the student's relationship as a spouse, former spouse, or child to an individual who has separated from the uniformed services with any period of honorable service after at least ninety days of active duty service, and who enters an institution of higher education in Washington within three years of the service member's date of separation;

(p) A student who is the spouse or child to an individual who has separated from the uniformed services with at least ten years of honorable service and at least ninety days of active duty service, and who enters an institution of higher education in Washington within three years of the service member's date of separation;

(q) A student who has separated from the uniformed services who was discharged due to the student's sexual orientation or gender identity or expression;

(r) A student who is entitled to veterans administration educational assistance benefits based on the student's relationship with a deceased member of the uniformed services who died in the line of duty;

(s) A student who is entitled to federal vocational rehabilitation and employment services for veterans with service-connected disabilities under 38 U.S.C. Sec. 3102(a);

(t) A student who is defined as a covered individual in 38 U.S.C. Sec. 3679(c)(2) as it existed on July 28, 2019, or such subsequent date as the student achievement council may determine by rule;

(u) A student of an out-of-state institution of higher education who is attending a Washington state institution of higher education pursuant to a home tuition agreement as described in RCW 28B.15.725;

(v) A student who meets the requirements of RCW 28B.15.0131 or 28B.15.0139: PROVIDED, That a nonresident student enrolled for more than six hours per semester or quarter shall be considered as attending for primarily educational purposes, and for tuition and fee paying purposes only such period of enrollment shall not be counted toward the establishment of a bona fide domicile of one year in this state unless such student proves that the student has in fact established a bona fide domicile in this state primarily for purposes other than educational;

(w) A student who resides in Washington and is on active military duty stationed in the Oregon counties of Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington; or

(x) A student who resides in Washington and is the spouse or a dependent of a person defined in (w) of this subsection. If the person defined in (w) of this subsection moves from Washington or is reassigned out of the Oregon counties of Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington, the student maintains the status as a resident student so long as the student resides in Washington and is either:

(i) Admitted to an institution before the reassignment and enrolls in that institution for the term the student was admitted; or

(ii) Enrolled in an institution and remains continuously enrolled at the institution.

(3)(a) A student who qualifies under subsection (2)(k), (m), (n), (o), (p), (q), (r), (s), or (t) of this section and who remains continuously enrolled at an institution of higher education shall retain resident student status.

(b) Nothing in subsection (2)(k), (m), (n), (o), (p), (q), (r), (s), or (t) of this section applies to students who have a dishonorable discharge from the uniformed services, or to students who are the spouse or child of an individual who has had a dishonorable discharge from the uniformed services, unless the student is receiving veterans administration educational assistance benefits.

(4) The term "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of this section and RCW 28B.15.013. Except for students qualifying under subsection (2)(e) or (u) of this section, a nonresident student shall include:

(a) A student attending an institution with the aid of financial assistance provided by another state or governmental unit or agency thereof, such nonresidency continuing for one year after the completion of such semester or quarter. This condition shall not apply to students from Columbia, Multnomah, Clatsop, Clackamas, or Washington county, Oregon participating in the border county pilot project under RCW 28B.76.685, 28B.76.690, and 28B.15.0139.

(b) A person who is not a citizen of the United States of America, unless the person meets and complies with all applicable requirements in this section and RCW 28B.15.013 and is one of the following:

(i) A lawful permanent resident;

(ii) A temporary resident;

(iii) A person who holds "refugee-parolee," "conditional entrant," or U or T nonimmigrant status with the United States citizenship and immigration services;

(iv) A person who has been issued an employment authorization document by the United States citizenship and immigration services that is valid as of the date the person's residency status is determined;

(v) A person who has been granted deferred action for childhood arrival

status before, on, or after June 7, 2018, regardless of whether the person is no longer or will no longer be granted deferred action for childhood arrival status due to the termination, suspension, or modification of the deferred action for childhood arrival program; or

(vi) A person who is otherwise permanently residing in the United States under color of law, including deferred action status.

(5) The term "domicile" shall denote a person's true, fixed and permanent home and place of habitation. It is the place where the student intends to remain, and to which the student expects to return when the student leaves without intending to establish a new domicile elsewhere. The burden of proof that a student, parent or guardian has established a domicile in the state of Washington primarily for purposes other than educational lies with the student.

(6) The term "dependent" shall mean a person who is not financially independent. Factors to be considered in determining whether a person is financially independent shall be set forth in rules adopted by the student achievement council and shall include, but not be limited to, the state and federal income tax returns of the person and/or the student's parents or legal guardian filed for the calendar year prior to the year in which application is made and such other evidence as the council may require.

(7) The term "active military duty" means the person is serving on active duty in:

(a) The armed forces of the United States government; or

(b) The Washington national guard; or

(c) The coast guard, merchant mariners, or other nonmilitary organization when such service is recognized by the United States government as equivalent to service in the armed forces.

(8) The term "active duty service" means full-time duty, other than active duty for training, as a member of the uniformed services of the United States. Active duty service as a national guard member under Title 32 U.S.C. for the purpose of organizing, administering, recruiting, instructing, or training and

active service under 32 U.S.C. Sec. 502(f) for the purpose of responding to a national emergency is recognized as active duty service.

(9) The term "uniformed services" is defined by Title 10 U.S.C.; subsequently structured and organized by Titles 14, 33, and 42 U.S.C.; consisting of the United States army, United States marine corps, United States navy, United States air force, United States coast guard, United States public health service commissioned corps, and the national oceanic and atmospheric administration commissioned officer corps.

NEW SECTION. **Sec. 10.** Sections 1 through 7 of this act are each added to chapter 28B.50 RCW.

NEW SECTION. **Sec. 11.** This act may be known and cited as the our colleges our future act of 2021."

Correct the title.

Signed by Representatives Slatter, Chair; Entenman, Vice Chair; Leavitt, Vice Chair; Hansen; Paul; Pollet and Sells.

MINORITY recommendation: Without recommendation. Signed by Representative Jacobsen, Assistant Ranking Minority Member.

MINORITY recommendation: Do not pass. Signed by Representatives Chambers, Ranking Minority Member; Chandler; Hoff; Kraft and Sutherland.

Referred to Committee on Rules for second reading.

March 25, 2021

ESB 5220

Prime Sponsor, Senator Van De Wege: Concerning the taxation of salmon recovery grants by updating the state business and occupation tax deduction for these grants, creating a sales and use tax exemption for grant proceeds received by recipients of these grants, and clarifying the sales and use tax obligations for goods and services purchased by recipients of these grants. Reported by Committee on Finance

MAJORITY recommendation: Do pass. Signed by Representatives Frame, Chair; Berg, Vice Chair; Walen, Vice Chair; Orcutt, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Chase; Chopp; Harris-Talley; Morgan; Orwall; Ramel; Springer; Stokesbary; Thai; Vick; Wylie and Young.

Referred to Committee on Rules for second reading.

March 25, 2021



**SSB 5228** Prime Sponsor, Committee on Higher Education & Workforce Development: Addressing disproportionate health outcomes by building a foundation of equity in medical training. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass. Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives MacEwen, Assistant Ranking Minority Member; Boehnke; Chandler; Dye; Harris; Hoff; Jacobsen; Rude; Schmick and Steele.

MINORITY recommendation: Without recommendation. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member and Caldier.

Referred to Committee on Appropriations.

March 24, 2021

**E2SSB 5237** Prime Sponsor, Committee on Ways & Means: Expanding accessible, affordable child care and early childhood development programs. Reported by Committee on Children, Youth & Families

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** SHORT TITLE. This act may be known and cited as the fair start for kids act.

**NEW SECTION. Sec. 2.** INTENT. (1) The legislature finds that high quality child care and early learning is critical to a child's success in school and life. The legislature recognizes that COVID-19 has devastated the existing child care industry, making it unduly burdensome for families to find care. The legislature recognizes that without immediate action to support child care providers, and without expanded access to affordable child care, especially infant and school-age care, parents will not be able to return to work while children lose valuable learning opportunities. In order to bolster a full economic recovery, the legislature finds that every child deserves a fair start.

(2) The legislature finds that access to affordable child care increases economic growth and labor force participation. The legislature further finds that an affordable, accessible system of high quality child care is necessary to the health of Washington's economy because employers benefit when parents have safe, stable, and appropriate care for their children. The legislature recognizes that too many working parents are forced to reduce their hours, decline promotional opportunities, or leave the workforce completely due to a lack of affordable and appropriate child care. The legislature finds that a report commissioned by the department of commerce in 2019 found that working parents in Washington forego \$14,000,000,000 each year directly due to child care scarcity. The legislature recognizes that this disproportionately impacts women in the workforce and that in September 2020 alone, 78,000 men left the workforce, compared to 600,000 women.

(3) The legislature recognizes that quality child care can be a stabilizing factor for children experiencing homelessness, and is a proven protective factor against the impacts of trauma they may experience. Access to child care is also a necessary support for families with young children in resolving homelessness and securing employment.

(4) The legislature finds that the scarcity of child care, exacerbated by COVID-19, most significantly impacts families furthest from opportunity. The legislature recognizes that there are additional barriers to accessing this foundational support for immigrant communities and families whose first language is not English, families who have children with disabilities, rural communities, or other child care deserts. The legislature recognizes that high quality, inclusive child care and early learning programs have been shown to reduce the opportunity gap for low-income children and black, indigenous, and children of color while consistently improving outcomes for all children both inside and outside of the classroom.

(5) The legislature finds that without access to comprehensive, high quality prenatal to five services, children often enter kindergarten without the social-emotional, physical, cognitive, and language skills they need to be successful and fall behind their peers,

facing compounding developmental challenges throughout their K-12 education. The legislature finds that cascading impacts of inaccessible child care and early learning programs create systemic barriers for children and their families that result in higher special education needs, greater likelihood of needing to repeat grades, increased child welfare and juvenile justice involvement, reduced high school graduation rates, limited postsecondary education attainment, and greater barriers to employment in adulthood.

(6) The legislature finds the vast majority of child care providers are small businesses and nonprofit organizations. In addition to adhering to federal, state, and local regulations to ensure healthy and safe environments for children, the legislature recognizes that child care providers must ensure their employees are adequately compensated and supported. However, the legislature acknowledges that the reduced staffing ratios for health and safety, additional cost of personal protective equipment and extra cleaning supplies, increased use of substitutes needed during COVID-19-related absences, and increased technology demands during school closures from the pandemic are further straining the viability of the child care business model in Washington state.

(7) The legislature finds that the health and stability of the early learning workforce is pivotal to any expansion of child care in Washington state. The legislature recognizes that the child care workforce, predominantly comprised of women of color, is structurally afflicted by low wages, limited or no health care, and a severe lack of retirement benefits. The legislature further recognizes that the threat of COVID-19 compounds these underlying issues, forcing providers to navigate increased stress, anxiety, and behavioral issues all while risking their lives to care for children. The legislature recognizes that families, friends, and neighbors who provide care are a critical component of the child care system. The legislature finds that child care workers are essential and deserve to be compensated and benefited accordingly.

(8) Therefore, the legislature resolves to respond to the COVID-19 crisis by first stabilizing the child

care industry and then expanding access to a comprehensive continuum of high quality early childhood development programs, including infant and school-age child care, preschool, parent and family supports, and prenatal to three services. The legislature recognizes this continuum as critical to meeting different families' needs and offering every child in Washington access to a fair start.

(9) The legislature recognizes the strengths that multilingual, diverse early learning providers and caregivers contribute to early learning across the state. Therefore, the legislature intends to expand language access services to create an inclusive early learning system that specifically supports underserved providers.

(10) The legislature intends to expand eligibility for existing child care and preschool programs to increase access. The legislature recognizes that expansion must be accompanied by an investment to make child care more affordable. Therefore, the legislature intends to eliminate copayments for low-income families and limit copayments for any family on subsidy to no more than seven percent of their income.

(11) The legislature further intends to stabilize, support, and grow the diverse early learning workforce by funding living wages and affordable health benefits while providing training, infant and early childhood mental health consultation, shared business services, and a variety of other supports that recognize the critical role that early learning providers serve for all Washington children.

(12) The legislature intends to accelerate Washington's economic recovery from the devastating impacts of COVID-19 by dramatically expanding access to affordable, high quality child care and preschool, in order to get parents back to work and provide every child with a fair start.

## **PART I**

### **INVESTING IN CHILD CARE AND EARLY LEARNING**

NEW SECTION. **Sec. 101.** FAIR START FOR KIDS ACCOUNT. (1) The fair start for kids account is created in the state treasury. Moneys in the account may be spent only after appropriation.

(2) Expenditures from the account may be used only for child care and early learning purposes.

**NEW SECTION. Sec. 102. FAIR START FOR KIDS SPENDING GOALS AND STRATEGIES.**

(1) The spending goals and strategies for the fair start for kids account created under section 101 of this act include, but are not limited to:

(a) Increasing child care subsidy rates, with the goal of moving toward the full cost of providing high quality child care;

(b) Expanding health care coverage through state sponsorship of child care workers on the Washington health benefit exchange and providing consumer assistance through navigators, as well as any other expansions of access to affordable health care for staff in child care centers, family home providers, outdoor nature-based care, and early childhood education and assistance program staff;

(c) Increasing child care and early learning providers' compensation;

(d) Implementing the provisions of collective bargaining agreements for family child care providers negotiated pursuant to RCW 41.56.028;

(e) Supporting and expanding access to the early childhood education and assistance program to reach state-funded entitlement required in RCW 43.216.556;

(f) Making child care affordable for families;

(g) Providing resources and supports for family, friend, and neighbor caregivers that better reflect the full cost of care;

(h) Providing child care subsidies for families working to resolve homelessness;

(i) Providing professional development opportunities for child care and early learning providers;

(j) Delivering infant and early childhood mental health consultation services;

(k) Establishing prekindergarten through third grade systems coordinators at educational service districts;

(l) Supporting youth development programs serving children and youth ages birth through 12 including, but not

limited to, expanded learning opportunities, mentoring, school-age child care, and wraparound supports or integrated student supports;

(m) Awarding grants and loans through the early learning facilities grant and loan program established under chapter 43.31 RCW;

(n) Funding special designations in the working connections child care programs, early childhood education and assistance programs, and birth to three early childhood education and assistance programs including designations established in sections 302, 304, 305, and 404 of this act;

(o) Supporting costs for transparent data collection and information technology systems operated by the department and department contractors, in particular, to ensure equitable systemic service provision and outcomes;

(p) Providing access to learning technology;

(q) Providing child care resource and referral services;

(r) Conducting quality rating and improvement system activities through the early achievers program;

(s) Expanding prenatal to three services and supports, including the birth to three early childhood education and assistance program and the in-home parent skill-based programs established in RCW 43.216.130;

(t) Building and delivering a family resource and referral linkage system;

(u) Allowing the exploration of options to provide regulatory relief and make licensing more affordable for child care providers;

(v) Administering comprehensive shared services hubs to allow the ongoing pooling and shared use of services by licensed or certified child care centers and family home providers;

(w) Training department staff to ensure consistent and equitable application of child care licensing and quality standards across the state including antibias and antiracist training;

(x) Providing incentives and supports for child care providers to become licensed;

(y) Studying and evaluating options to incentivize business participation in child care and early learning systems;

(z) Providing start-up grants to eligible organizations as described in RCW 43.31.575 who provide or commit to providing the early childhood education and assistance program or working connections child care. Start-up grants must be used for one-time start-up costs associated with the start-up of a new child care or early childhood education and assistance program site; and

(aa) Recognizing the benefits of the diverse workforce and facilitating communication in the three most commonly spoken languages by developing a language access plan that centers on equity and access for immigrants, multilingual providers, caregivers, and families.

(2) This section does not interfere with, impede, or in any way diminish the right of family child care providers to bargain collectively with the state through the exclusive bargaining representatives as provided for under RCW 41.56.028.

**Sec. 103.** RCW 43.88.055 and 2020 c 218 s 2 are each amended to read as follows:

LEGISLATIVE                      BALANCED                      BUDGET  
REQUIREMENT.

(1) The legislature must adopt a four-year balanced budget as follows:

(a) Beginning in the 2013-2015 fiscal biennium, the legislature shall enact a balanced omnibus operating appropriations bill that leaves, in total, a positive ending fund balance in the general fund and related funds.

(b) Beginning in the 2013-2015 fiscal biennium, the projected maintenance level of the omnibus appropriations bill enacted by the legislature shall not exceed the available fiscal resources for the next ensuing fiscal biennium.

(2) For purposes of this section:

(a) "Available fiscal resources" means the beginning general fund and related fund balances and any fiscal resources estimated for the general fund and related funds, adjusted for enacted legislation, and with forecasted revenues adjusted to the greater of (i) the official general fund and related funds revenue forecast for the ensuing biennium, or (ii) the official general

fund and related funds forecast for the second fiscal year of the current fiscal biennium, increased by 4.5 percent for each fiscal year of the ensuing biennium;

(b) "Projected maintenance level" means estimated appropriations necessary to maintain the continuing costs of program and service levels either funded in that appropriations bill or mandated by other state or federal law, and the amount of any general fund moneys projected to be transferred to the budget stabilization account pursuant to Article VII, section 12 of the state Constitution;

(c) "Related funds," as used in this section, means the Washington opportunity pathways account, the workforce education investment account, the fair start for kids account, and the education legacy trust account.

(3) Subsection (1)(a) and (b) of this section does not apply to an appropriations bill that makes net reductions in general fund and related funds appropriations and is enacted between July 1st and February 15th of any fiscal year.

(4) Subsection (1)(b) of this section does not apply in a fiscal biennium in which money is appropriated from the budget stabilization account pursuant to Article VII, section 12(d)(ii) of the state Constitution.

**Sec. 104.** RCW 43.216.075 and 2020 c 262 s 4 are each amended to read as follows:

INVESTMENT                      ACCOUNTABILITY                      AND  
OVERSIGHT.

(1) The early learning advisory council is established to advise the department on statewide early learning issues that contribute to the ongoing efforts of building a comprehensive system of quality early learning programs and services for Washington's young children and families.

(2) The council shall work in conjunction with the department to ~~((assist))~~:

(a) Assist in policy development and implementation that ~~((assist the department in promoting))~~ promotes alignment of private and public sector actions, objectives, and resources, ~~((ensuring))~~ with the overall goal of promoting school readiness for all children;

(b) Provide recommendations annually to the governor and the legislature, beginning August 31, 2022, regarding the phased implementation of strategies and priorities identified in section 102 of this act;

(c) Maintain a focus on racial equity and inclusion in order to dismantle systemic racism at its core and contribute to statewide efforts to break the cycle of intergenerational poverty;

(d) Maintain a focus on inclusionary practices for children with disabilities;

(e) Partner with nonprofit organizations to collect and analyze data and measure progress; and

(f) Assist the department in monitoring and ensuring that the investments funded by the fair start for kids account created in section 101 of this act are designed to support the following objectives:

(i) Advance racial equity and strengthen families by recognizing and responding to the growing diversity of our state's population;

(ii) Promote access to affordable, high quality child care and early learning opportunities for all families, paying particular attention to the needs of rural and other underserved communities;

(iii) Promote kindergarten readiness by enhancing child development, including development of social-emotional skills, and eliminating exclusionary admissions practices and disproportionate removals in child care and early learning programs; and

(iv) Contribute to efforts to strengthen and grow our state's economy by supporting working parents as well as stabilizing and supporting the child care and early learning workforce.

(3) In collaboration with the council, the department shall consult with its advisory groups and other interested stakeholders and shall submit a biennial report to the governor and legislature describing how the investments funded by the fair start for kids act have impacted the policy objectives stated in subsection (2)(f) of this section. The first report under this section is due September 15, 2023. The council shall include diverse, statewide representation from public, nonprofit,

and for-profit entities. Its membership shall include critical partners in service delivery and reflect regional, racial, and cultural diversity to adequately represent the ~~((needs))~~ interests of all children and families in the state.

(4) Councilmembers shall serve two-year terms. However, to stagger the terms of the council, the initial appointments for twelve of the members shall be for one year. Once the initial one-year to two-year terms expire, all subsequent terms shall be for two years, with the terms expiring on June 30th of the applicable year. The terms shall be staggered in such a way that, where possible, the terms of members representing a specific group do not expire simultaneously.

(5) The council shall consist of members essential to coordinating services statewide prenatal through age ~~((five))~~ 12, as follows:

(a) In addition to being staffed and supported by the department, the governor shall appoint one representative from each of the following: The department of commerce and the department of health~~((the student achievement council, and the state board for community and technical colleges))~~;

(b) One representative from the student achievement council, to be appointed by the student achievement council;

(c) The military spouse liaison created within the department of veterans affairs under RCW 43.60A.245;

(d) One representative from the state board for community and technical colleges, to be appointed by the state board for community and technical colleges;

(e) One representative from the office of the superintendent of public instruction, to be appointed by the superintendent of public instruction;

~~((c) The governor shall appoint leaders in early childhood education to represent critical service delivery and support sectors, with at least one individual representing each of the following:~~

~~((i) The head start state collaboration office director or the director's designee;~~

~~(ii) A representative of a head start, early head start, or migrant/seasonal head start program;~~

~~(iii) A representative of a local education agency;~~

~~(iv) A representative of the state agency responsible for programs under section 619 or part C of the federal individuals with disabilities education act;~~

~~(v) A representative of the early childhood education and assistance program;~~

~~(vi) A representative of licensed family day care providers;~~

~~(vii) A representative of child day care centers; and~~

~~(viii) A representative from the home visiting advisory committee established in RCW 43.216.130;~~

~~(d))~~ (f) Two members of the house of representatives, one from each caucus, to be appointed by the speaker of the house of representatives and two members of the senate, one from each caucus, to be appointed by the majority leader in the senate and the minority leader in the senate;

~~((e))~~ (g) Two parents, one of whom serves on the department's parent advisory group, to be appointed by the ~~((governor))~~ parent advisory group;

~~((f))~~ (h) One representative of the private-public partnership created in RCW 43.216.065, to be appointed by the partnership board;

~~((g))~~ (i) One representative from the developmental disabilities community representing children and families involved in part C of the federal individuals with disabilities education act and one representative from the developmental disabilities community representing children and families involved in part B of the federal individuals with disabilities education act;

~~((h))~~ (j) Two representatives from early learning regional coalitions;

~~((i) Representatives))~~ (k) Up to five representatives of underserved communities who have a special expertise or interest in high quality early learning, one to be appointed by each of the following commissions:

(i) The Washington state commission on Asian Pacific American affairs established under chapter 43.117 RCW;

(ii) The Washington state commission on African American affairs established under chapter 43.113 RCW; ~~((and))~~

(iii) The Washington state commission on Hispanic affairs established under chapter 43.115 RCW;

(iv) The Washington state women's commission established under chapter 43.119 RCW; and

(v) The Washington state office of equity established under chapter 43.06D RCW;

~~((j))~~ (l) Two representatives designated by sovereign tribal governments, one of whom must be a representative of a tribal early childhood education assistance program or head start program;

~~((k))~~ (m) One representative from the Washington federation of independent schools;

~~((l))~~ (n) One representative from the Washington library association; ~~((and~~

~~((m))~~ (o) One representative from a statewide advocacy coalition of organizations that focuses on early learning;

(p) One representative from an association representing statewide business interests, to be appointed by the association and one representative from a regional business coalition;

(q) One representative of an advocacy organization for immigrants and refugees;

(r) One representative of an organization advocating for expanded learning opportunities and school-age child care programs;

(s) One representative from the largest union representing child care providers;

(t) A representative of a head start, early head start, or migrant and seasonal head start program, to be appointed by the head start collaboration office;

(u) A representative of educational service districts, to be appointed by a statewide association of educational service district board members;

(v) A provider responsible for programs under section 619 of the federal individuals with disabilities education act, to be appointed by the superintendent of public instruction;

(w) A representative of the state agency responsible for part C of the federal individuals with disabilities education act, to be appointed by the department;

(x) A representative of the early childhood education and assistance program, to be appointed by an association representing early childhood education and assistance programs;

(y) A representative of licensed family home providers, to be appointed by the largest union representing child care providers;

(z) A representative of child care centers, to be appointed by an association representing child care centers;

(aa) A representative from the home visiting advisory committee established in RCW 43.216.130, to be appointed by the committee;

(bb) An infant or early childhood mental health expert, to be appointed by the Barnard center for infant and early childhood mental health at the University of Washington;

(cc) A family, friend, and neighbor caregiver, to be appointed by the largest union representing child care providers;

(dd) A representative from prenatal to three services;

(ee) A pediatrician, to be appointed by the state chapter of the American academy of pediatrics; and

(ff) A representative of the statewide child care resource and referral organization, to be appointed by the statewide child care resource and referral organization.

(6) The council shall be cochaired by two members, to be elected by the council for two-year terms and not more than one cochair may represent a state agency.

(7) At the direction of the cochairs, the council may convene advisory groups, such as a parent caucus, to evaluate specific issues and report related findings and recommendations to the full council.

(8) The council shall appoint two members and stakeholders with expertise in early learning to sit on the technical working group created in section 2, chapter 234, Laws of 2010.

~~((9))~~ (9) Each member of the ~~((board))~~ council shall be compensated in accordance with RCW 43.03.240 and reimbursed for travel expenses incurred in carrying out the duties of the ~~((board))~~ council in accordance with RCW 43.03.050 and 43.03.060.

~~((10))~~ (10)(a) The council shall convene an early achievers review subcommittee to provide feedback and guidance on strategies to improve the quality of instruction and environment for early learning and provide input and recommendations on the implementation and refinement of the early achievers program. The subcommittee shall at a minimum provide feedback and guidance to the department and the council on the following:

(i) Adequacy of data collection procedures;

(ii) Coaching and technical assistance standards;

(iii) Progress in reducing barriers to participation for low-income providers and providers from diverse cultural backgrounds, including a review of the early achievers program's rating tools, quality standard areas, and components, and how they are applied;

(iv) Strategies in response to data on the effectiveness of early achievers program standards in relation to providers and children from diverse cultural backgrounds;

(v) Status of the life circumstance exemption protocols; ~~((and))~~

(vi) Analysis of early achievers program data trends; and

(vii) Other relevant early learning data including progress in serving students with disabilities ages birth to five and least restrictive environment data.

(b) The subcommittee must include consideration of cultural linguistic responsiveness when analyzing the areas for review required by (a) of this subsection.

(c) The subcommittee shall include representatives from child care centers, family child care, the early childhood

education and assistance program, contractors for early achievers program technical assistance and coaching, tribal governments, the organization responsible for conducting early achievers program ratings, and parents of children participating in early learning programs, including working connections child care and early childhood education and assistance programs. The subcommittee shall include representatives from diverse cultural and linguistic backgrounds.

~~((410))~~ (11) The council shall convene a temporary licensing subcommittee to provide feedback and recommendations on improvement to the statewide licensing process. The subcommittee shall examine strategies to increase the number of licensed child care providers in the state, including meeting with prospective licensees to explain the licensure requirements and inspect and provide feedback on the physical space that is contemplated for licensure. The subcommittee shall develop model policies for licensed child care providers to implement licensing standards including, but not limited to, completing the child care and early learning licensing guidebook, to be made available to support providers with compliance. The subcommittee shall also develop recommendations regarding incentives and financial supports to help prospective providers navigate the licensing process. The subcommittee shall provide feedback and recommendations to the department of children, youth, and families pursuant to this subsection (11) by December 1, 2022.

(12) The department shall provide staff support to the council.

**Sec. 105.** RCW 83.100.230 and 2019 c 415 s 990 are each amended to read as follows:

The education legacy trust account is created in the state treasury. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for support of the common schools, and for expanding access to higher education through funding for new enrollments and financial aid, early learning and child care programs, and other educational improvement efforts. ~~((During the 2015-2017, 2017-2019, and 2019-2021 fiscal biennia appropriations from the account may be made for support of early learning programs. It is the intent of the~~

~~legislature that this policy will be continued in subsequent fiscal biennia.))~~

**NEW SECTION. Sec. 106.** INFLATIONARY ADJUSTMENTS. Beginning July 1, 2023, and subject to the availability of amounts appropriated for this specific purpose, rates paid under sections 302, 305, and 404 of this act and RCW 43.216.578 must be adjusted every two years according to an inflationary increase. The inflationary increase must be calculated by applying the rate of the increase in the inflationary adjustment index to the rates established in sections 302, 305, and 404 of this act and RCW 43.216.578. Any funded inflationary increase must be included in the rate used to determine inflationary increases in subsequent years. For the purposes of this section, "inflationary adjustment index" means the implicit price deflator averaged for each fiscal year, using the official current base rate, compiled by the bureau of economic analysis, United States department of commerce.

## PART II

### EXPANDING ACCESS TO CHILD CARE AND EARLY LEARNING PROGRAMS

**NEW SECTION. Sec. 201.** WORKING CONNECTIONS CHILD CARE PROGRAM ELIGIBILITY AND COPAYMENT. (1) It is the intent of the legislature to increase working families' access to affordable, high quality child care and to support the expansion of the workforce to support businesses and the statewide economy.

(2) Beginning July 1, 2025, a family is eligible for working connections child care when the household's annual income is at or below 75 percent of the state median income adjusted for family size and:

(a) The child receiving care is: (i) Aged 13 years or younger; or (ii) aged 19 years or younger and has a verified special need according to department rule or is under court supervision; and

(b) The household meets all other program eligibility requirements.

(3) Beginning July 1, 2025, and subject to the availability of amounts appropriated for this specific purpose, a family is eligible for working connections child care when the household's annual income is above 75 percent of the state median income and is at or below 100 percent of the state



median income adjusted for family size and:

(a) The child receiving care is: (i) Aged 13 years or younger; or (ii) aged 19 years or younger and has a verified special need according to department rule or is under court supervision; and

(b) The household meets all other program eligibility requirements.

(4) (a) The department must calculate a monthly copayment according to the following phased-in schedule:

Beginning date:	If the household's income is:	Then the household's copayment is:
Beginning July 1, 2021	At or below 36 percent of the state median income	Waived to the extent allowable under federal law
Beginning July 1, 2021	Above 36 percent and at or below 50 percent of the state median income	\$65
Beginning July 1, 2023	Above 50 percent and at or below 60 percent of the state median income	\$165
Beginning July 1, 2025	Above 60 percent and at or below 75 percent of the state median income	\$215

(b) The department shall adopt a copayment model based on available revenue for households with annual incomes above 75 percent of the state median income and at or below 100 percent of the state median income. The model must calculate a copayment for each household that is no greater than seven percent of the household's countable income within this income range.

(c) The department may adjust the copayment schedule to comply with federal law.

(5) The department must adopt rules, including phase-out eligibility, to implement this section.

**Sec. 202.** RCW 43.216.136 and 2020 c 279 s 2 are each amended to read as follows:

**WORKING CONNECTIONS CHILD CARE FOR STUDENT PARENTS.**

(1) The department shall establish and implement policies in the working connections child care program to promote stability and quality of care for children from low-income households. These policies shall focus on supporting school readiness for young learners. Policies for the expenditure of funds constituting the working connections child care program must be consistent with the outcome measures established by the department and the standards established in this section intended to promote stability, quality, and continuity of early care and education programming.

(2) As recommended by P.L. 113-186, authorizations for the working connections child care subsidy are effective for twelve months beginning July 1, 2016 (~~unless an earlier date is provided in the omnibus appropriations act~~).

(a) A household's 12-month authorization begins on the date that child care is expected to begin.

(b) If a newly eligible household does not begin care within 12 months of being determined eligible by the department, the household must reapply in order to qualify for subsidy.

(3) (a) The department shall establish and implement policies in the working connections child care program to allow eligibility for families with children who:

(i) In the last six months have:

(A) Received child protective services as defined and used by chapters 26.44 and 74.13 RCW;

(B) Received child welfare services as defined and used by chapter 74.13 RCW; or

(C) Received services through a family assessment response as defined and used by chapter 26.44 RCW;

(ii) Have been referred for child care as part of the family's case management as defined by RCW 74.13.020; and

(iii) Are residing with a biological parent or guardian.

(b) ~~((Children))~~ Families who are eligible for working connections child care pursuant to this subsection do not have to keep receiving services identified in this subsection to maintain twelve-month authorization.

(4) (a) Beginning ~~((August 1, 2020))~~ July 1, 2021, and subject to the availability of amounts appropriated for this specific purpose, the department may not require an applicant or consumer to meet work requirements as a condition of receiving working connections child care benefits when the applicant or consumer is ~~((+~~

~~((i) A single parent;~~

~~((ii) A) a full-time student of a community, technical, or tribal college ~~((+))~~ and ~~((+iii) Pursuing))~~ is enrolled in: (i) A vocational education program that leads to a degree or certificate in a specific occupation ~~((+ not to result in a bachelor's or advanced degree))~~;~~

(ii) An associate degree program; or

(iii) A registered apprenticeship program.

(b) An applicant or consumer is a full-time student for the purposes of this subsection if he or she meets the college's definition of a full-time student. ~~((The student must maintain passing grades and be in good standing pursuant to college attendance requirements.))~~

(c) Nothing in this subsection is intended to change how applicants or consumers are prioritized when applicants or consumers are placed on a waitlist for working connections child care benefits.

(d) Subject to the availability of amounts appropriated for this specific purpose, the department may extend the provisions of this subsection (4) to full-time students who are enrolled in a bachelor's degree program or applied baccalaureate degree program.

(5) (a) The department must extend the homeless grace period, as adopted in department rule as of January 1, 2020, from a four-month grace period to a twelve-month grace period.

(b) For the purposes of this section, "homeless" means being without a fixed,

regular, and adequate nighttime residence as described in the federal McKinney-Vento homeless assistance act (42 U.S.C. Sec. 11434a) as it existed on January 1, 2020.

(6) For purposes of this section, "authorization" means a transaction created by the department that allows a child care provider to claim payment for care. The department may adjust an authorization based on a household's eligibility status.

NEW SECTION. Sec. 203. EARLY CHILDHOOD EDUCATION AND ASSISTANCE PROGRAM INTENT. (1) The legislature finds that eligibility guidelines for the national school lunch program require free meals for children with household incomes at or below 130 percent of the federal poverty level and that this income level is approximately equivalent to 36 percent of the state median income for a household of three. The legislature further finds that eligibility guidelines require reduced-price meals for children with household incomes at or below 185 percent of the federal poverty level and that this income level is approximately equivalent to 50 percent of the state median income for a household of three.

(2) Therefore, the legislature intends to raise the maximum family income for children entitled to enroll in the early childhood education and assistance program to 36 percent of the state median income beginning July 1, 2026. Beginning in the 2030-31 school year, the legislature intends to raise the maximum family income for children entitled to enroll in this program to 50 percent of the state median income. It is the intent of the legislature to standardize income eligibility levels for assistance programs in order to help families and social workers better understand the benefits for which families qualify and to simplify and align state systems wherever feasible.

(3) The legislature further intends to support educational service districts to help school districts partner with early childhood education and assistance program contractors and providers to expand access.

**Sec. 204.** RCW 43.216.505 and 2019 c 408 s 2 are each amended to read as follows:

EARLY CHILDHOOD EDUCATION AND  
ASSISTANCE PROGRAM ENTITLEMENT  
ELIGIBILITY.

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.216.500 through 43.216.559, 43.216.900, and 43.216.901.

(1) "Advisory committee" means the advisory committee under RCW 43.216.520.

(2) "Approved programs" means those state-supported education and special assistance programs which are recognized by the department as meeting the minimum program rules adopted by the department to qualify under RCW 43.216.500 through 43.216.550, 43.216.900, and 43.216.901 and are designated as eligible for funding by the department under RCW 43.216.530 and 43.216.540.

(3) "Comprehensive" means an assistance program that focuses on the needs of the child and includes education, health, and family support services.

(4) "Eligible child" means a three to five-year old child who is not age-eligible for kindergarten, is not a participant in a federal or state program providing comprehensive services, and who:

(a) ~~Has a family ((income at or below one hundred ten percent of the federal poverty level, as published annually by the federal department of health and human services))~~ with financial need;

(b) Is experiencing homelessness;

(c) Has participated in early head start or a successor federal program providing comprehensive services for children from birth through two years of age, the early support for infants and toddlers program or received class C developmental services, the birth to three early childhood education and assistance program, or the early childhood intervention and prevention services program;

(d) Is eligible for special education due to disability under RCW 28A.155.020;  
~~((=~~

~~(e))~~ (e) Is Indian as defined in rule by the department after consultation and agreement with Washington state's federally recognized tribes pursuant to section 207 of this act and is at or below

100 percent of the state median income adjusted for family size; or

(f) Meets criteria under rules adopted by the department if the number of such children equals not more than ten percent of the total enrollment in the early childhood program. Preference for enrollment in this group shall be given to children from families with the lowest income, children in foster care, or to eligible children from families with multiple needs.

(5) "Family support services" means providing opportunities for parents to:

(a) Actively participate in their child's early childhood program;

(b) Increase their knowledge of child development and parenting skills;

(c) Further their education and training;

(d) Increase their ability to use needed services in the community;

(e) Increase their self-reliance; and

(f) Connect with culturally competent, disability positive therapists and supports where appropriate.

(6) "Experiencing homelessness" means a child without a fixed, regular, and adequate nighttime residence as described in the federal McKinney-Vento homeless assistance act (42 U.S.C., Chapter 119, Subchapter VI, Part B) as it existed on January 1, 2021.

(7) "Family with financial need" means families with incomes at or below 36 percent of the state median income adjusted for family size until the 2030-31 school year. Beginning in the 2030-31 school year, "family with financial need" means families with incomes at or below 50 percent of the state median income adjusted for family size.

**Sec. 205.** RCW 43.216.512 and 2019 c 409 s 2 are each amended to read as follows:

EARLY CHILDHOOD EDUCATION AND  
ASSISTANCE PROGRAM EXPANDED ENROLLMENT.

(1) The department shall adopt rules that allow the enrollment of children in the early childhood education and assistance program, as space is available, if the number of such children equals not more than ~~((twenty-five))~~ 25 percent of total statewide enrollment, when the child is not eligible under RCW

43.216.505 and whose family income level is (~~+~~

~~(a) Above one hundred ten percent but less than or equal to one hundred thirty percent of the federal poverty level; or~~

~~(b) Above one hundred thirty percent but less than or equal to two hundred percent of the federal poverty level if)) above 36 percent of the state median income but at or below 50 percent of the state median income adjusted for family size and the child meets at least one of the risk factor criterion described in subsection (2) of this section.~~

(2) Children enrolled in the early childhood education and assistance program pursuant to (~~subsection (1) (b) of~~) this section must be prioritized for available funded slots according to a prioritization system adopted in rule by the department that considers risk factors that have a disproportionate effect on kindergarten readiness and school performance, including:

(a) Family income as a percent of the (~~federal poverty level~~) state median income;

(b) (~~Homelessness;~~  
~~e))~~ Child welfare system involvement;

(~~(d) Developmental delay or disability that does not meet the eligibility criteria for special education described in RCW 28A.155.020)~~

(c) Eligible for services under part C of the federal individuals with disabilities education act but not eligible for services under part B of the federal individuals with disabilities education act;

(~~(e))~~ (d) Domestic violence;

(~~(f))~~ (e) English as a second language;

(~~(g))~~ (f) Expulsion from an early learning setting;

(~~(h))~~ (g) A parent who is incarcerated;

(~~(i))~~ (h) A parent with a (~~substance use disorder or mental~~) behavioral health treatment need; and

(~~(j))~~ (i) Other risk factors determined by the department to be linked by research to school performance.

(3) (~~The department shall adopt rules that allow a child to enroll in the early~~

~~childhood education and assistance program, as space is available, when the child is not eligible under RCW 43.216.505 and the child turns three years old at any time during the school year when the child:~~

~~(a) Has a family income at or below two hundred percent of the federal poverty level or meets at least one risk factor criterion adopted by the department in rule; and~~

~~(b) Has received services from or participated in:~~

~~(i) The early support for infants and toddlers program;~~

~~(ii) The early head start or a successor federal program providing comprehensive services for children from birth through two years of age; or~~

~~(iii) The birth to three early childhood education and assistance program, if such a program is established.~~

~~(4))~~ Children enrolled in the early childhood education and assistance program under this section are not considered eligible children as defined in RCW 43.216.505 and are not considered to be part of the state-funded entitlement required in RCW 43.216.556.

(4) This section expires August 1, 2030.

NEW SECTION. Sec. 206. EARLY CHILDHOOD EDUCATION AND ASSISTANCE PROGRAM EARLY ENTRY. (1) The department shall adopt rules that allow a child to enroll in the early childhood education and assistance program, as space is available, when the child is not eligible under RCW 43.216.505 and the child turns three years old at any time during the school year when the child:

(a) Has a family income at or below 50 percent of the state median income or meets at least one risk factor criterion adopted by the department in rule; and

(b) Has received services from or participated in:

(i) The early head start or a successor federal program providing comprehensive services for children from birth through two years of age;

(ii) The early support for infants and toddlers program or received class C developmental services;

(iii) The birth to three early childhood education and assistance program; or

(iv) The early childhood intervention and prevention services program.

(2) Children enrolled in the early childhood education and assistance program under this section are not eligible children as defined in RCW 43.216.505 and are not part of the state-funded entitlement required in RCW 43.216.556.

NEW SECTION. Sec. 207. INDIAN CHILD DEFINITION. (1) The department must consult, and obtain the advice and consent of, the governing bodies of the state's federally recognized tribes in developing an agreed-upon definition of the term "Indian" for the purposes of RCW 43.216.505 and, by July 1, 2024, must adopt the definition in rule.

(2) This section expires December 1, 2030.

**Sec. 208.** RCW 43.216.556 and 2019 c 408 s 3 are each amended to read as follows:

(1) Funding for the program of early learning established under this chapter must be appropriated to the department. The department shall distribute funding to approved early childhood education and assistance program contractors on the basis of eligible children enrolled.

(2) The program shall be implemented in phases, so that full implementation is achieved in the ~~((2022-23))~~ 2026-27 school year.

(3) Funding shall continue to be phased in each year until full statewide implementation of the early learning program is achieved in the ~~((2022-23))~~ 2026-27 school year, at which time any eligible child is entitled to be enrolled in the program. Entitlement under this section is voluntary enrollment.

(4) School districts and approved community-based early learning providers may contract with the department to provide services under the program. The department shall collaborate with school districts, community-based providers, and educational service districts to promote an adequate supply of approved providers.

### PART III

#### SUPPORTING CHILD CARE AND EARLY LEARNING PROVIDERS

**Sec. 301.** RCW 43.216.749 and 2019 c 368 s 7 are each amended to read as follows:

#### CHILD CARE SUBSIDY RATES.

~~(1) ((By January 1, 2025, the department of children, youth, and families must))~~ It is the intent of the legislature to systemically increase child care subsidy rates over time until rates are equal to the full cost of providing high quality child care.

(2) Beginning July 1, 2021, child care subsidy base rates must achieve the 85th percentile of market for licensed or certified child care providers. The state and the exclusive representative for family child care providers must enter bargaining over the implementation of the subsidy rate increase under this subsection.

(3) (a) The department shall build upon the work of the child care collaborative task force to develop and implement a child care cost estimate model and use the completed child care cost model ~~((developed under RCW 43.330.527 to determine child care subsidy rates.~~

~~(2) This section expires January 30, 2025))~~ to recommend subsidy rates at levels that are sufficient to compensate licensed or certified child care providers for the full costs of providing high quality child care. The department shall consider:

(i) Adjusting rates to reflect cost of living such as area median income, cost of living by zip code, and grouping by categories such as rural, suburban, or urban; and

(ii) Incorporating the rate model for nonstandard child care hours developed under section 306 of this act.

(b) The department shall build upon the work of the child care collaborative task force to evaluate options to support access to affordable health care insurance coverage for licensed or certified child care providers.

(4) This section does not interfere with, impede, or in any way diminish the right of family child care providers to bargain collectively with the state through the exclusive bargaining representatives as provided for under RCW 41.56.028.

NEW SECTION. Sec. 302. EARLY CHILDHOOD EDUCATION AND ASSISTANCE

PROGRAM RATES. (1) For the 2021-22 school year, rates for the early childhood education and assistance program must be set at a level at least 10 percent higher than the rates established in section 225, chapter 415, Laws of 2019.

(2) It is the intent of the legislature that rate increases shall be informed by the department's 2020 early childhood education and assistance program rate study.

(3) This section expires June 30, 2027.

**NEW SECTION. Sec. 303. COMPLEX NEEDS FUNDS.** (1) The department shall administer two complex needs funds to promote inclusive, least restrictive environments and to support contractors and providers serving children who have developmental delays, disabilities, behavioral needs, or other unique needs. The department shall work collaboratively with the office of the superintendent of public instruction and providers so that the funds best serve the children. One fund must support early childhood education and assistance program contractors and providers and birth to three early childhood education and assistance program contractors and providers, and one fund must support licensed or certified child care providers and license-exempt child care programs.

(2) Support may include staffing, programming, therapeutic services, and equipment or technology support. Additional support may include activities to assist families with children expelled or at risk of expulsion from child care, and to help families transition in and out of child care.

**NEW SECTION. Sec. 304. TRAUMA-INFORMED CARE SUPPORTS.** (1) Beginning July 1, 2022, the department shall provide supports to aid eligible providers in providing trauma-informed care. Trauma-informed care supports may be used by eligible providers for the following purposes:

(a) Additional compensation for individual staff who have an infant and early childhood mental health or other child development specialty credential;

(b) Trauma-informed professional development and training;

(c) The purchase of screening tools and assessment materials;

(d) Supportive services for children with complex needs that are offered as fee-for-service within local communities; or

(e) Other related expenses.

(2) The department must adopt rules to implement this section.

(3) For the purposes of this section, "eligible provider" means: (a) An employee or owner of a licensed or certified child care center or outdoor nature-based care accepting state subsidy; (b) an employee or owner of a licensed family home provider accepting state subsidy; (c) a contractor or provider of the early childhood education and assistance program or birth to three early childhood education and assistance program; (d) a license-exempt child care program; or (e) an early achievers coach.

**NEW SECTION. Sec. 305. DUAL LANGUAGE RATE ENHANCEMENT.** (1) Beginning July 1, 2022, the department shall establish a dual language designation and provide subsidy rate enhancements or site-specific grants for licensed or certified child care providers who are accepting state subsidy; early childhood education and assistance program contractors; or birth to three early childhood education and assistance program contractors. It is the intent of the legislature to allow uses of the rate enhancements or site-specific grants to include increased wages for individual staff who provide bilingual instruction, professional development training, the purchase of dual language and culturally appropriate curricula and accompanying training programs, instructional materials, or other related expenses.

(2) The department must consult with a culturally and linguistically diverse stakeholder advisory group to develop criteria for the dual language designation.

(3) The department must adopt rules to implement this section.

**NEW SECTION. Sec. 306. NONSTANDARD HOURS RATE MODEL.** (1) In order to expand the supply of critically needed after-hours care to meet the needs of parents and caregivers and a round-the-clock economy, the department of children, youth, and families, in consultation with diverse stakeholders, must develop a rate

model for nonstandard child care hours and submit the model to the governor and the appropriate committees of the legislature by January 1, 2022.

(2) This section expires June 30, 2022.

**NEW SECTION. Sec. 307. EARLY CHILDHOOD EQUITY GRANTS.** (1) Subject to the availability of amounts appropriated for this specific purpose, the department shall distribute early childhood equity grants to eligible applicants. Eligible applicants include play and learn groups, licensed or certified child care centers and family home providers, license-exempt child care programs, and early childhood education and assistance program contractors. The equity grants are intended to serve as a step toward expanding access to early learning statewide and transforming Washington's early learning system to make it more inclusive and equitable. The department shall administer the early childhood equity grants to support inclusive and culturally and linguistically specific early learning and early childhood and parent support programs across the state.

(2) The department must conduct an equitable process to prioritize grant applications for early childhood equity grant assistance. An eligible applicant may receive an early childhood equity grant once every two years. When conducting the equitable grant process, the department must:

(a) Solicit project applications from a racially and geographically diverse pool of eligible applicants statewide;

(b) Provide application materials in the five most commonly spoken languages in the state and broadly communicate using a variety of strategies to reach diverse communities;

(c) Require applicants to demonstrate their proposed uses of early childhood equity grant funds to incorporate either inclusive practices or culturally and linguistically supportive and relevant practices, or both, into early learning program design, delivery, education, training, and evaluation; and

(d) Provide technical assistance to any applicant who needs it.

**NEW SECTION. Sec. 308.** A new section is added to chapter 43.330 RCW to read as follows:

EMPLOYER-SUPPORTED CHILD CARE.

(1) Subject to the availability of amounts appropriated for this specific purpose, the department, in collaboration with the department of children, youth, and families, shall provide or contract to provide remote or in-person technical assistance to employers interested in supporting their employees' access to high quality child care.

(2) Technical assistance may include guidance related to:

(a) Operating a licensed child care center at or near the workplace for the benefit of employees;

(b) Financing and construction of a licensed child care center at or near the workplace for the benefit of employees;

(c) Providing financial assistance to employees for licensed or certified child care providers and license-exempt child care program expenses;

(d) Encouraging access and support for low-wage employees;

(e) Sponsoring dependent care flexible spending accounts for employees; and

(f) Developing a "bring your infant to work" program and other family-friendly work policies for employees.

**NEW SECTION. Sec. 309. INFANT AND EARLY CHILDHOOD MENTAL HEALTH CONSULTATION.** (1) The department shall administer or contract for infant and early childhood mental health consultation services to child care providers and early learning providers participating in the early achievers program.

(2) Infant and early childhood mental health consultation services must be delivered in coordination with the consultants provided under RCW 43.216.090.

(3) The department shall provide, or contract with an entity to provide, reflective supervision and professional development for infant and early childhood mental health consultants to meet national competency standards.

(4) As capacity allows, the department may provide access to infant and early childhood mental health consultation services to caregivers and licensed or certified, military, and tribal early learning providers, license-exempt family, friend, and neighbor care providers, and families with children

expelled or at risk of expulsion from child care.

**Sec. 310.** RCW 43.216.090 and 2019 c 360 s 7 are each amended to read as follows:

**INFANT AND EARLY CHILDHOOD MENTAL HEALTH CONSULTATION.**

~~((The))~~ Beginning July 1, 2021, the department of children, youth, and families must have or contract for one infant and early childhood mental health consultation coordinator and must enter into a contractual agreement with an organization providing coaching services to early achievers program participants to hire ~~((one))~~ at least 12 qualified infant and early childhood mental health consultants ~~((for each of the six department-designated regions))~~. The department shall determine, in collaboration with the statewide child care resource and referral network, where the additional consultants should be sited based on factors such as the total provider numbers overlaid with indicators of highest need. The infant and early childhood mental health consultants must support early achievers program coaches and child care providers by providing resources, information, and guidance regarding challenging behavior and expulsions and may travel to assist providers in serving families and children with severe behavioral needs. ~~((In coordination with the contractor, the department of children, youth, and families must report on the services provided and the outcomes of the consultant activities to the governor and the appropriate policy and fiscal committees of the legislature by June 30, 2021-))~~

**NEW SECTION. Sec. 311. PLAY AND LEARN GROUPS.** Subject to the availability of amounts appropriated for this specific purpose, the department, in consultation with community-based programs, shall provide or contract to provide, or both, resources and supports for inclusive and culturally and linguistically relevant play and learn groups. Play and learn groups offer parents and other caregivers culturally responsive opportunities to support their children's early learning, build relationships that reduce isolation and encourage socialization, and promote kindergarten readiness.

**NEW SECTION. Sec. 312. PROFESSIONAL DEVELOPMENT.** (1) Subject to the availability of amounts appropriated for

this specific purpose, the department shall provide professional development supports to aid eligible providers in reaching the professional education and training standards adopted by the department. Professional development supports may include:

(a) Department-required trainings for child care providers conducted by department-approved trainers;

(b) Trainings for license-exempt family, friend, and neighbor child care providers conducted by department-approved trainers;

(c) Early achievers scholarships;

(d) Community-based training pathways and systems developed under RCW 43.216.755;

(e) Supporting a nonprofit organization that provides relationship-based professional development support to family, friend, and neighbor caregivers, child care centers, and licensed family home providers, and their work to help providers start their businesses; and

(f) Other professional development activities such as updating training content, data collection and reporting, trainer recruitment, retention, program monitoring, and trainings delivered by department-approved trainers on topics such as small business management, antibias and antiracist training, providing care for children with developmental disabilities, social-emotional learning, implementing inclusionary practices in early learning environments, infant and toddler care, dual language program development, and providing trauma-informed care.

(2) For the purposes of this section, "eligible provider" means: (a) An owner of a licensed or certified child care center, licensed or certified outdoor nature-based care, or licensed family home provider accepting state subsidy; (b) an employee of a licensed or certified child care center, licensed or certified outdoor nature-based care, or a licensed family home provider; (c) a contractor or provider of the early childhood education and assistance program or birth to three early childhood education and assistance program; or (d) an early achievers coach.

**NEW SECTION. Sec. 313. NEGOTIATED RULE MAKING WITH CHILD CARE CENTERS.**



When the secretary elects to engage in negotiated rule making pursuant to RCW 34.05.310(2)(a), the department must include the largest organization representing child care center owners and directors; the largest organization representing supervisors, teachers, and aides; and other affected interests before adopting requirements that affect child care center licensees.

NEW SECTION. **Sec. 314.** CAPACITY FLEXIBILITY FOR FAMILY HOME PROVIDERS. The department may waive the limit, as established in RCW 43.216.010(1)(c), that restricts family home providers from serving not more than 12 children. The department must establish conditions for such waivers by rule and must assess, at minimum, the provider's available square footage and staffing capabilities prior to issuing any waiver of the limit of 12 children.

#### PART IV

#### STRENGTHENING PRENATAL TO THREE SUPPORTS

NEW SECTION. **Sec. 401.** PRENATAL TO THREE INTENT. (1) The legislature finds that parental relationships and healthy interactions in the first few years of life help shape the development of babies' and toddlers' brains and bodies. Eighty percent of the brain is developed by the age of three and parents are a child's first teachers.

(2) The legislature finds that the federal family first prevention services act (P.L. 115-123) offers the state the opportunity to leverage federal funding for certain programs, including in-home parent skill-based programs, substance use disorder support, and mental health interventions. Culturally relevant, evidence-based programs that may qualify for these federal funds are limited. Therefore, state support may be necessary to serve traditionally underrepresented communities and increase positive engagement from parents and caregivers of children from before birth to age three.

(3) The legislature finds that small teacher-child ratios for infant and toddler care, as well as the existence of child care deserts with low levels of access to care for the birth to three age group, contribute to higher expenses for providers and families with babies and young children.

(4) Therefore, the legislature intends to expand parent and family education and

support, incentivize the provision of infant and toddler care, and make early therapeutic and preventative services more readily available to families and young children.

NEW SECTION. **Sec. 402.** EDUCATION AND SUPPORT FOR PARENTS AND FAMILY, FRIEND, AND NEIGHBOR CAREGIVERS. (1) Subject to the availability of amounts appropriated for this specific purpose, the department shall administer a prenatal to three family engagement strategy to support expectant parents, babies and toddlers from birth to three years of age, and their caregivers.

(2) Components of the prenatal to three family engagement strategy must include supports and services to improve maternal and infant health outcomes, reduce and mitigate trauma, promote attachment and other social-emotional assets, strengthen parenting skills, and provide early supports to help maximize healthy and robust childhood development and reduce isolation. Services and supports may include:

(a) In-home parent skill-based programs and training established in RCW 43.216.130;

(b) Facilitated play and learn groups;

(c) Parent peer-support groups, including groups designed for families with children with complex needs; families whose primary home language is not English; incarcerated parents; families coping with substance use disorder or mental health support needs; black, indigenous, and families of color; or other specific needs; and

(d) Other prenatal to age three programs and services.

(3) Continuity of services for babies and toddlers are important for early childhood brain development. Therefore, the services and supports described in this section may be made available to biological parents, foster parents, kinship care providers, and other family, friend, and neighbor caregivers.

**Sec. 403.** RCW 43.216.578 and 2019 c 408 s 8 are each amended to read as follows:

BIRTH TO THREE EARLY CHILDHOOD EDUCATION AND ASSISTANCE PROGRAM.

(1) (~~Within resources available under the federal preschool development grant birth to five grant award received in~~

~~December 2018,)) Subject to the availability of amounts appropriated for this specific purpose, the department shall ((develop a plan for phased implementation of)) administer a birth to three early childhood education and assistance program ((pilot project)) for eligible children under thirty-six months old. Funds to implement the ((pilot project)) program may include a combination of federal, state, or private sources.~~

(2) The department may adopt rules to implement the ((pilot project)) program and may waive or adapt early childhood education and assistance program requirements when necessary to allow for the operation of the birth to three early childhood education and assistance program. The department shall consider early head start rules and regulations when developing the provider and family eligibility requirements and program requirements. ((Any deviations from early head start standards, rules, or regulations must be identified and explained by the department in its annual report under subsection (6) of this section.))

(3) (a) ((Upon securing adequate funds to begin implementation, the pilot project)) The birth to three early childhood education and assistance program((s)) must be delivered through child care centers and family home providers who meet minimum licensing standards and are enrolled in the early achievers program.

(b) The department must determine minimum early achievers ratings scores for ((programs)) participating ((in the pilot project)) contractors.

(4) ((When selecting pilot project locations for service delivery, the department may allow each pilot project location to have up to three classrooms per location. When selecting and approving pilot project locations, the department shall attempt to select a combination of rural, urban, and suburban locations. The department shall prioritize locations with programs currently operating early head start, head start, or the early childhood education and assistance program.

~~(5))~~ To be eligible for the birth to three early childhood education and assistance program, a child's family income must be at or below ((one hundred thirty)) 50 percent of the ((federal

poverty level)) state median income and the child must be under thirty-six months old.

~~((6) Beginning November 1, 2020, and each November 1st thereafter during pilot project activity, the department shall submit an annual report to the governor and legislature that includes a status update that describes the planning work completed, the status of funds secured, and any implementation activities of the pilot project. Implementation activity reports must include a description of the participating programs and number of children and families served.))~~

NEW SECTION. Sec. 404. INFANT CARE INCENTIVES. (1) The legislature finds that our state suffers from an extreme shortage of infant child care, impacting the ability of parents to participate in the workforce. Further, parents returning to work after using paid family leave to care for a new child struggle to find readily available, high quality care during a time of critical growth and brain development for young children. Therefore, the legislature intends to incentivize the provision of high quality infant care.

(2) Beginning July 1, 2022, the department shall provide an infant rate enhancement for licensed or certified child care providers and birth to three early childhood education and assistance program contractors who are:

(a) Accepting state subsidy;

(b) In good standing with the early achievers quality rating and improvement system; and

(c) Caring for a child between the ages of birth and 11 months.

(3) The department must adopt rules to implement this section.

NEW SECTION. Sec. 405. EARLY THERAPEUTIC AND PREVENTATIVE SERVICES. (1) Subject to the availability of amounts appropriated for this specific purpose, the department shall administer early therapeutic and preventative services and programs, such as the early childhood intervention and prevention services program, and other related services for children who are:

(a) Between the ages of birth and five years; and

(b) Referred by a child welfare worker, a department of social and health

services social worker, a primary care physician, a behavioral health provider, or a public health nurse due to: (i) Risk of child abuse or neglect; (ii) exposure to complex trauma; or (iii) significant developmental delays.

(2) Subject to the availability of amounts appropriated for this specific purpose, the department shall make all reasonable efforts to deliver early therapeutic and preventative services and programs statewide. These services and programs must focus first on children and families furthest from opportunity as defined by income and be delivered by programs that emphasize greater racial equity.

## PART V

### CONFORMING AMENDMENTS

**Sec. 501.** RCW 43.216.010 and 2020 c 270 s 11 are each reenacted and amended to read as follows:

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

(1) "Agency" means any person, firm, partnership, association, corporation, or facility that provides child care and early learning services outside a child's own home and includes the following irrespective of whether there is compensation to the agency:

(a) "Child day care center" and "child care center" mean((~~s~~)) an agency that regularly provides early childhood education and early learning services for a group of children for periods of less than twenty-four hours;

(b) "Early learning" includes but is not limited to programs and services for child care; state, federal, private, and nonprofit preschool; child care subsidies; child care resource and referral; parental education and support; and training and professional development for early learning professionals;

(c) "Family day care provider" and "family home provider" mean((~~s~~)) a child care provider who regularly provides early childhood education and early learning services for not more than twelve children at any given time in the provider's home in the family living quarters except as provided in section 314 of this act;

(d) "Nongovernmental private-public partnership" means an entity registered as a nonprofit corporation in Washington state with a primary focus on early learning, school readiness, and parental support, and an ability to raise a minimum of five million dollars in contributions;

(e) "Service provider" means the entity that operates a community facility.

(2) "Agency" does not include the following:

(a) Persons related to the child in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law; or

(iv) Spouses of any persons named in (a) (i), (ii), or (iii) of this subsection, even after the marriage is terminated;

(b) Persons who are legal guardians of the child;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) Nursery schools that are engaged primarily in early childhood education with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(f) Schools, including boarding schools, that are engaged primarily in education, operate on a definite school year schedule, follow a stated academic

curriculum, and accept only school age children;

(g) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(h) Facilities providing child care for periods of less than twenty-four hours when a parent or legal guardian of the child remains on the premises of the facility for the purpose of participating in:

(i) Activities other than employment; or

(ii) Employment of up to two hours per day when the facility is operated by a nonprofit entity that also operates a licensed child care program at the same facility in another location or at another facility;

(i) Any entity that provides recreational or educational programming for school age children only and the entity meets all of the following requirements:

(i) The entity utilizes a drop-in model for programming, where children are able to attend during any or all program hours without a formal reservation;

(ii) The entity does not assume responsibility in lieu of the parent, unless for coordinated transportation;

(iii) The entity is a local affiliate of a national nonprofit; and

(iv) The entity is in compliance with all safety and quality standards set by the associated national agency;

(j) A program operated by any unit of local, state, or federal government;

(k) A program located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(l) A program located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(m) A program that offers early learning and support services, such as parent education, and does not provide child care services on a regular basis.

(3) "Applicant" means a person who requests or seeks employment in an agency.

(4) "Certificate of parental improvement" means a certificate issued under RCW 74.13.720 to an individual who has a founded finding of physical abuse or negligent treatment or maltreatment, or a court finding that the individual's child was dependent as a result of a finding that the individual abused or neglected their child pursuant to RCW 13.34.030(6)(b).

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

(6) "Department" means the department of children, youth, and families.

(7) "Early achievers" means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

(8) "Early childhood education and assistance program contractor" means an organization that provides early childhood education and assistance program services under a signed contract with the department.

(9) "Early childhood education and assistance program provider" means an organization that provides site level, direct, and high quality early childhood education and assistance program services under the direction of an early childhood education and assistance program contractor.

~~(10) ("Early start" means an integrated high quality continuum of early learning programs for children birth to five years of age. Components of early start include, but are not limited to, the following:~~

~~(a) Home visiting and parent education and support programs;~~

~~(b) The early achievers program described in RCW 43.216.085;~~

~~(c) Integrated full day and part day high quality early learning programs; and~~

~~(d) High quality preschool for children whose family income is at or below one hundred ten percent of the federal poverty level.~~

~~(11))~~ "Education data center" means the education data center established in RCW 43.41.400, commonly referred to as the education research and data center.

~~((112))~~ (11) "Employer" means a person or business that engages the services of one or more people, especially for wages or salary to work in an agency.

~~((113))~~ (12) "Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.216.325(1) or assessment of civil monetary penalties pursuant to RCW 43.216.325(3).

~~((114))~~ (13) "Extended day program" means an early childhood education and assistance program that offers early learning education for at least ten hours per day, a minimum of two thousand hours per year, at least four days per week, and operates year-round.

(14) "Family resource and referral linkage system" means a system that connects families to resources, services, and programs for which families are eligible and uses a database that is developed and maintained in partnership with communities, health care providers, and early learning providers.

(15) "Full day program" means an early childhood education and assistance program that offers early learning education for a minimum of one thousand hours per year.

(16) "Low-income child care provider" means a person who administers a child care program that consists of at least eighty percent of children receiving working connections child care subsidy.

(17) "Low-income neighborhood" means a district or community where more than twenty percent of households are below the federal poverty level.

(18) "Negative action" means a court order, court judgment, or an adverse action taken by an agency, in any state, federal, tribal, or foreign jurisdiction, which results in a finding against the applicant reasonably related to the individual's character, suitability, and competence to care for or have unsupervised access to children in child care. This may include, but is not limited to:

(a) A decision issued by an administrative law judge;

(b) A final determination, decision, or finding made by an agency following an investigation;

(c) An adverse agency action, including termination, revocation, or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification, or contract in lieu of the adverse action;

(d) A revocation, denial, or restriction placed on any professional license; or

(e) A final decision of a disciplinary board.

(19) "Nonconviction information" means arrest, founded allegations of child abuse, or neglect pursuant to chapter 26.44 RCW, or other negative action adverse to the applicant.

(20) "Nonschool age child" means a child who is age six years or younger and who is not enrolled in a public or private school.

(21) "Part day program" means an early childhood education and assistance program that offers early learning education for at least two and one-half hours per class session, at least three hundred twenty hours per year, for a minimum of thirty weeks per year.

(22) "Private school" means a private school approved by the state under chapter 28A.195 RCW.

(23) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(24) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(25) "School age child" means a child who is five years of age through ~~((twelve))~~ 13 years of age and is attending a public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

(26) "Secretary" means the secretary of the department.

(27) "Washington state preschool program" means an education program for children three-to-five years of age who have not yet entered kindergarten, such as the early childhood education and assistance program.

**Sec. 502.** RCW 28B.50.248 and 2020 c 355 s 4 and 2020 c 279 s 3 are each reenacted and amended to read as follows:

Nothing in RCW 43.216.135(~~(7)~~) or 43.216.136(~~(7) or 43.216.1365~~) requires a community or technical college to expand any of its existing child care facilities. Any additional child care services provided by a community or technical college as a result of RCW 43.216.135(~~(7)~~) or 43.216.136(~~(7) or 43.216.1365~~) must be provided within existing resources and existing facilities.

**Sec. 503.** RCW 43.84.092 and 2020 c 354 s 11, 2020 c 221 s 5, 2020 c 103 s 7, and 2020 c 18 s 3 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings

set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The abandoned recreational vehicle disposal account, the aeronautics account, the Alaskan Way viaduct replacement project account, the ambulance transport fund, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Chehalis basin account, the Chehalis basin taxable account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the community forest trust account, the connecting Washington account, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community (~~trust~~) services account, the diesel idle reduction account, the drinking water assistance account, the administrative subaccount of the drinking water assistance account, the early learning facilities development account, the early learning facilities revolving account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the electric vehicle account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the fair start for kids account, the ferry bond retirement fund,

the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the state higher education construction account, the higher education construction account, the higher education retirement plan supplemental benefit fund, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the hospital safety net assessment fund, the Interstate 405 and state route number 167 express toll lanes account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the money-purchase retirement savings administrative account, the money-purchase retirement savings principal account, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the pilotage account, the pollution liability insurance agency underground storage tank revolving account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puget Sound Gateway facility account, the Puget Sound taxpayer accountability account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the sexual assault prevention and response account, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state investment board expense account, the state

investment board commingled trust fund accounts, the state patrol highway account, the state reclamation revolving account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the statewide broadband account, the statewide tourism marketing account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation future funding program account, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the University of Washington bond retirement fund, the University of Washington building account, the voluntary cleanup account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the vulnerable roadway user education account, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent

fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

**Sec. 504.** RCW 43.84.092 and 2020 c 354 s 11, 2020 c 221 s 5, 2020 c 148 s 3, 2020 c 103 s 7, and 2020 c 18 s 3 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of

treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The abandoned recreational vehicle disposal account, the aeronautics account, the Alaskan Way viaduct replacement project account, the ambulance transport fund, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Chehalis basin account, the Chehalis basin taxable account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the community forest trust account, the connecting Washington account, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community ~~(trust)~~ services account, the diesel idle reduction account, the drinking water assistance account, the administrative subaccount of the drinking water assistance account, the early learning facilities development account, the early learning facilities revolving account, the Eastern Washington University capital projects



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the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the sexual assault prevention and response account, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state reclamation revolving account, the state route number 520 civil penalties account, the state route number 520 corridor account, the statewide broadband account, the statewide tourism marketing account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation future funding program account, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the University of Washington bond retirement fund, the University of Washington building account, the voluntary cleanup account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the vulnerable roadway user education account, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the

Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

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implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The abandoned recreational vehicle disposal account, the aeronautics account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Chehalis basin account, the Chehalis basin taxable account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the community forest trust account, the connecting Washington account, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense

account, the developmental disabilities community (~~trust~~) services account, the diesel idle reduction account, the drinking water assistance account, the administrative subaccount of the drinking water assistance account, the early learning facilities development account, the early learning facilities revolving account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the electric vehicle account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the fair start for kids account, the ferry bond retirement fund, the fish, wildlife, and conservation account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the state higher education construction account, the higher education construction account, the higher education retirement plan supplemental benefit fund, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the hospital safety net assessment fund, the Interstate 405 and state route number 167 express toll lanes account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the limited fish and wildlife account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the money-purchase retirement savings administrative account, the money-purchase retirement savings principal account, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the pilotage account, the pollution liability insurance agency underground storage tank revolving account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account, the

public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puget Sound Gateway facility account, the Puget Sound taxpayer accountability account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the sexual assault prevention and response account, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state reclamation revolving account, the state route number 520 civil penalties account, the state route number 520 corridor account, the statewide broadband account, the statewide tourism marketing account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation future funding program account, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the University of Washington bond retirement fund, the University of Washington building account, the voluntary cleanup account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the vulnerable roadway user education account, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan

2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

**Sec. 506.** RCW 43.216.710 and 2017 3rd sp.s. c 6 s 213 are each amended to read as follows:

The department shall:

(1) Work in conjunction with the statewide child care resource and referral network as well as local governments, nonprofit organizations, businesses, and community child care advocates to create local child care resource and referral organizations. These organizations may carry out needs assessments, resource development, provider training, technical assistance, and parent information and training;

(2) Actively seek public and private money for distribution as grants to the statewide child care resource and referral network and to existing or

potential local child care resource and referral organizations;

(3) Adopt rules regarding the application for and distribution of grants to local child care resource and referral organizations. The rules shall, at a minimum, require an applicant to submit a plan for achieving the following objectives:

(a) Provide parents with information about child care resources, including location of services and subsidies;

(b) Carry out child care provider recruitment and training programs, including training under RCW 74.25.040;

(c) Offer support services, such as parent and provider seminars, toy-lending libraries, and substitute banks;

(d) Provide information for businesses regarding child care supply and demand;

(e) Advocate for increased public and private sector resources devoted to child care;

(f) Provide technical assistance to employers regarding employee child care services; and

(g) Serve recipients of temporary assistance for needy families and working parents with household incomes at or below (~~household incomes of two hundred~~) 100 percent of the ((federal poverty line)) state median income;

(4) Provide staff support and technical assistance to the statewide child care resource and referral network and local child care resource and referral organizations;

(5) Maintain a statewide child care licensing data bank and work with department licensors to provide information to local child care resource and referral organizations about licensed or certified child care providers in the state;

(6) Through the statewide child care resource and referral network and local resource and referral organizations, compile data about local child care needs and availability for future planning and development;

(7) Coordinate with the statewide child care resource and referral network and local child care resource and referral organizations for the provision of training and technical assistance to child care providers;

(8) Collect and assemble information regarding the availability of insurance and of federal and other child care funding to assist state and local agencies, businesses, and other child care providers in offering child care services;

(9) Subject to the availability of amounts appropriated for this specific purpose, increase the base rate for all child care providers by ten percent;

(10) Subject to the availability of amounts appropriated for this specific purpose, provide tiered subsidy rate enhancements to child care providers if the provider meets the following requirements:

(a) The provider enrolls in quality rating and improvement system levels 2, 3, 4, or 5;

(b) The provider is actively participating in the early achievers program;

(c) The provider continues to advance towards level 5 of the early achievers program; and

(d) The provider must complete level 2 within thirty months or the reimbursement rate returns the level 1 rate; and

(11) Require exempt providers to participate in continuing education, if adequate funding is available.

**Sec. 507.** RCW 43.216.514 and 2020 c 343 s 3 are each amended to read as follows:

(1) (a) The department shall prioritize children for enrollment in the early childhood education and assistance program who are eligible pursuant to RCW 43.216.505.

(b) A child who is eligible at the time of enrollment in the early childhood education and assistance program maintains program eligibility until the child begins kindergarten.

(2) As space is available, children may be included in the early childhood education and assistance program pursuant to RCW 43.216.512. ~~((Priority within this group must be given first to children with incomes up to one hundred thirty percent of the federal poverty level.))~~

## PART VI

### MISCELLANEOUS

NEW SECTION. **Sec. 601.** Nothing in this act changes the department's responsibility to collectively bargain over mandatory subjects consistent with RCW 41.56.028(3) or limits the legislature's authority to make programmatic modifications to licensed child care and early learning programs consistent with legislative reservation of rights under RCW 41.56.028(4) (d).

NEW SECTION. **Sec. 602.** RCW 43.216.1365 (Working connections child care program—Eligibility) and 2020 c 355 s 3 are each repealed.

NEW SECTION. **Sec. 603.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. **Sec. 604.** Sections 204 through 206 and 403 of this act take effect July 1, 2026.

NEW SECTION. **Sec. 605.** Sections 101, 102, 106, 201, 206, 207, 302 through 307, 309, 311 through 314, 402, 404, 405, and 601 of this act are each added to chapter 43.216 RCW.

NEW SECTION. **Sec. 606.** Section 503 of this act expires July 1, 2021.

NEW SECTION. **Sec. 607.** Sections 201, 202, 301, 310, and 504 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2021.

NEW SECTION. **Sec. 608.** Section 504 of this act expires July 1, 2024.

NEW SECTION. **Sec. 609.** Section 505 of this act takes effect July 1, 2024.

NEW SECTION. **Sec. 610.** Sections 105 and 503 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately."

Correct the title.

Signed by Representatives Senn, Chair; Harris-Talley, Vice Chair; Rule, Vice Chair; Callan; Goodman; Ortiz-Self and Wicks.

MINORITY recommendation: Do not pass. Signed by Representatives Dent, Ranking Minority Member; Chase, Assistant Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Eslick; Klippert and Young.

Referred to Committee on Appropriations.

March 25, 2021

ESSB 5251 Prime Sponsor, Committee on Ways & Means: Modifying tax and revenue laws in a manner that is not estimated to affect state or local tax collections, by easing compliance burdens for taxpayers, clarifying ambiguities, making technical corrections, and providing administrative efficiencies. Reported by Committee on Finance

MAJORITY recommendation: Do pass. Signed by Representatives Frame, Chair; Berg, Vice Chair; Walen, Vice Chair; Orcutt, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Chase; Chopp; Harris-Talley; Morgan; Orwall; Ramel; Springer; Stokesbary; Thai; Vick; Wylie and Young.

Referred to Committee on Rules for second reading.

March 24, 2021

2SSB 5253 Prime Sponsor, Committee on Ways & Means: Implementing the recommendations of the pollinator health task force. Reported by Committee on Rural Development, Agriculture & Natural Resources

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The purpose of this act is to implement the recommendations of the pollinator health task force created by section 3, chapter 353, Laws of 2019, entitled "Recommendations of the Pollinator Health Task Force - for Pollinator Health in Washington" (November 2020).

(2) The task force provided recommendations to help prioritize and enact policy changes for pollinators in Washington. The recommendations are organized under five broad categories:

(a) Habitat; (b) pesticides; (c) education; (d) managed pollinators; and (e) research.

(3) The task force met for the first time the same week that the Asian giant hornet was first discovered in Washington and the week after the Houdini fly was also reported for the first time in Washington. Asian giant hornets primarily hunt honey bees and destroy entire honey bee hives. The Houdini fly threatens native mason bee populations as well as managed mason bees. Washington is home to over 400 different species of native bees, 65 species of butterflies, as well as moths, wasps, beetles, flies, and hummingbirds. The loss of pollinators, managed and unmanaged, can lead to decreased yields of many fruits, nuts, and vegetables. Washington is currently the top producer in the United States of apples, sweet cherries, alfalfa, blueberries, and pears. In Washington state, honey bees and other pollinators are responsible for the production of tree fruits, small fruits, and other crops.

(4) The legislature intends by this act to implement various recommendations from the pollinator health task force to protect and expand the habitat upon which pollinators depend, by providing technical and financial assistance to public and private landowners, and by coordinating with state agencies and local governments in promoting practices to ensure sustainable, healthy populations of managed and native pollinators.

NEW SECTION. Sec. 2. A new section is added to chapter 43.23 RCW to read as follows:

(1) The department shall create and chair a pollinator health task force. The department shall appoint the members of the task force, which must include, but is not limited to, representatives of the following interests, organizations, and state agencies:

- (a) The conservation commission;
- (b) The department of natural resources;
- (c) The department of fish and wildlife;
- (d) The state parks and recreation commission;
- (e) The Washington state department of transportation;

(f) The state noxious weed control board;

(g) The tree fruit industry;

(h) The seed industry;

(i) The berry industry;

(j) Other agricultural industries dependent upon pollinators;

(k) Washington State University;

(l) Pesticide distributors and applicators;

(m) Conservation organizations;

(n) Organizations representing beekeepers or apiarists;

(o) A member of the public from west of the crest of the Cascade mountains; and

(p) A member of the public from east of the crest of the Cascade mountains.

(2) One or more representatives of Washington tribes must also be invited to participate on the task force.

(3) One youth representative from an organization that encourages students to engage in agricultural education must also be invited to participate on the task force when available.

(4) The task force shall build upon existing pollinator research and pollinator habitat plans at the national and state level including, but not limited to, the state-managed pollinator plan, to assist with the development of an implementation plan to implement the state pollinator health strategy.

(5) The task force shall assist, as practicable, with implementation of the recommendations of the task force submitted to the legislature in November 2020.

(6) The department shall provide the implementation plan to the appropriate committees of the senate and house of representatives by December 31, 2021, in compliance with RCW 43.01.036. The implementation plan must include the task force's evaluation and development of protocols that would increase communications between beekeepers, farmers and growers, and pesticide applicators including, but not limited to, education and outreach to beekeepers, farmers and growers, and pesticide applicators.

(7) The department shall provide information related to implementation of the state pollinator health strategy and a recommendation of whether to extend the task force beyond January 1, 2024, to the appropriate committees of the senate and house of representatives by December 1, 2022, in compliance with RCW 43.01.036.

(8) This section expires January 1, 2024.

**Sec. 3.** RCW 43.23.300 and 2019 c 353 s 2 are each amended to read as follows:

(1) The department shall establish a program to promote and protect pollinator habitat and the health and sustainability of pollinator species. As funds are made available, the program must provide technical and financial assistance to state agencies, local governments, and private landowners to implement practices that promote habitat for ~~((managed))~~ all pollinators, including native species, as well as beekeeper and grower best management practices. The program must be administered in coordination with the apiary program established in chapter 15.60 RCW, the honey bee commission authorized in chapter 15.62 RCW, and programs administered by the conservation commission and conservation districts.

(2) Subject to the availability of funds appropriated for this specific purpose, and in consultation with the department of fish and wildlife, the department must:

(a) Review, in consultation with Washington State University, education needs related to pollinator education and develop a plan that outlines the goals related to pollinator education and the necessary partners, personnel, and other resources;

(b) Evaluate and complete an analysis of critical impacts and needed best management practices for managed and wild pollinators. The department shall lead this effort in partnership with Washington State University, and in collaboration with the department of fish and wildlife and the state conservation commission. The effort must utilize the framework established in the state's managed pollinator protection plan as a guide for formal recommendations and education opportunities. The analysis must address food insecurities, habitat loss, virus and disease, pests, and pesticides, which may play a role in pollinator health decline. The

department shall make the resources produced pursuant to this subsection available to the public on the department's website, as well as through Washington State University and the state's conservation districts;

(c) Document, in consultation with Washington State University, the bee species within the state and map their distributions as practicable;

(d) Provide economic and environmental impacts of weed listing and categorization on pollinator health to county noxious weed control boards in consultation with the state noxious weed control board and annually submit a report to the noxious weed control board describing pollinator health issues;

(e) Provide materials, where practicable and in consultation with Washington State University, about certification programs that support pollinator health, biodiversity, and low-impact pesticide application to the public;

(f) Educate the public through plant nurseries about the necessity for blooming nectar plants to be available to wild and managed pollinators throughout their respective active seasons;

(g) Survey registered beekeepers to determine whether the current apiary program should be expanded to include apiary inspections or registration of apiary yards;

(h) Continue and maintain partnership with federal agencies and neighboring states to promote and enhance the implementation of the national strategy to promote the health of honey bees and improve pollinator health;

(i) Increase the availability of pollinator-related resources on the department's website, as practicable, and other state agencies' websites as appropriate;

(j) Review guidelines on state-managed lands to protect native pollinators and improve transparency for state-managed land areas which may permit managed honey bees so that impacts to wild pollinators from honey bees may be minimized; and

(k) In consultation with the department of revenue, review the open space taxation act and provide recommendations to the legislature, in compliance with RCW 43.01.036, on options to include pollinator habitat in the

current open space property tax classification.

NEW SECTION. Sec. 4. A new section is added to chapter 17.21 RCW to read as follows:

(1) The department shall continue to evaluate and update, as necessary, pesticide regulatory and education programs focused on measures to protect pollinator health. This work by the department, when appropriate, must be coordinated with Washington State University pesticide education programs to limit duplication and ensure consistent information sharing.

(2) Subject to the availability of amounts appropriated for this specific purpose, and in consultation with the department of fish and wildlife with regard to considerations for native pollinator species, the department must:

(a) Evaluate and adapt pesticide training and drift reduction technical assistance programs to include up-to-date protection measures for pollinators;

(b) Support Washington State University's pesticide education programs continued incorporation of pollinator protection measures during their training and certification classes, and coordinate on presented research, new protection measures, technological advancements, and any other significant science-based information;

(c) Coordinate with pollinator health staff in the department and at Washington State University to conduct investigations and share annual findings from pesticide-related investigations with the pollinator health task force;

(d) Evaluate and, if necessary, update the pesticide civil penalty matrix related to pollinator death or damage due to the misuse of pesticides and ensure pollinator health protections are included;

(e) When possible, the department must provide credits for pesticide courses focused on pollinator protection measures.

(3) By December 31, 2021, the department shall provide a report to the appropriate committees of the senate and house of representatives, in compliance with RCW 43.01.036, that includes recommendations for measures to mitigate



the risks of harm to bees and other pollinators from the use of neonicotinoid pesticides and treated seeds. The department shall evaluate and incorporate the reviews scheduled for completion by the United States environmental protection agency during 2021, including recommended mitigation measures from that agency. The department shall also review neonicotinoid pesticide use restrictions and labeling requirements adopted in other states and include in the report any recommendations for adoption of similar requirements in this state.

**Sec. 5.** RCW 17.24.081 and 1991 c 257 s 12 are each amended to read as follows:

It shall be unlawful for a person to:

(1) Sell, offer for sale, or distribute a noxious weed or a plant or plant product or regulated article infested or infected with a plant pest declared by rule to be a threat to the state's forest, agricultural, horticultural, floricultural, or beekeeping industries or environment;

(2) Knowingly receive a noxious weed, or a plant, plant product, bees, bee hive or appliances, or regulated article sold, given away, carried, shipped, or delivered for carriage or shipment within this state, in violation of the provisions of this chapter or the rules adopted under this chapter;

(3) Fail to immediately notify the department and isolate and hold the noxious weed, bees, bee hives or appliances, plants or plant products, or other thing unopened or unused subject to inspection or other disposition as may be provided by the department, where the item has been received without knowledge of the violation and the receiver has become subsequently aware of the potential problem;

(4) Knowingly conceal or willfully withhold available information regarding an infected or infested plant, plant product, regulated article, or noxious weed;

(5) Introduce or move into this state, or to move or dispose of in this state, a plant, plant product, or other item included in a quarantine, except under rules as may be prescribed by the department, after a quarantine order has been adopted under this chapter against a place, nursery, orchard, vineyard, apiary, other agricultural

establishment, county of this state, another state, territory, or a foreign country as to a plant pest, bee pest, or noxious weed or genetically engineered plant or plant pest organism, until such quarantine is removed;

(6) Introduce or move nonnative managed bumble bees into this state to be used in open-field agricultural use.

**NEW SECTION. Sec. 6.** A new section is added to chapter 28B.30 RCW to read as follows:

The Washington State University extension program must develop a pollinator extension education and outreach program and develop a statewide, science-based, pollinator education plan to educate beekeepers, agricultural producers, land managers, licensed pesticide applicators, other professionals, and the public. The plan should emphasize pollinator best management practices for both native and managed species.

**NEW SECTION. Sec. 7.** A new section is added to chapter 39.04 RCW to read as follows:

If a public works project includes landscaping, at least 25 percent of the planted area must be pollinator habitat to the extent practicable. For purposes of this section, "pollinator habitat" means an area of land that is or may be developed as habitat beneficial for the feeding, nesting, and reproduction of all pollinators, including honey bees. The department of agriculture, in consultation with the conservation commission and the department of fish and wildlife, must develop a list of native forage plants that are pollen-rich or nectar-rich and beneficial for all pollinators, including honey bees.

**Sec. 8.** RCW 77.12.058 and 2019 c 353 s 8 are each amended to read as follows:

(1) The department must implement practices necessary to maintain pollinator habitat on department-owned and managed agricultural and grazing lands where practicable. ~~((For the purposes of this section, "pollinator habitat" means an area of land that is or may be developed as habitat beneficial for the feeding, nesting, and reproduction of all pollinators, including honey bees, as determined by the department.))~~

(2) The department must evaluate various restoration techniques with the goal of improving habitat for native pollinators. The department must update its riparian habitat recommendations to encourage development of pollinator habitat where practicable when making habitat improvements or for riparian restoration.

(3) For the purposes of this section, "pollinator habitat" means an area of land that is or may be developed as habitat beneficial for the feeding, nesting, and reproduction of all pollinators, including honey bees, as determined by the department.

**Sec. 9.** RCW 89.08.620 and 2020 c 351 s 4 are each amended to read as follows:

(1) When prioritizing grant recipients, the commission, in consultation with the department of agriculture, Washington State University, the department of fish and wildlife, and the United States department of agriculture natural resources conservation service, shall seek to maximize the benefits of the grant program by leveraging other state, nonstate, public, and private sources of money. The primary metrics used to rank grant applications must be made public by the commission.

(2) The grant program must prioritize or weight projects based on consideration of the individual project's ability to:

(a) Increase the quantity of organic carbon in topsoil through practices including, but not limited to, cover cropping, no-till and minimum tillage conservation practices, crop rotations, manure application, biochar application, compost application, and changes in grazing management;

(b) Increase the quantity of organic carbon in aquatic soils;

(c) Intentionally integrate trees, shrubs, seaweed, or other vegetation into management of agricultural and aquacultural lands, with preference for native vegetation where practicable and appropriate;

(d) Reduce or avoid carbon dioxide equivalent emissions in or from soils;

(e) Reduce nitrous oxide and methane emissions through changes to livestock or soil management; and

(f) Increase usage of precision agricultural practices.

(3) The commission shall develop and approve a prioritization metric to guide the distribution of funds appropriated by the legislature for this purpose, with the goal of producing cost-effective carbon dioxide equivalent impact benefits.

(4) Applicants that create riparian buffers along waterways, or otherwise benefit fish habitat, must receive an enhanced prioritization compared to other grant applications that perform similarly under the prioritization metrics developed by the commission.

(5)(a) Applicants that create or maintain pollinator habitat must receive an enhanced prioritization compared to other grant applications that perform similarly under the prioritization metrics developed by the commission.

(b) For the purposes of this subsection, "pollinator habitat" means an area of land that is or may be developed as habitat beneficial for the feeding, nesting, and reproduction of all pollinators, including honey bees, as determined by the department of agriculture.

(6) The commission shall downgrade a specific grant proposal within its prioritization metric if the proposal is expected to cause significant environmental damage to fish and wildlife habitat.

**NEW SECTION. Sec. 10.** A new section is added to chapter 89.08 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the commission is authorized to develop an ongoing small grants program to provide funding to the conservation districts to educate residents and community groups in urban, suburban, and rural nonfarm areas about the value of habitat for both managed and native pollinators, and to provide the necessary technical and financial assistance and materials to create it.

(2) Educational efforts should include the benefits of habitat diversity, especially pollen-rich and nectar-rich flowering forbs and shrubs. Preference for pollinator plants should be given to native plants or noninvasive, nonnative plants.

(3) Planting projects should provide diverse native or nonnative, noninvasive plants of high quality for pollinator foraging, nesting, and overwintering, as determined by site suitability. Options may include, but are not limited to, bee or eco-lawns, flowering meadow gardens, xeriscaping, shrub plantings, tree plantings, rain gardens, riparian restoration, and other pollinator-friendly landscaping.

(4) Criteria to rank applicants should include a detailed budget demonstrating funding needs, resource concerns addressed, value to at-risk native pollinators, multiple-use benefits of habitat, planned project longevity, and plans for long-term maintenance."

Correct the title.

Signed by Representatives Chapman, Chair; Shewmake, Vice Chair; Chandler, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Fitzgibbon; Klicker; Kloba; Kretz; Lekanoff; McEntire; Morgan; Orcutt; Ramos; Schmick and Springer.

Referred to Committee on Appropriations.

March 25, 2021

E2SSB 5304 Prime Sponsor, Committee on Ways & Means: Providing reentry services to persons releasing from state and local institutions. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds that when considering releasing persons from state and local institutions, realizing the safety of the public is the primary concern. The legislature also finds that the success of persons with behavioral health needs being released from confinement in a prison, jail, juvenile rehabilitation facility, state hospital, and other state and local institutions can be increased with access to continuity of medical assistance, supportive services, and other targeted assistance. The legislature finds that this act provides strategies to prevent interruption of medical assistance benefits and to allow for a seamless transfer between systems of care. The legislature further finds that this act removes stigmatizing

language from the program created under RCW 72.09.370 and 71.24.470 and creates a work group to study how to expand the cost-effective strategies of this program to other populations and settings to enhance recovery, reduce recidivism, and improve safety.

**Sec. 2.** RCW 74.09.670 and 2016 c 154 s 2 are each amended to read as follows:

~~((The))~~ When the authority receives information that a person enrolled in medical assistance is confined in a setting in which federal financial participation is disallowed by the state's agreements with the federal government, the authority ~~((is directed to))~~ shall suspend, rather than terminate, medical assistance benefits ~~((by July 1, 2017,))~~ for these persons, including those who are incarcerated in a correctional institution as defined in RCW 9.94.049, or committed to a state hospital or other treatment facility. ((This must include the ability for a)) A person who is not currently enrolled in medical assistance must be allowed to apply for medical assistance in suspense status during ~~((incarceration))~~ confinement, and the ability to apply may not depend upon knowledge of the release or discharge date of the person. ((The authority must provide a progress report describing program design and a detailed fiscal estimate to the governor and relevant committees of the legislature by December 1, 2016.))

**Sec. 3.** RCW 74.09.555 and 2019 c 325 s 4005 are each amended to read as follows:

(1) The authority shall adopt rules and policies providing that when persons ~~((with a mental disorder,))~~ who were enrolled in medical assistance immediately prior to confinement, or who become enrolled in medical assistance in suspense status during the period of confinement, are released from confinement, their medical assistance coverage ~~((will))~~ shall be fully reinstated ~~((on the day))~~ no later than at the moment of their release, subject to any expedited review of their continued eligibility for medical assistance coverage that is required under federal or state law. The authority may reinstate medical assistance prior to the day of release provided that no federal funds are expended for any purpose that is not authorized by the state's agreements with the federal government.

(2) The authority, in collaboration with the Washington association of sheriffs and police chiefs, the department of corrections, the department of children, youth, and families, managed care organizations, and behavioral health administrative services organizations, shall establish procedures for coordination between the authority and department field offices, institutions for mental disease, and correctional institutions, as defined in RCW 9.94.049, that result in prompt reinstatement of eligibility and speedy eligibility determinations for ~~((persons who are likely to be eligible for))~~ medical assistance services upon release from confinement. Procedures developed under this subsection must address:

(a) Mechanisms for receiving medical assistance services applications on behalf of confined persons in anticipation of their release from confinement;

(b) Expeditious review of applications filed by or on behalf of confined persons and, to the extent practicable, completion of the review before the person is released;

(c) Mechanisms for providing medical assistance services identity cards to persons eligible for medical assistance services ~~((immediately upon))~~ before their release from confinement; ~~((and))~~

(d) Coordination with the federal social security administration, through interagency agreements or otherwise, to expedite processing of applications for federal supplemental security income or social security disability benefits, including federal acceptance of applications on behalf of confined persons; and

(e) Assuring that notification of the person's release date, current location, and other appropriate information is provided to the person's managed care organization before the person's scheduled release from confinement, or as soon as practicable thereafter.

(3) Where medical or psychiatric examinations during a person's confinement indicate that the person is disabled, the correctional institution or institution for mental diseases shall provide the authority with that information for purposes of making medical assistance eligibility and enrollment determinations prior to the person's release from confinement. The

authority shall, to the maximum extent permitted by federal law, use the examination in making its determination whether the person is disabled and eligible for medical assistance.

(4) For purposes of this section, "confined" or "confinement" means incarcerated in a correctional institution, as defined in RCW 9.94.049, or admitted to an institute for mental disease, as defined in 42 C.F.R. part 435, Sec. 1009 on July 24, 2005.

~~((For purposes of this section, "likely to be eligible" means that a person:~~

~~(a) Was enrolled in medicaid or supplemental security income or the medical care services program immediately before he or she was confined and his or her enrollment was terminated during his or her confinement; or~~

~~(b) Was enrolled in medicaid or supplemental security income or the medical care services program at any time during the five years before his or her confinement, and medical or psychiatric examinations during the person's confinement indicate that the person continues to be disabled and the disability is likely to last at least twelve months following release.~~

~~(c))~~ The economic services administration within the department shall adopt standardized statewide screening and application practices and forms designed to facilitate the application of a confined person ~~((who is likely to be eligible))~~ for medicaid.

**NEW SECTION. Sec. 4.** (1) The health care authority shall apply for a waiver allowing the state to provide medicaid services to persons who are confined in a correctional institution as defined in RCW 9.94.049 or confined in a state hospital or other treatment facility up to 30 days prior to the person's release or discharge to the community. The purpose is to create continuity of care and provide reentry services.

(2) The health care authority shall consult with the work group established under section 9 of this act about how to optimize the waiver application and its chance of success, including by limiting its scope if deemed appropriate.

(3) The health care authority shall inform the governor and relevant committees of the legislature in writing

when the waiver application is submitted and update them as to progress of the waiver at appropriate points.

(4) No provision of this section may be interpreted to require the health care authority to provide medicaid services to persons who are confined in a correctional institution, state hospital, or other treatment facility up to 30 days prior to the person's release or discharge unless the health care authority obtains final approval for its waiver application from the centers for medicare and medicaid services.

**Sec. 5.** RCW 9.94.049 and 1995 c 314 s 6 are each amended to read as follows:

(1) For the purposes of this chapter, the term "correctional institution" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including state prisons, county and local jails, juvenile detention centers, and other facilities operated by the department of corrections, department of children, youth, and families, or local governmental units primarily for the purposes of punishment, correction, or rehabilitation following conviction or adjudication of a criminal offense.

(2) For the purposes of RCW 9.94.043 and 9.94.045, "state correctional institution" means all state correctional facilities under the supervision of the secretary of the department of corrections used solely for the purpose of confinement of convicted felons.

**Sec. 6.** RCW 72.09.370 and 2019 c 325 s 5025 are each amended to read as follows:

(1) The ~~((offender))~~ reentry community ((safety)) services program is established to provide intensive services to ((offenders)) persons identified under this subsection and to thereby promote successful reentry, public safety, and recovery. The secretary shall identify ~~((offenders))~~ persons in confinement or partial confinement who: (a) Are reasonably believed to ~~((be dangerous))~~ present a danger to themselves or others if released to the community without supportive services; and (b) have a mental disorder. In ~~((determining an offender's dangerousness))~~ evaluating these criteria, the secretary shall consider behavior known to the department and factors, based on research, that are

linked to ~~((an increased))~~ risk ~~((for))~~ of dangerousness ~~((of offenders))~~ for persons with mental illnesses within the criminal justice system and shall include consideration of ~~((an offender's))~~ the person's history of substance use disorder or abuse.

(2) Prior to release of ~~((an offender))~~ a person identified under this section, a team consisting of representatives of the department of corrections, the health care authority, and, as necessary, the indeterminate sentence review board, divisions or administrations within the department of social and health services, specifically including the division of developmental disabilities, the appropriate managed care organization ~~((contracted with the health care authority, the appropriate))~~ or behavioral health administrative services organization, and ~~((the))~~ reentry community services providers, as appropriate, shall develop a plan, as determined necessary by the team, for delivery of treatment and support services to the ~~((offender))~~ person upon release. In developing the plan, the ~~((offender))~~ person shall be offered assistance in executing a mental health advance directive under chapter 71.32 RCW, after being fully informed of the benefits, scope, and purposes of such directive. The team may include a school district representative for ~~((offenders))~~ persons under the age of ~~((twenty-one))~~ 21. The team shall consult with the ~~((offender's))~~ person's counsel, if any, and, as appropriate, the ~~((offender's))~~ person's family and community. The team shall notify the crime victim/witness program, which shall provide notice to all people registered to receive notice under RCW 72.09.712 of the proposed release plan developed by the team. Victims, witnesses, and other interested people notified by the department may provide information and comments to the department on potential safety risk to specific individuals or classes of individuals posed by the specific ~~((offender))~~ person. The team may recommend: (a) That the ~~((offender))~~ person be evaluated by ~~((the))~~ a designated crisis responder, as defined in chapter 71.05 RCW; (b) department-supervised community treatment; or (c) voluntary community mental health or substance use disorder or abuse treatment.

(3) Prior to release of ~~((an offender))~~ a person identified under this section, the team shall determine whether or not an evaluation by a designated crisis responder is needed. If an evaluation is recommended, the supporting documentation shall be immediately forwarded to the appropriate designated crisis responder. The supporting documentation shall include the ~~((offender's))~~ person's criminal history, history of judicially required or administratively ordered involuntary antipsychotic medication while in confinement, and any known history of involuntary civil commitment.

(4) If an evaluation by a designated crisis responder is recommended by the team, such evaluation shall occur not more than ten days, nor less than five days, prior to release.

(5) A second evaluation by a designated crisis responder shall occur on the day of release if requested by the team, based upon new information or a change in the ~~((offender's))~~ person's mental condition, and the initial evaluation did not result in an emergency detention or a summons under chapter 71.05 RCW.

(6) If the designated crisis responder determines an emergency detention under chapter 71.05 RCW is necessary, the department shall release the ~~((offender))~~ person only to a state hospital or to a consenting evaluation and treatment facility or secure withdrawal management and stabilization facility. The department shall arrange transportation of the ~~((offender))~~ person to the hospital or facility.

(7) If the designated crisis responder believes that a less restrictive alternative treatment is appropriate, he or she shall seek a summons, pursuant to the provisions of chapter 71.05 RCW, to require the ~~((offender))~~ person to appear at an evaluation and treatment facility or secure withdrawal management and stabilization facility. If a summons is issued, the ~~((offender))~~ person shall remain within the corrections facility until completion of his or her term of confinement and be transported, by corrections personnel on the day of completion, directly to the identified ~~((evaluation and treatment))~~ facility.

(8) The secretary shall adopt rules to implement this section.

**Sec. 7.** RCW 71.24.470 and 2019 c 325 s 1030 are each amended to read as follows:

(1) The director shall contract, to the extent that funds are appropriated for this purpose, for case management services and such other services as the director deems necessary to assist ~~((offenders))~~ persons identified under RCW 72.09.370 for participation in the ~~((offender))~~ reentry community ~~((safety))~~ services program. The contracts may be with any qualified and appropriate entities. The director shall ensure the authority has coverage in all counties of the state for the purposes of providing reentry community services program services.

(2) The case manager has the authority to assist these ~~((offenders))~~ persons in obtaining the services, as set forth in the plan created under RCW 72.09.370(2), for up to five years. The services may include coordination of mental health services, assistance with unfunded medical expenses, assistance obtaining substance use disorder treatment, housing, employment services, educational or vocational training, independent living skills, parenting education, anger management services, peer services, and such other services as the case manager deems necessary.

(3) The legislature intends that funds appropriated for the purposes of RCW 72.09.370, 71.05.145, and 71.05.212, and this section are to supplement and not to supplant general funding. Funds appropriated to implement RCW 72.09.370, 71.05.145, and 71.05.212, and this section are not to be considered available resources as defined in RCW 71.24.025 and are not subject to the priorities, terms, or conditions in the appropriations act established pursuant to RCW 71.24.035.

(4) The ~~((offender))~~ reentry community ~~((safety))~~ services program was formerly known as the community integration assistance program.

**Sec. 8.** RCW 71.24.480 and 2019 c 325 s 1031 are each amended to read as follows:

(1) A licensed or certified behavioral health agency acting in the course of the ~~((provider's))~~ agency's duties under this chapter ~~((, is))~~ and its individual employees are not liable for civil damages resulting from the injury or death of another caused by a participant

in the ((~~offender~~)) reentry community ((~~safety~~)) services program who is a client of the ((~~provider~~ or ~~organization~~)) agency, unless the act or omission of the ((~~provider~~ or ~~organization~~)) agency or employee constitutes:

- (a) Gross negligence;
- (b) Willful or wanton misconduct; or
- (c) A breach of the duty to warn of and protect from a client's threatened violent behavior if the client has communicated a serious threat of physical violence against a reasonably ascertainable victim or victims.

(2) In addition to any other requirements to report violations, the licensed or certified behavioral health agency shall report ((~~an offender's~~)) a reentry community services program participant's expressions of intent to harm or other predatory behavior, regardless of whether there is an ascertainable victim, in progress reports and other established processes that enable courts and supervising entities to assess and address the progress and appropriateness of treatment.

(3) A licensed or certified behavioral health agency's mere act of treating a participant in the ((~~offender~~)) reentry community ((~~safety~~)) services program is not negligence. Nothing in this subsection alters the licensed or certified behavioral health agency's normal duty of care with regard to the client.

(4) The limited liability provided by this section applies only to the conduct of licensed or certified behavioral health agencies and their employees and does not apply to conduct of the state.

(5) For purposes of this section, "participant in the ((~~offender~~)) reentry community ((~~safety~~)) services program" means a person who has been identified under RCW 72.09.370 as ((~~an offender~~)) a person who: (a) Is reasonably believed to ((~~be dangerous~~)) present a danger to himself or herself or others if released to the community without supportive services; and (b) has a mental disorder.

**NEW SECTION. Sec. 9.** A new section is added to chapter 71.24 RCW to read as follows:

(1) The authority shall convene a reentry services work group to consider

ways to improve reentry services for persons with an identified behavioral health services need. The work group shall:

(a) Advise the authority on its waiver application under section 4 of this act;

(b) Develop a plan to assure notifications of the person's release date, current location, and other appropriate information are provided to the person's managed care organization before the person's scheduled release from confinement, or as soon as practicable thereafter, in accordance with RCW 74.09.555;

(c) Consider the value of expanding, replicating, or adapting the essential elements of the reentry community services program under RCW 72.09.370 and 71.24.470 to benefit new populations, such as:

(i) A larger group of incarcerated persons in the department of corrections than those who currently have the opportunity to participate;

(ii) State hospital patients committed under criminal insanity laws under chapter 10.77 RCW;

(iii) Involuntary treatment patients committed under chapter 71.05 RCW;

(iv) Persons committed to juvenile rehabilitation;

(v) Persons confined in jail; and

(vi) Other populations recommended by the work group;

(d) Consider whether modifications should be made to the reentry community services program;

(e) Identify potential costs and savings for the state and local governments which could be realized through the use of telehealth technology to provide behavioral health services, expansion or replication of the reentry community services program, or other reentry programs which are supported by evidence;

(f) Consider the sustainability of reentry or diversion services provided by pilot programs funded by contempt fines in *Trueblood, et al., v. Washington State DSHS*, No. 15-35462;

(g) Recommend a means of funding expanded reentry services; and

(h) Consider incorporation of peer services into the reentry community services programs.

(2) The authority shall invite participation in the work group by stakeholders including but not limited to representatives from: Disability rights Washington; behavioral health advocacy organizations; behavioral health peers; reentry community services providers; community behavioral health agencies; advocates for persons with developmental disabilities; the department of corrections; the department of children, youth, and families; the Washington association of sheriffs and police chiefs; prosecutors; defense attorneys; the Washington state association of counties; King county behavioral health and recovery division; the department of social and health services; state hospital employees who serve patients committed under chapters 10.77 and 71.05 RCW; the public safety review panel under RCW 10.77.270; managed care organizations; behavioral health administrative services organizations; jail administrators; the Washington statewide reentry council; the Washington state senate; the Washington state house of representatives; and the Washington state institute for public policy.

(3) The work group must provide a progress report to the governor and appropriate committees of the legislature by July 1, 2022, and a final report by December 1, 2023.

**NEW SECTION. Sec. 10.** The Washington state institute for public policy shall update its previous evaluations of the reentry community services program under RCW 72.09.370 and 71.24.470, and broaden its cost-benefit analysis to include impacts on the use of public services, and other factors. The institute shall collaborate with the work group established under section 9 of this act to determine research parameters and help the work group answer additional research questions including, but not limited to, the potential cost, benefit, and risks involved in expanding or replicating the reentry community services program; and what modifications to the program are most likely to prove advantageous based on the current state of knowledge about evidence-based, research-based, and promising programs. The department of corrections, health care authority, administrative office of the courts, King

county, and department of social and health services must cooperate with the institute to facilitate access to data or other resources necessary to complete this work. The institute must provide a preliminary report by July 1, 2022, and a final report by November 1, 2023, to the governor and relevant committees of the legislature.

**Sec. 11.** RCW 72.09.270 and 2008 c 231 s 48 are each amended to read as follows:

(1) The department of corrections shall develop an individual reentry plan as defined in RCW 72.09.015 for every ~~((offender))~~ person who is committed to the jurisdiction of the department except:

(a) ~~((Offenders))~~ Persons who are sentenced to life without the possibility of release or sentenced to death under chapter 10.95 RCW; and

(b) ~~((Offenders))~~ Persons who are subject to the provisions of 8 U.S.C. Sec. 1227.

(2) The individual reentry plan may be one document, or may be a series of individual plans that combine to meet the requirements of this section.

(3) In developing individual reentry plans, the department shall assess all ~~((offenders))~~ persons using standardized and comprehensive tools to identify the criminogenic risks, programmatic needs, and educational and vocational skill levels for each ~~((offender))~~ person. The assessment tool should take into account demographic biases, such as culture, age, and gender, as well as the needs of the ~~((offender))~~ person, including any learning disabilities, substance abuse or mental health issues, and social or behavior deficits.

(4)(a) The initial assessment shall be conducted as early as sentencing, but, whenever possible, no later than ~~((forty-five))~~ 45 days of being sentenced to the jurisdiction of the department of corrections.

(b) The ~~((offender's))~~ person's individual reentry plan shall be developed as soon as possible after the initial assessment is conducted, but, whenever possible, no later than ~~((sixty))~~ 60 days after completion of the assessment, and shall be periodically reviewed and updated as appropriate.

(5) The individual reentry plan shall, at a minimum, include:



(a) A plan to maintain contact with the inmate's children and family, if appropriate. The plan should determine whether parenting classes, or other services, are appropriate to facilitate successful reunification with the ~~((offender's))~~ person's children and family;

(b) An individualized portfolio for each ~~((offender))~~ person that includes the ~~((offender's))~~ person's education achievements, certifications, employment, work experience, skills, and any training received prior to and during incarceration; and

(c) A plan for the ~~((offender))~~ person during the period of incarceration through reentry into the community that addresses the needs of the ~~((offender))~~ person including education, employment, substance abuse treatment, mental health treatment, family reunification, and other areas which are needed to facilitate a successful reintegration into the community.

(6)(a) Prior to discharge of any ~~((offender))~~ person, the department shall:

(i) Evaluate the ~~((offender's))~~ person's needs and, to the extent possible, connect the ~~((offender))~~ person with existing services and resources that meet those needs; and

(ii) Connect the ~~((offender))~~ person with a community justice center and/or community transition coordination network in the area in which the ~~((offender))~~ person will be residing once released from the correctional system if one exists.

(b) If the department recommends partial confinement in ~~((an offender's))~~ a person's individual reentry plan, the department shall maximize the period of partial confinement for the ~~((offender))~~ person as allowed pursuant to RCW 9.94A.728 to facilitate the ~~((offender's))~~ person's transition to the community.

(7) The department shall establish mechanisms for sharing information from individual reentry plans to those persons involved with the ~~((offender's))~~ person's treatment, programming, and reentry, when deemed appropriate. When feasible, this information shall be shared electronically.

(8)(a) In determining the county of discharge for ~~((an offender))~~ a person released to community custody, the department may ~~((not))~~ approve a residence location that is not in the ~~((offender's))~~ person's county of origin ~~((unless it is determined by the))~~ if the department determines that the ~~((offender's return to his or her county of origin would be inappropriate considering))~~ residence location would be appropriate based on any court-ordered condition of the ~~((offender's))~~ person's sentence, victim safety concerns, ~~((negative influences on the offender in the community, or the))~~ and factors that increase opportunities for successful reentry and long-term support including, but not limited to, location of family or other sponsoring persons or organizations that will support the ~~((offender))~~ person, availability of appropriate programming or treatment, and access to housing, employment, and prosocial influences on the person in the community.

(b) In implementing the provisions of this subsection, the department shall approve residence locations in a manner that will not cause any one county to be disproportionately impacted.

(c) If the ~~((offender))~~ person is not returned to his or her county of origin, the department shall provide the law and justice council of the county in which the ~~((offender))~~ person is placed with a written explanation.

~~((c))~~ (d)(i) For purposes of this section, except as provided in (d)(ii) of this subsection, the ~~((offender's))~~ person's county of origin means the county of the ~~((offender's))~~ person's residence at the time of the person's first felony conviction in Washington state.

(ii) If the person is a homeless person as defined in RCW 43.185C.010, or the person's residence is unknown, then the person's county of origin means the county of the person's first felony conviction in Washington state.

(9) Nothing in this section creates a vested right in programming, education, or other services.

**Sec. 12.** RCW 43.380.020 and 2019 c 415 s 976 are each amended to read as follows:

(1) Subject to the availability of amounts appropriated for this specific

purpose, the Washington statewide reentry council is created and located within the department for the purpose of promoting successful reentry of offenders after incarceration.

(2) Through the executive director that may be appointed by the council, the department shall administer the council by:

(a) Providing the council and its executive director use of the department's facilities; and

(b) Managing grants and other funds received, used, and disbursed by the council.

~~((3) Except during the 2019-2021 fiscal biennium, the department may not designate additional full-time staff to the administration of the council beyond the executive director.))"~~

Correct the title.

Signed by Representatives Cody, Chair; Bateman, Vice Chair; Bronoske; Davis; Harris; Macri; Maycumber; Riccelli; Rude; Simmons; Stonier; Tharinger and Ybarra.

MINORITY recommendation: Without recommendation. Signed by Representatives Schmick, Ranking Minority Member Caldier, Assistant Ranking Minority Member.

Referred to Committee on Appropriations.

March 24, 2021

ESSB 5321 Prime Sponsor, Committee on Higher Education & Workforce Development: Expanding access to the college bound scholarship. Reported by Committee on College & Workforce Development

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature enacted the college bound scholarship program in 2007 to encourage all Washington students to dream big by creating a guaranteed four-year tuition scholarship program for students from low-income families. The legislature finds the program has been successful in achieving this goal. A report by the Washington state institute for public policy found that the scholarship increases high school graduation rates, probability of on-time college

enrollment, college persistence, and college graduation rates. However, more than one quarter of eligible students are unable to access the scholarship by failing to sign the pledge required by the program. The legislature finds that the pledge has become an unintended barrier to entry, a problem made more acute as students are receiving their education remotely during the COVID-19 pandemic and have less access to school teachers, counselors, and peers. Therefore, the legislature intends with this act to remove the pledge as an eligibility requirement while retaining the requirement that students maintain a "C" average for direct admittance to a public or private four-year higher education institution and avoid serious interactions with the criminal justice system for four years. In order to ensure that the legislature will fulfill its promise to provide a scholarship upon graduation, the legislature intends by this act to create a statutory contractual right for students who fulfill scholarship requirements that vests when the student becomes first eligible for the scholarship.

**Sec. 2.** RCW 28B.118.010 and 2019 c 406 s 44 and 2019 c 298 s 1 are each reenacted and amended to read as follows:

The office of student financial assistance shall design the Washington college bound scholarship program in accordance with this section and in alignment with the Washington college grant program in chapter 28B.92 RCW unless otherwise provided in this section. The right of an eligible student to receive a college bound scholarship vests upon enrollment in the program that is earned by meeting the requirements of this section as it exists at the time of the student's enrollment under subsection (2) of this section.

(1) "Eligible students" are those students who:

(a) Qualify for free or reduced-price lunches or are enrolled at schools using provision 2 of the national school lunch act or the community eligibility provision under section 104(a) of the federal health, hunger-free kids act of 2010.

(i) If a student qualifies in the seventh ((or) eighth, or ninth grade, the student remains eligible even if the student does not receive free or reduced-price lunches thereafter or if the

student is no longer enrolled at a school using provision 2 of the national school lunch act or the community eligibility provision under section 104(a) of the federal health, hunger-free kids act of 2010.

(ii) Beginning in the ~~((2019-20))~~ 2021-22 academic year, if a student qualifies for free or reduced-price lunches in the ~~((ninth))~~ 10th grade and was previously ineligible during the seventh ~~((or))~~, eighth, or ninth grade while he or she was a student in Washington, the student is eligible for the college bound scholarship program;

(b) Are dependent pursuant to chapter 13.34 RCW and:

(i) In grade seven through twelve; or

(ii) Are between the ages of eighteen and twenty-one and have not graduated from high school; or

(c) Were dependent pursuant to chapter 13.34 RCW and were adopted between the ages of fourteen and eighteen with a negotiated adoption agreement that includes continued eligibility for the Washington state college bound scholarship program pursuant to RCW 74.13A.025.

~~(2) ((Eligible students and the students' parents or guardians shall be notified of the student's eligibility for the Washington college bound scholarship program. Students and the students' parents or guardians shall also be notified of the requirements for award of the scholarship.~~

~~(3) (a) To be eligible for a Washington college bound scholarship, a student eligible under subsection (1)(a)(i) of this section must sign a pledge during seventh or eighth grade or a student eligible under subsection (1)(a)(ii) of this section must sign a pledge during ninth grade. The pledge must include a commitment to graduate from high school with at least a C average and with no felony convictions. The pledge must be witnessed by a parent or guardian and forwarded to the office of student financial assistance by mail or electronically, as indicated on the pledge form.~~

~~(b) (i) Beginning in the 2018-19 academic year, the office of student financial assistance shall make multiple attempts to secure the signature of the~~

~~student's parent or guardian for the purpose of witnessing the pledge.~~

~~(ii) If the signature of the student's parent or guardian is not obtained, the office of student financial assistance may partner with the school counselor or administrator to secure the parent's or guardian's signature to witness the pledge. The school counselor or administrator shall make multiple attempts via all phone numbers, email addresses, and mailing addresses on record to secure the parent's or guardian's signature. All attempts to contact the parent or guardian must be documented and maintained in the student's official file.~~

~~(iii) If a parent's or guardian's signature is still not obtained, the school counselor or administrator shall indicate to the office of student financial assistance the nature of the unsuccessful efforts to contact the student's parent or guardian and the reasons the signature is not available. Then the school counselor or administrator may witness the pledge unless the parent or guardian has indicated that he or she does not wish for the student to participate in the program.~~

~~(e) A) (a) Every eligible student ((eligible under subsection (1)(b) of this section)) shall be automatically enrolled by the office of student financial assistance, with no action necessary by the student ((or the)), student's family, ((and the enrollment form must be forwarded by the department of social and health services to the office of student financial assistance by mail or electronically, as indicated on the form)) or student's guardians.~~

(b) Eligible students and the students' parents or guardians shall be notified of the student's enrollment in the Washington college bound scholarship program and the requirements for award of the scholarship by the office of student financial assistance. To the maximum extent practicable, an eligible student must acknowledge enrollment in the college bound scholarship program and receipt of the requirements for award of the scholarship.

(c) The office of the superintendent of public instruction and the department of children, youth, and families must provide the office of student financial assistance with a list of eligible

students when requested. The office of student financial assistance must determine the most effective methods, including timing and frequency, to notify eligible students of enrollment in the Washington college bound scholarship program. The office of student financial assistance must take reasonable steps to ensure that eligible students acknowledge enrollment in the college bound scholarship program and receipt of the requirements for award of the scholarship. The office of student financial assistance shall also make available to every school district information, brochures, and posters to increase awareness and to enable school districts to notify eligible students directly or through school teachers, counselors, or school activities.

~~((4) (a) Scholarships shall be awarded to) (3) Except as provided in subsection (4) of this section, an eligible student (s) graduating from public high schools, approved private high schools under chapter 28A.195 RCW, or who received home based instruction under chapter 28A.200 RCW.~~

~~(b) (i) To receive the Washington college bound scholarship, a student must graduate with at least a "C" average) must:~~

~~(a) Graduate from a public high school ((or) under RCW 28A.150.010, an approved private high school under chapter 28A.195 RCW in Washington, or have received home-based instruction under chapter 28A.200 RCW ((, must have)) and:~~

~~(i) For direct admittance to a public or private four-year institution of higher education, graduate with at least a "C" average; or~~

~~(ii) Enroll directly into a community or technical college with the opportunity to transfer to a public or private four-year institution of higher education;~~

~~(b) Have no felony convictions ((, and must be));~~

~~(c) Be a resident student as defined in RCW 28B.15.012(2) (a) through (e) ((, A)); and~~

~~(d) Have a family income that does not exceed 65 percent of the state median family income at the time of high school graduation.~~

~~(4) (a) An eligible student who ((is eligible to receive the Washington college bound scholarship because the~~

~~student)) is a resident student under RCW 28B.15.012(2) (e) must also provide the institution, as defined in RCW 28B.15.012, an affidavit indicating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so and a willingness to engage in any other activities necessary to acquire citizenship, including but not limited to citizenship or civics review courses.~~

~~((iii)) (b) For eligible ((children)) students as defined in subsection (1) (b) and (c) of this section, ((to receive the Washington college bound scholarship,)) a student ((must have received)) may also meet the requirement in subsection (3) (a) of this section by receiving a high school equivalency certificate as provided in RCW 28B.50.536 ((or have graduated with at least a "C" average from a public high school or an approved private high school under chapter 28A.195 RCW in Washington or have received home-based instruction under chapter 28A.200 RCW, must have no felony convictions, and must be a resident student as defined in RCW 28B.15.012(2) (a) through (e))).~~

~~(c) For a student who does not meet the "C" average requirement, and who completes fewer than two quarters in the running start program, under chapter 28A.600 RCW, the student's first quarter of running start course grades must be excluded from the student's overall grade point average for purposes of determining ((their eligibility to receive the scholarship)) if the requirement in subsection (3) (a) of this section is met.~~

~~(5) ((A student's family income will be assessed upon graduation before awarding the scholarship. If at graduation from high school the student's family income does not exceed sixty-five percent of the state median family income, scholarship award amounts shall be as provided in this section.~~

~~(6)) (a) For students attending two or four-year institutions of higher education as defined in RCW 28B.10.016, the value of the award shall be (i) the difference between the student's tuition and required fees, less the value of any state-funded grant, scholarship, or waiver assistance the student receives; (ii) plus five hundred dollars for books and materials.~~

~~(b) For students attending private four-year institutions of higher~~

education in Washington, the award amount shall be the representative average of awards granted to students in public research universities in Washington or the representative average of awards granted to students in public research universities in Washington in the 2014-15 academic year, whichever is greater.

(c) For students attending private vocational schools in Washington, the award amount shall be the representative average of awards granted to students in public community and technical colleges in Washington or the representative average of awards granted to students in public community and technical colleges in Washington in the 2014-15 academic year, whichever is greater.

~~((7) Recipients))~~ (6) Eligible students must enroll no later than the fall term, as defined by the institution of higher education, one academic year following high school graduation. Eligible students may receive no more than four full-time years' worth of scholarship awards within a five-year period.

~~((8))~~ (7) Institutions of higher education shall award the student all need-based and merit-based financial aid for which the student would otherwise qualify. The Washington college bound scholarship is intended to replace unmet need, loans, and, at the student's option, work-study award before any other grants or scholarships are reduced.

~~((9))~~ (8) The first scholarships shall be awarded to students graduating in 2012.

(9) For eligible students who are divested of a college bound scholarship because they are unable to meet the requirement in subsection (3)(d) of this section, those students with a family income of less than 100 percent of the state median family income are entitled to a stipend of \$500 for books, materials, and other scholastic expenses annually, renewable for no more than four full-time years.

(10) The eligible student has a property right in the award, but the state of Washington retains legal ownership of tuition units awarded as scholarships under this chapter until the tuition units are redeemed. These tuition units shall remain separately held from any tuition units owned under chapter 28B.95 RCW by a Washington college bound scholarship recipient.

(11) The scholarship award must be used within five years of receipt. Any unused scholarship tuition units revert to the Washington college bound scholarship account.

(12) Should the recipient terminate his or her enrollment for any reason during the academic year, the unused portion of the scholarship tuition units shall revert to the Washington college bound scholarship account.

**Sec. 3.** RCW 28B.118.040 and 2019 c 298 s 2 are each amended to read as follows:

The office of student financial assistance shall:

(1) With the assistance of the office of the superintendent of public instruction, implement and administer the Washington college bound scholarship program;

(2) ~~Develop ((and distribute, to all schools with students enrolled in grades seven through nine, a pledge form that can be completed and returned electronically or by mail by the student or the school to the office of student financial assistance))~~ effective methods to notify eligible students of their enrollment in the Washington college bound scholarship program and the requirements of RCW 28B.118.010;

(3) ~~Develop and implement a ((student application, selection, and notification))~~ process for ((scholarships)) verifying eligibility, which includes working with other state agencies, law enforcement, or the court system to verify that eligible students do not have felony convictions;

(4) Annually in March, with the assistance of the office of the superintendent of public instruction, distribute to ~~((tenth))~~ 11th grade ((college bound scholarship)) eligible students and their families: (a) Notification that, to qualify for the scholarship, a student's family income may not exceed sixty-five percent of the state median family income at graduation from high school; (b) the current year's value for sixty-five percent of the state median family income; and (c) a statement that a student should consult their school counselor if their family makes, or is projected to make, more than this value before the student graduates;

(5) Develop comprehensive social media outreach with grade-level specific information designed to keep students on track to graduate and leverage current tools such as the high school and beyond plan required by the state board of education and the ready set grad website maintained by the student achievement council;

(6) Track scholarship recipients to ensure continued eligibility and determine student compliance for awarding of scholarships;

(7) Within existing resources, collaborate with college access providers and K-12, postsecondary, and youth-serving organizations to map and coordinate mentoring and advising resources across the state;

(8) Subject to appropriation, deposit funds into the state educational trust fund;

(9) Purchase tuition units under the advanced college tuition payment program in chapter 28B.95 RCW to be owned and held in trust by the office of student financial assistance, for the purpose of scholarship awards as provided for in this section; and

(10) Distribute scholarship funds, in the form of tuition units purchased under the advanced college tuition payment program in chapter 28B.95 RCW or through direct payments from the state educational trust fund, to institutions of higher education on behalf of scholarship recipients identified by the office, as long as recipients maintain satisfactory academic progress.

**Sec. 4.** RCW 28B.118.090 and 2019 c 406 s 45 and 2019 c 298 s 3 are each reenacted and amended to read as follows:

(1) Beginning January 1, 2015, and at a minimum every year thereafter, the student achievement council and all institutions of higher education eligible to participate in the college bound scholarship program shall ensure data needed to analyze and evaluate the effectiveness of the college bound scholarship program is promptly transmitted to the education data center created in RCW 43.41.400 so that it is available and easily accessible. The data to be reported should include but not be limited to:

(a) The number of enrolled students (~~who sign up~~) for the college bound

scholarship program in seventh, eighth, (~~or~~) ninth, or 10th grade;

(b) The number of college bound scholarship students who graduate from high school;

(c) The number of college bound scholarship students who enroll in postsecondary education;

(d) Persistence and completion rates of college bound scholarship recipients disaggregated by institutions of higher education;

(e) College bound scholarship recipient grade point averages;

(f) The number of college bound scholarship recipients who did not remain eligible and reasons for ineligibility;

(g) College bound scholarship program costs; and

(h) Impacts to the Washington college grant program.

(2) Beginning May 12, 2015, and at a minimum every December 1st thereafter, the student achievement council shall submit student unit record data for the college bound scholarship program applicants and recipients to the education data center.

**NEW SECTION. Sec. 5.** This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections.

**NEW SECTION. Sec. 6.** The legislature intends this act to be curative, remedial, and retroactively apply to seventh grade students beginning with the 2019-20 school year.

**NEW SECTION. Sec. 7.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

Correct the title.

Signed by Representatives Slatter, Chair; Entenman, Vice Chair; Leavitt, Vice Chair; Hansen; Paul; Pollet; Sells and Sutherland.

MINORITY recommendation: Do not pass. Signed by Representatives Chambers, Ranking Minority Member;

Jacobsen, Assistant Ranking Minority Member; Chandler; Hoff and Kraft.

Referred to Committee on Appropriations.

March 25, 2021

SSB 5325 Prime Sponsor, Committee on Health & Long Term Care: Concerning telemedicine. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass. Signed by Representatives Cody, Chair; Bateman, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Bronoske; Davis; Harris; Macri; Maycumber; Riccelli; Rude; Simmons; Stonier; Tharinger and Ybarra.

Referred to Committee on Rules for second reading.

March 24, 2021

2SSB 5327 Prime Sponsor, Committee on Ways & Means: Creating a confidential youth safety and well-being tip line. Reported by Committee on Children, Youth & Families

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 74.09 RCW to read as follows:

(1) (a) The children and youth behavioral health work group established under RCW 74.09.4951 shall convene a youth safety and well-being statewide reporting tool advisory group to review the youth safety and well-being statewide reporting tool work group report completed by the attorney general in 2020.

(b) The youth safety and well-being statewide reporting tool advisory group shall first determine how a new youth safety and well-being reporting tool would increase youth access to services. If the youth safety and well-being statewide reporting tool advisory group finds that creation of a new youth safety and well-being reporting tool is needed to increase youth access to services, the advisory group shall consider the following elements related to implementing the reporting tool:

(i) To what extent the youth safety and well-being statewide tool would provide added support or duplicative

efforts alongside other reporting mechanisms, such as the:

(A) Universal telephone number within the United States designated for the purpose of the national suicide prevention and mental health crisis hotline system operating through the national suicide prevention lifeline, also known as the 988 crisis hotline;

(B) National youth safety related hotlines;

(C) State child abuse reporting hotline; and

(D) Other national, state, or local youth safety and well-being related hotlines;

(ii) If this youth safety and well-being reporting tool is implemented, which state agency should be responsible for implementation and whether that agency should allow for a private contractor to manage the reporting tool;

(iii) How this reporting tool will be integrated with existing services to support the safety and well-being of children;

(iv) What resources are needed to implement the reporting tool and the cost-benefit of spending resources on a reporting tool or expanding the services available to support youth safety and well-being;

(v) How the reporting tool could focus on supporting youth safety and well-being and limit a criminal justice response for the youth who are subjects of the reporting tool;

(vi) The appropriate criteria used by the reporting tool to determine referral of persons to service providers;

(vii) The threat assessment criteria used by the reporting tool to determine immediate referral to law enforcement, child protective services, behavioral health professionals, or other first responders;

(viii) The appropriate communication with education institutions, local crisis services, law enforcement, and other entities;

(ix) Expected services needed, existing capacity, and who would provide and pay for these services;

(x) The appropriate warm hand off protocols between the reporting tool and service providers;

(xi) Appropriate confidentiality protections for the person making the report and the subject of the report, including protections related to the public records act, data retention schedules, and data management;

(xii) State liability concerns related to creation and operation of a reporting tool and the response or lack of a response provided by the reporting tool;

(xiii) Integration with K-12 and higher education institutions;

(xiv) Evaluation mechanisms to review appropriateness of law enforcement responses, behavioral health services, education responses, and other responses;

(xv) The training needed for individuals operating the reporting tool and the service providers and first responders contacted by the reporting tool; and

(xvi) Marketing and outreach needed to inform the public about the reporting tool.

(c) Staff support for the youth safety and well-being statewide reporting tool advisory group, including administration of work group meetings and preparation of full work group recommendations and reports required under this section, must be provided by the health care authority.

(d) The youth safety and well-being statewide reporting tool advisory group shall choose a chair who is a member of the legislature or from among the members of the children and youth behavioral health work group established under RCW 74.09.4951.

(2) By November 1, 2022, and in compliance with RCW 43.01.036, the youth safety and well-being statewide reporting tool advisory group to the children and youth behavioral health work group established under RCW 74.09.4951 shall submit a report to the governor and the appropriate committees of the legislature that details the review required under subsection (1) of this section and includes recommendations regarding a youth safety and well-being tip line based on that review.

(3) This section expires June 30, 2023."

Correct the title.

Signed by Representatives Senn, Chair; Harris-Talley, Vice Chair; Rule, Vice Chair; Callan; Goodman; Ortiz-Self and Wicks.

MINORITY recommendation: Do not pass. Signed by Representatives Dent, Ranking Minority Member; Chase, Assistant Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Eslick; Klippert and Young.

Referred to Committee on Rules for second reading.

March 24, 2021

E2SSB 5377 Prime Sponsor, Committee on Ways & Means: Increasing affordability of standardized plans on the individual market. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 43.71 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, a premium assistance program is hereby established to be administered by the exchange.

(2) Assistance amounts must be established through the omnibus appropriations act.

(3) The exchange must establish, consistent with the omnibus appropriations act:

(a) Procedural requirements for eligibility and continued participation in any premium assistance program or cost-sharing program established under this section, including participant documentation requirements that are necessary to administer the program; and

(b) Procedural requirements for facilitating payments to carriers.

(4) Subject to the availability of amounts appropriated for this specific purpose, an individual is eligible for premium assistance and cost-sharing reductions under this section if the individual:

(a) (i) Is a resident of the state;



(ii) Has income that is up to 500 percent of the federal poverty level, or a lower income threshold determined through appropriation;

(iii) Is enrolled in a silver or gold standard plan offered in the enrollee's county of residence;

(iv) Applies for and accepts all federal advance premium tax credits for which they may be eligible before receiving any state premium assistance;

(v) Applies for and accepts all federal cost-sharing reductions for which they may be eligible before receiving any state cost-sharing reductions; and

(vi) Is ineligible for minimum essential coverage through medicare, a federal or state medical assistance program administered by the authority under chapter 74.09 RCW, or for premium assistance under RCW 43.71A.020; or

(b) Meets alternate eligibility criteria as established in the omnibus appropriations act.

(5)(a) The exchange may disqualify an individual from receiving premium assistance or cost-sharing reductions under this section if the individual:

(i) No longer meets the eligibility criteria in subsection (4) of this section;

(ii) Fails, without good cause, to comply with any procedural or documentation requirements established by the exchange in accordance with subsection (3) of this section;

(iii) Fails, without good cause, to notify the exchange of a change of address in a timely manner;

(iv) Voluntarily withdraws from the program; or

(v) Performs an act, practice, or omission that constitutes fraud, and, as a result, an issuer rescinds the individual's policy for the qualified health plan.

(b) The exchange must develop a process for an individual to appeal a premium assistance or cost-sharing assistance eligibility determination from the exchange.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Advance premium tax credit" means the premium assistance amount determined in accordance with the federal patient protection and affordable care act, P.L. 111-148, as amended by the federal health care and education reconciliation act of 2010, P.L. 111-152, or federal regulations or guidance issued under the affordable care act.

(b) "Income" means the modified adjusted gross income attributed to an individual for purposes of determining his or her eligibility for advance premium tax credits.

(c) "Standard plan" means a standardized health plan under RCW 43.71.095.

NEW SECTION. **Sec. 2.** A new section is added to chapter 43.71 RCW to read as follows:

(1) The exchange, in close consultation with the authority and the office of the insurance commissioner, must explore all opportunities to apply to the secretary of health and human services under 42 U.S.C. Sec. 18052 for a waiver or other available federal flexibilities to:

(a) Receive federal funds for the implementation of the premium assistance or cost-sharing reduction programs established under section 1 of this act;

(b) Increase access to qualified health plans; and

(c) Implement or expand other exchange programs that increase affordability of or access to health insurance coverage in Washington state.

(2) If, through the process described in subsection (1) of this section an opportunity to submit a waiver is identified, the exchange, in collaboration with the office of the insurance commissioner and the health care authority, may develop an application under this section to be submitted by the health care authority. If an application is submitted, the health care authority must notify the chairs and ranking minority members of the appropriate policy and fiscal committees of the legislature.

(3) Any application submitted under this section must meet all federal public notice and comment requirements under 42 U.S.C. Sec. 18052(a)(4)(B), including public hearings to ensure a meaningful level of public input.

NEW SECTION. Sec. 3. A new section is added to chapter 43.71 RCW to read as follows:

(1) The state health care affordability account is created in the state treasury. Expenditures from the account may only be used for premium and cost-sharing assistance programs established in section 1 of this act.

(2) The following funds must be deposited in the account:

(a) Any grants, donations, or contributions of money collected for purposes of the premium assistance or cost-sharing reduction programs established in section 4 of this act;

(b) Any federal funds received by the health benefit exchange pursuant to section 2 of this act; and

(c) Any additional funding specifically appropriated to the account.

NEW SECTION. Sec. 4. A new section is added to chapter 48.43 RCW to read as follows:

For qualified health plans offered on the exchange, a carrier shall:

(1) Accept payments for enrollee premiums or cost-sharing assistance under section 1 of this act or as part of a sponsorship program under RCW 43.71.030(4). Nothing in this subsection expands or restricts the types of sponsorship programs authorized under state and federal law;

(2) Clearly communicate premium assistance amounts to enrollees as part of the invoicing and payment process; and

(3) Accept and process enrollment and payment data transferred by the exchange in a timely manner.

NEW SECTION. Sec. 5. A new section is added to chapter 41.05 RCW to read as follows:

(1)(a) For plan years 2022 and later, except as provided in (b) of this subsection, a hospital system that owns or operates at least four hospitals licensed under chapter 70.41 RCW must contract with at least two public option plans of the hospital system's choosing in each county in which the hospital system has at least one hospital licensed under chapter 70.41 RCW to provide in-network services to the enrollees of that plan.

(b) A hospital is not required to contract with two public option plans in a county pursuant to (a) of this subsection unless it receives an offer from at least two health carriers to provide in-network services as part of a public option plan in that county for the following plan year. If a hospital receives only one offer from a health carrier to participate in a public option plan in a county, it is only required to contract with one public option plan in that county.

(2) Health carriers and hospitals may not condition negotiations or participation of a hospital licensed under chapter 70.41 RCW in any health plan offered by the health carrier on the hospital's negotiations or participation in a public option plan.

(3) By December 1st of the plan year during which enrollment in public option plans statewide is greater than 10,000 covered lives:

(a) The health benefit exchange, in consultation with the insurance commissioner and the authority, shall analyze public option plan rates paid to hospitals for in-network services and whether they have impacted hospital financial sustainability. The analysis must include any impact on hospitals' operating margins during the years public option health plans have been offered in the state and the estimated impact on operating margins in future years if enrollment in public option plans increases. The analysis may examine a sample of hospitals of various sizes and located in various counties. In conducting its analysis, the exchange must give substantial weight to any available reporting of health care provider and health system costs under RCW 70.390.050; and

(b) The health care cost transparency board established under chapter 70.390 RCW shall analyze the effect that enrollment in public option plans has had on consumers, including an analysis of the benefits provided to, and premiums and cost-sharing amounts paid by, consumers enrolled in public option plans compared to other standardized and nonstandardized qualified health plans.

(4) The authority may adopt program rules, in consultation with the office of the insurance commissioner, to ensure compliance with this section, including levying fines and taking other contract

actions it deems necessary to enforce compliance with this section.

(5) For the purposes of this section, "public option plan" means a qualified health plan contracted by the authority under RCW 41.05.410.

**Sec. 6.** RCW 41.05.410 and 2019 c 364 s 3 are each amended to read as follows:

(1) The authority, in consultation with the health benefit exchange, must contract with one or more health carriers to offer qualified health plans on the Washington health benefit exchange for plan years beginning in 2021. A health carrier contracting with the authority under this section must offer at least one bronze, one silver, and one gold qualified health plan in a single county or in multiple counties. The goal of the procurement conducted under this section is to have a choice of qualified health plans under this section offered in every county in the state. The authority may not execute a contract with an apparently successful bidder under this section until after the insurance commissioner has given final approval of the health carrier's rates and forms pertaining to the health plan to be offered under this section and certification of the health plan under RCW 43.71.065.

(2) A qualified health plan offered under this section must meet the following criteria:

(a) The qualified health plan must be a standardized health plan established under RCW 43.71.095;

(b) The qualified health plan must meet all requirements for qualified health plan certification under RCW 43.71.065 including, but not limited to, requirements relating to rate review and network adequacy;

(c) The qualified health plan must incorporate recommendations of the Robert Bree collaborative and the health technology assessment program;

(d) The qualified health plan may use an integrated delivery system or a managed care model that includes care coordination or care management to enrollees as appropriate;

(e) The qualified health plan must meet additional participation requirements to reduce barriers to maintaining and improving health and align to state agency value-based purchasing. These requirements may

include, but are not limited to, standards for population health management; high-value, proven care; health equity; primary care; care coordination and chronic disease management; wellness and prevention; prevention of wasteful and harmful care; and patient engagement;

(f) To reduce administrative burden and increase transparency, the qualified health plan's utilization review processes must:

(i) Be focused on care that has high variation, high cost, or low evidence of clinical effectiveness; and

(ii) Meet national accreditation standards;

(g) ~~((i))~~ The total amount the qualified health plan reimburses providers and facilities for all covered benefits in the statewide aggregate, excluding pharmacy benefits, may not exceed one hundred sixty percent of the total amount medicare would have reimbursed providers and facilities for the same or similar services in the statewide aggregate;

~~((ii) Beginning in calendar year 2023, if the authority determines that selective contracting will result in actuarially sound premium rates that are no greater than the qualified health plan's previous plan year rates adjusted for inflation using the consumer price index, the director may, in consultation with the health benefit exchange, waive (g) (i) of this subsection as a requirement of the contracting process under this section;))~~

(h) For services provided by rural hospitals certified by the centers for medicare and medicaid services as critical access hospitals or sole community hospitals, the rates may not be less than one hundred one percent of allowable costs as defined by the United States centers for medicare and medicaid services for purposes of medicare cost reporting;

(i) Reimbursement for primary care services, as defined by the authority, provided by a physician with a primary specialty designation of family medicine, general internal medicine, or pediatric medicine, may not be less than one hundred thirty-five percent of the amount that would have been reimbursed under the medicare program for the same or similar services; and

(j) The qualified health plan must comply with any requirements established by the authority to address amounts expended on pharmacy benefits including, but not limited to, increasing generic utilization and use of evidence-based formularies.

(3) (a) At the request of the authority for monitoring, enforcement, or program and quality improvement activities, a qualified health plan offered under this section must provide cost and quality of care information and data to the authority, and may not enter into an agreement with a provider or third party that would restrict the qualified health plan from providing this information or data.

(b) Pursuant to RCW 42.56.650, any cost or quality information or data submitted to the authority is exempt from public disclosure.

(4) Nothing in this section prohibits a health carrier offering qualified health plans under this section from offering other health plans in the individual market.

**Sec. 7.** RCW 43.71.095 and 2019 c 364 s 1 are each amended to read as follows:

(1) The exchange, in consultation with the commissioner, the authority, an independent actuary, and other stakeholders, must establish up to three standardized health plans for each of the bronze, silver, and gold levels.

(a) The standardized health plans must be designed to reduce deductibles, make more services available before the deductible, provide predictable cost sharing, maximize subsidies, limit adverse premium impacts, reduce barriers to maintaining and improving health, and encourage choice based on value, while limiting increases in health plan premium rates.

(b) The exchange may update the standardized health plans annually.

(c) The exchange must provide a notice and public comment period before finalizing each year's standardized health plans.

(d) The exchange must provide written notice of the standardized health plans to licensed health carriers by January 31st before the year in which the health plans are to be offered on the exchange. The exchange may make modifications to the standardized plans after January 31st

to comply with changes to state or federal law or regulations.

(2) (a) Beginning January 1, 2021, any health carrier offering a qualified health plan on the exchange must offer ~~((one))~~ the silver ~~((standardized health plan))~~ and ~~((one))~~ gold standardized health plans established under this section on the exchange in each county where the carrier offers a qualified health plan. If a health carrier offers a bronze health plan on the exchange, it must offer ~~((one))~~ the bronze standardized health plans established under this section on the exchange in each county where the carrier offers a qualified health plan.

(b) (i) ~~((A))~~ Until December 31, 2022, a health ~~((plan))~~ carrier offering a standardized health plan under this section may also offer nonstandardized health plans on the exchange. Beginning January 1, 2023, a health carrier offering a standardized health plan under this section may also offer up to two nonstandardized gold health plans, two nonstandardized bronze health plans, one nonstandardized silver health plan, one nonstandardized platinum health plan, and one nonstandardized catastrophic health plan in each county where the carrier offers a qualified health plan.

(ii) The exchange, in consultation with the office of the insurance commissioner, shall analyze the impact to exchange consumers of offering only standard plans beginning in 2025 and submit a report to the appropriate committees of the legislature by December 1, 2023. The report must include an analysis of how plan choice and affordability will be impacted for exchange consumers across the state, including an analysis of offering a bronze standardized high deductible health plan compatible with a health savings account, and a gold standardized health plan closer in actuarial value to the silver standardized health plan.

(iii) The actuarial value of nonstandardized silver health plans offered on the exchange may not be less than the actuarial value of the standardized silver health plan with the lowest actuarial value.

(c) A health carrier offering a standardized health plan on the exchange under this section must continue to meet all requirements for qualified health plan certification under RCW 43.71.065

including, but not limited to, requirements relating to rate review and network adequacy."

Correct the title.

Signed by Representatives Cody, Chair; Bateman, Vice Chair; Bronoske; Davis; Macri; Riccelli; Simmons; Stonier and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representatives Caldier, Assistant Ranking Minority Member; Harris; Maycumber and Ybarra.

MINORITY recommendation: Do not pass. Signed by Representatives Schmick, Ranking Minority Member and Rude.

Referred to Committee on Appropriations.

March 24, 2021

E2SSB 5399 Prime Sponsor, Committee on Ways & Means: Concerning the creation of a universal health care commission. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** (1) The legislature finds that:

(a) Healthy Washingtonians contribute to the economic well-being of their families and communities, and access to appropriate health services and improved health outcomes allow all Washingtonian families to enjoy productive and satisfying lives;

(b) Washington and the United States are experiencing the deepest economic crisis since the Great Depression, caused by a public health crisis;

(c) Skyrocketing unemployment rates due to COVID-19 have exposed the frailties and inequalities of the current health care system while causing unsustainable strain to the state's medicaid system;

(d) Thousands of union and nonunion workers are unemployed and without health insurance;

(e) Approximately 125,000 undocumented people live in the state with no access to health care during a global pandemic;

(f) Multiple economic analyses show that a universal system is less expensive, more equitable, and will produce billions in savings per year; and

(g) While a unified health care financing system can provide universal coverage, increase access to care, decrease costs, and improve quality, implementing such a system in the state is dependent on foundational legal, financial, and programmatic changes from the federal government.

(2) The legislature intends to create a permanent universal health care commission to:

(a) Implement immediate and impactful changes in the state's current health care system to increase access to quality, affordable health care by streamlining access to coverage, reducing fragmentation of health care financing across multiple public and private health insurance entities, reducing unnecessary administrative costs, reducing health disparities, and establishing mechanisms to expeditiously link residents with their chosen providers; and

(b) Establish the preliminary infrastructure to position the state to be prepared to establish a universal health system, including a unified financing system, that controls health care spending so that the system is affordable to the state, employers, and individuals, once the necessary federal authorities have been realized.

(3) The legislature further intends that the state, in collaboration with all communities, health plans, and providers, should take steps to improve health outcomes for all residents of the state.

NEW SECTION. **Sec. 2.** A new section is added to chapter 41.05 RCW to read as follows:

(1) The universal health care commission is established to create immediate and impactful changes in the health care access and delivery system in Washington and to prepare the state for the creation of a health care system that provides coverage and access through a universal financing system, including a unified financing system, for all Washingtonians, once the necessary federal authority has been acquired.

(2) The commission includes the following voting members:

(a) One member from each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives;

(b) One member from each of the two largest caucuses of the senate, appointed by the president of the senate;

(c) The secretary of the department of health, or the secretary's designee;

(d) The director of the health care authority, or the director's designee, who shall serve as chair of the commission;

(e) The chief executive officer of the Washington health benefit exchange, or the chief executive officer's designee;

(f) The insurance commissioner, or the commissioner's designee;

(g) The director of the office of equity, or the director's designee; and

(h) Six members appointed by the governor with knowledge and experience regarding health care coverage, access, and financing, or other relevant expertise, including at least one invitation to an individual representing tribal governments with knowledge of the Indian health care delivery in the state.

(3) A majority of the voting members of the commission shall constitute a quorum for any votes of the commission.

(4) The health care authority shall staff the commission.

(5) Members of the commission shall serve without compensation but must be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060.

(6) The commission may establish advisory committees that include members of the public with knowledge and experience in health care, in order to support stakeholder engagement and an analytical process by which key design options are developed. A member of an advisory committee need not be a member of the commission.

(7) By November 1, 2022, the commission shall submit a baseline report to the legislature and the governor, and post it on the authority's website. The report must include:

(a) A complete synthesis of analyses done on Washington's existing health care finance and delivery system, including cost, quality, workforce, and provider consolidation trends and how they impact the state's ability to provide all Washingtonians with timely access to high quality, affordable health care;

(b) A strategy for developing implementable changes to the state's health care financing and delivery system to increase access to health care services and health coverage, reduce health care costs, reduce health disparities, improve quality, and prepare for the transition to a unified health care financing system by actively examining data and reports from sources that are monitoring the health care system. Such sources shall include data or reports from the health care cost transparency board under RCW 70.390.070, the public health advisory board, the governor's interagency coordinating council on health disparities under RCW 43.20.275, the all-payer health care claims database established under chapter 43.371 RCW, prescription drug price data, performance measure data under chapter 70.320 RCW, and other health care cost containment programs;

(c) An inventory of the key design elements of a universal health care system including:

(i) A unified financing system including, but not limited to, a single-payer financing system;

(ii) Eligibility and enrollment processes and requirements;

(iii) Covered benefits and services;

(iv) Provider participation;

(v) Effective and efficient provider payments, including consideration of global budgets and health plan payments;

(vi) Cost containment and savings strategies that are designed to assure that total health care expenditures do not exceed the health care cost growth benchmark established under chapter 70.390 RCW;

(vii) Quality improvement strategies;

(viii) Participant cost sharing, if appropriate;

(ix) Quality monitoring and disparities reduction;

(x) Initiatives for improving culturally appropriate health services within public and private health-related agencies;

(xi) Home and community-based services;

(xii) Strategies to reduce health disparities including, but not limited to, mitigating structural racism and other determinants of health as set forth by the office of equity;

(xiii) Information technology systems and financial management systems;

(xiv) Data sharing and transparency; and

(xv) Governance and administration structure, including integration of federal funding sources;

(d) An assessment of the state's current level of preparedness to meet the elements of (c) of this subsection and steps Washington should take to prepare for a just transition to a unified health care financing system, including a single-payer financing system. Recommendations must include, but are not limited to, administrative changes, reorganization of state programs, retraining programs for displaced workers, federal waivers, and statutory and constitutional changes;

(e) Recommendations for implementing reimbursement rates for health care providers serving medical assistance clients who are enrolled in programs under chapter 74.09 RCW at a rate that is no less than 80 percent of the rate paid by medicare for similar services;

(f) Recommendations for coverage expansions to be implemented prior to and consistent with a universal health care system, including potential funding sources; and

(g) Recommendations for the creation of a finance committee to develop a financially feasible model to implement universal health care coverage using state and federal funds.

(8) Following the submission of the baseline report on November 1, 2022, the commission must structure its work to continue to further identify opportunities to implement reforms consistent with subsection (7) (b) of this section and to implement structural changes to prepare the state for a transition to a unified health care

financing system. The commission must submit annual reports to the governor and the legislature each November 1st, beginning in 2023. The reports must detail the work of the commission, the opportunities identified to advance the goals under subsection (7) of this section, which, if any, of the opportunities a state agency is implementing, which, if any, opportunities should be pursued with legislative policy or fiscal authority, and which opportunities have been identified as beneficial, but lack federal authority to implement.

(9) Subject to sufficient existing agency authority, state agencies may implement specific elements of any report issued under this section. This section shall not be construed to authorize the commission to implement a universal health care system through a unified financing system until there is further action by the legislature and the governor.

(10) The commission must hold its first meeting within 90 days of the effective date of this section."

Correct the title.

Signed by Representatives Cody, Chair; Bateman, Vice Chair; Bronoske; Davis; Harris; Macri; Riccelli; Simmons; Stonier and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Schmick, Ranking Minority Member and Rude.

MINORITY recommendation: Without recommendation. Signed by Representatives Caldier, Assistant Ranking Minority Member; Maycumber and Ybarra.

Referred to Committee on Appropriations.

March 24, 2021

SSB 5425

Prime Sponsor, Committee on Labor, Commerce & Tribal Affairs: Concerning extended benefits in the unemployment insurance system. Reported by Committee on Labor & Workplace Standards

MAJORITY recommendation: Do pass. Signed by Representatives Sells, Chair; Berry, Vice Chair; Hoff, Ranking Minority Member; Mosbrucker, Assistant Ranking Minority Member; Bronoske; Harris and Ortiz-Self.

Referred to Committee on Rules for second reading.

March 25, 2021

**ESSB 5432** Prime Sponsor, Committee on Environment, Energy & Technology: Concerning cybersecurity and data sharing in Washington state government. Reported by Committee on Appropriations

**MAJORITY recommendation:** Do pass as amended by Committee on State Government & Tribal Relations.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 43.105 RCW to read as follows:

(1) The office of cybersecurity is created within the office of the chief information officer.

(2) The director shall appoint a state chief information security officer, who is the director of the office of cybersecurity.

(3) The primary duties of the office of cybersecurity are:

(a) To establish security standards and policies to protect the state's information technology systems and infrastructure, to provide appropriate governance and application of the standards and policies across information technology resources used by the state, and to ensure the confidentiality, availability, and integrity of the information transacted, stored, or processed in the state's information technology systems and infrastructure;

(b) To develop a centralized cybersecurity protocol for protecting and managing state information technology assets and infrastructure;

(c) To detect and respond to security incidents consistent with information security standards and policies;

(d) To create a model incident response plan for agency adoption, with the office of cybersecurity as the incident response coordinator for incidents that: (i) Impact multiple agencies; (ii) impact more than 10,000 citizens; (iii) involve a nation state actor; or (iv) are likely to be in the public domain;

(e) To ensure the continuity of state business and information resources that support the operations and assets of

state agencies in the event of a security incident;

(f) To provide formal guidance to agencies on leading practices and applicable standards to ensure a whole government approach to cybersecurity, which shall include, but not be limited to, guidance regarding: (i) The configuration and architecture of agencies' information technology systems, infrastructure, and assets; (ii) governance, compliance, and oversight; and (iii) incident investigation and response;

(g) To serve as a resource for local and municipal governments in Washington in the area of cybersecurity;

(h) To develop a service catalog of cybersecurity services to be offered to state and local governments;

(i) To collaborate with state agencies in developing standards, functions, and services in order to ensure state agency regulatory environments are understood and considered as part of an enterprise cybersecurity response;

(j) To define core services that must be managed by agency information technology security programs; and

(k) To perform all other matters and things necessary to carry out the purposes of this chapter.

(4) In performing its duties, the office of cybersecurity must address the highest levels of security required to protect confidential information transacted, stored, or processed in the state's information technology systems and infrastructure that is specifically protected from disclosure by state or federal law and for which strict handling requirements are required.

(5) In executing its duties under subsection (3) of this section, the office of cybersecurity shall use or rely upon existing, industry standard, widely adopted cybersecurity standards, with a preference for United States federal standards.

(6) Each state agency, institution of higher education, the legislature, and the judiciary must develop an information technology security program consistent with the office of cybersecurity's standards and policies.

(7)(a) Each state agency information technology security program must adhere



to the office of cybersecurity's security standards and policies. Each state agency must review and update its program annually, certify to the office of cybersecurity that its program is in compliance with the office of cybersecurity's security standards and policies, and provide the office of cybersecurity with a list of the agency's cybersecurity business needs and agency program metrics.

(b) The office of cybersecurity shall require a state agency to obtain an independent compliance audit of its information technology security program and controls at least once every three years to determine whether the state agency's information technology security program is in compliance with the standards and policies established by the agency and that security controls identified by the state agency in its security program are operating efficiently.

(c) If a review or an audit conducted under (a) or (b) of this subsection identifies any failure to comply with the standards and policies of the office of cybersecurity or any other material cybersecurity risk, the office of cybersecurity must require the state agency to formulate and implement a plan to resolve the failure or risk. On an annual basis, the office of cybersecurity must provide a confidential report to the governor and appropriate committees of the legislature identifying and describing the cybersecurity risk or failure to comply with the office of cybersecurity's security policy or implementing cybersecurity standards and policies, as well as the agency's plan to resolve such failure or risk. Risks that are not mitigated are to be tracked by the office of cybersecurity and reviewed with the governor and the chair and ranking member of the appropriate committees of the legislature on a quarterly basis.

(d) The reports produced, and information compiled, pursuant to this subsection (7) are confidential and may not be disclosed under chapter 42.56 RCW.

(8) In the case of institutions of higher education, the judiciary, and the legislature, each information technology security program must be comparable to the intended outcomes of the office of cybersecurity's security standards and policies.

NEW SECTION. **Sec. 2.** A new section is added to chapter 43.105 RCW to read as follows:

(1) By July 1, 2022, the office of cybersecurity, in collaboration with state agencies, shall develop a catalog of cybersecurity services and functions for the office of cybersecurity to perform and submit a report to the legislature and governor. The report must include, but not be limited to:

(a) Cybersecurity services and functions to include in the office of cybersecurity's catalog of services that should be performed by the office of cybersecurity;

(b) Core capabilities and competencies of the office of cybersecurity;

(c) Security functions which should remain within agency information technology security programs;

(d) A recommended model for accountability of agency security programs to the office of cybersecurity; and

(e) The cybersecurity services and functions required to protect confidential information transacted, stored, or processed in the state's information technology systems and infrastructure that is specifically protected from disclosure by state or federal law and for which strict handling requirements are required.

(2) The office of cybersecurity shall update and publish its catalog of services and performance metrics on a biennial basis. The office of cybersecurity shall use data and information provided from agency security programs to inform the updates to its catalog of services and performance metrics.

(3) To ensure alignment with enterprise information technology security strategy, the office of cybersecurity shall develop a process for reviewing and evaluating agency proposals for additional cybersecurity services consistent with RCW 43.105.255.

NEW SECTION. **Sec. 3.** A new section is added to chapter 43.105 RCW to read as follows:

(1) In the event of a major cybersecurity incident, as defined in policy established by the office of cybersecurity in accordance with section

1 of this act, state agencies must report that incident to the office of cybersecurity within 24 hours of discovery of the incident.

(2) State agencies must provide the office of cybersecurity with contact information for any external parties who may have material information related to the cybersecurity incident.

(3) Once a cybersecurity incident is reported to the office of cybersecurity, the office of cybersecurity must investigate the incident to determine the degree of severity and facilitate any necessary incident response measures that need to be taken to protect the enterprise.

(4) The chief information security officer or the chief information security officer's designee shall serve as the state's point of contact for all major cybersecurity incidents.

(5) The office of cybersecurity must create policy to implement this section.

NEW SECTION. Sec. 4. (1) The office of cybersecurity, in collaboration with the office of privacy and data protection and the office of the attorney general, shall research and examine existing best practices for data governance, data protection, the sharing of data relating to cybersecurity, and the protection of state and local governments' information technology systems and infrastructure including, but not limited to, model terms for data-sharing contracts and adherence to privacy principles.

(2) The office of cybersecurity must submit a report of its findings and identify specific recommendations to the governor and the appropriate committees of the legislature by December 1, 2021.

(3) This section expires December 31, 2021.

NEW SECTION. Sec. 5. A new section is added to chapter 39.26 RCW to read as follows:

(1) Before an agency shares with a contractor category 3 or higher data, as defined in policy established in accordance with RCW 43.105.054, a written data-sharing agreement must be in place. Such agreements shall conform to the policies for data sharing specified by the office of cybersecurity under the authority of RCW 43.105.054.

(2) Nothing in this section shall be construed as limiting audit authorities under chapter 43.09 RCW.

NEW SECTION. Sec. 6. A new section is added to chapter 39.34 RCW to read as follows:

(1) If a public agency is requesting from another public agency category 3 or higher data, as defined in policy established in accordance with RCW 43.105.054, the requesting agency shall provide for a written agreement between the agencies that conforms to the policies of the office of cybersecurity.

(2) Nothing in this section shall be construed as limiting audit authorities under chapter 43.09 RCW.

NEW SECTION. Sec. 7. (1) The office of cybersecurity shall contract for an independent security assessment of the state agency information technology security program audits, required under section 1 of this act, that have been conducted since July 1, 2015. The independent assessment must be conducted in accordance with subsection (2) of this section. To the greatest extent practicable, the office of cybersecurity must contract for the independent security assessment using a department of enterprise services master contract or the competitive solicitation process described under chapter 39.26 RCW. If the office of cybersecurity conducts a competitive solicitation, the office of cybersecurity shall work with the department of enterprise services, office of minority and women's business enterprises, and the department of veterans affairs to engage in outreach to Washington small businesses, as defined in RCW 39.26.010, and certified veteran-owned businesses, as described in RCW 43.60A.190, and encourage these entities to submit a bid.

(2) The assessment must, at a minimum:

(a) Review the state agency information technology security program audits, required under section 1 of this act, performed since July 1, 2015;

(b) Assess the content of any audit findings and evaluate the findings relative to industry standards at the time of the audit;

(c) Evaluate the state's performance in taking action upon audit findings and implementing recommendations from the audit;

(d) Evaluate the policies and standards established by the office of cybersecurity pursuant to section 1 of this act and provide recommendations for ways to improve the policies and standards; and

(e) Include recommendations, based on best practices, for both short-term and long-term programs and strategies designed to implement audit findings.

(3) A report detailing the elements of the assessment described under subsection (2) of this section must be submitted to the governor and appropriate committees of the legislature by August 31, 2022. The report is confidential and may not be disclosed under chapter 42.56 RCW.

**NEW SECTION. Sec. 8.** A new section is added to chapter 42.56 RCW to read as follows:

The reports and information compiled pursuant to sections 1 and 7 of this act are confidential and may not be disclosed under this chapter.

**Sec. 9.** RCW 43.105.054 and 2016 c 237 s 3 are each amended to read as follows:

(1) The director shall establish standards and policies to govern information technology in the state of Washington.

(2) The office shall have the following powers and duties related to information services:

(a) To develop statewide standards and policies governing the:

(i) Acquisition of equipment, software, and technology-related services;

(ii) Disposition of equipment;

(iii) Licensing of the radio spectrum by or on behalf of state agencies; and

(iv) Confidentiality of computerized data;

(b) To develop statewide and interagency technical policies, standards, and procedures;

(c) To review and approve standards and common specifications for new or expanded telecommunications networks proposed by agencies, public postsecondary education institutions, educational service districts, or statewide or regional providers of K-12 information technology services;

(d) With input from the legislature and the judiciary, to provide direction concerning strategic planning goals and objectives for the state;

(e) To establish policies for the periodic review by the director of state agency performance which may include but are not limited to analysis of:

(i) Planning, management, control, and use of information services;

(ii) Training and education;

(iii) Project management; and

(iv) Cybersecurity, in coordination with the office of cybersecurity;

(f) To coordinate with state agencies with an annual information technology expenditure that exceeds ten million dollars to implement a technology business management program to identify opportunities for savings and efficiencies in information technology expenditures and to monitor ongoing financial performance of technology investments;

(g) In conjunction with the consolidated technology services agency, to develop statewide standards for agency purchases of technology networking equipment and services;

(h) To implement a process for detecting, reporting, and responding to security incidents consistent with the information security standards, policies, and guidelines adopted by the director;

(i) To develop plans and procedures to ensure the continuity of commerce for information resources that support the operations and assets of state agencies in the event of a security incident; and

(j) To work with the office of cybersecurity, department of commerce, and other economic development stakeholders to facilitate the development of a strategy that includes key local, state, and federal assets that will create Washington as a national leader in cybersecurity. The office shall collaborate with, including but not limited to, community colleges, universities, the national guard, the department of defense, the department of energy, and national laboratories to develop the strategy.

(3) Statewide technical standards to promote and facilitate electronic information sharing and access are an

essential component of acceptable and reliable public access service and complement content-related standards designed to meet those goals. The office shall:

(a) Establish technical standards to facilitate electronic access to government information and interoperability of information systems, including wireless communications systems; and

(b) Require agencies to include an evaluation of electronic public access needs when planning new information systems or major upgrades of systems.

In developing these standards, the office is encouraged to include the state library, state archives, and appropriate representatives of state and local government.

NEW SECTION. Sec. 10. RCW 43.105.215 (Security standards and policies—State agencies' information technology security programs) and 2015 3rd sp.s. c 1 s 202 & 2013 2nd sp.s. c 33 s 8 are each repealed."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Hoff; Rude; Schmick and Steele.

MINORITY recommendation: Without recommendation. Signed by Representatives Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Harris and Jacobsen.

Referred to Committee on Rules for second reading.

#### 1<sup>st</sup> SUPPLEMENTAL REPORTS OF STANDING COMMITTEES

March 25, 2021

HB 1135 Prime Sponsor, Representative Fey: Making transportation appropriations for the 2021-2023 fiscal biennium. Reported by Committee on Transportation

MAJORITY recommendation: The substitute bill be substituted therefor and the substitute bill do pass.

Signed by Representatives Fey, Chair; Wylie, 1st Vice Chair; Bronoske, 2nd Vice Chair; Ramos, 2nd Vice Chair; Barkis, Ranking Minority Member; Eslick, Assistant Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Berry; Chapman; Dent; Duerr; Entenman; Griffey; Hackney; Klicker; Lovick; Paul; Ramel; Riccelli; Slatter; Taylor; Valdez and Wicks.

MINORITY recommendation: Without recommendation. Signed by Representatives Goehner; McCaslin; Orcutt; Sutherland and Walsh.

Referred to Committee on Rules for second reading.

March 26, 2021

ESSB 5024 Prime Sponsor, Committee on Law & Justice: Reducing barriers to condominium construction. Reported by Committee on Civil Rights & Judiciary

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 64.55.040 and 2005 c 456 s 5 are each amended to read as follows:

(1) A qualified building enclosure inspector:

(a) Must be ((=)) the architect or engineer of record or another person with substantial and verifiable training and experience in building enclosure design and construction;

(b) Shall be free from improper interference or influence relating to the inspections; and

(c) May not be an employee, officer, or director of, nor have any pecuniary interest in, the declarant, developer, association, or any party providing services or materials for the project, or any of their respective affiliates, except that the qualified inspector may be the architect or engineer who approved the building enclosure design documents or the architect or engineer of record. The qualified inspector may, but is not required to, assist with the preparation of such design documents.

(2) Nothing in this section alters requirements for licensure of any architect, engineer, or other professional, or alters the jurisdiction, authority, or scope of practice of architects, engineers, other professionals, or general contractors.

**Sec. 2.** RCW 64.90.645 and 2018 c 277 s 410 are each amended to read as follows:

~~((Any earnest money deposit, as defined in RCW 64.04.005, or any reservation))~~ (1) Except as provided in subsection (2) of this section, any deposit made in connection with the right to purchase a unit from a person required to deliver a public offering statement pursuant to RCW 64.90.605(3) must be placed in escrow and held in this state in an escrow or trust account designated solely for that purpose by a licensed title insurance company or agent, a licensed attorney, a real estate broker or independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until: ~~((1))~~ (a) Delivered to the declarant at closing, ~~((2))~~ (b) delivered to the declarant because of the purchaser's default under a contract to purchase the unit, ~~((3))~~ (c) refunded to the purchaser, or ~~((4))~~ (d) delivered to a court in connection with the filing of an interpleader action.

(2) (a) If a purchase agreement for the sale of a unit provides that deposit funds may be used for construction costs and the declarant obtains and maintains a surety bond as required by this section, the declarant may withdraw escrow funds when construction of improvements has begun. The funds may be used only for actual building and construction costs of the project in which the unit is located.

(b) The bond must be issued by a surety insurer licensed in this state in favor of the purchaser in an amount adequate to cover the amount of the deposit to be withdrawn. The declarant may not withdraw more than the face amount of the bond. The bond must be payable to the purchaser if the purchaser obtains a final judgment against the declarant requiring the declarant to return the deposit pursuant to the purchase agreement. The bond may be either in the form of an individual bond for each deposit accepted by the declarant or in the form of a blanket bond assuring the return of all deposits received by the declarant.

(c) The party holding escrow funds who releases all or any portion of the funds to the declarant has no obligation to monitor the progress of construction or the expenditure of the funds by the declarant and is not liable to any

purchaser for the release of funds pursuant to this section.

(3) A deposit under this section may not exceed five percent of the purchase price."

Correct the title.

Signed by Representatives Hansen, Chair; Simmons, Vice Chair; Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno; Davis; Entenman; Goodman; Kirby; Klippert; Orwall; Peterson; Thai; Valdez; Walen and Ybarra.

Referred to Committee on Rules for second reading.

March 25, 2021

**SB 5040** Prime Sponsor, Senator Fortunato: Enhancing litter control along state highways. Reported by Committee on Environment & Energy

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"Sec. 1.** RCW 70A.200.170 and 2020 c 20 s 1078 are each amended to read as follows:

(1) The department is the coordinating and administrative agency working with the departments of natural resources, revenue, transportation, and corrections, and the parks and recreation commission in developing a biennial budget request for funds for the various agencies' litter collection programs.

(2) Funds may be used to meet the needs of efficient and effective litter collection and illegal dumping programs identified by the various agencies. The department shall develop criteria for evaluating the effectiveness and efficiency of the waste reduction, litter control, and recycling programs being administered by the various agencies listed in RCW 70A.200.140, and shall distribute funds according to the effectiveness and efficiency of those programs. In addition, the department shall approve funding requests for efficient and effective waste reduction, litter control, and recycling programs, provide funds, and monitor the results of all agency programs.

(3) All agencies are responsible for reporting information on their litter

collection programs as requested by the department.

(4) The department shall contract with the department of transportation to schedule litter prevention messaging and coordination of litter emphasis patrols with the Washington state patrol. Additionally, the department of transportation may coordinate with the department to conduct litter pickup during scheduled maintenance closures as situations allow.

**Sec. 2.** RCW 70A.200.190 and 2020 c 20 s 1079 are each amended to read as follows:

(1) The department shall provide funding to local units of government to establish, conduct, and evaluate community restitution and other programs for waste reduction, litter and illegal dump cleanup, and recycling. Programs eligible for funding under this section shall include, but not be limited to, programs established pursuant to RCW 72.09.260.

(2) Funds may be offered for costs associated with community waste reduction, litter cleanup and prevention, and recycling activities. The funding program must be flexible, allowing local governments to use funds broadly to meet their needs to reduce waste, control litter and illegal dumping, and promote recycling. Local governments are required to contribute resources or in-kind services. The department shall evaluate funding requests from local government according to the same criteria as those developed in RCW 70A.200.170, provide funds according to the effectiveness and efficiency of local government litter control programs, and monitor the results of all local government programs under this section.

(3) Local governments may initiate and apply to the department for reimbursement of litter clean-up activities on state highway ramps located within the jurisdiction of the local government.

(4) Local governments shall report information as requested by the department in funding agreements entered into by the department and a local government.

**NEW SECTION. Sec. 3.** This act may be known and cited as the welcome to Washington act."

Correct the title.

Signed by Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno; Berry; Boehnke; Goehner; Harris-Talley; Ramel; Shewmake and Slatter.

Referred to Committee on Rules for second reading.

March 25, 2021

**SB 5043**

Prime Sponsor, Senator Salomon: Providing housing to school district employees. Reported by Committee on Education

**MAJORITY recommendation:** Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** Many communities throughout Washington recognize that a lack of affordable housing significantly undermines the ability to attract candidates to work in the public service. Firefighters, police officers, and teachers, for example, must often resort to living far from the communities they serve and must contend with traffic and transportation pressures getting to and from work. In the field of education, the inability to find affordable housing in neighborhoods and communities where schools are located contributes to the acute educator workforce shortage. Some school districts are exploring ways to provide teacher housing as a potential strategy to attract and retain these essential public servants. The intent of the legislature is to enable communities to determine the success and value of supporting housing for public servants by first expanding to all school districts an existing authority to provide teacher housing currently available only to second-class districts. In so doing, the legislature encourages school districts that wish to pursue this strategy to partner with local housing authorities and other local governments to finance, build, and manage affordable housing for public servants.

**Sec. 2.** RCW 28A.335.240 and 2004 c 6 s 1 are each amended to read as follows:

(1) The board of directors of a ~~((second-class))~~ school district ~~((shall))~~ may build schoolhouses and teachers' cottages, or other single or

multifamily housing for school district employees, when directed by a vote of the qualified electors of the school district to do so pursuant to RCW 28A.530.010, and may purchase real property for any school district purpose.

(2) The board of directors of a second-class nonhigh school district that is totally surrounded by water and serves fewer than forty students also may authorize the construction of teachers' cottages without a vote of the district using funds from the district's capital projects fund or general fund.

(3) Rental and other income from the cottages or other housing, including sale of the cottages or other housing, may be deposited, in whole or in part, into the school district's general fund to be used for general maintenance, utility, insurance costs, and any other costs associated with the lease or rental of such property and for other district purposes including costs related to operating and maintaining school facilities, debt service fund, or capital projects fund as determined by the board of directors.

(4) The board of directors of any district may find the provision of housing for school district employees to be necessary or proper to recruit or retain qualified school district employees or otherwise necessary or proper to carry out the functions of the district, and upon such finding the provision of such housing is in furtherance of the district's fundamental governmental purpose.

(5) Any school district may enter into an agreement with any municipality, taxing district, or municipal corporation regarding the conveying or leasing of any lands, properties, or facilities for the development of single or multifamily housing for school district employees or to provide for the joint use of such lands, properties, or facilities, or to participate in the financing of all or any part of the lands, properties, or facilities for these purposes on terms as may be fixed by agreement between the respective legislative bodies.

**Sec. 3.** RCW 28A.335.250 and 1975 c 43 s 16 are each amended to read as follows:

~~((School boards in each district of the second class))~~ The board of directors of any school district may provide for the free, comfortable and convenient use

of the school property to promote and facilitate frequent meetings and association of the people in discussion, study, improvement, recreation and other community purposes, and may acquire, assemble and house material for the dissemination of information of use and interest to the farm, the home and the community, and facilities for experiment and study, especially in matters pertaining to the growing of crops, the improvement and handling of livestock, the marketing of farm products, the planning and construction of farm buildings, the subjects of household economies, home industries, good roads, and community vocations and industries; and may call meetings for the consideration and discussion of any such matters((7)) and employ a special supervisor, or leader, if need be((7 and)). School districts may provide suitable dwellings and accommodations for ~~((teachers, supervisors and necessary assistants))~~ school district employees for these purposes and for any other district purposes determined by the board of directors of any district under RCW 28A.335.240.

**Sec. 4.** RCW 28A.335.130 and 2004 c 6 s 2 are each amended to read as follows:

Except as provided in RCW 28A.335.240(~~((1))~~) (3), the proceeds from any sale of school district real property by a board of directors shall be deposited to the debt service fund and/or the capital projects fund, except for amounts required to be expended for the costs associated with the sale of such property, which moneys may be deposited into the fund from which the expenditure was incurred.

**Sec. 5.** RCW 82.29A.130 and 2019 c 335 s 1 are each amended to read as follows:

The following leasehold interests are exempt from taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040:

(1) All leasehold interests constituting a part of the operating properties of any public utility that is assessed and taxed as a public utility pursuant to chapter 84.12 RCW.

(2) All leasehold interests in facilities owned or used by a school, school district, college or university which leasehold provides housing for students or school district employees and which is otherwise exempt from taxation under provisions of RCW 84.36.010 and 84.36.050.

(3) All leasehold interests of subsidized housing where the fee ownership of such property is vested in the government of the United States, or the state of Washington or any political subdivision thereof but only if income qualification exists for such housing.

(4) All leasehold interests used for fair purposes of a nonprofit fair association that sponsors or conducts a fair or fairs which receive support from revenues collected pursuant to RCW 67.16.100 and allocated by the director of the department of agriculture where the fee ownership of such property is vested in the government of the United States, the state of Washington or any of its political subdivisions. However, this exemption does not apply to the leasehold interest of any sublessee of such nonprofit fair association if such leasehold interest would be taxable if it were the primary lease.

(5) All leasehold interests in any property of any public entity used as a residence by an employee of that public entity who is required as a condition of employment to live in the publicly owned property.

(6) All leasehold interests held by enrolled Indians of lands owned or held by any Indian or Indian tribe where the fee ownership of such property is vested in or held in trust by the United States and which are not subleased to other than to a lessee which would qualify pursuant to this chapter, RCW 84.36.451 and 84.40.175.

(7) All leasehold interests in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. However, this exemption applies only where it is determined that contract rent paid is greater than or equal to ninety percent of fair market rental, to be determined by the department of revenue using the same criteria used to establish taxable rent in RCW 82.29A.020(2)(g).

(8) All leasehold interests for which annual taxable rent is less than two hundred fifty dollars per year. For purposes of this subsection leasehold interests held by the same lessee in contiguous properties owned by the same lessor are deemed a single leasehold interest.

(9) All leasehold interests which give use or possession of the leased property for a continuous period of less than thirty days: PROVIDED, That for purposes of this subsection, successive leases or lease renewals giving substantially continuous use of possession of the same property to the same lessee are deemed a single leasehold interest: PROVIDED FURTHER, That no leasehold interest is deemed to give use or possession for a period of less than thirty days solely by virtue of the reservation by the public lessor of the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(10) All leasehold interests under month-to-month leases in residential units rented for residential purposes of the lessee pending destruction or removal for the purpose of constructing a public highway or building.

(11) All leasehold interests in any publicly owned real or personal property to the extent such leasehold interests arises solely by virtue of a contract for public improvements or work executed under the public works statutes of this state or of the United States between the public owner of the property and a contractor.

(12) All leasehold interests that give use or possession of state adult correctional facilities for the purposes of operating correctional industries under RCW 72.09.100.

(13) All leasehold interests used to provide organized and supervised recreational activities for persons with disabilities of all ages in a camp facility and for public recreational purposes by a nonprofit organization, association, or corporation that would be exempt from property tax under RCW 84.36.030(1) if it owned the property. If the publicly owned property is used for any taxable purpose, the leasehold excise taxes set forth in RCW 82.29A.030 and 82.29A.040 must be imposed and must be apportioned accordingly.

(14) All leasehold interests in the public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy that is in a county with a population of over one million, that has a seating capacity of over forty thousand, and that is constructed on or after January 1, 1995. "Public or entertainment areas" include



ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include locker rooms or private offices exclusively used by the lessee.

(15) All leasehold interests in the public or entertainment areas of a stadium and exhibition center, as defined in RCW 36.102.010, that is constructed on or after January 1, 1998. For the purposes of this subsection, "public or entertainment areas" has the same meaning as in subsection (14) of this section, and includes exhibition areas.

(16) All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW.

(17) All leasehold interests in property that is: (a) Owned by the United States government or a municipal corporation; (b) listed on any federal or state register of historical sites; and (c) wholly contained within a designated national historic reserve under 16 U.S.C. Sec. 461.

(18) All leasehold interests in the public or entertainment areas of an amphitheater if a private entity is responsible for one hundred percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over seventeen thousand reserved and general admission seats and is in a county that had a population of over three hundred fifty thousand, but less than four hundred twenty-five thousand when the amphitheater first opened to the public.

For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include office areas used predominately by the lessee.

(19) All leasehold interests in real property used for the placement of military housing meeting the requirements of RCW 84.36.665.

(20) All leasehold interests in facilities owned or used by a community college or technical college, which leasehold interest provides:

(a) Food services for students, faculty, and staff;

(b) The operation of a bookstore on campus; or

(c) Maintenance, operational, or administrative services to the community college or technical college.

(21) (a) All leasehold interests in the public or entertainment areas of an arena if it:

(i) Has a seating capacity of more than two thousand;

(ii) Is located on city-owned land; and

(iii) Is owned by a city with a population over two hundred thousand within a county with a population of less than one million five hundred thousand.

(b) For the purposes of this subsection (21), "public or entertainment areas" has the same meaning as provided in subsection (18) of this section.

NEW SECTION. **Sec. 6.** RCW 28A.335.270 (School property used for public purposes—Special state commission to pass on plans) and 1990 c 33 s 364 & 1975-'76 2nd ex.s. c 15 s 12 are each repealed.

NEW SECTION. **Sec. 7.** Section 5 of this act expires January 1, 2032."

Correct the title.

Signed by Representatives Santos, Chair; Dolan, Vice Chair; Berg; Bergquist; Callan; Ortiz-Self and Stonier.

MINORITY recommendation: Do not pass. Signed by Representatives Ybarra, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; McEntire; Rude and Steele.

Referred to Committee on Capital Budget.

March 26, 2021

2SSB 5045 Prime Sponsor, Committee on Ways & Means: Expanding opportunities for meat and poultry processing and inspection. Reported by Committee on Rural Development, Agriculture & Natural Resources

MAJORITY recommendation: Do pass. Signed by Representatives Chapman, Chair; Shewmake, Vice Chair; Chandler, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Klicker; Kloba; Lekanoff; McEntire; Morgan; Orcutt; Ramos; Schmick and Springer.

MINORITY recommendation: Without recommendation. Signed by Representative Fitzgibbon.

Referred to Committee on Appropriations.

March 26, 2021

2SSB 5062 Prime Sponsor, Committee on Ways & Means: Concerning the management, oversight, and use of data. Reported by Committee on Civil Rights & Judiciary

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** SHORT TITLE. This act may be known and cited as the Washington privacy act.

NEW SECTION. **Sec. 2.** LEGISLATIVE FINDINGS AND INTENT. (1) The legislature finds that the people of Washington regard their privacy as a fundamental right and an essential element of their

individual freedom. Washington's Constitution explicitly provides the right to privacy, and fundamental privacy rights have long been and continue to be integral to protecting Washingtonians and to safeguarding our democratic republic.

(2) Ongoing advances in technology have produced an exponential growth in the volume and variety of personal data being generated, collected, stored, and analyzed, which presents both promise and potential peril. The ability to harness and use data in positive ways is driving innovation and brings beneficial technologies to society. However, it has also created risks to privacy and freedom. The unregulated and unauthorized use and disclosure of personal information and loss of privacy can have devastating impacts, ranging from financial fraud, identity theft, and unnecessary costs, to personal time and finances, to destruction of property, harassment, reputational damage, emotional distress, and physical harm.

(3) Given that technological innovation and new uses of data can help solve societal problems, protect public health associated with global pandemics, and improve quality of life, the legislature seeks to shape responsible public policies where innovation and protection of individual privacy coexist. The legislature notes that our federal authorities have not developed or adopted into law regulatory or legislative solutions that give consumers control over their privacy. In contrast, the European Union's general data protection regulation has continued to influence data privacy policies and practices of those businesses competing in global markets. In the absence of federal standards, Washington and other states across the United States are analyzing elements of the European Union's general data protection regulation to enact state-based data privacy regulatory protections.

(4) Responding to COVID-19 illustrates the need for public policies that protect individual privacy while fostering technological innovation. For years, contact tracing best practices have been used by public health officials to securely process high value individual data and have effectively stopped the prolific spread of infectious diseases. However, the scale of COVID-19 is unprecedented. Contact tracing is

evolving in a manner that necessitates the use of technology to rapidly collect and process data from multiple data sets, many of which are unanticipated, to protect public health as well as to facilitate the continued safe operation of the economy. The benefits of such technology, however, should not supersede the potential privacy risks to individuals.

(5) Exposure notification applications have already been deployed throughout the country and the world. However, contact tracing technology is rapidly evolving. Applications may be integrated in a manner that facilitates the aggregation and sharing of individual data that in effect generate profiles of individuals. Artificial intelligence may be used for the extrapolation of data to analyze and interpret data for public health purposes. Moreover, the potential government use of exposure notification applications poses additional potential privacy risks to individuals due to the types of sensitive data it has access to and processes. Much of that processing may have legal effects, including access to services or establishments. The capabilities of next generation contact tracing technologies are unknown and policies must be in place to provide privacy protections for current uses as well as potential future uses.

(6) With this act, the legislature intends to: Provide a modern privacy regulatory framework with data privacy guardrails to protect individual privacy; establish mechanisms for consumers to exercise control over their data; instill public confidence on the processing of their personal and public health data during any global pandemic; and require companies to be responsible custodians of data as technological innovations emerge.

(7) This act gives consumers the ability to protect their own rights to privacy by explicitly providing consumers the right to access, correct, and delete personal data, as well as the rights to obtain data in a portable format and to opt out of the collection and use of personal data for certain purposes. These rights will add to, and not subtract from, the consumer protection rights that consumers already have under Washington state law.

(8) This act also imposes affirmative obligations upon companies to safeguard personal data, and provide clear,

understandable, and transparent information to consumers about how their personal data is used. It strengthens compliance and accountability by requiring data protection assessments in the collection and use of personal data. Finally, it exclusively empowers the state attorney general to obtain and evaluate a company's data protection assessments, to conduct investigations, while preserving consumers' rights under the consumer protection act to impose penalties where violations occur, and to prevent against future violations.

(9) Lastly, the legislature encourages the state office of privacy and data protection to monitor (1) the development of universal privacy controls that communicate a consumer's affirmative, freely given, and unambiguous choice to opt out of the processing of their personal data, and (2) the effectiveness of allowing a consumer to designate a third party to exercise a consumer right on their behalf as authorized in other privacy laws.

#### **PART 1**

#### **Personal Data Privacy Regulations— Private Sector**

NEW SECTION. **Sec. 101.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affiliate" means a legal entity that controls, is controlled by, or is under common control with, that other legal entity. For these purposes, "control" or "controlled" means: Ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a company; control in any manner over the election of a majority of the directors or of individuals exercising similar functions; or the power to exercise a controlling influence over the management of a company.

(2) "Air carriers" has the same meaning as defined in the federal aviation act (49 U.S.C. Sec. 40101, et seq.), including the airline deregulation act (49 U.S.C. 41713).

(3) "Authenticate" means to use reasonable means to determine that a request to exercise any of the rights in section 103 (1) through (4) of this act is being made by the consumer who is entitled to exercise such rights with respect to the personal data at issue.

(4) "Business associate" has the same meaning as in Title 45 C.F.R., established pursuant to the federal health insurance portability and accountability act of 1996.

(5) "Child" has the same meaning as defined in the children's online privacy protection act, Title 15 U.S.C. Sec. 6501 through 6506.

(6) "Consent" means any freely given, specific, informed, and unambiguous indication of the consumer's wishes by which the consumer signifies agreement to the processing of personal data relating to the consumer for a narrowly defined particular purpose. Acceptance of a general or broad terms of use or similar document that contains descriptions of personal data processing along with other, unrelated information, does not constitute consent. Hovering over, muting, pausing, or closing a given piece of content does not constitute consent. Likewise, agreement obtained through dark patterns does not constitute consent.

(7) "Consumer" means a natural person who is a Washington resident acting only in an individual or household context. It does not include a natural person acting in a commercial or employment context.

(8) "Controller" means the natural or legal person that, alone or jointly with others, determines the purposes and means of the processing of personal data.

(9) "Covered entity" has the same meaning as defined in Title 45 C.F.R., established pursuant to the federal health insurance portability and accountability act of 1996.

(10) "Dark pattern" means a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision making, or choice.

(11) "Decisions that produce legal effects concerning a consumer or similarly significant effects concerning a consumer" means decisions that result in the provision or denial of financial and lending services, housing, insurance, education enrollment, criminal justice, employment opportunities, health care services, or access to basic necessities, such as food and water.

(12) "Deidentified data" means data that cannot reasonably be used to infer

information about, or otherwise be linked to, an identified or identifiable natural person, or a device linked to such person, provided that the controller that possesses the data: (a) Takes reasonable measures to ensure that the data cannot be associated with a natural person, household, or device; (b) publicly commits to maintain and use the data only in a deidentified fashion and not attempt to reidentify the data; and (c) contractually obligates any recipients of the information to comply with all provisions of this subsection.

(13) "Health care facility" has the same meaning as defined in RCW 70.02.010.

(14) "Health care information" has the same meaning as defined in RCW 70.02.010.

(15) "Health care provider" has the same meaning as defined in RCW 70.02.010.

(16) "Identified or identifiable natural person" means a person who can be readily identified, directly or indirectly.

(17) "Institutions of higher education" has the same meaning as in RCW 28B.92.030.

(18) "Judicial branch" means any court, agency, commission, or department provided in Title 2 RCW.

(19) "Known child" means a child under circumstances where a controller has actual knowledge of, or willfully disregards, the child's age.

(20) "Legislative agencies" has the same meaning as defined in RCW 44.80.020.

(21) "Local government" has the same meaning as in RCW 39.46.020.

(22) "Minor" means an individual who is at least 13 and under 16 years of age under circumstances where a controller has actual knowledge of, or willfully disregards, the minor's age.

(23) "Nonprofit corporation" has the same meaning as in RCW 24.03.005.

(24) "Personal data" means any information, including pseudonymous data, that is linked or reasonably linkable to an identified or identifiable natural person. "Personal data" does not include deidentified data or publicly available information.

(25) "Process" or "processing" means any operation or set of operations which are performed on personal data or on sets

of personal data, whether or not by automated means, such as the collection, use, storage, disclosure, analysis, deletion, or modification of personal data.

(26) "Processor" means a natural or legal person who processes personal data on behalf of a controller.

(27) "Profiling" means any form of automated processing of personal data to evaluate, analyze, or predict personal aspects concerning an identified or identifiable natural person's economic situation, health, personal preferences, interests, reliability, behavior, location, or movements.

(28) "Protected health information" has the same meaning as defined in Title 45 C.F.R., established pursuant to the federal health insurance portability and accountability act of 1996.

(29) "Pseudonymous data" means personal data that cannot be attributed to a specific natural person without the use of additional information, provided that such additional information is kept separately and is subject to appropriate technical and organizational measures to ensure that the personal data are not attributed to an identified or identifiable natural person.

(30) "Publicly available information" means information that is lawfully made available from federal, state, or local government records.

(31) (a) "Sale," "sell," or "sold" means the exchange of personal data for monetary or other valuable consideration by the controller to a third party.

(b) "Sale" does not include the following: (i) The disclosure of personal data to a processor who processes the personal data on behalf of the controller; (ii) the disclosure of personal data to a third party with whom the consumer has a direct relationship for purposes of providing a product or service requested by the consumer; (iii) the disclosure or transfer of personal data to an affiliate of the controller; (iv) the disclosure of information that the consumer (A) intentionally made available to the general public via a channel of mass media, and (B) did not restrict to a specific audience; or (v) the disclosure or transfer of personal data to a third party as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which

the third party assumes control of all or part of the controller's assets.

(32) "Sensitive data" means (a) personal data revealing racial or ethnic origin, religious beliefs, mental or physical health condition or diagnosis, sexual orientation, or citizenship or immigration status; (b) the processing of genetic or biometric data for the purpose of uniquely identifying a natural person; (c) the personal data from a known child; or (d) specific geolocation data. "Sensitive data" is a form of personal data.

(33) "Specific geolocation data" means information derived from technology including, but not limited to, global positioning system level latitude and longitude coordinates or other mechanisms that directly identifies the specific location of a natural person within a geographic area that is equal to or less than the area of a circle with a radius of 1,850 feet. Specific geolocation data excludes the content of communications.

(34) "State agency" has the same meaning as in RCW 43.105.020.

(35) "Targeted advertising" means displaying advertisements to a consumer where the advertisement is selected based on personal data obtained from a consumer's activities over time and across one or more distinctly branded websites or online applications to predict the consumer's preferences or interests. It does not include advertising: (a) Based on activities within a controller's own commonly branded websites or online applications; (b) based on the context of a consumer's current search query or visit to a website or online application; or (c) to a consumer in response to the consumer's request for information or feedback.

(36) "Third party" means a natural or legal person, public authority, agency, or body other than the consumer, controller, processor, or an affiliate of the processor or the controller.

**NEW SECTION. Sec. 102.**  
**JURISDICTIONAL SCOPE.** (1) This chapter applies to legal entities that conduct business in Washington or produce products or services that are targeted to residents of Washington, and that satisfy one or more of the following thresholds:

(a) During a calendar year, controls or processes personal data of 100,000 consumers or more; or

(b) Derives over 25 percent of gross revenue from the sale of personal data and processes or controls personal data of 25,000 consumers or more.

(2) This chapter does not apply to:

(a) State agencies, legislative agencies, the judicial branch, local governments, or tribes;

(b) Municipal corporations;

(c) Air carriers;

(d) Nonprofit organizations that:

(i) Are registered with the secretary of state under the charities program pursuant to chapter 19.09 RCW;

(ii) Collect personal data during legitimate activities related to the organization's tax-exempt purpose; and

(iii) Do not sell personal data collected by the organization;

(e) Information that meets the definition of:

(i) Protected health information for purposes of the federal health insurance portability and accountability act of 1996 and related regulations;

(ii) Health care information for purposes of chapter 70.02 RCW;

(iii) Patient identifying information for purposes of 42 C.F.R. Part 2, established pursuant to 42 U.S.C. Sec. 290dd-2;

(iv) Identifiable private information for purposes of the federal policy for the protection of human subjects, 45 C.F.R. Part 46; identifiable private information that is otherwise information collected as part of human subjects research pursuant to the good clinical practice guidelines issued by the international council for harmonization; the protection of human subjects under 21 C.F.R. Parts 50 and 56; or personal data used or shared in research conducted in accordance with one or more of the requirements set forth in this subsection;

(v) Information and documents created specifically for, and collected and maintained by:

(A) A quality improvement committee for purposes of RCW 43.70.510, 70.230.080, or 70.41.200;

(B) A peer review committee for purposes of RCW 4.24.250;

(C) A quality assurance committee for purposes of RCW 74.42.640 or 18.20.390;

(D) A hospital, as defined in RCW 43.70.056, for reporting of health care-associated infections for purposes of RCW 43.70.056, a notification of an incident for purposes of RCW 70.56.040(5), or reports regarding adverse events for purposes of RCW 70.56.020(2)(b);

(vi) Information and documents created for purposes of the federal health care quality improvement act of 1986, and related regulations;

(vii) Patient safety work product for purposes of 42 C.F.R. Part 3, established pursuant to 42 U.S.C. Sec. 299b-21 through 299b-26; or

(viii) Information that is (A) deidentified in accordance with the requirements for deidentification set forth in 45 C.F.R. Part 164, and (B) derived from any of the health care-related information listed in this subsection (2)(e);

(f) Information originating from, and intermingled to be indistinguishable with, information under (e) of this subsection that is maintained by:

(i) A covered entity or business associate as defined by the health insurance portability and accountability act of 1996 and related regulations;

(ii) A health care facility or health care provider as defined in RCW 70.02.010; or

(iii) A program or a qualified service organization as defined by 42 C.F.R. Part 2, established pursuant to 42 U.S.C. Sec. 290dd-2;

(g) Information used only for public health activities and purposes as described in 45 C.F.R. Sec. 164.512;

(h)(i) An activity involving the collection, maintenance, disclosure, sale, communication, or use of any personal data bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living by a consumer reporting agency, as defined in Title 15 U.S.C.

Sec. 1681a(f), by a furnisher of information, as set forth in Title 15 U.S.C. Sec. 1681s-2, who provides information for use in a consumer report, as defined in Title 15 U.S.C. Sec. 1681a(d), and by a user of a consumer report, as set forth in Title 15 U.S.C. Sec. 1681b.

(ii) (h) (i) of this subsection applies only to the extent that such an activity involving the collection, maintenance, disclosure, sale, communication, or use of such personal data by that agency, furnisher, or user is subject to regulation under the fair credit reporting act, Title 15 U.S.C. Sec. 1681 et seq., and the personal data is not collected, maintained, used, communicated, disclosed, or sold except as authorized by the fair credit reporting act;

(i) Personal data collected and maintained for purposes of chapter 43.71 RCW;

(j) Personal data collected, processed, sold, or disclosed pursuant to the federal Gramm-Leach-Bliley act (P.L. 106-102), and implementing regulations, if the collection, processing, sale, or disclosure is in compliance with that law;

(k) Personal data collected, processed, sold, or disclosed pursuant to the federal driver's privacy protection act of 1994 (18 U.S.C. Sec. 2721 et seq.), if the collection, processing, sale, or disclosure is in compliance with that law;

(l) Personal data regulated by the federal family education rights and privacy act, 20 U.S.C. Sec. 1232g and its implementing regulations;

(m) Personal data regulated by the student user privacy in education rights act, chapter 28A.604 RCW;

(n) Personal data collected, maintained, disclosed, or otherwise used in connection with the gathering, dissemination, or reporting of news or information to the public by news media as defined in RCW 5.68.010(5);

(o) Personal data collected, processed, sold, or disclosed pursuant to the federal farm credit act of 1971 (as amended in 12 U.S.C. Sec. 2001-2279cc) and its implementing regulations (12 C.F.R. Part 600 et seq.) if the collection, processing, sale, or

disclosure is in compliance with that law; or

(p) Data collected or maintained: (i) In the course of an individual acting as a job applicant to, an employee of, owner of, director of, officer of, medical staff member of, or contractor of that business to the extent that it is collected and used solely within the context of that role; (ii) as the emergency contact information of an individual under (p)(i) of this subsection used solely for emergency contact purposes; or (iii) that is necessary for the business to retain to administer benefits for another individual relating to the individual under (p)(i) of this subsection is used solely for the purposes of administering those benefits.

(3) Controllers that are in compliance with the children's online privacy protection act, Title 15 U.S.C. Sec. 6501 through 6506 and its implementing regulations, shall be deemed compliant with any obligation to obtain parental consent under this chapter.

(4) Payment-only credit, check, or cash transactions where no data about consumers are retained do not count as "consumers" for purposes of subsection (1) of this section.

**NEW SECTION. Sec. 103. CONSUMER RIGHTS.** (1) A consumer has the right to confirm whether or not a controller is processing personal data concerning the consumer and access the personal data the controller is processing.

(2) A consumer has the right to correct inaccurate personal data concerning the consumer, taking into account the nature of the personal data and the purposes of the processing of the personal data.

(3) A consumer has the right to delete personal data concerning the consumer.

(4) A consumer has the right to obtain personal data concerning the consumer, which the consumer previously provided to the controller, in a portable and, to the extent technically feasible, readily usable format that allows the individual to transmit the data to another controller without hindrance, where the processing is carried out by automated means.

(5) A consumer has the right to opt out of the processing of personal data concerning such a consumer for the

purposes of (a) targeted advertising; (b) the sale of personal data; or (c) profiling in furtherance of decisions that produce legal effects concerning a consumer or similarly significant effects concerning a consumer.

**NEW SECTION. Sec. 104. EXERCISING CONSUMER RIGHTS.** (1) A consumer may exercise the rights set forth in section 103 of this act by submitting a request, at any time, to a controller specifying which rights the consumer wishes to exercise.

(2) Beginning July 31, 2023, a consumer may exercise the rights under section 103(5) (a) and (b) of this act:

(a) By designating an authorized agent who may exercise the rights on behalf of the consumer; or

(b) Via user-enabled global privacy controls, such as a browser plug-in or privacy setting, device setting, or other mechanism, that communicates or signals the consumer's choice to opt out.

(3) In the case of processing personal data of a known child, the parent or legal guardian of the known child may exercise the rights of this chapter on the child's behalf.

(4) In the case of processing personal data concerning a consumer subject to guardianship, conservatorship, or other protective arrangement under chapter 11.88, 11.92, or 11.130 RCW, the guardian or the conservator of the consumer may exercise the rights of this chapter on the consumer's behalf.

**NEW SECTION. Sec. 105. RESPONDING TO REQUESTS.** (1) Except as provided in this chapter, the controller must comply with a request to exercise the rights pursuant to section 103 of this act.

(2) (a) Controllers must provide one or more secure and reliable means for consumers to submit a request to exercise their rights under this chapter. These means must take into account the ways in which consumers interact with the controller and the need for secure and reliable communication of the requests.

(b) Controllers may not require a consumer to create a new account in order to exercise a right, but a controller may require a consumer to use an existing account to exercise the consumer's rights under this chapter.

(3) A controller must comply with a request to exercise the right in section 103(5) of this act as soon as feasibly possible, but no later than 15 days of receipt of the request.

(4) (a) A controller must inform a consumer of any action taken on a request to exercise any of the rights in section 103 (1) through (4) of this act without undue delay and in any event within 45 days of receipt of the request. That period may be extended once by 45 additional days where reasonably necessary, taking into account the complexity and number of the requests. The controller must inform the consumer of any such extension within 45 days of receipt of the request, together with the reasons for the delay.

(b) If a controller does not take action on the request of a consumer, the controller must inform the consumer without undue delay and at the latest within 45 days of receipt of the request of the reasons for not taking action and instructions for how to appeal the decision with the controller as described in subsection (5) of this section.

(c) Information provided under this section must be provided by the controller to the consumer free of charge, up to twice annually. Where requests from a consumer are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may either: (i) Charge a reasonable fee to cover the administrative costs of complying with the request; or (ii) refuse to act on the request. The controller bears the burden of demonstrating the manifestly unfounded or excessive character of the request.

(d) A controller is not required to comply with a request to exercise any of the rights under section 103 (1) through (4) of this act if the controller is unable to authenticate the request using commercially reasonable efforts. In such a case, the controller may request the provision of additional information reasonably necessary to authenticate the request.

(5) (a) A controller must establish an internal process whereby a consumer may appeal a refusal to take action on a request to exercise any of the rights under section 103 of this act within a reasonable period of time after the



controller refuses to take action on such request.

(b) The appeal process must be conspicuously available and as easy to use as the process for submitting such a request under this section.

(c) Within 30 days of receipt of an appeal, a controller must inform the consumer of any action taken or not taken in response to the appeal, along with a written explanation of the reasons in support thereof. That period may be extended by 60 additional days where reasonably necessary, taking into account the complexity and number of the requests serving as the basis for the appeal. The controller must inform the consumer of such an extension within 30 days of receipt of the appeal, together with the reasons for the delay. The controller must also provide the consumer with an email address or other online mechanism through which the consumer may submit the appeal, along with any action taken or not taken by the controller in response to the appeal and the controller's written explanation of the reasons in support thereof, to the attorney general.

(d) When informing a consumer of any action taken or not taken in response to an appeal pursuant to (c) of this subsection, the controller must clearly and prominently provide the consumer with information about how to file a complaint with the consumer protection division of the attorney general's office. The controller must maintain records of all such appeals and how it responded to them for at least 24 months and shall, upon request, compile and provide a copy of such records to the attorney general.

**NEW SECTION. Sec. 106.**  
**RESPONSIBILITY ACCORDING TO ROLE.** (1) Controllers and processors are responsible for meeting their respective obligations established under this chapter.

(2) Processors are responsible under this chapter for adhering to the instructions of the controller and assisting the controller to meet its obligations under this chapter. This assistance includes the following:

(a) Taking into account the nature of the processing, the processor shall assist the controller by appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of the controller's

obligation to respond to consumer requests to exercise their rights pursuant to section 103 of this act; and

(b) Taking into account the nature of processing and the information available to the processor, the processor shall: Assist the controller in meeting the controller's obligations in relation to the security of processing the personal data and in relation to the notification of a breach of the security of the system pursuant to RCW 19.255.010; and provide information to the controller necessary to enable the controller to conduct and document any data protection assessments required by section 109 of this act. The controller and processor are each responsible for only the measures allocated to them.

(3) Notwithstanding the instructions of the controller, a processor shall:

(a) Ensure that each person processing the personal data is subject to a duty of confidentiality with respect to the data; and

(b) Engage a subcontractor only after providing the controller with an opportunity to object and pursuant to a written contract in accordance with subsection (5) of this section that requires the subcontractor to meet the obligations of the processor with respect to the personal data.

(4) Taking into account the context of processing, the controller and the processor shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk and establish a clear allocation of the responsibilities between them to implement such measures.

(5) Processing by a processor must be governed by a contract between the controller and the processor that is binding on both parties and that sets out the processing instructions to which the processor is bound, including the nature and purpose of the processing, the type of personal data subject to the processing, the duration of the processing, and the obligations and rights of both parties. In addition, the contract must include the requirements imposed by this subsection and subsections (3) and (4) of this section, as well as the following requirements:

(a) At the choice of the controller, the processor shall delete or return all personal data to the controller as

requested at the end of the provision of services, unless retention of the personal data is required by law;

(b) (i) The processor shall make available to the controller all information necessary to demonstrate compliance with the obligations in this chapter; and

(ii) The processor shall allow for, and contribute to, reasonable audits and inspections by the controller or the controller's designated auditor. Alternatively, the processor may, with the controller's consent, arrange for a qualified and independent auditor to conduct, at least annually and at the processor's expense, an audit of the processor's policies and technical and organizational measures in support of the obligations under this chapter using an appropriate and accepted control standard or framework and audit procedure for the audits as applicable, and provide a report of the audit to the controller upon request.

(6) In no event may any contract relieve a controller or a processor from the liabilities imposed on them by virtue of its role in the processing relationship as defined by this chapter.

(7) Determining whether a person is acting as a controller or processor with respect to a specific processing of data is a fact-based determination that depends upon the context in which personal data are to be processed. A person that is not limited in its processing of personal data pursuant to a controller's instructions, or that fails to adhere to such instructions, is a controller and not a processor with respect to a specific processing of data. A processor that continues to adhere to a controller's instructions with respect to a specific processing of personal data remains a processor. If a processor begins, alone or jointly with others, determining the purposes and means of the processing of personal data, it is a controller with respect to the processing.

**NEW SECTION. Sec. 107.**  
**RESPONSIBILITIES OF CONTROLLERS.** (1) (a) Controllers shall provide consumers with a reasonably accessible, clear, and meaningful privacy notice that includes:

(i) The categories of personal data processed by the controller;

(ii) The purposes for which the categories of personal data are processed;

(iii) How and where consumers may exercise the rights contained in section 103 of this act, including how a consumer may appeal a controller's action with regard to the consumer's request;

(iv) The categories of personal data that the controller shares with third parties, if any; and

(v) The categories of third parties, if any, with whom the controller shares personal data.

(b) If a controller sells personal data to third parties or processes personal data for targeted advertising, the controller must clearly and conspicuously disclose the processing, as well as the manner in which a consumer may exercise the right to opt out of the processing, in a clear and conspicuous manner.

(c) The privacy notice required under this subsection must:

(i) Use clear and plain language;

(ii) Be in English and any other language in which a controller communicates with the consumer to whom the information pertains; and

(iii) Be understandable to the least sophisticated consumer.

(2) A controller's collection of personal data must be limited to what is reasonably necessary in relation to the purposes for which the data is processed.

(3) A controller's collection of personal data must be adequate, relevant, and limited to what is reasonably necessary in relation to the purposes for which the data is processed.

(4) Except as provided in this chapter, a controller may not process personal data for purposes that are not reasonably necessary to, or compatible with, the purposes for which the personal data is processed unless the controller obtains the consumer's consent.

(5) A controller shall establish, implement, and maintain reasonable administrative, technical, and physical data security practices to protect the confidentiality, integrity, and accessibility of personal data. The data security practices must be appropriate to

the volume and nature of the personal data at issue.

(6) A controller shall not process personal data on the basis of a consumer's or a class of consumers' actual or perceived race, color, ethnicity, religion, national origin, sex, gender, gender identity, sexual orientation, familial status, lawful source of income, or disability, in a manner that unlawfully discriminates against the consumer or class of consumers with respect to the offering or provision of: (a) Housing; (b) employment; (c) credit; (d) education; or (e) the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.

(7) A controller may not discriminate against a consumer for exercising any of the rights contained in this chapter, including denying goods or services to the consumer, charging different prices or rates for goods or services, and providing a different level of quality of goods and services to the consumer. This subsection does not prohibit a controller from offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the offering is in connection with a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or club card program. If a consumer exercises their right pursuant to section 103(5) of this act, a controller may not sell personal data to a third-party controller as part of such a program unless: (a) The sale is reasonably necessary to enable the third party to provide a benefit to which the consumer is entitled; (b) the sale of personal data to third parties is clearly disclosed in the terms of the program; and (c) the third party uses the personal data only for purposes of facilitating such a benefit to which the consumer is entitled and does not retain or otherwise use or disclose the personal data for any other purpose.

(8) Except as otherwise provided in this chapter, a controller may not process sensitive data concerning a consumer without obtaining the consumer's consent or, in the case of the processing of sensitive data of a known child, without obtaining consent from the child's parent or lawful guardian, in

accordance with the children's online privacy protection act requirements.

(9) Except as otherwise provided in this chapter, a controller may not process the personal data of a minor for the purposes of targeted advertising or the sale of personal data without obtaining consent from the minor.

(10) Any provision of a contract or agreement of any kind that purports to waive or limit in any way a consumer's rights under this chapter is deemed contrary to public policy and is void and unenforceable.

**NEW SECTION. Sec. 108. PROCESSING DEIDENTIFIED DATA OR PSEUDONYMOUS DATA.**

(1) This chapter does not require a controller or processor to do any of the following solely for purposes of complying with this chapter:

(a) Reidentify deidentified data;

(b) Comply with an authenticated consumer request to access, correct, delete, or port personal data pursuant to section 103 (1) through (4) of this act, if all of the following are true:

(i) (A) The controller is not reasonably capable of associating the request with the personal data; or (B) it would be unreasonably burdensome for the controller to associate the request with the personal data;

(ii) The controller does not use the personal data to recognize or respond to the specific consumer who is the subject of the personal data, or associate the personal data with other personal data about the same specific consumer; and

(iii) The controller does not sell the personal data to any third party or otherwise voluntarily disclose the personal data to any third party other than a processor, except as otherwise permitted in this section; or

(c) Maintain data in identifiable form, or collect, obtain, retain, or access any data or technology, in order to be capable of associating an authenticated consumer request with personal data.

(2) The rights contained in section 103 (1) through (4) of this act do not apply to pseudonymous data in cases where the controller is able to demonstrate any information necessary to identify the consumer is kept separately and is subject to effective technical and

organizational controls that prevent the controller from accessing such information.

(3) A controller that uses pseudonymous data or deidentified data must exercise reasonable oversight to monitor compliance with any contractual commitments to which the pseudonymous data or deidentified data are subject and must take appropriate steps to address any breaches of contractual commitments.

**NEW SECTION. Sec. 109. DATA PROTECTION ASSESSMENTS.** (1) Controllers must conduct and document a data protection assessment of each of the following processing activities involving personal data:

(a) The processing of personal data for purposes of targeted advertising;

(b) The processing of personal data for the purposes of the sale of personal data;

(c) The processing of personal data for purposes of profiling, where such profiling presents a reasonably foreseeable risk of: (i) Unfair or deceptive treatment of, or disparate impact on, consumers; (ii) financial, physical, or reputational injury to consumers; (iii) a physical or other intrusion upon the solitude or seclusion, or the private affairs or concerns, of consumers, where such intrusion would be offensive to a reasonable person; or (iv) other substantial injury to consumers;

(d) The processing of sensitive data; and

(e) Any processing activities involving personal data that present a heightened risk of harm to consumers.

Such data protection assessments must take into account the type of personal data to be processed by the controller, including the extent to which the personal data are sensitive data, and the context in which the personal data are to be processed.

(2) Data protection assessments conducted under subsection (1) of this section must identify and weigh the benefits that may flow directly and indirectly from the processing to the controller, consumer, other stakeholders, and the public against the potential risks to the rights of the consumer associated with such processing, as mitigated by safeguards that can be employed by the controller to

reduce such risks. The use of deidentified data and the reasonable expectations of consumers, as well as the context of the processing and the relationship between the controller and the consumer whose personal data will be processed, must be factored into this assessment by the controller.

(3) The attorney general may request, in writing, that a controller disclose any data protection assessment that is relevant to an investigation conducted by the attorney general. The controller must make a data protection assessment available to the attorney general upon such a request. The attorney general may evaluate the data protection assessments for compliance with the responsibilities contained in section 107 of this act and, if it serves a civil investigative demand, with RCW 19.86.110. Data protection assessments are confidential and exempt from public inspection and copying under chapter 42.56 RCW. The disclosure of a data protection assessment pursuant to a request from the attorney general under this subsection does not constitute a waiver of the attorney-client privilege or work product protection with respect to the assessment and any information contained in the assessment unless otherwise subject to case law regarding the applicability of attorney-client privilege or work product protections.

(4) Data protection assessments conducted by a controller for the purpose of compliance with other laws or regulations may qualify under this section if they have a similar scope and effect.

**NEW SECTION. Sec. 110. LIMITATIONS AND APPLICABILITY.** (1) The obligations imposed on controllers or processors under this chapter do not restrict a controller's or processor's ability to:

(a) Comply with federal, state, or local laws, rules, or regulations;

(b) Comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, local, or other governmental authorities;

(c) Cooperate with law enforcement agencies concerning conduct or activity that the controller or processor reasonably and in good faith believes may violate federal, state, or local laws, rules, or regulations;

(d) Investigate, establish, exercise, prepare for, or defend legal claims;

(e) Provide a product or service specifically requested by a consumer, perform a contract to which the consumer is a party, or take steps at the request of the consumer prior to entering into a contract;

(f) Take immediate steps to protect an interest that is essential for the life of the consumer or of another natural person, and where the processing cannot be manifestly based on another legal basis;

(g) Prevent, detect, protect against, or respond to security incidents, identity theft, fraud, harassment, malicious or deceptive activities, or any illegal activity; preserve the integrity or security of systems; or investigate, report, or prosecute those responsible for any such action;

(h) Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws and is approved, monitored, and governed by an institutional review board, human subjects research ethics review board, or a similar independent oversight entity that determines: (i) If the research is likely to provide substantial benefits that do not exclusively accrue to the controller; (ii) the expected benefits of the research outweigh the privacy risks; and (iii) if the controller has implemented reasonable safeguards to mitigate privacy risks associated with research, including any risks associated with reidentification; or

(i) Assist another controller, processor, or third party with any of the obligations under this subsection.

(2) The obligations imposed on controllers or processors under this chapter do not restrict a controller's or processor's ability to collect, use, or retain data to:

(a) Identify and repair technical errors that impair existing or intended functionality; or

(b) Perform solely internal operations that are reasonably aligned with the expectations of the consumer based on the consumer's existing relationship with the controller, or are otherwise compatible with processing in

furtherance of the provision of a product or service specifically requested by a consumer or the performance of a contract to which the consumer is a party when those internal operations are performed during, and not following, the consumer's relationship with the controller.

(3) The obligations imposed on controllers or processors under this chapter do not apply where compliance by the controller or processor with this chapter would violate an evidentiary privilege under Washington law and do not prevent a controller or processor from providing personal data concerning a consumer to a person covered by an evidentiary privilege under Washington law as part of a privileged communication.

(4) A controller or processor that discloses personal data to a third-party controller or processor in compliance with the requirements of this chapter is not in violation of this chapter if the recipient processes such personal data in violation of this chapter, provided that, at the time of disclosing the personal data, the disclosing controller or processor did not have actual knowledge that the recipient intended to commit a violation. A third-party controller or processor receiving personal data from a controller or processor in compliance with the requirements of this chapter is likewise not in violation of this chapter for the obligations of the controller or processor from which it receives such personal data.

(5) Obligations imposed on controllers and processors under this chapter shall not:

(a) Adversely affect the rights or freedoms of any persons, such as exercising the right of free speech pursuant to the First Amendment to the United States Constitution; or

(b) Apply to the processing of personal data by a natural person in the course of a purely personal or household activity.

(6) Processing personal data solely for the purposes expressly identified in subsection (1)(a) through (g) of this section does not, by itself, make an entity a controller with respect to the processing.

(7) If a controller processes personal data pursuant to an exemption in this section, the controller bears the burden

of demonstrating that the processing qualifies for the exemption and complies with the requirements in subsection (8) of this section.

(8) (a) Personal data that is processed by a controller pursuant to this section must not be processed for any purpose other than those expressly listed in this section.

(b) Personal data that is processed by a controller pursuant to this section may be processed solely to the extent that such processing is: (i) Necessary, reasonable, and proportionate to the purposes listed in this section; (ii) adequate, relevant, and limited to what is necessary in relation to the specific purpose or purposes listed in this section; and (iii) insofar as possible, taking into account the nature and purpose of processing the personal data, subjected to reasonable administrative, technical, and physical measures to protect the confidentiality, integrity, and accessibility of the personal data, and to reduce reasonably foreseeable risks of harm to consumers.

**NEW SECTION. Sec. 111. PRIVATE RIGHT OF ACTION.** (1) Except as provided in subsection (2) of this section, nothing in this chapter creates an independent cause of action, except for the actions brought by the attorney general to enforce this chapter. Except as provided in subsection (2) of this section, no person, except for the attorney general, may enforce the rights and protections created by this chapter in any action. However, nothing in this chapter limits any other independent causes of action enjoyed by any person, including any constitutional, statutory, administrative, or common law rights or causes of action. The rights and protections in this chapter are not exclusive, and to the extent that a person has the rights and protections in this chapter because of another law other than this chapter, the person continues to have those rights and protections notwithstanding the existence of this chapter.

(2) A consumer alleging a violation of section 103 or 107 (6), (8), or (9) of this act may bring a civil action in any court of competent jurisdiction. Remedies shall be limited to appropriate injunctive relief. The court shall also award reasonable attorneys' fees and costs to any prevailing plaintiff.

**NEW SECTION. Sec. 112. ENFORCEMENT.**

(1) Except as provided in section 111 of this act, chapter may be enforced solely by the attorney general under the consumer protection act, chapter 19.86 RCW.

(2) In actions brought by the attorney general, the legislature finds: (a) The practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW, and (b) a violation of this chapter is not reasonable in relation to the development and preservation of business, is an unfair or deceptive act in trade or commerce, and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(3) The legislative declarations in this section shall not apply to any claim or action by any party other than the attorney general alleging that conduct regulated by this chapter violates chapter 19.86 RCW, and this chapter does not incorporate RCW 19.86.093.

(4) Until July 31, 2023, in the event of a controller's or processor's violation under this chapter, prior to filing a complaint, the attorney general must provide the controller or processor with a warning letter identifying the specific provisions of this chapter the attorney general alleges have been or are being violated. If, after 30 days of issuance of the warning letter, the attorney general believes the controller or processor has failed to cure any alleged violation, the attorney general may bring an action against the controller or processor as provided under this chapter.

(5) Beginning July 31, 2023, in determining a civil penalty under this chapter, the court must consider, as mitigating factors, a controller's or processor's good faith efforts to comply with the requirements of this chapter and any actions to cure or remedy the violations before an action is filed.

(6) All receipts from the imposition of civil penalties under this chapter must be deposited into the consumer privacy account created in section 113 of this act.

**NEW SECTION. Sec. 113. CONSUMER PRIVACY ACCOUNT.** The consumer privacy account is created in the state treasury. All receipts from the imposition of civil

penalties under this chapter must be deposited into the account. Moneys in the account may be spent only after appropriation. Moneys in the account may only be used for the purposes of recovery of costs and attorneys' fees accrued by the attorney general in enforcing this chapter and for the office of privacy and data protection as created in RCW 43.105.369. Moneys may not be used to supplant general fund appropriations to either agency.

**NEW SECTION. Sec. 114. PREEMPTION.** (1) Except as provided in this section, this chapter supersedes and preempts laws, ordinances, regulations, or the equivalent adopted by any local entity regarding the processing of personal data by controllers or processors.

(2) Laws, ordinances, or regulations regarding the processing of personal data by controllers or processors that are adopted by any local entity prior to July 1, 2020, are not superseded or preempted.

**NEW SECTION. Sec. 115.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 116. PRIVACY OFFICE REPORT.** (1) The state office of privacy and data protection, in collaboration with the office of the attorney general, shall research and examine existing analysis on the development of technology, such as a browser setting, browser extension, or global device setting, indicating a consumer's affirmative, freely given, and unambiguous choice to opt out of the processing of personal data for the purposes of targeted advertising, the sale of personal data, or profiling in furtherance of decisions that produce legal effects concerning consumers or similarly significant effects concerning consumers, and the effectiveness of allowing a consumer to designate a third party to exercise a consumer right on their behalf. A contracted study is not required.

(2) The office of privacy and data protection shall submit a report of its findings and will identify specific recommendations to the governor and the appropriate committees of the legislature by December 1, 2022.

**NEW SECTION. Sec. 117.** A new section is added to chapter 42.56 RCW to read as follows:

Data protection assessments submitted by a controller to the attorney general in accordance with requirements under section 109 of this act are exempt from disclosure under this chapter.

**NEW SECTION. Sec. 118.** A new section is added to chapter 44.28 RCW to read as follows:

(1) By December 1, 2023, the joint committee must review the efficacy of the attorney general providing controllers and processors with warning letters and 30 days to cure alleged violations in the warning letters pursuant to section 112 of this act and report its findings to the governor and the appropriate committees of the legislature.

(2) The report must include, but not be limited to:

(a) The number of warning letters the attorney general sent to controllers and processors;

(b) A list of the controller and processor names that received the warning letters;

(c) The categories of violations and the number of violations per category;

(d) The number of actions brought by the attorney general as authorized in this act due to a controller or processor not curing the alleged violations within 30 days;

(e) The types of resources, including associated costs, expended when providing warning letters and tracking compliance; and

(f) A recommendation on whether the warning letters provided by the attorney general should be continued.

(3) The office of the attorney general shall provide the joint committee any data within their purview that the joint committee considers necessary to conduct the review.

(4) This section expires June 30, 2024.

## **PART 2**

### **Data Privacy Regarding Public Health Emergency—Private Sector**

**NEW SECTION. Sec. 201.** The definitions in this section apply

throughout this chapter unless the context clearly requires otherwise.

(1) "Authenticate" means to use reasonable means to determine that a request to exercise any of the rights in section 203 of this act is being made by the consumer who is entitled to exercise the rights with respect to the covered data at issue.

(2) "Business associate" has the same meaning as in Title 45 C.F.R. Part 160, established pursuant to the federal health insurance portability and accountability act of 1996.

(3) "Child" has the same meaning as defined in the children's online privacy protection act, Title 15 U.S.C. Sec. 6501 through 6506.

(4) "Consent" means any freely given, specific, informed, and unambiguous indication of the consumer's wishes by which the consumer signifies agreement to the processing of personal data relating to the consumer for a narrowly defined particular purpose. Acceptance of a general or broad terms of use or similar document that contains descriptions of personal data processing along with other, unrelated information, does not constitute consent. Hovering over, muting, pausing, or closing a given piece of content does not constitute consent. Likewise, agreement obtained through dark patterns does not constitute consent.

(5)(a) "Consumer" means a natural person who is a Washington resident acting only in an individual or household context.

(b) "Consumer" does not include a natural person acting in a commercial or employment context.

(6) "Controller" means the natural or legal person that, alone or jointly with others, determines the purposes and means of the processing of covered data.

(7) "Covered data" includes personal data and one or more of the following: Specific geolocation data; proximity data; or personal health data.

(8) "Covered entity" has the same meaning as defined in Title 45 C.F.R. Part 160, established pursuant to the federal health insurance portability and accountability act of 1996.

(9) "Covered purpose" means processing of covered data concerning a consumer for

the purposes of detecting symptoms of an infectious disease, enabling the tracking of a consumer's contacts with other consumers, or with specific locations to identify in an automated fashion whom consumers have come into contact with, or digitally notifying, in an automated manner, a consumer who may have become exposed to an infectious disease, or other similar purposes directly related to a state of emergency declared by the governor pursuant to RCW 43.06.010 and any restrictions imposed under the state of emergency declared by the governor pursuant to RCW 43.06.200 through 43.06.270.

(10) "Deidentified data" means data that cannot reasonably be used to infer information about, or otherwise be linked to, an identified or identifiable natural person, or a device linked to such a person, provided that the controller that possesses the data: (a) Takes reasonable measures to ensure that the data cannot be associated with a natural person, household, or device; (b) publicly commits to maintain and use the data only in a deidentified fashion and not attempt to reidentify the data; and (c) contractually obligates any recipients of the information to comply with all provisions of this subsection.

(11) "Delete" means to remove or destroy information such that it is not maintained in human or machine-readable form and cannot be retrieved or utilized in the course of business.

(12) "Health care facility" has the same meaning as defined in RCW 70.02.010.

(13) "Health care information" has the same meaning as defined in RCW 70.02.010.

(14) "Health care provider" has the same meaning as defined in RCW 70.02.010.

(15) "Identified or identifiable natural person" means a consumer who can be readily identified, directly or indirectly.

(16) "Known child" means a child under circumstances where a controller has actual knowledge of, or willfully disregards, the child's age.

(17) "Personal data" means any information that is linked or reasonably linkable to an identified or identifiable natural person.

"Personal data" does not include deidentified data or publicly available information.



(18) "Personal health data" means information relating to the past, present, or future diagnosis or treatment of a consumer regarding an infectious disease.

(19) "Process," "processed," or "processing" means any operation or set of operations that are performed on covered data or on sets of covered data by automated means, such as the collection, use, storage, disclosure, analysis, deletion, or modification of covered data.

(20) "Processor" means a natural or legal person that processes covered data on behalf of a controller.

(21) "Protected health information" has the same meaning as defined in Title 45 C.F.R. Sec. 160.103, established pursuant to the federal health insurance portability and accountability act of 1996.

(22) "Proximity data" means technologically derived information that identifies past or present proximity of one consumer to another, or the proximity of natural persons to other locations or objects.

(23) "Publicly available information" means information that is lawfully made available from federal, state, or local government records.

(24) "Secure" means encrypted in a manner that meets or exceeds the national institute of standards and technology standard or is otherwise modified so that the covered data is rendered unreadable, unusable, or undecipherable by an unauthorized person.

(25) "Sell" means the exchange of covered data for monetary or other valuable consideration by the controller to a third party.

(26) "Specific geolocation data" means information derived from technology including, but not limited to, global positioning system level latitude and longitude coordinates or other mechanisms that directly identifies the specific location of a natural person within a geographic area that is equal to or less than the area of a circle with a radius of 1,850 feet. Specific geolocation data excludes the content of communications.

(27) "Third party" means a natural or legal person, public authority, agency, or body other than the consumer,

controller, processor, or an affiliate of the processor or the controller.

NEW SECTION. **Sec. 202.** PROHIBITIONS. Except as provided in this chapter, it is unlawful for a controller or processor to:

(1) Process covered data for a covered purpose unless:

(a) The controller or processor provides the consumer with a privacy notice as required in section 207 of this act prior to or at the time of the processing; and

(b) The consumer provides consent for the processing;

(2) Disclose any covered data processed for a covered purpose to federal, state, or local law enforcement;

(3) Sell any covered data processed for a covered purpose; or

(4) Share any covered data processed for a covered purpose with another controller, processor, or third party unless the sharing is governed by contract pursuant to section 206 of this act and is disclosed to a consumer in the notice required in section 207 of this act.

NEW SECTION. **Sec. 203.** CONSUMER RIGHTS. (1) A consumer has the right to opt out of the processing of covered data concerning the consumer for a covered purpose.

(2) A consumer has the right to confirm whether or not a controller is processing covered data concerning the consumer for a covered purpose and access the covered data.

(3) A consumer has the right to request correction of inaccurate covered data concerning the consumer processed for a covered purpose.

(4) A consumer has the right to request deletion of covered data concerning the consumer processed for a covered purpose.

NEW SECTION. **Sec. 204.** EXERCISING CONSUMER RIGHTS. (1) A consumer may exercise the rights set forth in section 203 of this act by submitting a request, at any time, to a controller specifying which rights the consumer wishes to exercise.

(2) In the case of processing personal data of a known child, the parent or legal guardian of the known child may

exercise the rights of this chapter on the child's behalf.

(3) In the case of processing personal data concerning a consumer subject to guardianship, conservatorship, or other protective arrangement under chapter 11.88, 11.92, or 11.130 RCW, the guardian or the conservator of the consumer may exercise the rights of this chapter on the consumer's behalf.

NEW SECTION. **Sec. 205.** RESPONDING TO REQUESTS. (1) Except as provided in this chapter, controllers that process covered data for a covered purpose must comply with a request to exercise the rights pursuant to section 203 of this act.

(2) (a) Controllers must provide one or more secure and reliable means for consumers to submit a request to exercise their rights under this chapter. These means must take into account the ways in which consumers interact with the controller and the need for secure and reliable communication of the requests.

(b) Controllers may not require a consumer to create a new account in order to exercise a right, but a controller may require a consumer to use an existing account to exercise the consumer's rights under this chapter.

(3) A controller must comply with a request to exercise the right in section 203(1) of this act as soon as feasibly possible, but no later than 15 days of receipt of the request.

(4) (a) A controller must inform a consumer of any action taken on a request to exercise any of the rights in section 203 (2) through (4) of this act without undue delay and in any event within 45 days of receipt of the request. That period may be extended once by 45 additional days where reasonably necessary, taking into account the complexity and number of the requests. The controller must inform the consumer of any such extension within 45 days of receipt of the request, together with the reasons for the delay.

(b) If a controller does not take action on the request of a consumer, the controller must inform the consumer without undue delay and within 45 days of receipt of the request, of the reasons for not taking action and instructions for how to appeal the decision with the controller as described in subsection (5) of this section.

(c) Information provided under this section must be provided by the controller to the consumer free of charge, up to twice annually. Where requests from a consumer are manifestly unfounded or excessive, because of their repetitive character, the controller may either: (i) Charge a reasonable fee to cover the administrative costs of complying with the request; or (ii) refuse to act on the request. The controller bears the burden of demonstrating the manifestly unfounded or excessive character of the request.

(d) A controller is not required to comply with a request to exercise any of the rights under section 203 (1) through (4) of this act if the controller is unable to authenticate the request using commercially reasonable efforts. In such a case, the controller may request the provision of additional information reasonably necessary to authenticate the request.

(5) (a) Controllers must establish an internal process whereby consumers may appeal a refusal to take action on a request to exercise any of the rights under section 203 of this act within a reasonable period of time after the consumer's receipt of the notice sent by the controller under subsection (4) (b) of this section.

(b) The appeal process must be conspicuously available and as easy to use as the process for submitting such a request under this section.

(c) Within 30 days of receipt of an appeal, a controller must inform the consumer of any action taken or not taken in response to the appeal, along with a written explanation of the reasons in support thereof. That period may be extended by 60 additional days where reasonably necessary, taking into account the complexity and number of the requests serving as the basis for the appeal. The controller must inform the consumer of such an extension within 30 days of receipt of the appeal, together with the reasons for the delay. The controller must also provide the consumer with an email address or other online mechanism through which the consumer may submit the appeal, along with any action taken or not taken by the controller in response to the appeal and the controller's written explanation of the reasons in support thereof, to the attorney general.

(d) When informing a consumer of any action taken or not taken in response to an appeal pursuant to (c) of this subsection, the controller must clearly and prominently provide the consumer with information about how to file a complaint with the consumer protection division of the attorney general's office. The controller must maintain records of all such appeals and how it responded to them for at least 24 months and shall, upon request, compile and provide a copy of such records to the attorney general.

NEW SECTION. **Sec. 206.**  
RESPONSIBILITY ACCORDING TO ROLE. (1) Controllers and processors are responsible for meeting their respective obligations established under this chapter.

(2) Processors are responsible under this chapter for adhering to the instructions of the controller and assisting the controller to meet their obligations under this chapter. This assistance includes the following:

(a) Taking into account the nature of the processing, the processor shall assist the controller by appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of the controller's obligation to respond to consumer requests to exercise their rights pursuant to section 203 of this act; and

(b) Taking into account the nature of processing and the information available to the processor, the processor shall assist the controller in meeting the controller's obligations in relation to the security of processing the personal data and in relation to the notification of a breach of the security of the system pursuant to RCW 19.255.010.

(3) Notwithstanding the instructions of the controller, a processor shall:

(a) Ensure that each person processing the personal data is subject to a duty of confidentiality with respect to the data; and

(b) Engage a subcontractor only after providing the controller with an opportunity to object and pursuant to a written contract in accordance with subsection (5) of this section that requires the subcontractor to meet the obligations of the processor with respect to the personal data.

(4) Taking into account the context of processing, the controller and the processor shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk and establish a clear allocation of the responsibilities between them to implement such measures.

(5) Processing by a processor must be governed by a contract between the controller and the processor that is binding on both parties and that sets out the processing instructions to which the processor is bound, including the nature and purpose of the processing, the type of personal data subject to the processing, the duration of the processing, and the obligations and rights of both parties. In addition, the contract must include the requirements imposed by this subsection and subsections (3) and (4) of this section, as well as the following requirements:

(a) At the choice of the controller, the processor shall delete or return all personal data to the controller as requested at the end of the provision of services, unless retention of the personal data is required by law;

(b) (i) The processor shall make available to the controller all information necessary to demonstrate compliance with the obligations in this chapter; and

(ii) The processor shall allow for, and contribute to, reasonable audits and inspections by the controller or the controller's designated auditor. Alternatively, the processor may, with the controller's consent, arrange for a qualified and independent auditor to conduct, at least annually and at the processor's expense, an audit of the processor's policies and technical and organizational measures in support of the obligations under this chapter using an appropriate and accepted control standard or framework and audit procedure for the audits as applicable, and provide a report of the audit to the controller upon request.

(6) In no event may any contract relieve a controller or a processor from the liabilities imposed on them by virtue of its role in the processing relationship as defined by this chapter.

(7) Determining whether a person is acting as a controller or processor with respect to a specific processing of data is a fact-based determination that

depends upon the context in which personal data is to be processed. A person that is not limited in its processing of personal data pursuant to a controller's instructions, or that fails to adhere to such instructions, is a controller and not a processor with respect to a specific processing of data. A processor that continues to adhere to a controller's instructions with respect to a specific processing of personal data remains a processor. If a processor begins, alone or jointly with others, determining the purposes and means of the processing of personal data, it is a controller with respect to the processing.

NEW SECTION. **Sec. 207.**  
RESPONSIBILITIES OF CONTROLLERS. (1) Controllers that process covered data for a covered purpose must provide consumers with a clear and conspicuous privacy notice that includes, at a minimum:

(a) How a consumer may exercise the rights contained in section 203 of this act, including how a consumer may appeal a controller's action with regard to the consumer's request;

(b) The categories of covered data processed by the controller;

(c) The purposes for which the categories of covered data are processed;

(d) The categories of covered data that the controller shares with third parties, if any; and

(e) The categories of third parties, if any, with whom the controller shares covered data.

(2) A controller's collection of covered data must be limited to what is reasonably necessary in relation to the covered purposes for which the data is processed.

(3) A controller's collection of covered data must be adequate, relevant, and limited to what is reasonably necessary in relation to the covered purpose for which the data is processed.

(4) Except as provided in this chapter, a controller may not process covered data for purposes that are not reasonably necessary to, or compatible with, the covered purposes for which the personal data is processed unless the controller obtains the consumer's consent. Controllers may not process covered data or deidentified data that was processed for a covered purpose for

purposes of marketing, developing new products or services, or engaging in commercial product or market research.

(5) A controller shall establish, implement, and maintain reasonable administrative, technical, and physical data security practices to protect the confidentiality, integrity, and accessibility of covered data. The data security practices must be appropriate to the volume and nature of the personal data at issue.

(6) A controller must delete or deidentify all covered data processed for a covered purpose when the data is no longer being used for the covered purpose.

(7) A controller may not process personal data on the basis of a consumer's or a class of consumers' actual or perceived race, color, ethnicity, religion, national origin, sex, gender, gender identity, sexual orientation, familial status, lawful source of income, or disability, in a manner that unlawfully discriminates against the consumer or class of consumers with respect to the offering or provision of: (a) Housing; (b) employment; (c) credit; (d) education; or (e) the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.

(8) Any provision of a contract or agreement of any kind that purports to waive or limit in any way a consumer's rights under this chapter is deemed contrary to public policy and is void and unenforceable.

NEW SECTION. **Sec. 208.** LIMITATIONS AND APPLICABILITY. (1) The obligations imposed on controllers or processors under this chapter do not restrict a controller's or processor's ability to:

(a) Comply with federal, state, or local laws, rules, or regulations; or

(b) Process deidentified information to engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws and is approved, monitored, and governed by an institutional review board, human subjects research ethics review board, or a similar independent oversight entity that determines: (i) If the research is likely to provide substantial benefits

that do not exclusively accrue to the controller; (ii) the expected benefits of the research outweigh the privacy risks; and (iii) if the controller has implemented reasonable safeguards to mitigate privacy risks associated with research, including any risks associated with reidentification.

(2) This chapter does not apply to:

(a) Information that meets the definition of:

(i) Protected health information for purposes of the federal health insurance portability and accountability act of 1996 and health insurance portability and accountability act of 1996 and related regulations;

(ii) Health care information for purposes of chapter 70.02 RCW;

(iii) Identifiable private information for purposes of the federal policy for the protection of human subjects, 45 C.F.R. Part 46; identifiable private information that is otherwise information collected as part of human subjects research pursuant to the good clinical practice guidelines issued by the international council for harmonization; the protection of human subjects under 21 C.F.R. Parts 50 and 56; or personal data used or shared in research conducted in accordance with one or more of the requirements set forth in this subsection; or

(iv) Information that is (A) deidentified in accordance with the requirements for deidentification set forth in 45 C.F.R. Sec. 164, and (B) derived from any of the health care-related information listed in this subsection (2)(a);

(b) Information originating from, and intermingled to be indistinguishable with, information under (a) of this subsection that is maintained by:

(i) A covered entity or business associate as defined by the health insurance portability and accountability act of 1996 and related regulations;

(ii) A health care facility or health care provider as defined in RCW 70.02.010; or

(iii) A program or a qualified service organization as defined by 42 C.F.R. Part 2, established pursuant to 42 U.S.C. Sec. 290dd-2;

(c) Information used only for public health activities and purposes as described in 45 C.F.R. Sec. 164.512; or

(d) Data maintained for employment records purposes.

(3) Processing covered data solely for the purposes expressly identified in subsection (1) of this section does not, by itself, make an entity a controller with respect to the processing.

(4) If a controller processes covered data pursuant to an exemption in subsection (1) of this section, the controller bears the burden of demonstrating that the processing qualifies for the exemption and complies with the requirements in subsection (2) of this section.

(5)(a) Covered data that is processed by a controller pursuant to this section must not be processed for any purpose other than those expressly listed in this section.

(b) Covered data that is processed by a controller pursuant to this section may be processed solely to the extent that such processing is: (i) Necessary, reasonable, and proportionate to the purposes listed in this section; (ii) adequate, relevant, and limited to what is necessary in relation to the specific purpose or purposes listed in this section; and (iii) insofar as possible, taking into account the nature and purpose of processing the personal data, subjected to reasonable administrative, technical, and physical measures to protect the confidentiality, integrity, and accessibility of the personal data, and to reduce reasonably foreseeable risks of harm to consumers.

**NEW SECTION. Sec. 209. PRIVATE RIGHT OF ACTION.** (1) Except as provided in subsection (2) of this section, nothing in this chapter creates an independent cause of action, except for the actions brought by the attorney general to enforce this chapter. Except as provided in subsection (2) of this section, no person, except for the attorney general, may enforce the rights and protections created by this chapter in any action. However, nothing in this chapter limits any other causes of action enjoyed by any person, including any constitutional, statutory, administrative, or common law rights or causes of action. The rights and protections in this chapter are not exclusive, and to the extent that a person has the rights and protections in

this chapter because of another law other than this chapter, the person continues to have those rights and protections notwithstanding the existence of this chapter.

(2) A consumer alleging a violation of section 203 or 207(7) of this act may bring a civil action in any court of competent jurisdiction. Remedies shall be limited to appropriate injunctive relief. The court shall also award reasonable attorneys' fees and costs to any prevailing plaintiff.

**NEW SECTION. Sec. 210. ENFORCEMENT.**

(1) Except as provided in section 209 of this act, this chapter may be enforced solely by the attorney general under the consumer protection act, chapter 19.86 RCW.

(2) In actions brought by the attorney general, the legislature finds: (a) The practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW, and (b) a violation of this chapter is not reasonable in relation to the development and preservation of business, is an unfair or deceptive act in trade or commerce, and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(3) The legislative declarations in this section shall not apply to any claim or action by any party other than the attorney general alleging that conduct regulated by this chapter violates chapter 19.86 RCW, and this chapter does not incorporate RCW 19.86.093.

(4) Until July 31, 2023, in the event of a controller's or processor's violation under this chapter, prior to filing a complaint, the attorney general must provide the controller or processor with a warning letter identifying the specific provisions of this chapter the attorney general alleges have been or are being violated. If, after 30 days of issuance of the warning letter, the attorney general believes the controller or processor has failed to cure any alleged violation, the attorney general may bring an action against the controller or processor as provided under this chapter.

(5) Beginning July 31, 2023, in determining a civil penalty under this chapter, the court must consider, as mitigating factors, a controller's or

processor's good faith efforts to comply with the requirements of this chapter and any actions to cure or remedy the violations before an action is filed.

(6) All receipts from the imposition of civil penalties under this chapter must be deposited into the consumer privacy account created in section 113 of this act.

**NEW SECTION. Sec. 211. PREEMPTION.**

(1) Except as provided in this section, this chapter supersedes and preempts laws, ordinances, regulations, or the equivalent adopted by any local entity regarding the processing of covered data for a covered purpose by controllers or processors.

(2) Laws, ordinances, or regulations regarding the processing of covered data for a covered purpose by controllers or processors that are adopted by any local entity prior to July 1, 2020, are not superseded or preempted.

**NEW SECTION. Sec. 212.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**PART 3**

**Data Privacy Regarding Public Health Emergency—Public Sector**

**NEW SECTION. Sec. 301.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Consent" means any freely given, specific, informed, and unambiguous indication of the consumer's wishes by which the consumer signifies agreement to the processing of personal data relating to the consumer for a narrowly defined particular purpose. Acceptance of a general or broad terms of use or similar document that contains descriptions of personal data processing along with other, unrelated information, does not constitute consent. Hovering over, muting, pausing, or closing a given piece of content does not constitute consent. Likewise, agreement obtained through dark patterns does not constitute consent.

(2) "Controller" means the local government, state agency, or institutions of higher education that, alone or jointly with others, determines the purposes and means of the processing

of technology-assisted contact tracing information.

(3) (a) "Deidentified data" means data that cannot reasonably be used to infer information about, or otherwise be linked to, an identified or identifiable natural person, or a device linked to such a person, provided that the controller that possesses the data: (i) Takes reasonable measures to ensure that the data cannot be associated with a natural person, household, or device; (ii) publicly commits to maintain and use the data only in a deidentified fashion and not attempt to reidentify the data; and (iii) except as provided in (b) of this subsection, contractually obligates any recipients of the information to comply with all provisions of this subsection.

(b) For the purposes of this subsection, the obligations imposed under (a)(iii) of this subsection do not apply when a controller discloses deidentified data to the public pursuant to chapter 42.56 RCW or other state disclosure laws.

(4) "Delete" means to remove or destroy information such that it is not maintained in human or machine-readable form and cannot be retrieved or utilized in the course of business.

(5) "Identified or identifiable natural person" means an individual who can be readily identified, directly or indirectly.

(6) "Individual" means a natural person who is a Washington resident acting only in an individual or household context. "Individual" does not include a natural person acting in a commercial or employment context.

(7) "Institutions of higher education" has the same meaning as defined in RCW 28B.92.030.

(8) "Local government" has the same meaning as in RCW 39.46.020.

(9) "Local health departments" has the same meaning as in RCW 70.05.010.

(10) (a) "Process," "processed," or "processing" means any operation or set of operations that are performed on technology-assisted contact tracing information by automated means, such as the collection, use, storage, disclosure, analysis, deletion, or modification of technology-assisted contact tracing information.

(b) "Processing" does not include means such as recognized investigatory measures intended to gather information to facilitate investigations including, but not limited to, traditional in-person, email, or telephonic activities used as of the effective date of this section by the department of health, created under chapter 43.70 RCW, or local health departments to provide for the control and prevention of any dangerous, contagious, or infectious disease.

(11) "Processor" means a natural or legal person, local government, state agency, or institutions of higher education that processes technology-assisted contact tracing information on behalf of a controller.

(12) "Secure" means encrypted in a manner that meets or exceeds the national institute of standards and technology standard or is otherwise modified so that the technology-assisted contact tracing information is rendered unreadable, unusable, or undecipherable by an unauthorized person.

(13) "Sell" means the exchange of technology-assisted contact tracing information for monetary or other valuable consideration by the controller to a third party. For the purposes of this subsection, "sell" does not include the recovery of fees by a controller.

(14) "State agency" has the same meaning as defined in RCW 43.105.020.

(15) "Technology-assisted contact tracing" means the use of a digital application or other electronic or digital platform that is capable of independently transmitting information and is offered to individuals for the purpose of notifying individuals who may have had contact with an infectious person through data collection and analysis as a means of controlling the spread of a communicable disease.

(16) "Technology-assisted contact tracing information" means any information, data, or metadata received through technology-assisted contact tracing.

(17) "Third party" means a natural or legal person, public authority, agency, or body other than the individual, controller, processor, or an affiliate of the processor or the controller.

NEW SECTION. **Sec. 302.** PROHIBITIONS. Except as provided in this chapter, it is

unlawful for a controller or processor to:

(1) Process technology-assisted contact tracing information unless:

(a) The controller or processor provides the individual with a privacy notice prior to or at the time of the processing; and

(b) The individual provides consent for the processing;

(2) Disclose any technology-assisted contact tracing information to federal, state, or local law enforcement;

(3) Sell any technology-assisted contact tracing information; or

(4) Share any technology-assisted contact tracing information with another controller, processor, or third party unless the sharing is governed by a contract or data-sharing agreement as prescribed in section 303 of this act and is disclosed to an individual in the notice required in section 304 of this act.

**NEW SECTION. Sec. 303.**  
**RESPONSIBILITY ACCORDING TO ROLE.** (1) Controllers and processors are responsible for meeting their respective obligations established under this chapter.

(2) Processors are responsible under this chapter for adhering to the instructions of the controller and assisting the controller to meet its obligations under this chapter. This assistance must include the processor assisting the controller in meeting the controller's obligations in relation to the security of processing technology-assisted contact tracing information and in relation to the notification of a breach of the security of the system pursuant to RCW 42.56.590.

(3) Notwithstanding the instructions of the controller, a processor shall:

(a) Ensure that each person processing the technology-assisted contact tracing information is subject to a duty of confidentiality with respect to the information; and

(b) Engage a subcontractor only after providing the controller with an opportunity to object and pursuant to a written contract in accordance with subsection (5) of this section that requires the subcontractor to meet the obligations of the processor with respect

to the technology-assisted contact tracing information.

(4) Taking into account the context of processing, the controller and the processor shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk and establish a clear allocation of the responsibilities between them to implement such measures.

(5) Processing by a processor must be governed by a contract or data-sharing agreement between the controller and the processor that is binding on both parties and that sets out the processing instructions to which the processor is bound, including the nature and purpose of the processing, the type of data subject to the processing, the duration of the processing, and the obligations and rights of both parties. In addition, the contract or data-sharing agreement must include the requirements imposed by this subsection and subsections (3) and (4) of this section, as well as the following requirements:

(a) At the choice of the controller, the processor shall delete or return all technology-assisted contact tracing information to the controller as requested at the end of the provision of services, unless retention of the technology-assisted contact tracing information is required by law;

(b)(i) The processor shall make available to the controller all information necessary to demonstrate compliance with the obligations in this chapter; and

(ii) The processor shall allow for, and contribute to, reasonable audits and inspections by the controller or the controller's designated auditor. Alternatively, the processor may, with the controller's consent, arrange for a qualified and independent auditor to conduct, at least annually and at the processor's expense, an audit of the processor's policies and technical and organizational measures in support of the obligations under this chapter using an appropriate and accepted control standard or framework and audit procedure for the audits as applicable, and provide a report of the audit to the controller upon request.

(6) In no event may any contract or data-sharing agreement relieve a controller or a processor from the liabilities imposed on them by virtue of



its role in the processing relationship as defined in this chapter.

(7) Determining whether a person is acting as a controller or processor with respect to a specific processing of data is a fact-based determination that depends upon the context in which technology-assisted contact tracing information is to be processed. A person that is not limited in its processing of technology-assisted contact tracing information pursuant to a controller's instructions, or that fails to adhere to such instructions, is a controller and not a processor with respect to processing of technology-assisted contact tracing information. A processor that continues to adhere to a controller's instructions with respect to processing of technology-assisted contact tracing information remains a processor. If a processor begins, alone or jointly with others, determining the purposes and means of the processing of technology-assisted contact tracing information, it is a controller with respect to the processing.

NEW SECTION. **Sec. 304.**  
RESPONSIBILITIES OF CONTROLLERS. (1) Controllers that process technology-assisted contact tracing information must provide individuals with a clear and conspicuous privacy notice that includes, at a minimum:

(a) The categories of technology-assisted contact tracing information processed by the controller;

(b) The purposes for which the categories of technology-assisted contact tracing information are processed;

(c) The categories of technology-assisted contact tracing information that the controller shares with third parties, if any; and

(d) The categories of third parties, if any, with whom the controller shares technology-assisted contact tracing information.

(2) A controller's collection of technology-assisted contact tracing information must be limited to what is reasonably necessary in relation to the technology-assisted contact tracing purpose for which the information is processed.

(3) A controller's collection of technology-assisted contact tracing

information must be adequate, relevant, and limited to what is reasonably necessary in relation to the technology-assisted contact tracing purposes for which the information is processed.

(4) Except as provided in this chapter, a controller may not process technology-assisted contact tracing information for purposes that are not reasonably necessary to, or compatible with, the technology-assisted contact tracing purposes for which the technology-assisted contact tracing information is processed unless the controller obtains the individual's consent. Controllers may not process technology-assisted contact tracing information or deidentified data that was processed for a technology-assisted contact tracing purpose for purposes of marketing, developing new products or services, or engaging in commercial product or market research.

(5) A controller shall establish, implement, and maintain reasonable administrative, technical, and physical data security practices to protect the confidentiality, integrity, and accessibility of technology-assisted contact tracing information. These data security practices must be appropriate to the volume and nature of the data at issue.

(6) A controller must delete or deidentify all technology-assisted contact tracing information when the information is no longer being used for a technology-assisted contact tracing purpose and has met records retention as required by federal or state law.

(7) A controller may not process technology-assisted contact tracing information on the basis of an individual's or a class of individuals' actual or perceived race, color, ethnicity, religion, national origin, sex, gender, gender identity, sexual orientation, familial status, lawful source of income, or disability, in a manner that unlawfully discriminates against the individual or class of individuals with respect to the offering or provision of: (a) Housing; (b) employment; (c) credit; (d) education; or (e) the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.

NEW SECTION. **Sec. 305.** LIMITATIONS AND APPLICABILITY. (1) The obligations

imposed on controllers or processors under this chapter do not restrict a controller's or processor's ability to:

(a) Comply with federal, state, or local laws, rules, or regulations; or

(b) Process deidentified information to engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws and is approved, monitored, and governed by an institutional review board, human subjects research ethics review board, or a similar independent oversight entity that determines: (i) If the research is likely to provide substantial benefits that do not exclusively accrue to the controller; (ii) the expected benefits of the research outweigh the privacy risks; and (iii) the controller has implemented reasonable safeguards to mitigate privacy risks associated with research, including any risks associated with reidentification.

(2) Processing technology-assisted contact tracing information solely for the purposes expressly identified in this section does not, by itself, make an entity a controller with respect to such processing.

(3) If a controller processes technology-assisted contact tracing information pursuant to an exemption in this section, the controller bears the burden of demonstrating that the processing qualifies for the exemption and complies with the requirements in subsection (4) of this section.

(4)(a) Technology-assisted contact tracing information that is processed by a controller pursuant to this section must not be processed for any purpose other than those expressly listed in this section.

(b) Technology-assisted contact tracing information that is processed by a controller pursuant to this section may be processed solely to the extent that such processing is: (i) Necessary, reasonable, and proportionate to the purposes listed in this section; (ii) adequate, relevant, and limited to what is necessary in relation to the specific purpose or purposes listed in this section; and (iii) insofar as possible, taking into account the nature and purpose of processing the technology-assisted contact tracing information, subjected to reasonable administrative,

technical, and physical measures to protect the confidentiality, integrity, and accessibility of the personal data, and to reduce reasonably foreseeable risks of harm to consumers.

NEW SECTION. **Sec. 306.** **LIABILITY.** Where more than one controller or processor, or both a controller and a processor, involved in the same processing, is in violation of this chapter, the liability must be allocated among the parties according to principles of comparative fault.

NEW SECTION. **Sec. 307.** **ENFORCEMENT.** (1) Any waiver of the provisions of this chapter is contrary to public policy and is void and unenforceable.

(2)(a) Any individual injured by a violation of this chapter may institute a civil action to recover damages.

(b) Any controller that violates, proposes to violate, or has violated this chapter may be enjoined.

(c) The rights and remedies available under this chapter are cumulative to each other and to any other rights and remedies available under law.

NEW SECTION. **Sec. 308.** **EXPIRATION.** This chapter expires June 30, 2024.

NEW SECTION. **Sec. 309.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

#### **PART 4**

##### **Miscellaneous**

NEW SECTION. **Sec. 401.** (1) Sections 101 through 114 of this act constitute a new chapter in Title 19 RCW.

(2) Sections 201 through 211 of this act constitute a new chapter in Title 19 RCW.

(3) Sections 301 through 308 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. **Sec. 402.** Sections 1, 2, and 101 through 118 of this act take effect July 31, 2022.

NEW SECTION. **Sec. 403.** Sections 101 through 114 of this act do not apply to institutions of higher education or nonprofit corporations until July 31, 2026.

NEW SECTION. **Sec. 404.** Except for sections 1, 2, and 101 through 118 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

Correct the title.

Signed by Representatives Hansen, Chair; Simmons, Vice Chair; Davis; Entenman; Goodman; Kirby; Orwall; Peterson; Thai; Valdez and Walen.

MINORITY recommendation: Do not pass. Signed by Representatives Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno; Klippert and Ybarra.

Referred to Committee on Appropriations.

March 26, 2021

E2SSB 5065 Prime Sponsor, Committee on Labor, Commerce & Tribal Affairs: Safeguarding the public safety by protecting railroad workers. Reported by Committee on Labor & Workplace Standards

MAJORITY recommendation: Do pass. Signed by Representatives Sells, Chair; Berry, Vice Chair; Bronoske and Ortiz-Self.

MINORITY recommendation: Do not pass. Signed by Representatives Hoff, Ranking Minority Member; Mosbrucker, Assistant Ranking Minority Member and Harris.

Referred to Committee on Rules for second reading.

March 26, 2021

E2SSB 5071 Prime Sponsor, Committee on Ways & Means: Creating transition teams to assist specified persons under civil commitment. Reported by Committee on Civil Rights & Judiciary

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 10.77.150 and 2010 c 263 s 5 are each amended to read as follows:

(1) Persons examined pursuant to RCW 10.77.140 may make application to the secretary for conditional release. The secretary shall, after considering the reports of experts or professional

persons conducting the examination pursuant to RCW 10.77.140, forward to the court of the county which ordered the person's commitment the person's application for conditional release as well as the secretary's recommendations concerning the application and any proposed terms and conditions upon which the secretary reasonably believes the person can be conditionally released. Conditional release may also contemplate partial release for work, training, or educational purposes.

(2) In instances in which persons examined pursuant to RCW 10.77.140 have not made application to the secretary for conditional release, but the secretary, after considering the reports of experts or professional persons conducting the examination pursuant to RCW 10.77.140, reasonably believes the person may be conditionally released, the secretary may submit a recommendation for release to the court of the county that ordered the person's commitment. The secretary's recommendation must include any proposed terms and conditions upon which the secretary reasonably believes the person may be conditionally released. Conditional release may also include partial release for work, training, or educational purposes. Notice of the secretary's recommendation under this subsection must be provided to the person for whom the secretary has made the recommendation for release and to his or her attorney.

(3)(a) The court of the county which ordered the person's commitment, upon receipt of an application or recommendation for conditional release with the secretary's recommendation for conditional release terms and conditions, shall within thirty days schedule a hearing. The court may schedule a hearing on applications recommended for disapproval by the secretary.

(b) The prosecuting attorney shall represent the state at such hearings and shall have the right to have the ((~~patient~~)) person examined by an expert or professional person of the prosecuting attorney's choice. If the committed person is indigent, and he or she so requests, the court shall appoint a qualified expert or professional person to examine the person on his or her behalf.

(c) The issue to be determined at such a hearing is whether or not the person

may be released conditionally to less restrictive alternative treatment under the supervision of a multidisciplinary transition team under conditions imposed by the court, including access to services under section 4 of this act without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security.

(d) ~~((The court, after the hearing, shall rule on the secretary's recommendations, and if it disapproves of conditional release, may do so))~~ In cases that come before the court under subsection (1) or (2) of this section, the court may deny conditional release to a less restrictive alternative only on the basis of substantial evidence. The court may modify the suggested terms and conditions on which the person is to be conditionally released. Pursuant to the determination of the court after hearing, the committed person shall thereupon be released on such conditions as the court determines to be necessary, or shall be remitted to the custody of the secretary.

(4) If the order of conditional release ~~((includes a))~~ provides for the conditional release of the person to a less restrictive alternative, including residential treatment or treatment in the community, the conditional release order must also include:

(a) A requirement for the committed person to ~~((report to a))~~ be supervised by a multidisciplinary transition team, including a specially trained community corrections officer, ~~((the order shall also specify that the conditionally released person shall be under the supervision of the secretary of corrections or such person as the secretary of corrections may designate and shall follow explicitly the instructions of the secretary of corrections including))~~ a representative of the department of social and health services, and a representative of the community behavioral health agency providing treatment to the person under section 4 of this act.

(i) The court may omit appointment of the representative of the community behavioral health agency if the conditional release order does not require participation in behavioral health treatment;

(ii) The court may omit the appointment of a community corrections

officer if it makes a special finding that the appointment of a community corrections officer would not facilitate the success of the person, or the safety of the person and the community;

(b) A requirement for the person to comply with conditions of supervision established by the court which shall include at a minimum reporting as directed to a ~~((community corrections officer))~~ designated member of the transition team, remaining within prescribed geographical boundaries, and notifying the ~~((community corrections officer))~~ transition team prior to making any change in the ~~((offender's))~~ person's address or employment. If the ~~((order of conditional release includes a requirement for the committed person to report to a community corrections officer, the community corrections officer shall notify the secretary or the secretary's designee, if the))~~ person is not in compliance with the court-ordered conditions of release ~~((=)),~~ the community corrections officer or another designated transition team member shall notify the secretary or the secretary's designee; and

~~((4))~~ (c) If the court ~~((determines that receiving regular or periodic medication or other medical treatment shall be a condition of the committed person's release, then the court shall require him or her to report to a physician or other medical or mental health practitioner for the medication or treatment. In addition to submitting any report required by RCW 10.77.160, the physician or other medical or mental health practitioner shall immediately upon the released person's failure to appear for the))~~ requires participation in behavioral health treatment, the name of the licensed or certified behavioral health agency responsible for identifying the services the person will receive under section 4 of this act, and a requirement that the person cooperate with the services planned by the licensed or certified behavioral health agency. The licensed or certified behavioral health agency must comply with the reporting requirements of RCW 10.77.160, and must immediately report to the court, prosecutor, and defense counsel any substantial withdrawal or disengagement from medication or treatment, or ~~((upon a))~~ any change in the person's mental health condition that renders ~~((the patient))~~ him or her a potential risk to the public ~~((report to the court, to the~~

~~prosecuting attorney of the county in which the released person was committed, to the secretary, and to the supervising community corrections officer).~~

(5) The role of the transition team appointed under subsection (4) of this section shall be to facilitate the success of the person on the conditional release order by monitoring the person's progress in treatment, compliance with court-ordered conditions, and to problem solve around extra support the person may need or circumstances that may arise that threaten the safety of the person or the community. The transition team may develop a monitoring plan that may be carried out by any member of the team. The transition team shall meet according to a schedule developed by the team, and shall communicate as needed if issues arise that require the immediate attention of the team.

(6) The department of corrections shall collaborate with the department to develop specialized training for community corrections officers under this section. The lack of a trained community corrections officer must not be the cause of delay to entry of a conditional release order. Another community corrections officer may be appointed if no specially trained officer is available.

(7) Any person, whose application for conditional release has been denied, may reapply after a period of six months from the date of denial, or sooner with the support of the department.

(8) A person examined under RCW 10.77.140 or the department may make a motion for limited conditional release under this section, on the grounds that there is insufficient evidence that the person may be released conditionally to less restrictive alternative treatment under subsection (3)(c) of this section, but the person would benefit from the opportunity to exercise increased privileges while remaining under the custody and supervision of the department and with the supervision of the department these increased privileges can be exercised without substantial danger to other persons or substantial likelihood of committing criminal acts jeopardizing public safety or security. The department may respond to a person's application for conditional release by instead supporting limited conditional release.

**Sec. 2.** RCW 71.05.320 and 2020 c 302 s 45 are each amended to read as follows:

(1)(a) Subject to (b) of this subsection, if the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department for a further period of intensive treatment not to exceed ninety days from the date of judgment.

(b) If the order for inpatient treatment is based on a substance use disorder, treatment must take place at an approved substance use disorder treatment program. The court may only enter an order for commitment based on a substance use disorder if there is an available approved substance use disorder treatment program with adequate space for the person.

(c) If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment to the custody of the department of social and health services or to a facility certified for one hundred eighty-day treatment by the department or under RCW 71.05.745.

(2) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him or her to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment. If the court has made an affirmative special finding under RCW 71.05.280(3)(b), the court shall appoint a multidisciplinary transition team as provided in subsection (6)(a)(i) of this section. If the court or jury finds that the grounds set forth in RCW 71.05.280(5) have been proven, and

provide the only basis for commitment, the court must enter an order for less restrictive alternative treatment for up to ninety days from the date of judgment and may not order inpatient treatment.

(3) An order for less restrictive alternative treatment entered under subsection (2) of this section must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the behavioral health service provider.

(4) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) or (2) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated crisis responder, files a new petition for involuntary treatment on the grounds that the committed person:

(a) During the current period of court ordered treatment: (i) Has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another, and (ii) as a result of a behavioral health disorder or developmental disability presents a likelihood of serious harm; or

(b) Was taken into custody as a result of conduct in which he or she attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of a behavioral health disorder or developmental disability, a likelihood of serious harm; or

(c) (i) Is in custody pursuant to RCW 71.05.280(3) and as a result of a behavioral health disorder or developmental disability continues to present a substantial likelihood of repeating acts similar to the charged criminal behavior, when considering the person's life history, progress in treatment, and the public safety.

(ii) In cases under this subsection where the court has made an affirmative special finding under RCW 71.05.280(3)(b), the commitment shall continue for up to an additional one hundred eighty-day period whenever the petition presents prima facie evidence

that the person continues to suffer from a behavioral health disorder or developmental disability that results in a substantial likelihood of committing acts similar to the charged criminal behavior, unless the person presents proof through an admissible expert opinion that the person's condition has so changed such that the behavioral health disorder or developmental disability no longer presents a substantial likelihood of the person committing acts similar to the charged criminal behavior. The initial or additional commitment period may include transfer to a specialized program of intensive support and treatment, which may be initiated prior to or after discharge from the state hospital; or

(d) Continues to be gravely disabled; or

(e) Is in need of assisted outpatient behavioral health treatment.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to prove such conduct again.

If less restrictive alternative treatment is sought, the petition shall set forth any recommendations for less restrictive alternative treatment services.

(5) A new petition for involuntary treatment filed under subsection (4) of this section shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

(6) (a) The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this section are present, subject to subsection (1)(b) of this section, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment, except as provided in subsection (7) of this section. If the court's order is based solely on the grounds identified in subsection (4)(e) of this section, the court may enter an order for less restrictive alternative treatment not to exceed one hundred eighty days from the date of judgment, and may not enter an

order for inpatient treatment. An order for less restrictive alternative treatment must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the behavioral health service provider.

(i) In cases where the court has ordered less restrictive alternative treatment and has previously made an affirmative special finding under RCW 71.05.280(3)(b), the court shall appoint a multidisciplinary transition team to supervise and assist the person on the order for less restrictive treatment, which shall include a representative of the community behavioral health agency providing treatment under RCW 71.05.585, and a specially trained supervising community corrections officer. The court may omit the appointment of a community corrections officer if it makes a special finding that the appointment of a community corrections officer would not facilitate the success of the person, or the safety of the person and the community under (a)(ii) of this subsection.

(ii) The role of the transition team shall be to facilitate the success of the person on the less restrictive alternative order by monitoring the person's progress in treatment, compliance with court-ordered conditions, and to problem solve around extra support the person may need or circumstances which may arise that threaten the safety of the person or the community. The transition team may develop a monitoring plan which may be carried out by any member of the team. The transition team shall meet according to a schedule developed by the team, and shall communicate as needed if issues arise that require the immediate attention of the team.

(iii) The department of corrections shall collaborate with the department to develop specialized training for community corrections officers under this section. The lack of a trained community corrections officer must not be the cause of delay to entry of a less restrictive alternative order.

(b) At the end of the one hundred eighty-day period of commitment, or one-year period of commitment if subsection (7) of this section applies, the

committed person shall be released unless a petition for an additional one hundred eighty-day period of continued treatment is filed and heard in the same manner as provided in this section. Successive one hundred eighty-day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty-day commitment.

(7) An order for less restrictive treatment entered under subsection (6) of this section may be for up to one year when the person's previous commitment term was for intensive inpatient treatment in a state hospital.

(8) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length except as provided in subsection (7) of this section.

**Sec. 3.** RCW 71.05.320 and 2020 c 302 s 46 are each amended to read as follows:

(1) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department for a further period of intensive treatment not to exceed ninety days from the date of judgment.

If the order for inpatient treatment is based on a substance use disorder, treatment must take place at an approved substance use disorder treatment program. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment to the custody of the department of social and health services or to a facility certified for one hundred eighty-day treatment by the department or under RCW 71.05.745.

(2) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him or her to the custody of the department of social and health services or to a facility certified for ninety day

treatment by the department or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment. If the court has made an affirmative special finding under RCW 71.05.280(3)(b), the court shall appoint a multidisciplinary transition team as provided in subsection (6)(a)(i) of this section. If the court or jury finds that the grounds set forth in RCW 71.05.280(5) have been proven, and provide the only basis for commitment, the court must enter an order for less restrictive alternative treatment for up to ninety days from the date of judgment and may not order inpatient treatment.

(3) An order for less restrictive alternative treatment entered under subsection (2) of this section must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the behavioral health service provider.

(4) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) or (2) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated crisis responder, files a new petition for involuntary treatment on the grounds that the committed person:

(a) During the current period of court ordered treatment: (i) Has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another, and (ii) as a result of a behavioral health disorder or developmental disability presents a likelihood of serious harm; or

(b) Was taken into custody as a result of conduct in which he or she attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of a behavioral health disorder or developmental disability, a likelihood of serious harm; or

(c) (i) Is in custody pursuant to RCW 71.05.280(3) and as a result of a behavioral health disorder or developmental disability continues to present a substantial likelihood of repeating acts similar to the charged criminal behavior, when considering the person's life history, progress in treatment, and the public safety.

(ii) In cases under this subsection where the court has made an affirmative special finding under RCW 71.05.280(3)(b), the commitment shall continue for up to an additional one hundred eighty-day period whenever the petition presents prima facie evidence that the person continues to suffer from a behavioral health disorder or developmental disability that results in a substantial likelihood of committing acts similar to the charged criminal behavior, unless the person presents proof through an admissible expert opinion that the person's condition has so changed such that the behavioral health disorder or developmental disability no longer presents a substantial likelihood of the person committing acts similar to the charged criminal behavior. The initial or additional commitment period may include transfer to a specialized program of intensive support and treatment, which may be initiated prior to or after discharge from the state hospital; or

(d) Continues to be gravely disabled; or

(e) Is in need of assisted outpatient behavioral health treatment.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to prove such conduct again.

If less restrictive alternative treatment is sought, the petition shall set forth any recommendations for less restrictive alternative treatment services.

(5) A new petition for involuntary treatment filed under subsection (4) of this section shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.



(6)(a) The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this section are present, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment, except as provided in subsection (7) of this section. If the court's order is based solely on the grounds identified in subsection (4)(e) of this section, the court may enter an order for less restrictive alternative treatment not to exceed one hundred eighty days from the date of judgment, and may not enter an order for inpatient treatment. An order for less restrictive alternative treatment must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the behavioral health service provider.

(i) In cases where the court has ordered less restrictive alternative treatment and has previously made an affirmative special finding under RCW 71.05.280(3)(b), the court shall appoint a multidisciplinary transition team to supervise and assist the person on the order for less restrictive treatment, which shall include a representative of the community behavioral health agency providing treatment under RCW 71.05.585, and a specially trained supervising community corrections officer. The court may omit the appointment of a community corrections officer if it makes a special finding that the appointment of a community corrections officer would not facilitate the success of the person, or the safety of the person and the community under (a)(ii) of this subsection.

(ii) The role of the transition team shall be to facilitate the success of the person on the less restrictive alternative order by monitoring the person's progress in treatment, compliance with court-ordered conditions, and to problem solve around extra support the person may need or circumstances which may arise that threaten the safety of the person or the community. The transition team may develop a monitoring plan which may be carried out by any member of the team. The transition team shall meet according to a schedule developed by the team, and

shall communicate as needed if issues arise that require the immediate attention of the team.

(iii) The department of corrections shall collaborate with the department to develop specialized training for community corrections officers under this section. The lack of a trained community corrections officer must not be the cause of delay to entry of a less restrictive alternative order.

(b) At the end of the one hundred eighty-day period of commitment, or one-year period of commitment if subsection (7) of this section applies, the committed person shall be released unless a petition for an additional one hundred eighty-day period of continued treatment is filed and heard in the same manner as provided in this section. Successive one hundred eighty-day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty-day commitment.

(7) An order for less restrictive treatment entered under subsection (6) of this section may be for up to one year when the person's previous commitment term was for intensive inpatient treatment in a state hospital.

(8) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length except as provided in subsection (7) of this section.

**NEW SECTION. Sec. 4.** A new section is added to chapter 10.77 RCW to read as follows:

(1) Conditional release planning should start at admission and proceed in coordination between the department and the person's managed care organization, or behavioral health administrative services organization if the person is not eligible for medical assistance under chapter 74.09 RCW. If needed, the department shall assist the person to enroll in medical assistance in suspense status under RCW 74.09.670. The state hospital liaison for the managed care organization or behavioral health administrative services organization shall facilitate conditional release planning in collaboration with the department.

(2) Less restrictive alternative treatment pursuant to a conditional release order, at a minimum, includes the following services:

- (a) Assignment of a care coordinator;
- (b) An intake evaluation with the provider of the conditional treatment;
- (c) A psychiatric evaluation or a substance use disorder evaluation, or both;
- (d) A schedule of regular contacts with the provider of the less restrictive alternative treatment services for the duration of the order;
- (e) A transition plan addressing access to continued services at the expiration of the order;
- (f) An individual crisis plan;
- (g) Consultation about the formation of a mental health advance directive under chapter 71.32 RCW; and
- (h) Appointment of a transition team under RCW 10.77.150;

(i) Notification to the care coordinator assigned in (a) of this subsection and to the transition team as provided in RCW 10.77.150 if reasonable efforts to engage the client fail to produce substantial compliance with court-ordered treatment conditions.

(3) Less restrictive alternative treatment pursuant to a conditional release order may additionally include requirements to participate in the following services:

- (a) Medication management;
- (b) Psychotherapy;
- (c) Nursing;
- (d) Substance use disorder counseling;
- (e) Residential treatment;
- (f) Support for housing, benefits, education, and employment; and
- (g) Periodic court review.

(4) Nothing in this section prohibits items in subsection (2) of this section from beginning before the conditional release of the individual.

(5) If the person was provided with involuntary medication under RCW 10.77.094 or pursuant to a judicial order during the involuntary commitment period, the less restrictive alternative

treatment pursuant to the conditional release order may authorize the less restrictive alternative treatment provider or its designee to administer involuntary antipsychotic medication to the person if the provider has attempted and failed to obtain the informed consent of the person and there is a concurring medical opinion approving the medication by a psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with an independent mental health professional with prescribing authority.

(6) Less restrictive alternative treatment pursuant to a conditional release order must be administered by a provider that is certified or licensed to provide or coordinate the full scope of services required under the less restrictive alternative order and that has agreed to assume this responsibility.

(7) The care coordinator assigned to a person ordered to less restrictive alternative treatment pursuant to a conditional release order must submit an individualized plan for the person's treatment services to the court that entered the order. An initial plan must be submitted as soon as possible following the intake evaluation and a revised plan must be submitted upon any subsequent modification in which a type of service is removed from or added to the treatment plan.

(8) A care coordinator may disclose information and records related to mental health treatment under RCW 70.02.230(2)(k) for purposes of implementing less restrictive alternative treatment pursuant to a conditional release order.

(9) For the purpose of this section, "care coordinator" means a representative from the department of social and health services who coordinates the activities of less restrictive alternative treatment pursuant to a conditional release order. The care coordinator coordinates activities with the person's transition team that are necessary for enforcement and continuation of the conditional release order and is responsible for coordinating service activities with other agencies and establishing and maintaining a therapeutic relationship with the individual on a continuing basis.

**Sec. 5.** RCW 10.77.060 and 2016 sp.s. c 29 s 408 are each amended to read as follows:

(1)(a) Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate a qualified expert or professional person, who shall be approved by the prosecuting attorney, to evaluate and report upon the mental condition of the defendant.

(b) The signed order of the court shall serve as authority for the evaluator to be given access to all records held by any mental health, medical, educational, or correctional facility that relate to the present or past mental, emotional, or physical condition of the defendant. If the court is advised by any party that the defendant may have a developmental disability, the evaluation must be performed by a developmental disabilities professional.

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

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

(e) The order shall indicate whether, in the event the defendant is committed

to a hospital or secure mental health facility for evaluation, all parties agree to waive the presence of the defendant or to the defendant's remote participation at a subsequent competency hearing or presentation of an agreed order if the recommendation of the evaluator is for continuation of the stay of criminal proceedings, or if the opinion of the evaluator is that the defendant remains incompetent and there is no remaining restoration period, and the hearing is held prior to the expiration of the authorized commitment period.

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

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

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

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

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

(c) If the defendant suffers from a mental disease or defect, or has a developmental disability, an opinion as to competency;

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

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

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

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

**Sec. 6.** RCW 70.02.230 and 2020 c 256 s 402 are each amended to read as follows:

(1) (~~Except as provided in this section, RCW 70.02.050, 71.05.445, 74.09.295, 70.02.210, 70.02.240, 70.02.250, 70.02.260, and 70.02.265, or pursuant to a valid authorization under RCW 70.02.030, the~~) The fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or

involuntary recipients of services at public or private agencies (~~must be confidential~~) may not be disclosed except as provided in this section, RCW 70.02.050, 71.05.445, 74.09.295, 70.02.210, 70.02.240, 70.02.250, 70.02.260, and 70.02.265, or pursuant to a valid authorization under RCW 70.02.030.

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

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

- (i) Employed by the facility;
- (ii) Who has medical responsibility for the patient's care;
- (iii) Who is a designated crisis responder;
- (iv) Who is providing services under chapter 71.24 RCW;
- (v) Who is employed by a state or local correctional facility where the person is confined or supervised; or
- (vi) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW;

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

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

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

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

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

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

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

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

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

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

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

(f) To the attorney of the detained person;

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

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

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

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

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

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

(k) By a care coordinator under RCW 71.05.585 or section 4 of this act assigned to a person ordered to receive less restrictive alternative treatment for the purpose of sharing information to parties necessary for the implementation of proceedings under chapter 71.05 or 10.77 RCW;

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

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

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

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

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

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

~~((n))~~ (o) When a patient would otherwise be subject to the provisions of this section and disclosure is necessary

for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of the disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility, or his or her professional designee;

~~((o))~~ (p) Pursuant to lawful order of a court, including a tribal court;

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

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

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

~~((s))~~ (t) Between the department of social and health services, the department of children, youth, and families, and the health care authority as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of persons who are under the supervision of the department of social and health services or the department of children, youth, and families;

~~((t))~~ (u) To a licensed physician or psychiatric advanced registered nurse

practitioner who has determined that the life or health of the person is in danger and that treatment without the information and records related to mental health services could be injurious to the patient's health. Disclosure must be limited to the portions of the records necessary to meet the medical emergency;

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

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

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

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

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

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

~~((w))~~ (x) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one evaluation and treatment facility to another. The release of records under this subsection is limited to the information and records related to mental health services required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future

treatment, but may not include the patient's complete treatment record;

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

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

~~((z))~~ (aa) To all current treating providers, including Indian health care providers, of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. For purposes of coordinating health care, the department or the authority may release without written authorization of the patient, information acquired for billing and collection purposes as described in RCW 70.02.050(1)(d). The department, or the authority, if applicable, shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. Neither the department nor the authority may release counseling,

inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client;

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

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

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ . . . . ."

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

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

~~((ccc))~~ (dd) To the secretary of health for the purposes of the maternal mortality review panel established in RCW 70.54.450;

~~((ddd))~~ (ee) To a tribe or Indian health care provider to carry out the requirements of RCW 71.05.150(7).

(3) Whenever federal law or federal regulations restrict the release of information contained in the information and records related to mental health services of any patient who receives treatment for a substance use disorder, the department or the authority may

restrict the release of the information as necessary to comply with federal law and regulations.

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

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

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

- (i) One thousand dollars; or
- (ii) Three times the amount of actual damages sustained, if any.

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



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

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

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

**Sec. 7.** RCW 70.02.240 and 2019 c 381 s 20 are each amended to read as follows:

The fact of admission and all information and records related to mental health services obtained through inpatient or outpatient treatment of a minor under chapter 71.34 RCW must be kept confidential, except as authorized by this section or under RCW 70.02.050, 70.02.210, 70.02.230, 70.02.250, 70.02.260, and 70.02.265. Confidential information under this section may be disclosed only:

(1) In communications between mental health professionals to meet the requirements of chapter 71.34 RCW, in the provision of services to the minor, or in making appropriate referrals;

(2) In the course of guardianship or dependency proceedings;

(3) To the minor, the minor's parent, including those acting as a parent as defined in RCW 71.34.020 for purposes of family-initiated treatment, and the minor's attorney, subject to RCW 13.50.100;

(4) To the courts as necessary to administer chapter 71.34 RCW;

(5) By a care coordinator under RCW 71.34.755 or section 4 of this act assigned to a person ordered to receive less restrictive alternative treatment for the purpose of sharing information to parties necessary for the implementation of proceedings under chapter 71.34 or 10.77 RCW;

(6) To law enforcement officers or public health officers as necessary to carry out the responsibilities of their office. However, only the fact and date of admission, and the date of discharge, the name and address of the treatment

provider, if any, and the last known address must be disclosed upon request;

~~((46))~~ (7) To law enforcement officers, public health officers, relatives, and other governmental law enforcement agencies, if a minor has escaped from custody, disappeared from an evaluation and treatment facility, violated conditions of a less restrictive treatment order, or failed to return from an authorized leave, and then only such information as may be necessary to provide for public safety or to assist in the apprehension of the minor. The officers are obligated to keep the information confidential in accordance with this chapter;

~~((47))~~ (8) To the secretary of social and health services and the director of the health care authority for assistance in data collection and program evaluation or research so long as the secretary or director, where applicable, adopts rules for the conduct of such evaluation and research. The rules must include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

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

I recognize that unauthorized release of confidential information may subject me to civil liability under state law.

/s/ . . . . .";

~~((48))~~ (9) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence;

~~((49))~~ (10) To appropriate law enforcement agencies and to a person, when the identity of the person is known

to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence;

~~((110))~~ (11) To a minor's next of kin, attorney, guardian, or conservator, if any, the information that the minor is presently in the facility or that the minor is seriously physically ill and a statement evaluating the mental and physical condition of the minor as well as a statement of the probable duration of the minor's confinement;

~~((111))~~ (12) Upon the death of a minor, to the minor's next of kin;

~~((112))~~ (13) To a facility in which the minor resides or will reside;

~~((113))~~ (14) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(iv). The extent of information that may be released is limited as follows:

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

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

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

~~((114))~~ (15) This section may not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the director of the health care authority or the secretary of the department of social and health services, where applicable. The fact of admission and all information obtained pursuant to chapter 71.34 RCW are not admissible as evidence in any legal proceeding outside chapter 71.34 RCW, except guardianship or dependency, without the written consent of the minor or the minor's parent;

~~((115))~~ (16) For the purpose of a correctional facility participating in the postinstitutional medical assistance system supporting the expedited medical determinations and medical suspensions as provided in RCW 74.09.555 and 74.09.295;

~~((116))~~ (17) Pursuant to a lawful order of a court.

**Sec. 8.** RCW 71.24.035 and 2020 c 256 s 202 are each amended to read as follows:

(1) The authority is designated as the state behavioral health authority which includes recognition as the single state authority for substance use disorders and state mental health authority.

(2) The director shall provide for public, client, tribal, and licensed or certified behavioral health agency participation in developing the state behavioral health program, developing related contracts, and any waiver request to the federal government under medicaid.

(3) The director shall provide for participation in developing the state behavioral health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state behavioral health program.

(4) The authority shall be designated as the behavioral health administrative services organization for a regional service area if a behavioral health administrative services organization fails to meet the authority's contracting requirements or refuses to exercise the responsibilities under its contract or state law, until such time as a new behavioral health administrative services organization is designated.

(5) The director shall:

(a) Assure that any behavioral health administrative services organization, managed care organization, or community behavioral health program provides medically necessary services to medicaid recipients consistent with the state's medicaid state plan or federal waiver authorities, and nonmedicaid services consistent with priorities established by the authority;

(b) Develop contracts in a manner to ensure an adequate network of inpatient services, evaluation and treatment services, and facilities under chapter 71.05 RCW to ensure access to treatment, resource management services, and community support services;

(c) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including managed care contracts for behavioral health services, contracts entered into under RCW 74.09.522, and contracts with public and private agencies, organizations, and individuals to pay them for behavioral health services;

(d) Define administrative costs and ensure that the behavioral health administrative services organization does not exceed an administrative cost of ten percent of available funds;

(e) Establish, to the extent possible, a standardized auditing procedure which is designed to assure compliance with contractual agreements authorized by this chapter and minimizes paperwork requirements. The audit procedure shall focus on the outcomes of service as provided in RCW 71.24.435, 70.320.020, and 71.36.025;

(f) Develop and maintain an information system to be used by the state and behavioral health administrative services organizations and managed care organizations that includes a tracking method which allows the authority to identify behavioral health clients' participation in any behavioral health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and chapter 70.02 RCW;

(g) Monitor and audit behavioral health administrative services organizations as needed to assure compliance with contractual agreements authorized by this chapter;

(h) Monitor and audit access to behavioral health services for individuals eligible for medicaid who are not enrolled in a managed care organization;

(i) Adopt such rules as are necessary to implement the authority's responsibilities under this chapter;

(j) Administer or supervise the administration of the provisions relating to persons with substance use disorders and intoxicated persons of any state plan submitted for federal funding pursuant to federal health, welfare, or treatment legislation;

(k) Require the behavioral health administrative services organizations and the managed care organizations to develop agreements with tribal, city, and county jails and the department of corrections to accept referrals for enrollment on behalf of a confined person, prior to the person's release;

(l) Require behavioral health administrative services organizations and managed care organizations, as applicable, to provide services as identified in RCW 71.05.585 and section 4 of this act to individuals committed for involuntary (~~commitment~~) treatment under less restrictive alternative court orders when:

(i) The individual is enrolled in the medicaid program; or

(ii) The individual is not enrolled in medicaid, does not have other insurance which can pay for the services, and the behavioral health administrative services organization has adequate available resources to provide the services; and

(m) Coordinate with the centers for medicare and medicaid services to provide that behavioral health aide services are eligible for federal funding of up to one hundred percent.

(6) The director shall use available resources only for behavioral health administrative services organizations and managed care organizations, except:

(a) To the extent authorized, and in accordance with any priorities or

conditions specified, in the biennial appropriations act; or

(b) To incentivize improved performance with respect to the client outcomes established in RCW 71.24.435, 70.320.020, and 71.36.025, integration of behavioral health and medical services at the clinical level, and improved care coordination for individuals with complex care needs.

(7) Each behavioral health administrative services organization, managed care organization, and licensed or certified behavioral health agency shall file with the secretary of the department of health or the director, on request, such data, statistics, schedules, and information as the secretary of the department of health or the director reasonably requires. A behavioral health administrative services organization, managed care organization, or licensed or certified behavioral health agency which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may be subject to the contractual remedies in RCW 74.09.871 or may have its service provider certification or license revoked or suspended.

(8) The superior court may restrain any behavioral health administrative services organization, managed care organization, or service provider from operating without a contract, certification, or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(9) Upon petition by the secretary of the department of health or the director, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary of the department of health or the director authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any behavioral health administrative services organization, managed care organization, or service provider refusing to consent to inspection or examination by the authority.

(10) Notwithstanding the existence or pursuit of any other remedy, the secretary of the department of health or the director may file an action for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a behavioral health administrative services organization, managed care organization, or service provider without a contract, certification, or a license under this chapter.

(11) The authority shall distribute appropriated state and federal funds in accordance with any priorities, terms, or conditions specified in the appropriations act.

(12) The authority, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by freestanding evaluation and treatment facilities licensed under chapter 71.12 RCW or certified under chapter 71.05 RCW. The authority shall periodically share the results of its efforts with the appropriate committees of the senate and the house of representatives.

(13) The authority may:

(a) Plan, establish, and maintain substance use disorder prevention and substance use disorder treatment programs as necessary or desirable;

(b) Coordinate its activities and cooperate with behavioral programs in this and other states, and make contracts and other joint or cooperative arrangements with state, tribal, local, or private agencies in this and other states for behavioral health services and for the common advancement of substance use disorder programs;

(c) Solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services, or property from the federal government, the state, or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grant;

(d) Keep records and engage in research and the gathering of relevant statistics; and

(e) Acquire, hold, or dispose of real property or any interest therein, and construct, lease, or otherwise provide substance use disorder treatment programs.

**Sec. 9.** RCW 10.77.010 and 2019 c 325 s 5005 are each amended to read as follows:

As used in this chapter:

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

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

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

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

(5) "Department" means the state department of social and health services.

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

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

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

(9) "Developmental disability" means the condition as defined in RCW 71A.10.020(5).

(10) "Discharge" means the termination of hospital medical authority. The

commitment may remain in place, be terminated, or be amended by court order.

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

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

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

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

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

(16) "Indigent" means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to the person or his or her family.

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

(a) The nature of the person's specific problems, prior charged

criminal behavior, and habilitation needs;

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

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

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

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

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

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

(18) "Professional person" means:

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

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

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

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

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

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

(22) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services

for mental illness, which are maintained by the department, by behavioral health administrative services organizations and their staffs, by managed care organizations and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, behavioral health administrative services organizations, managed care organizations, or a treatment facility if the notes or records are not available to others.

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

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

**Sec. 10.** RCW 10.77.195 and 2010 c 263 s 9 are each amended to read as follows:

For persons who have received court approval for conditional release, the secretary or the secretary's designee shall supervise the person's compliance with the court-ordered conditions of release in coordination with the multidisciplinary transition team appointed under RCW 10.77.150. The level of supervision provided by the secretary shall correspond to the level of the person's public safety risk. In undertaking supervision of persons under this section, the secretary shall coordinate with any treatment providers (~~designated pursuant to RCW 10.77.150(3), any~~) or department of corrections staff designated pursuant to RCW 10.77.150(~~(2)~~), and local law enforcement, if appropriate. The secretary shall adopt rules to implement this section.

**Sec. 11.** RCW 71.05.020 and 2020 c 302 s 3, 2020 c 256 s 301, and 2020 c 5 s 1 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

(8) "Behavioral health service provider" means a public or private agency that provides mental health, substance use disorder, or co-occurring disorder services to persons with behavioral health disorders as defined under this section and receives funding from public sources. This includes, but is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this

section, community mental health service delivery systems or community behavioral health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, approved substance use disorder treatment programs as defined in this section, secure withdrawal management and stabilization facilities as defined in this section, and correctional facilities operated by state and local governments;

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

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

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

(12) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

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

(14) "Department" means the department of health;

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

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

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

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

(19) "Director" means the director of the authority;

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

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

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

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

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

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

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

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

(28) "In need of assisted outpatient behavioral health treatment" means that a person, as a result of a behavioral health disorder: (a) Has been committed by a court to detention for involuntary behavioral health treatment during the preceding thirty-six months; (b) is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative treatment, based on a history of nonadherence with treatment or in view of the person's current behavior; (c) is likely to benefit from less restrictive alternative treatment; and (d) requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of



serious harm or the person becoming gravely disabled within a reasonably short period of time;

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

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

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

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

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

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

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

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

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

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

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

(33) "Less restrictive alternative treatment" means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585;

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

(35) "Likelihood of serious harm" means:

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

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

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

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

(38) "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

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

(40) "Physician assistant" means a person licensed as a physician assistant under chapter 18.57A or 18.71A RCW;

(41) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in

part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders;

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

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

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

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

(46) "Public agency" means any evaluation and treatment facility or institution, secure withdrawal management and stabilization facility, approved substance use disorder treatment program, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments;

(47) "Release" means legal termination of the commitment under the provisions of this chapter;

(48) "Resource management services" has the meaning given in chapter 71.24 RCW;

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

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

(a) Provide the following services:

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

(ii) Clinical stabilization services;

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

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

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

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

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

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

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

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

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

(56) "Triage facility" means a short-term facility or a portion of a facility licensed or certified by the department, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

(57) "Video," unless the context clearly indicates otherwise, means the delivery of behavioral health services through the use of interactive audio and video technology, permitting real-time communication between a person and a designated crisis responder, for the purpose of evaluation. "Video" does not include the use of audio-only telephone, facsimile, email, or store and forward technology. "Store and forward technology" means use of an asynchronous

transmission of a person's medical information from a mental health service provider to the designated crisis responder which results in medical diagnosis, consultation, or treatment;

(58) "Violent act" means behavior that resulted in homicide, attempted suicide, injury, or substantial loss or damage to property;

(59) "Written order of apprehension" means an order of the court for a peace officer to deliver the named person in the order to a facility or emergency room as determined by the designated crisis responder. Such orders shall be entered into the Washington crime information center database.

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

**Sec. 12.** RCW 71.05.020 and 2020 c 302 s 3, 2020 c 256 s 301, 2020 c 80 s 51, and 2020 c 5 s 1 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

(8) "Behavioral health service provider" means a public or private agency that provides mental health, substance use disorder, or co-occurring disorder services to persons with behavioral health disorders as defined under this section and receives funding from public sources. This includes, but is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this section, community mental health service delivery systems or community behavioral health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, approved substance use disorder treatment programs as defined in this section, secure withdrawal management and stabilization facilities as defined in this section, and correctional facilities operated by state and local governments;

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

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

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

(12) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose,

and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

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

(14) "Department" means the department of health;

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

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

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

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

(19) "Director" means the director of the authority;

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

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

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

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

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

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

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

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

(28) "In need of assisted outpatient behavioral health treatment" means that a person, as a result of a behavioral health disorder: (a) Has been committed by a court to detention for involuntary behavioral health treatment during the preceding thirty-six months; (b) is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative treatment, based on a history of nonadherence with treatment or in view of the person's current behavior; (c) is likely to benefit from less restrictive alternative treatment; and (d) requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time;

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

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

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

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

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

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

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

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

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

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

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

(33) "Less restrictive alternative treatment" means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585;

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

(35) "Likelihood of serious harm" means:

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

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

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

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

(38) "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

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

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

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

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

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

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

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

(46) "Public agency" means any evaluation and treatment facility or institution, secure withdrawal management and stabilization facility, approved substance use disorder treatment program, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments;

(47) "Release" means legal termination of the commitment under the provisions of this chapter;

(48) "Resource management services" has the meaning given in chapter 71.24 RCW;

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

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

(a) Provide the following services:

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

(ii) Clinical stabilization services;

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

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

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

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

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

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

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

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

(55) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for behavioral health disorders, which are maintained by the department of social and health services, the department, the authority, behavioral health administrative services organizations and their staffs, managed care organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department of social and health services, the department, the authority, behavioral health administrative services organizations, managed care organizations, or a treatment facility if

the notes or records are not available to others;

(56) "Triage facility" means a short-term facility or a portion of a facility licensed or certified by the department, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

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

(58) "Violent act" means behavior that resulted in homicide, attempted suicide, injury, or substantial loss or damage to property;

(59) "Written order of apprehension" means an order of the court for a peace officer to deliver the named person in the order to a facility or emergency room as determined by the designated crisis responder. Such orders shall be entered into the Washington crime information center database.

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

**Sec. 13.** RCW 71.05.020 and 2020 c 302 s 4, 2020 c 302 s 3, 2020 c 256 s 301, and 2020 c 5 s 1 are each reenacted and amended to read as follows:

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

(1) "Admission" or "admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a

person should be examined or treated as a patient in a hospital;

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

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

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

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

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

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

(8) "Behavioral health service provider" means a public or private agency that provides mental health, substance use disorder, or co-occurring disorder services to persons with behavioral health disorders as defined under this section and receives funding from public sources. This includes, but is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this section, community mental health service delivery systems or community behavioral health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, approved substance use disorder treatment programs as defined in this section, secure withdrawal management and stabilization facilities as defined in this section, and correctional



facilities operated by state and local governments;

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

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

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

(12) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

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

(14) "Department" means the department of health;

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

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

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

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

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

(19) "Director" means the director of the authority;

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

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

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

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

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

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

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

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

(28) "In need of assisted outpatient behavioral health treatment" means that a person, as a result of a behavioral health disorder: (a) Has been committed by a court to detention for involuntary behavioral health treatment during the preceding thirty-six months; (b) is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative treatment, based on a history of nonadherence with treatment or in view of the person's current behavior; (c) is likely to benefit from less restrictive alternative treatment; and (d) requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time;

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

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

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

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

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

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

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

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

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

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

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

(33) "Less restrictive alternative treatment" means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585;

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

(35) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as

evidenced by behavior which has caused harm, substantial pain, or which places another person or persons in reasonable fear of harm to themselves or others; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

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

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

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

(38) "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

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

(40) "Physician assistant" means a person licensed as a physician assistant under chapter 18.57A or 18.71A RCW;

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

(42) "Professional person" means a mental health professional, substance use disorder professional, or designated crisis responder and shall also mean a

physician, physician assistant, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

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

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

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

(46) "Public agency" means any evaluation and treatment facility or institution, secure withdrawal management and stabilization facility, approved substance use disorder treatment program, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments;

(47) "Release" means legal termination of the commitment under the provisions of this chapter;

(48) "Resource management services" has the meaning given in chapter 71.24 RCW;

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

(50) "Secure withdrawal management and stabilization facility" means a facility operated by either a public or private agency or by the program of an agency which provides care to voluntary individuals and individuals involuntarily detained and committed under this chapter for whom there is a likelihood of serious harm or who are gravely disabled due to the presence of

a substance use disorder. Secure withdrawal management and stabilization facilities must:

(a) Provide the following services:

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

(ii) Clinical stabilization services;

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

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

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

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

(51) "Severe deterioration from safe behavior" means that a person will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is associated with significant impairment of judgment, reason, or behavior;

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

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

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

(55) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders,

including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

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

(57) "Triage facility" means a short-term facility or a portion of a facility licensed or certified by the department, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

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

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

(60) "Written order of apprehension" means an order of the court for a peace officer to deliver the named person in the order to a facility or emergency room as determined by the designated crisis responder. Such orders shall be entered into the Washington crime information center database.

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

**Sec. 14.** RCW 71.05.020 and 2020 c 302 s 4, 2020 c 302 s 3, 2020 c 256 s 301, 2020 c 80 s 51, and 2020 c 5 s 1 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

(8) "Behavioral health service provider" means a public or private agency that provides mental health, substance use disorder, or co-occurring disorder services to persons with behavioral health disorders as defined under this section and receives funding from public sources. This includes, but is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this section, community mental health service delivery systems or community behavioral health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, approved substance use disorder treatment programs as defined in this section, secure withdrawal management and stabilization facilities as defined in this section, and correctional facilities operated by state and local governments;

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

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

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

(12) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

(13) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of

unconditional release from commitment from a facility providing involuntary care and treatment;

(14) "Department" means the department of health;

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

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

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

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

(19) "Director" means the director of the authority;

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

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

(22) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is licensed or certified as such by

the department. The authority may certify single beds as temporary evaluation and treatment beds under RCW 71.05.745. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department of social and health services or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

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

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

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

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

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

(28) "In need of assisted outpatient behavioral health treatment" means that a person, as a result of a behavioral health disorder: (a) Has been committed by a court to detention for involuntary

behavioral health treatment during the preceding thirty-six months; (b) is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative treatment, based on a history of nonadherence with treatment or in view of the person's current behavior; (c) is likely to benefit from less restrictive alternative treatment; and (d) requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time;

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

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

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

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

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

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

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

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

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

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

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

(33) "Less restrictive alternative treatment" means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585;

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

(35) "Likelihood of serious harm" means:

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

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

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

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

(38) "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

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

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

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

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

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

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

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

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

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

(47) "Release" means legal termination of the commitment under the provisions of this chapter;

(48) "Resource management services" has the meaning given in chapter 71.24 RCW;

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

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

(a) Provide the following services:

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

(ii) Clinical stabilization services;

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

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

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

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

(51) "Severe deterioration from safe behavior" means that a person will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is



associated with significant impairment of judgment, reason, or behavior;

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

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

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

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

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

(57) "Triage facility" means a short-term facility or a portion of a facility licensed or certified by the department, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

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

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

(60) "Written order of apprehension" means an order of the court for a peace officer to deliver the named person in the order to a facility or emergency room as determined by the designated crisis responder. Such orders shall be entered into the Washington crime information center database.

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

**Sec. 15.** RCW 71.05.740 and 2020 c 302 s 58 are each amended to read as follows:

(1) All behavioral health administrative services organizations in the state of Washington must forward historical behavioral health involuntary commitment information retained by the organization, including identifying information and dates of commitment to the authority. As soon as feasible, the behavioral health administrative services organizations must arrange to report new commitment data to the authority within twenty-four hours. Commitment information under this section does not need to be resent if it

is already in the possession of the authority. Behavioral health administrative services organizations and the authority shall be immune from liability related to the sharing of commitment information under this section.

(2) The clerk of the court must share hearing outcomes in all hearings under this chapter with the local behavioral health administrative services organization that serves the region where the superior court is located, including in cases in which the designated crisis responder investigation occurred outside the region. The hearing outcome data must include the name of the facility to which a person has been committed.

**Sec. 16.** RCW 71.24.035 and 2020 c 256 s 202 are each amended to read as follows:

(1) The authority is designated as the state behavioral health authority which includes recognition as the single state authority for substance use disorders and state mental health authority.

(2) The director shall provide for public, client, tribal, and licensed or certified behavioral health agency participation in developing the state behavioral health program, developing related contracts, and any waiver request to the federal government under medicaid.

(3) The director shall provide for participation in developing the state behavioral health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state behavioral health program.

(4) The authority shall be designated as the behavioral health administrative services organization for a regional service area if a behavioral health administrative services organization fails to meet the authority's contracting requirements or refuses to exercise the responsibilities under its contract or state law, until such time as a new behavioral health administrative services organization is designated.

(5) The director shall:

(a) Assure that any behavioral health administrative services organization, managed care organization, or community behavioral health program provides medically necessary services to medicaid

recipients consistent with the state's medicaid state plan or federal waiver authorities, and nonmedicaid services consistent with priorities established by the authority;

(b) Develop contracts in a manner to ensure an adequate network of inpatient services, evaluation and treatment services, and facilities under chapter 71.05 RCW to ensure access to treatment, resource management services, and community support services;

(c) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including managed care contracts for behavioral health services, contracts entered into under RCW 74.09.522, and contracts with public and private agencies, organizations, and individuals to pay them for behavioral health services;

(d) Define administrative costs and ensure that the behavioral health administrative services organization does not exceed an administrative cost of ten percent of available funds;

(e) Establish, to the extent possible, a standardized auditing procedure which is designed to assure compliance with contractual agreements authorized by this chapter and minimizes paperwork requirements. The audit procedure shall focus on the outcomes of service as provided in RCW 71.24.435, 70.320.020, and 71.36.025;

(f) Develop and maintain an information system to be used by the state and behavioral health administrative services organizations and managed care organizations that includes a tracking method which allows the authority to identify behavioral health clients' participation in any behavioral health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and chapter 70.02 RCW;

(g) Monitor and audit behavioral health administrative services organizations as needed to assure compliance with contractual agreements authorized by this chapter;

(h) Monitor and audit access to behavioral health services for

individuals eligible for medicaid who are not enrolled in a managed care organization;

(i) Adopt such rules as are necessary to implement the authority's responsibilities under this chapter;

(j) Administer or supervise the administration of the provisions relating to persons with substance use disorders and intoxicated persons of any state plan submitted for federal funding pursuant to federal health, welfare, or treatment legislation;

(k) Require the behavioral health administrative services organizations and the managed care organizations to develop agreements with tribal, city, and county jails and the department of corrections to accept referrals for enrollment on behalf of a confined person, prior to the person's release;

(l) Require behavioral health administrative services organizations and managed care organizations, as applicable, to provide services as identified in RCW 71.05.585 to individuals committed for involuntary commitment under less restrictive alternative court orders when:

(i) The individual is enrolled in the medicaid program; or

(ii) The individual is not enrolled in medicaid ~~((7))~~ and does not have other insurance which can pay for the services ~~((, and the behavioral health administrative services organization has adequate available resources to provide the services))~~; and

(m) Coordinate with the centers for medicare and medicaid services to provide that behavioral health aide services are eligible for federal funding of up to one hundred percent.

(6) The director shall use available resources only for behavioral health administrative services organizations and managed care organizations, except:

(a) To the extent authorized, and in accordance with any priorities or conditions specified, in the biennial appropriations act; or

(b) To incentivize improved performance with respect to the client outcomes established in RCW 71.24.435, 70.320.020, and 71.36.025, integration of behavioral health and medical services at the clinical level, and improved care

coordination for individuals with complex care needs.

(7) Each behavioral health administrative services organization, managed care organization, and licensed or certified behavioral health agency shall file with the secretary of the department of health or the director, on request, such data, statistics, schedules, and information as the secretary of the department of health or the director reasonably requires. A behavioral health administrative services organization, managed care organization, or licensed or certified behavioral health agency which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may be subject to the contractual remedies in RCW 74.09.871 or may have its service provider certification or license revoked or suspended.

(8) The superior court may restrain any behavioral health administrative services organization, managed care organization, or service provider from operating without a contract, certification, or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(9) Upon petition by the secretary of the department of health or the director, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary of the department of health or the director authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any behavioral health administrative services organization, managed care organization, or service provider refusing to consent to inspection or examination by the authority.

(10) Notwithstanding the existence or pursuit of any other remedy, the secretary of the department of health or the director may file an action for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a behavioral health

administrative services organization, managed care organization, or service provider without a contract, certification, or a license under this chapter.

(11) The authority shall distribute appropriated state and federal funds in accordance with any priorities, terms, or conditions specified in the appropriations act.

(12) The authority, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by freestanding evaluation and treatment facilities licensed under chapter 71.12 RCW or certified under chapter 71.05 RCW. The authority shall periodically share the results of its efforts with the appropriate committees of the senate and the house of representatives.

(13) The authority may:

(a) Plan, establish, and maintain substance use disorder prevention and substance use disorder treatment programs as necessary or desirable;

(b) Coordinate its activities and cooperate with behavioral programs in this and other states, and make contracts and other joint or cooperative arrangements with state, tribal, local, or private agencies in this and other states for behavioral health services and for the common advancement of substance use disorder programs;

(c) Solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services, or property from the federal government, the state, or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grant;

(d) Keep records and engage in research and the gathering of relevant statistics; and

(e) Acquire, hold, or dispose of real property or any interest therein, and construct, lease, or otherwise provide substance use disorder treatment programs.

**Sec. 17.** RCW 71.24.045 and 2019 c 325 s 1008 are each amended to read as follows:

(1) The behavioral health administrative services organization contracted with the authority pursuant to RCW 71.24.381 shall:

(a) Administer crisis services for the assigned regional service area. Such services must include:

(i) A behavioral health crisis hotline for its assigned regional service area;

(ii) Crisis response services twenty-four hours a day, seven days a week, three hundred sixty-five days a year;

(iii) Services related to involuntary commitments under chapters 71.05 and 71.34 RCW;

(iv) Tracking of less restrictive alternative orders issued within the region by superior courts, and providing notification to a managed care organization in the region when one of its enrollees receives a less restrictive alternative order so that the managed care organization may ensure that the person is connected to services and that the requirements of RCW 71.05.585 are complied with. If the person receives a less restrictive alternative order and is returning to another region, the behavioral health administrative services organization shall notify the behavioral health administrative services organization in the home region of the less restrictive alternative order so that the home behavioral health administrative services organization may notify the person's managed care organization or provide services if the person is not enrolled in medicaid and does not have other insurance which can pay for those services.

(v) Additional noncrisis behavioral health services, within available resources, to individuals who meet certain criteria set by the authority in its contracts with the behavioral health administrative services organization. These services may include services provided through federal grant funds, provisos, and general fund state appropriations;

~~((+v))~~ (vi) Care coordination, diversion services, and discharge planning for nonmedicaid individuals transitioning from state hospitals or inpatient settings to reduce

rehospitalization and utilization of crisis services, as required by the authority in contract; and

~~((vi))~~ (vii) Regional coordination, cross-system and cross-jurisdiction coordination with tribal governments, and capacity building efforts, such as supporting the behavioral health advisory board, the behavioral health ombuds, and efforts to support access to services or to improve the behavioral health system;

(b) Administer and provide for the availability of an adequate network of evaluation and treatment services to ensure access to treatment, investigation, transportation, court-related, and other services provided as required under chapter 71.05 RCW;

(c) Coordinate services for individuals under RCW 71.05.365;

(d) Administer and provide for the availability of resource management services, residential services, and community support services as required under its contract with the authority;

(e) Contract with a sufficient number, as determined by the authority, of licensed or certified providers for crisis services and other behavioral health services required by the authority;

(f) Maintain adequate reserves or secure a bond as required by its contract with the authority;

(g) Establish and maintain quality assurance processes;

(h) Meet established limitations on administrative costs for agencies that contract with the behavioral health administrative services organization; and

(i) Maintain patient tracking information as required by the authority.

(2) The behavioral health administrative services organization must collaborate with the authority and its contracted managed care organizations to develop and implement strategies to coordinate care with tribes and community behavioral health providers for individuals with a history of frequent crisis system utilization.

(3) The behavioral health administrative services organization shall:

(a) Assure that the special needs of minorities, older adults, individuals with disabilities, children, and low-income persons are met;

(b) Collaborate with local government entities to ensure that policies do not result in an adverse shift of persons with mental illness into state and local correctional facilities; and

(c) Work with the authority to expedite the enrollment or reenrollment of eligible persons leaving state or local correctional facilities and institutions for mental diseases.

**NEW SECTION. Sec. 18.** A new section is added to chapter 71.24 RCW to read as follows:

The authority shall coordinate with the department of social and health services to offer contracts to community behavioral health agencies to support the nonmedicaid costs entailed in fulfilling the agencies' role as transition team members for a person recommended for conditional release to a less restrictive alternative under RCW 10.77.150, or for a person who qualifies for multidisciplinary transition team services under RCW 71.05.320(6)(a)(i). The authority may establish requirements, provide technical assistance, and provide training as appropriate and within available funding.

**NEW SECTION. Sec. 19.** The Washington state health care authority shall revise its behavioral health data system for tracking involuntary commitment orders to distinguish less restrictive alternative orders from other types of involuntary commitment orders, including being able to distinguish between initial orders and extensions.

**NEW SECTION. Sec. 20.** The provisions of this act apply to persons who are committed for inpatient treatment under chapter 10.77 or 71.05 RCW as of the effective date of this section.

**Sec. 21.** 2020 c 302 s 110 (uncodified) is amended to read as follows:

(1) Sections 4 and 28 (~~of this act~~), chapter 302, Laws of 2020 and sections 13 and 14 of this act take effect when monthly single-bed certifications authorized under RCW 71.05.745 fall below 200 reports for 3 consecutive months.

(2) The health care authority must provide written notice of the effective

date of sections 4 and 28 (~~of this act~~), chapter 302, Laws of 2020 and sections 13 and 14 of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the authority.

NEW SECTION. **Sec. 22.** Section 2 of this act expires July 1, 2026.

NEW SECTION. **Sec. 23.** Section 3 of this act takes effect July 1, 2026.

NEW SECTION. **Sec. 24.** Sections 11 and 13 of this act expire July 1, 2022.

NEW SECTION. **Sec. 25.** Sections 12 and 14 of this act take effect July 1, 2022."

Correct the title.

Signed by Representatives Hansen, Chair; Simmons, Vice Chair; Davis; Entenman; Goodman; Kirby; Orwall; Peterson; Thai; Valdez and Walen.

MINORITY recommendation: Without recommendation. Signed by Representatives Abbarno; Klippert and Ybarra.

MINORITY recommendation: Do not pass. Signed by Representatives Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member Graham, Assistant Ranking Minority Member.

Referred to Committee on Appropriations.

March 26, 2021

SSB 5073 Prime Sponsor, Committee on Behavioral Health Subcommittee to Health & Long Term Care: Concerning involuntary commitment. Reported by Committee on Civil Rights & Judiciary

MAJORITY recommendation: Do pass. Signed by Representatives Hansen, Chair; Simmons, Vice Chair; Gilday, Assistant Ranking Minority Member; Abbarno; Davis; Entenman; Goodman; Kirby; Orwall; Peterson; Thai; Valdez; Walen and Ybarra.

MINORITY recommendation: Do not pass. Signed by Representative Klippert.

MINORITY recommendation: Without recommendation. Signed by Representatives Walsh, Ranking Minority Member Graham, Assistant Ranking Minority Member.

Referred to Committee on Appropriations.

March 25, 2021

ESSB 5121 Prime Sponsor, Committee on Human Services, Reentry & Rehabilitation: Expanding eligibility for the graduated reentry program. Reported by Committee on Public Safety

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9.94A.733 and 2018 c 166 s 1 are each amended to read as follows:

(1) (~~No more than the final six months of the offender's term of confinement may be served in partial confinement as home detention as part of the graduated reentry program developed by the department. However, an offender may not participate in the graduated reentry program under this section unless he or she has served at least twelve months in total confinement in a state correctional facility.~~) (a) Except as provided in (b) of this subsection, an offender may not participate in the graduated reentry program under this subsection unless he or she has served at least six months in total confinement in a state correctional facility.

(i) An offender subject to (a) of this subsection may serve no more than the final five months of the offender's term of confinement in partial confinement as home detention as part of the graduated reentry program developed by the department.

(ii) Home detention under (a) of this subsection may not be imposed for individuals subject to a deportation order, civil commitment, or the interstate compact for adult offender supervision under RCW 9.94A.745.

(b) For offenders who meet the requirements of (b)(iii) of this subsection, an offender may not participate in the graduated reentry program unless he or she has served at least four months in total confinement in a state correctional facility.

(i) An offender under this subsection (1)(b) may serve no more than the final 18 months of the offender's term of confinement in partial confinement as home detention as part of the graduated reentry program developed by the department.

(ii) Home detention under this subsection (1)(b) may not be imposed for

individuals subject to a deportation order or subject to the jurisdiction of the indeterminate sentence review board.

(iii) Home detention under this subsection (1)(b) may not be imposed for offenders currently serving a term of confinement for the following offenses:

(A) Any sex offense;

(B) Any violent offense; or

(C) Any crime against a person offense in accordance with the categorization of crimes against persons outlined in RCW 9.94A.411(2).

(2) The secretary of the department may transfer an offender from a department correctional facility to home detention in the community if it is determined that the graduated reentry program is an appropriate placement and must assist the offender's transition from confinement to the community.

(3) The department and its officers, agents, and employees are not liable for the acts of offenders participating in the graduated reentry program unless the department or its officers, agents, and employees acted with willful and wanton disregard.

(4) All offenders placed on home detention as part of the graduated reentry program must provide an approved residence and living arrangement prior to transfer to home detention.

(5) While in the community on home detention as part of the graduated reentry program, the department must:

(a) Require the offender to be placed on electronic home monitoring;

(b) Require the offender to participate in programming and treatment that the department shall assign based on an offender's assessed need; and

(c) Assign a community corrections officer who will monitor the offender's compliance with conditions of partial confinement and programming requirements.

(6) The department retains the authority to return any offender serving partial confinement in the graduated reentry program to total confinement for any reason including, but not limited to, the offender's noncompliance with any sentence requirement.

(7) The department may issue rental vouchers for a period not to exceed six months for those transferring to partial confinement under this section if an approved address cannot be obtained without the assistance of a voucher.

(8) In the selection of offenders to participate in the graduated reentry program, and in setting, modifying, and enforcing the requirements of the graduated (~~release~~ ~~[reentry]~~) reentry program, the department is deemed to be performing a quasi-judicial function.

(9) The department shall publish a monthly report on its website with the number of offenders who were transferred during the month to home detention as part of the graduated reentry program. The department shall submit an annual report by December 1st to the appropriate committees of the legislature with the number of offenders who were transferred to home detention as part of the graduated reentry program during the prior year.

**Sec. 2.** RCW 9.94A.728 and 2018 c 166 s 2 are each amended to read as follows:

(1) No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(a) An offender may earn early release time as authorized by RCW 9.94A.729;

(b) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(c) (i) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(A) The offender has a medical condition that is serious and is expected to require costly care or treatment;

(B) The offender poses a low risk to the community because he or she is currently physically incapacitated due to age or the medical condition or is expected to be so at the time of release; and

(C) It is expected that granting the extraordinary medical placement will result in a cost savings to the state.

(ii) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(iii) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care, in which case, an alternative type of monitoring shall be utilized. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(iv) The secretary may revoke an extraordinary medical placement under this subsection (1)(c) at any time.

(v) Persistent offenders are not eligible for extraordinary medical placement;

(d) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(e) No more than the final twelve months of the offender's term of confinement may be served in partial confinement for aiding the offender with: Finding work as part of the work release program under chapter 72.65 RCW; or reestablishing himself or herself in the community as part of the parenting program in RCW 9.94A.6551. This is in addition to that period of earned early release time that may be exchanged for partial confinement pursuant to RCW 9.94A.729(5)(d);

(f) ~~((No more than the final six months))~~ (i) No more than the final five months of the offender's term of confinement may be served in partial confinement as home detention as part of the graduated reentry program developed by the department under RCW 9.94A.733(1)(a);

(ii) For eligible offenders under RCW 9.94A.733(1)(b), after serving at least four months in total confinement in a

state correctional facility, an offender may serve no more than the final 18 months of the offender's term of confinement in partial confinement as home detention as part of the graduated reentry program developed by the department;

(g) The governor may pardon any offender;

(h) The department may release an offender from confinement any time within ten days before a release date calculated under this section;

(i) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870;

(j) Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540; and

(k) Any person convicted of one or more crimes committed prior to the person's eighteenth birthday may be released from confinement pursuant to RCW 9.94A.730.

(2) Offenders residing in a juvenile correctional facility placement pursuant to RCW 72.01.410(1)(a) are not subject to the limitations in this section.

**NEW SECTION. Sec. 3.** The changes to restrictions on partial confinement and the graduated reentry program under sections 1 and 2 of this act apply prospectively and retroactively to persons currently serving a sentence in any facility or institution either operated by the state or utilized under contract."

Correct the title.

Signed by Representatives Goodman, Chair; Johnson, J., Vice Chair; Davis; Hackney; Lovick; Orwall; Ramos and Simmons.

MINORITY recommendation: Do not pass. Signed by Representatives Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member and Graham.



MINORITY recommendation: Without recommendation. Signed by Representatives Griffey and Young.

Referred to Committee on Appropriations.

March 26, 2021

ESB 5135 Prime Sponsor, Senator Das: Concerning unlawfully summoning a police officer. Reported by Committee on Civil Rights & Judiciary

MAJORITY recommendation: Do pass. Signed by Representatives Hansen, Chair; Simmons, Vice Chair; Davis; Entenman; Goodman; Kirby; Orwall; Peterson; Thai; Valdez and Walen.

MINORITY recommendation: Do not pass. Signed by Representatives Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno; Klippert and Ybarra.

Referred to Committee on Rules for second reading.

March 25, 2021

E2SSB 5141 Prime Sponsor, Committee on Ways & Means: Reducing environmental and health disparities and improving the health of all Washington state residents by implementing the recommendations of the environmental justice task force. Reported by Committee on Environment & Energy

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The purpose of this chapter is to reduce environmental and health disparities in Washington state and improve the health of all Washington state residents. This chapter implements the recommendations of the environmental justice task force established in section 221(48), chapter 415, Laws of 2019 entitled "Report to the Washington state governor and legislature, *Environmental Justice Task Force: Recommendations for Prioritizing EJ in Washington State Government* (October 2020)."

(2) As conveyed in the task force report, Washington state studies and national studies found that people of color and low-income people continue to be disproportionately exposed to environmental harms in their communities. As a result, there is a

higher risk of adverse health outcomes for those communities. This risk is amplified when overlaid on communities with preexisting social and economic barriers and environmental risks, and creates cumulative environmental health impacts, which this act seeks to prevent and mitigate.

This chapter also seeks to reduce exposure to environmental hazards within Indian country, as defined in 18 U.S.C. Sec. 1151, due to off-reservation activities within the state, and to improve state practices to reduce contamination of traditional foods wherever they occur. Exposure to such hazards can result in generational health and ecological problems, particularly on small reservations where it is impossible to move away from a hazard.

(3) Accordingly, the state has a compelling interest in preventing and addressing such environmental health disparities in the administration of ongoing and new environmental programs, including allocation of funds, and in administering these programs so as to remedy the effects of past disparate treatment of overburdened communities and vulnerable populations.

(4) The task force provided recommendations to state agencies for measurable goals and model policies to reduce environmental health inequities in Washington, equitable practices for meaningful community involvement, and how to use the environmental health disparities map to identify and promote the equitable distribution of environmental benefits to overburdened communities. In order for all communities in Washington state to be healthy and thriving, state government should aim to concentrate government actions to benefit communities that currently have the greatest environmental and health burdens.

NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Council" means the environmental justice council established in section 20 of this act.

(2) "Covered agency" means the departments of ecology, health, natural resources, commerce, agriculture, and transportation, the Puget Sound partnership, and any agency that opts to

assume all of the obligations of this act pursuant to section 11 of this act.

(3) "Cumulative environmental health impact" means the combined, multiple environmental impacts and health impacts on a vulnerable population or overburdened community.

(4) "Environmental benefits" means activities that:

(a) Prevent or reduce existing environmental harms or associated risks that contribute significantly to cumulative environmental health impacts;

(b) Prevent or mitigate impacts to overburdened communities or vulnerable populations from, or support community response to, the impacts of environmental harm; or

(c) Meet a community need identified by an overburdened community or vulnerable population that is consistent with the intent of this chapter.

(5) "Environmental harm" means the individual or cumulative environmental health impacts and risks to communities caused by historic, current, and projected:

(a) Exposure to pollution, conventional or toxic pollutants, environmental hazards, or other contamination in the air, water, and land;

(b) Adverse environmental effects, including exposure to contamination, hazardous substances, or pollution that increase the risk of adverse environmental health outcomes or create vulnerabilities to the impacts of climate change;

(c) Loss or impairment of ecosystem functions or traditional food resources and loss of access to gather cultural resources or harvest traditional foods; and

(d) Health and economic impacts from climate change.

(6) "Environmental health disparities map" means the data and information developed pursuant to section 19 of this act.

(7) "Environmental impacts" means environmental benefits or environmental harms, or the combination of environmental benefits and harms, resulting or expected to result from a proposed action.

(8) "Environmental justice" means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, rules, and policies. Environmental justice includes addressing disproportionate environmental and health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities, equitably distributing resources and benefits, and eliminating harm.

(9) "Equitable distribution" means a fair and just, but not necessarily equal, allocation intended to mitigate disparities in benefits and burdens, and based on current conditions, including existing legacy and cumulative impacts, that are informed by cumulative environmental health impact analysis.

(10) "Overburdened community" means a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts, and includes, but is not limited to, highly impacted communities as defined in RCW 19.405.020.

(11) "Significant agency action" means:

(a) The process of developing and adopting significant legislative rules as defined in RCW 34.05.328;

(b) The development and adoption of any covered agency new grant or loan program;

(c) The allocation of more than \$25,000,000 in a single funding round through a grant or loan program administered by a covered agency;

(d) Major capital and transportation projects of at least \$5,000,000;

(e) The development of agency request legislation; and

(f) Any other agency actions deemed significant by a covered agency consistent with section 14 of this act.

(12) "Tribal lands" has the same meaning as "Indian country" as provided in 18 U.S.C. Sec. 1151, and also includes sacred sites, traditional cultural properties, burial grounds, and other tribal sites protected by federal or state law.

(13) (a) "Vulnerable populations" means population groups that are more likely to be at higher risk for poor health outcomes in response to environmental harms, due to: (i) Adverse socioeconomic factors, such as unemployment, high housing and transportation costs relative to income, limited access to nutritious food and adequate health care, linguistic isolation, and other factors that negatively affect health outcomes and increase vulnerability to the effects of environmental harms; and (ii) sensitivity factors, such as low birth weight and higher rates of hospitalization.

(b) "Vulnerable populations" includes, but is not limited to:

- (i) Racial or ethnic minorities;
- (ii) Low-income populations;
- (iii) Populations disproportionately impacted by environmental harms; and
- (iv) Populations of workers experiencing environmental harms.

**NEW SECTION. Sec. 3.** ENVIRONMENTAL JUSTICE OBLIGATIONS FOR ALL AGENCIES. Covered agencies are required to comply with all provisions of this chapter. All other state agencies should strive to apply the laws of the state of Washington, and the rules and policies of the agency, in accordance with the policies of this chapter including, to the extent feasible, incorporating the principles of environmental justice assessment processes set forth in section 14 of this act into agency decisions.

**NEW SECTION. Sec. 4.** A new section is added to chapter 43.70 RCW to read as follows:

ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF HEALTH.

The department must apply and comply with the substantive and procedural requirements of chapter 70A.--- RCW (the new chapter created in section 24 of this act).

**NEW SECTION. Sec. 5.** A new section is added to chapter 43.21A RCW to read as follows:

ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF ECOLOGY.

The department must apply and comply with the substantive and procedural requirements of chapter 70A.--- RCW (the

new chapter created in section 24 of this act).

**NEW SECTION. Sec. 6.** A new section is added to chapter 43.23 RCW to read as follows:

ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF AGRICULTURE.

The department must apply and comply with the substantive and procedural requirements of chapter 70A.--- RCW (the new chapter created in section 24 of this act).

**NEW SECTION. Sec. 7.** A new section is added to chapter 43.30 RCW to read as follows:

ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF NATURAL RESOURCES.

The department must apply and comply with the substantive and procedural requirements of chapter 70A.--- RCW (the new chapter created in section 24 of this act).

**NEW SECTION. Sec. 8.** A new section is added to chapter 43.31 RCW to read as follows:

ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF COMMERCE.

The department must apply and comply with the substantive and procedural requirements of chapter 70A.--- RCW (the new chapter created in section 24 of this act).

**NEW SECTION. Sec. 9.** A new section is added to chapter 47.01 RCW to read as follows:

ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF TRANSPORTATION.

The department must apply and comply with the substantive and procedural requirements of chapter 70A.--- RCW (the new chapter created in section 24 of this act).

**NEW SECTION. Sec. 10.** A new section is added to chapter 90.71 RCW to read as follows:

ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE PUGET SOUND PARTNERSHIP.

The partnership must apply and comply with the substantive and procedural requirements of chapter 70A.--- RCW (the new chapter created in section 24 of this act).

**NEW SECTION. Sec. 11.** AUTHORITY OF OTHER AGENCIES TO OPT IN TO ENVIRONMENTAL

JUSTICE OBLIGATIONS. (1) Any state agency, as the term "agency" is defined in RCW 34.05.010, including the governor's office and the office of the attorney general but excluding local governmental entities, may opt in to assume all of the substantive and procedural requirements of covered agencies under chapter 70A.--- RCW (the new chapter created in section 24 of this act) at any time by notifying the council established in section 20 of this act.

(2) An agency that opts in to assume all of the substantive and procedural requirements of chapter 70A.--- RCW (the new chapter created in section 24 of this act) is not subject to the deadlines or timelines established in sections 12, 13, 14, 16, and 20 of this act.

**NEW SECTION. Sec. 12. INCORPORATING ENVIRONMENTAL JUSTICE INTO AGENCY STRATEGIC PLANS.** (1) By January 1, 2023, each covered agency shall include an environmental justice implementation plan within its strategic plan. A covered agency may additionally incorporate an environmental justice implementation plan into other significant agency planning documents. The plan must describe how the covered agency plans to apply the principles of environmental justice to the agency's activities and guide the agency in its implementation of its obligations under this chapter.

(2) In its environmental justice implementation plan, each covered agency must include:

(a) Agency-specific goals and deliverables to reduce environmental and health disparities and for otherwise achieving environmental justice in the agency's programs;

(b) Metrics to track and measure accomplishments of the agency goals and deliverables;

(c) Methods to embed equitable community engagement with, and equitable participation from, members of the public, into agency practices for soliciting and receiving public comment;

(d) Strategies to ensure compliance with existing federal and state laws and policies relating to environmental justice, including Title VI of the civil rights act of 1964, 42 U.S.C. Sec. 2000d-2000d-4, Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681-1683, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Sec. 794, and the

age discrimination act of 1975, 42 U.S.C. Sec. 6101-6107;

(e) The plan for community engagement required under section 13 of this act; and

(f) Specific plans and timelines for incorporating environmental justice considerations into agency activities as required under this chapter.

(3) In developing and updating its plan, each covered agency must consider any guidance developed by the council pursuant to section 20 of this act.

**NEW SECTION. Sec. 13. EQUITABLE COMMUNITY ENGAGEMENT AND PUBLIC PARTICIPATION.** (1) By July 1, 2022, each covered agency must create and adopt a community engagement plan that describes how it will engage with overburdened communities and vulnerable populations as it evaluates new and existing activities and programs. This plan must describe how the agency plans to facilitate equitable participation and support meaningful and direct involvement of vulnerable populations and overburdened communities. The plan must include:

(a) How the covered agency will identify and prioritize overburdened communities for purposes of this chapter;

(b) Best practices for outreach and communication to overcome barriers to engagement with overburdened communities and vulnerable populations;

(c) Use of special screening tools that integrate environmental, demographic, and health disparities data, such as the environmental health disparities map, to evaluate and understand the nature and needs of the people who the agency expects to be impacted by significant agency actions under section 14 of this act and processes under section 16 of this act to overcome barriers to participation;

(d) Processes that facilitate and support the inclusion of members of communities affected by agency decision making including, to the extent legal and practicable, but not limited to, child care, and reimbursement for travel and other expenses; and

(e) Methods for outreach and communication with those who face barriers, language or otherwise, to participation.

(2) Covered agencies must regularly review their compliance with existing laws and policies that guide community engagement and must comply with the following:

(a) Title VI of the civil rights act, prohibiting discrimination based on race, color, or national origin and requiring meaningful access to people with limited English proficiency, and disability;

(b) Executive Order 05-03, requiring plain talk when communicating with the public; and

(c) Guidance related to Executive Order 13166, requiring meaningful access to agency programs and services for people with limited English proficiency.

(3) In developing and updating its plan, each covered agency must consider any guidance developed by the council pursuant to section 20 of this act.

(4) A covered agency may coordinate with the office of equity to identify policy and system barriers to meaningful engagement with communities as conducted by the office under RCW 43.06D.040(1)(b).

**NEW SECTION. Sec. 14. ENVIRONMENTAL JUSTICE ASSESSMENT.** (1) When considering a significant agency action initiated after July 1, 2023, a covered agency must conduct an environmental justice assessment in accordance with this section to inform and support the agency's consideration of overburdened communities and vulnerable populations when making decisions and to assist the agency with the equitable distribution of environmental benefits, the reduction of environmental harms, and the identification and reduction of environmental and health disparities.

(2)(a) Consistent with section 2(11)(f) of this act, for the purpose of preparing environmental justice assessments, a covered agency may deem actions significant that are additional to the significant agency actions identified in section 2(11)(a) through (e) of this act, in iterative consultation with the council and interagency work group established under section 20 of this act. By July 1, 2025, each covered agency must consider their agency's activities and identify and begin applying environmental justice assessments to any actions that the agency identifies as significant that are in addition to the significant agency

actions identified in section 2(11)(a) through (e) of this act. Significant agency actions designated by a covered agency under this subsection must be actions that may cause environmental harm or may affect the equitable distribution of environmental benefits to an overburdened community or a vulnerable population.

(b) In the identification of significant agency actions, covered agencies shall consider guidance issued by the council established in section 20 of this act. Each covered agency must periodically review and update its identified types of significant agency actions for which an environmental justice assessment is required under this section, and the relevant factors to the agency's environmental justice assessments that result from the unique mission, authorities, and priorities of the agency.

(3) By July 1, 2023, and periodically thereafter, after an opportunity for public comment on its determinations, each covered agency must:

(a) Publish on its website the types of agency actions that the agency has determined are significant agency actions that require an environmental justice assessment under this section, including any significant agency actions identified under subsection (2)(a) of this section;

(b) Provide notification of the determination of the types of significant agency actions in the Washington State Register; and

(c) Prepare an environmental justice assessment when considering a listed action, after publication of the list of any additional significant agency actions identified under (a) of this subsection.

(4) At a minimum, environmental justice assessments must:

(a) Consider guidance prepared by the council under section 20 of this act relating to best practices on environmental justice assessments and when and how to use cumulative environmental health impact analysis;

(b) Use cumulative environmental health impact analysis, such as the environmental health disparities map or other data that considers the effects of

a proposed action on overburdened communities and vulnerable populations;

(c) Identify overburdened communities and vulnerable populations who are expected to be affected by the proposed action and the potential environmental and health impacts;

(d) Identify if the proposed action is expected to have any local or regional impacts to federally reserved tribal rights and resources including, but not limited to, those protected by treaty, executive order, or federal law;

(e) Summarize community input and describe how the covered agency can further involve overburdened communities, vulnerable populations, affected tribes, and indigenous populations in development of the proposed action; and

(f) Describe options and, where practicable, related cost projections for the agency to reduce, mitigate, or eliminate identified probable impacts on overburdened communities and vulnerable populations, or provide a justification for not reducing, mitigating, or eliminating identified probable impacts.

(5) To obtain information for the purposes of assessments, a covered agency must solicit feedback from members of overburdened communities and vulnerable populations to assist in the accurate assessment of the potential impact of the action and in developing the means to reduce or eliminate the impact on overburdened communities and vulnerable populations.

(6) Based on the environmental justice assessment, each covered agency must seek, to the extent legal and feasible and consistent with the underlying statute being implemented, to reduce or eliminate the environmental harms and maximize the environmental benefits created by the significant agency action on overburdened communities and vulnerable populations. Consistent with agency authority, mission, and statutory responsibilities, the covered agency must consider each of the following methods for reducing environmental harms or equitably distributing environmental benefits:

(a) Eliminating the disparate impact of environmental harms on overburdened communities and vulnerable populations;

(b) Reducing cumulative environmental health impacts on overburdened communities or vulnerable populations;

(c) Preventing the action from adding to the cumulative environmental health impacts on overburdened communities or vulnerable populations;

(d) Providing equitable participation and meaningful engagement of vulnerable populations and overburdened communities in the development of the significant agency action;

(e) Prioritizing equitable distribution of resources and benefits to overburdened communities;

(f) Promoting positive workforce and job outcomes for overburdened communities;

(g) Meeting community needs identified by the affected overburdened community;

(h) Modifying substantive regulatory or policy requirements; and

(i) Any other mitigation techniques, including those suggested by the council, the office of equity, or representatives of overburdened communities and vulnerable populations.

(7) If the covered agency determines it does not have the ability or authority to avoid or reduce any estimated environmental harm of the significant agency action on overburdened communities and vulnerable populations or address the distribution of environmental and health benefits, the agency must provide a clear explanation of why it has made that determination and provide notice of that explanation to members of the public who participated in the environmental justice assessment process for the significant agency action and who provided contact information to the agency.

(8) In developing a process for conducting environmental justice assessments, each covered agency must consider any guidance developed by the council pursuant to section 20 of this act.

(9) The issuance of forest practices permits under chapter 76.09 RCW or sale of timber from state lands and state forestlands as defined in RCW 79.02.010 do not require an environmental justice assessment under this section.

NEW SECTION. **Sec. 15.** The obligation of a covered agency to conduct an

environmental justice assessment pursuant to section 14 of this act for significant agency actions does not, by itself, trigger requirements in chapter 43.21C RCW.

**NEW SECTION. Sec. 16. ENVIRONMENTAL JUSTICE OBLIGATIONS OF AGENCIES RELATING TO BUDGETS AND FUNDING.** (1) With consideration of the guidelines issued by the council in section 20 of this act, and in iterative consultation with the council, each covered agency must incorporate environmental justice principles into its decision processes for budget development, making expenditures, and granting or withholding benefits. Through the incorporation of environmental justice principles into its decision processes, including by conducting environmental justice assessments where required under section 14 of this act, each covered agency, to the extent allowed by law and consistent with legislative appropriations, must equitably distribute funding and expenditures towards overburdened communities and vulnerable populations.

(2) Beginning on or before July 1, 2023, each covered agency must, where practicable, take the following actions when making expenditure decisions or developing budget requests to the office of financial management and the legislature:

(a) Focus applicable expenditures on creating environmental benefits, including reducing or eliminating environmental harms, creating community and population resilience, and improving the quality of life of overburdened communities and vulnerable populations;

(b) Create opportunities for overburdened communities and vulnerable populations to meaningfully participate in agency expenditure decisions;

(c) Clearly articulate environmental justice goals and assessment metrics to communicate the basis for agency expenditures;

(d) Consider a broad scope of grants and contracting opportunities that effectuate environmental justice principles, including:

(i) Community grants to monitor pollution;

(ii) Grants focused on building capacity and providing training for community scientists and other staff;

(iii) Making technical assistance available for communities that may be new to receiving agency grant funding; and

(iv) Education and work readiness youth programs focused on infrastructure or utility-related internships to develop career paths and leadership skills for youth; and

(e) Establish a goal of directing 40 percent of grants and expenditures that create environmental benefits to vulnerable populations and overburdened communities.

(3) A covered agency may adopt rules for criteria and procedures applicable to incorporating environmental justice principles in expenditure decisions under this section.

(4) In incorporating environmental justice principles into its decision processes for budget development, making expenditures, and granting or withholding benefits, each covered agency must consider any guidance developed by the council pursuant to section 20 of this act.

(5) A covered agency may not take actions or make expenditures under this section that are inconsistent with or conflict with other statutes or with conditions or limitations on the agency's appropriations.

**NEW SECTION. Sec. 17. REPORTING REQUIREMENTS.** (1) By September 1st of each year, each covered agency must annually update the council on the development and implementation of environmental justice in agency strategic plans pursuant to section 12 of this act, budgeting and funding criteria for making budgeting and funding decisions pursuant to section 16 of this act, and community engagement plans pursuant to section 13 of this act.

(2)(a) Beginning in 2024, as part of each covered agency's annual update to the council under subsection (1) of this section, each covered agency must include updates on the agency's implementation status with respect to the environmental justice assessments under section 14 of this act.

(b) By September 1st of each year beginning in 2024, each covered agency must publish or update a dashboard

report, in a uniform dashboard format on the office of financial management's website, describing the agency's progress on:

- (i) Environmental justice in its strategic plan;
- (ii) The obligations of agencies relating to budgets and funding under section 16 of this act; and
- (iii) Its environmental justice assessments of proposed significant agency actions.

**NEW SECTION. Sec. 18. TRIBAL CONSULTATION.** (1) Covered agencies must offer consultation with federally recognized Indian tribes on decisions that affect federally recognized Indian tribes' rights and interests in their tribal lands. The consultation must occur in accordance with chapter 43.376 RCW and must be independent of any public participation process required by state law, or by a state agency, and regardless of whether the agency receives a request for consultation from an Indian tribe. Covered agencies collaboration should include protocols for communication and development of best practices in consultation.

(2) Nothing in this chapter is intended to direct, authorize, or encourage covered agencies to collect, maintain, or provide data related to sacred sites, traditional cultural properties, burial grounds, and other tribal sites protected by federal or state law.

**NEW SECTION. Sec. 19.** A new section is added to chapter 43.70 RCW to read as follows:

**ENVIRONMENTAL HEALTH DISPARITIES MAP.**

(1) In consultation with the environmental justice council established in section 20 of this act, the department must continue to develop and maintain an environmental health disparities map with the most current available information necessary to identify cumulative environmental health impacts and overburdened communities. The department may also consult with other interested partners, such as the University of Washington department of environmental and occupational health sciences, other academic partners, members of overburdened communities and vulnerable populations, and other

agencies. The environmental health disparities map must include tools to:

(a) Track changes in environmental health disparities over time in an interactive, regularly updated display; and

(b) Measure the link between overall environmental health disparity map ranks, environmental data, vulnerable populations characteristics, such as race and income, and human health data.

(2) In further developing and maintaining the environmental health disparities map, the department must solicit feedback by representatives from overburdened communities and vulnerable populations through community engagement and listening sessions in all regions of the state and provide opportunities for public comment.

(3) The department may request assistance from:

(a) The University of Washington;

(b) Other academic researchers to perform modeling and create evidence-based indicators and with conducting sensitivity analyses to assess the impact of new indicators on communities and determination of an overburdened community; and

(c) Other state agencies to provide applicable statewide environmental and sampling data for air, water, soil, polluted sites, toxic waste, pesticides, toxic chemicals, and other applicable media.

(4) The department must:

(a) Document and publish a summary of the regular updates and revisions to the environmental health disparities map that happen over time as the new data becomes available, in order to help the public understand different versions of the map as they are published;

(b) At least every three years, perform a comprehensive evaluation of the map to ensure that the most current modeling and methods available to evaluate cumulative environmental health impacts are being used to develop and update the environmental health disparities map's indicators;

(c) Develop technical guidance for agencies that includes an online training video detailing a description of how to use the environmental health disparities map's features, access source data, and



explanation of map and indicator limitations; and

(d) Provide support and consultation to agencies on the use of the environmental health disparities map by Washington tracking network staff.

**NEW SECTION. Sec. 20. ENVIRONMENTAL JUSTICE COUNCIL.** (1) The environmental justice council is established to advise covered agencies on incorporating environmental justice into agency activities.

(2) The council consists of 12 members appointed by the governor. The councilmembers must be persons who are well-informed regarding and committed to the principles of environmental justice and who, to the greatest extent practicable, represent diversity in race, ethnicity, age, and gender, urban and rural areas, and different regions of the state. The members of the council shall elect two members to serve as cochairs for two-year terms. The council must include:

(a) Seven community representatives, including one youth representative, the nominations of which are based upon applied and demonstrated work and focus on environmental justice or a related field, such as racial or economic justice, and accountability to vulnerable populations and overburdened communities;

(i) The youth representative must be between the ages of 18 and 25 at the time of appointment;

(ii) The youth representative serves a two-year term. All other community representatives serve four-year terms, with six representatives initially being appointed to four-year terms and five being initially appointed to two-year terms, after which they will be appointed to four-year terms;

(b) Two members representing tribal communities, one from eastern Washington and one from western Washington, appointed by the governor. The governor shall solicit and consider nominees from each of the federally recognized tribes in Washington state. The governor shall collaborate with federally recognized tribes on the selection of tribal representatives. The tribal representatives serve four-year terms. One representative must be initially appointed for a four-year term. The other representative must be initially

appointed for a two-year term, after which, that representative must be appointed for a four-year term;

(c) Two representatives who are environmental justice practitioners or academics to serve as environmental justice experts, the nominations of which are based upon applied and demonstrated work and focus on environmental justice; and

(d) One representative at large, the nomination of which is based upon applied and demonstrated work and focus on environmental justice.

(3) Covered agencies shall serve as nonvoting, ex officio liaisons to the council. Each covered agency must identify an executive team level staff person to participate on behalf of the agency.

(4) Nongovernmental members of the council must be compensated and reimbursed in accordance with RCW 43.03.050, 43.03.060, and 43.03.220.

(5) The department of health must:

(a) Hire a manager who is responsible for overseeing all staffing and administrative duties in support of the council; and

(b) Provide all administrative and staff support for the council.

(6) In collaboration with the office of equity, the office of financial management, the council, and covered agencies, the department of health must:

(a) Establish standards for the collection, analysis, and reporting of disaggregated data as it pertains to tracking population level outcomes of communities;

(b) Create statewide and agency-specific process and outcome measures to show performance:

(i) Using outcome-based methodology to determine the effectiveness of agency programs and services on reducing environmental disparities; and

(ii) Taking into consideration community feedback from the council on whether the performance measures established accurately measure the effectiveness of covered agency programs and services in the communities served; and

(c) Create an online performance dashboard to publish performance measures and outcomes as referenced in section 17 of this act for the state and each covered agency.

(7) The department of health must coordinate with the consolidated technology services agency to address cybersecurity and data protection for all data collected by the department.

(8)(a) With input and assistance from the council, the department of health must establish an interagency work group to assist covered agencies in incorporating environmental justice into agency decision making. The work group must include staff from each covered agency directed to implement environmental justice provisions under this chapter and may include members from the council. The department of health shall provide assistance to the interagency work group by:

(i) Facilitating information sharing among covered agencies on environmental justice issues and between agencies and the council;

(ii) Developing and providing assessment tools for covered agencies to use in the development and evaluation of agency programs, services, policies, and budgets;

(iii) Providing technical assistance and compiling and creating resources for covered agencies to use; and

(iv) Training covered agency staff on effectively using data and tools for environmental justice assessments.

(b) The duties of the interagency work group include:

(i) Providing technical assistance to support agency compliance with the implementation of environmental justice into their strategic plans, environmental justice obligations for budgeting and funding criteria and decisions, environmental justice assessments, and community engagement plans;

(ii) Assisting the council in developing a suggested schedule and timeline for sequencing the types of: (A) Funding and expenditure decisions subject to rules; and (B) criteria incorporating environmental justice principles;

(iii) Identifying other policies, priorities, and projects for the council's review and guidance development;

(iv) Identifying goals and metrics that the council may use to assess agency performance in meeting the requirements of this act for purposes of communicating progress to the public, the governor, and the legislature; and

(v) Developing the guidance under subsection (9)(c) of this section in coordination with the council.

(9) The council has the following powers and duties:

(a) To provide a forum for the public to:

(i) Provide written or oral testimony on their environmental justice concerns;

(ii) Assist the council in understanding environmental justice priorities across the state in order to develop council recommendations to agencies for issues to prioritize; and

(iii) Identify which agencies to contact with their specific environmental justice concerns and questions;

(b)(i) The council shall work in an iterative fashion with the interagency work group to develop guidance for environmental justice implementation into covered agency strategic plans pursuant to section 12 of this act, environmental justice assessments pursuant to section 14 of this act, budgeting and funding criteria for making budgeting and funding decisions pursuant to section 16 of this act, and community engagement plans pursuant to section 13 of this act;

(ii) The council and interagency work group shall regularly update its guidance;

(c) In consultation with the interagency work group, the council:

(i) Shall provide guidance to covered agencies on developing environmental assessments for the following significant agency actions: The development and adoption of any agency grant or loan program, rule making, major capital projects, and agency request legislation;

(ii) Shall make recommendations to covered agencies on which agency actions

may cause environmental harm or may affect the equitable distribution of environmental benefits to an overburdened community or a vulnerable population and therefore should be considered significant agency actions that require an environmental justice assessment under section 14 of this act;

(iii) Shall make recommendations to covered agencies on the identification and prioritization of overburdened communities under this chapter, and related to the use by covered agencies of the environmental and health disparities map in agency efforts to identify and prioritize overburdened communities;

(iv) May make recommendations to a covered agency on the timing and sequencing of a covered agencies' efforts to implement sections 12 through 16 of this act; and

(v) May make recommendations to the governor and the legislature regarding ways to improve agency compliance with the requirements of this chapter;

(d) By December 1, 2023, and biennially thereafter, and with consideration of the information shared on September 1st each year in covered agencies' annual updates to the council required under section 17 of this act the council must:

(i) Evaluate progress of each agency in applying council guidance, and update guidance as needed; and

(ii) Communicate each covered agency's progress to the public, the governor, and the legislature. This communication is not required to be a report and may take the form of a presentation or other format that communicates the progress of the state and its agencies in meeting the state's environmental justice goals in compliance with this act, and summarizing the work of the council pursuant to (a) through (d) of this subsection, and subsection (11) of this section.

(10) By November 30, 2022, and in compliance with RCW 43.01.036, the council must submit a report to the governor and the appropriate committees of the house of representatives and the senate on:

(a) The council's recommendations to covered agencies on the identification of significant agency actions requiring an environmental justice assessment under subsection (9)(c)(ii) of this section;

(b) The summary of covered agency progress reports provided to the council under section 17(1) of this act, including the status of agency plans for performing environmental justice assessments required by section 14 of this act; and

(c) Guidance for environmental justice implementation into covered agency strategic plans, environmental justice assessments, budgeting and funding criteria, and community engagement plans under subsection (9)(c)(i) of this section.

(11) The council may:

(a) Review incorporation of environmental justice implementation plans into covered agency strategic plans pursuant to section 12 of this act, environmental justice assessments pursuant to section 14 of this act, budgeting and funding criteria for making budgeting and funding decisions pursuant to section 16 of this act, and community engagement plans pursuant to section 13 of this act;

(b) Make recommendations for amendments to this chapter or other legislation to promote and achieve the environmental justice goals of the state;

(c) Review existing laws and make recommendations for amendments that will further environmental justice;

(d) Recommend to specific agencies that they create environmental justice-focused, agency-requested legislation; and

(e) Recommend funding strategies and allocations to build capacity in vulnerable populations and overburdened communities to address environmental justice.

(12) The role of the council is purely advisory and council decisions are not binding on an agency, individual, or organization.

(13) The department of health must convene the first meeting of the council by January 1, 2022.

(14) All council meetings are subject to the open public meetings requirements of chapter 42.30 RCW and a public comment period must be provided at every meeting of the council.

**NEW SECTION. Sec. 21. LEGAL OBLIGATIONS.** (1) Nothing in this act prevents state agencies that are not

covered agencies from adopting environmental justice policies and processes consistent with this act.

(2) The head of a covered agency may, on a case-by-case basis, exempt a significant agency action or decision process from the requirements of sections 14 and 16 of this act upon determining that:

(a) Any delay in the significant agency action poses a potentially significant threat to human health or the environment, or causes serious harm to the public interest;

(b) An assessment would delay a significant agency decision concerning the assessment, collection, or administration of any tax, tax program, debt, revenue, receipt, a regulated entity's financial filings, or insurance rate or form filing;

(c) The requirements of sections 14 and 16 of this act are in conflict with:

(i) Federal law or federal program requirements;

(ii) The requirements for eligibility of employers in this state for federal unemployment tax credits; or

(iii) Constitutional limitations, including those applicable to the management of state lands and state forestlands as defined in RCW 79.02.010.

**NEW SECTION. Sec. 22. APPEALS.** (1) Agency actions, as defined in chapter 34.05 RCW, that are subject to or result from the requirements of this chapter may be appealed as provided in chapter 34.05 RCW.

(2) Nothing in this act shall be construed to create a new private right of action on the part of any individual, entity, or agency against any state agency.

**Sec. 23.** RCW 43.376.020 and 2012 c 122 s 2 are each amended to read as follows:

In establishing a government-to-government relationship with Indian tribes, state agencies must:

(1) Make reasonable efforts to collaborate with Indian tribes in the development of policies, agreements, and program implementation that directly affect Indian tribes and develop a consultation process that is used by the agency for issues involving specific

Indian tribes. Covered agencies, as defined in section 2 of this act, subject to the requirements of chapter 70A.---RCW (the new chapter created in section 24 of this act), must offer consultation with Indian tribes on decisions that affect Indian tribes' rights and interests in their tribal lands, as required in section 18 of this act;

(2) Designate a tribal liaison who reports directly to the head of the state agency;

(3) Ensure that tribal liaisons who interact with Indian tribes and the executive directors of state agencies receive training as described in RCW 43.376.040; and

(4) Submit an annual report to the governor on activities of the state agency involving Indian tribes and on implementation of this chapter.

**NEW SECTION. Sec. 24.** Sections 1 through 3, 11 through 18, and 20 through 22 of this act constitute a new chapter in Title 70A RCW.

**NEW SECTION. Sec. 25.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 26.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state."

Correct the title.

Signed by Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Berry; Fey; Harris-Talley; Ramel; Shewmake and Slatter.

**MINORITY recommendation: Do not pass.** Signed by Representatives Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno; Boehnke and Goehner.

Referred to Committee on Appropriations.

March 25, 2021

**E2SSB 5160** Prime Sponsor, Committee on Ways & Means: Addressing landlord-tenant relations by providing certain tenant protections during the public health emergency, providing for legal representation in eviction cases, establishing an eviction resolution pilot program for nonpayment of rent cases, and authorizing landlord access to certain rental assistance programs. Reported by Committee on Housing, Human Services & Veterans

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that the COVID-19 pandemic is causing a sustained global economic slowdown, and an economic downturn throughout Washington state with unprecedented numbers of layoffs and reduced work hours for a significant percentage of our workforce. Many of the state's workforce has been impacted by these layoffs and substantially reduced work hours and have suffered economic hardship, disproportionately affecting low and moderate-income workers resulting in lost wages and the inability to pay for basic household expenses, including rent. Hundreds of thousands of tenants in Washington are unable to consistently pay their rent, reflecting the continued financial precariousness of many renters in the state. Before the COVID-19 pandemic, nonpayment of rent was the leading cause of evictions within the state. Because the COVID-19 pandemic has led to an inability for tenants to consistently pay rent, the likelihood of evictions has increased, as well as life, health, and safety risks to a significant percentage of the state's tenants. As a result, the governor has issued a temporary moratorium on evictions as of March 2020, with multiple extensions and other related actions, to reduce housing instability and enable tenants to stay in their homes.

Therefore, it is the intent of the legislature with this act to increase tenant protections during the public health emergency, provide legal representation for qualifying tenants in eviction cases, establish an eviction resolution pilot program to address nonpayment of rent eviction cases before

any court filing, and ensure tenants and landlords have adequate opportunities to access state and local rental assistance programs to reimburse landlords for unpaid rent and preserve tenancies.

**NEW SECTION. Sec. 2.** A new section is added to chapter 59.18 RCW to read as follows:

The definitions in this section apply to sections 3 and 4 of this act unless the context clearly requires otherwise.

(1) "Dwelling unit" has the same meaning as defined in RCW 59.18.030, and includes a manufactured/mobile home or a mobile home lot as defined in RCW 59.20.030.

(2) "Eviction moratorium" refers to the governor of the state of Washington's proclamation 20-19.6, proclaiming a moratorium on certain evictions for all counties throughout Washington state on March 18, 2021, and any subsequent orders extending or amending such proclamation until it expires or is terminated by the governor of the state of Washington.

(3) "Landlord" has the same meaning as defined in RCW 59.18.030 and 59.20.030.

(4) "Prospective landlord" has the same meaning as defined in RCW 59.18.030.

(5) "Public health emergency" refers to the governor of the state of Washington's proclamation 20-05, proclaiming a state of emergency for all counties throughout Washington state on February 29, 2020, and any subsequent orders extending or amending such proclamation due to COVID-19 until the proclamation expires or is terminated by the governor of the state of Washington.

(6) "Rent" has the same meaning as defined in RCW 59.18.030.

(7) "Tenant" refers to any individual renting a dwelling unit or lot primarily for living purposes, including any individual with a tenancy subject to this chapter or chapter 59.20 RCW or any individual residing in transient lodging, such as a hotel or motel or camping area as their primary dwelling, for 30 days or more prior to March 1, 2020. "Tenant" does not include any individual residing in a hotel or motel or camping area as their primary dwelling for more than 30 days after March 1, 2020, if the hotel or motel or camping area has provided the individual with a seven-day eviction notice, which must include the following language: "For no-

cost legal assistance, please call 2-1-1 or the Northwest Justice Project CLEAR Hotline outside King County (888) 201-1014 weekdays between 9:15 a.m. - 12:15 p.m., or (888) 387-7111 for seniors (age 60 and over). You may find additional resource information at <http://www.washingtonlawhelp.org>." "Tenant" also does not include occupants of homeless mitigation sites or a person entering onto land without permission of the landowner or lessor. For purposes of this subsection, any local government provision of solid waste or hygiene services to unsanctioned encampments does not constitute permission to occupy land.

#### **TENANT PROTECTIONS**

NEW SECTION. **Sec. 3.** A new section is added to chapter 59.18 RCW to read as follows:

(1) A landlord may not charge or impose any late fees or other charges against any tenant for the nonpayment of rent that became due between March 1, 2020, and six months following the expiration of the eviction moratorium.

(2) For rent that accrued between March 1, 2020, and the six months following the expiration of the eviction moratorium expiration date:

(a) A landlord may not report to a prospective landlord:

(i) A tenant's nonpayment of rent that accrued between March 1, 2020, and the six months following the expiration of the eviction moratorium; or

(ii) An unlawful detainer action pursuant to RCW 59.12.030(3) that resulted from a tenant's nonpayment of rent between March 1, 2020, and the six months following the expiration of the eviction moratorium.

(b) A prospective landlord may not take an adverse action based on a prospective tenant's nonpayment of rent that occurred between March 1, 2020, and the six months following the expiration of the eviction moratorium.

(3)(a) A landlord or prospective landlord may not deny, discourage application for, or otherwise make unavailable any rental dwelling unit based on a tenant's or prospective tenant's medical history including, but not limited to, the tenant's or prospective tenant's prior or current

exposure or infection to the COVID-19 virus.

(b) A landlord or prospective landlord may not inquire about, consider, or require disclosure of a tenant's or prospective tenant's medical records or history, unless such disclosure is necessary to evaluate a reasonable accommodation request or reasonable modification request under RCW 49.60.222.

(4) A landlord or prospective landlord in violation of this section is liable in a civil action for up to four and one-half times the monthly rent of the real property at issue, as well as court costs and reasonable attorneys' fees. A court must impose this penalty in an amount necessary to deter future violations, payable to the tenant bringing the action.

#### **REPAYMENT PLANS**

NEW SECTION. **Sec. 4.** A new section is added to chapter 59.18 RCW to read as follows:

(1) If a tenant has remaining unpaid rent that accrued between March 1, 2020, and six months following the expiration of the eviction moratorium or the end of the public health emergency, whichever is greater, the landlord must offer the tenant a reasonable schedule for repayment of the unpaid rent that does not exceed monthly payments equal to one-third of the monthly rental charges during the period of accrued debt. If a tenant fails to accept the terms of a reasonable repayment plan within 14 days of the landlord's offer, the landlord may proceed with an unlawful detainer action as set forth in RCW 59.12.030(3) but subject to any requirements under the eviction resolution pilot program established under section 7 of this act. If the tenant defaults on any rent owed under a repayment plan, the landlord may apply for reimbursement from the landlord mitigation program as authorized under RCW 43.31.605(1)(d) or proceed with an unlawful detainer action as set forth in RCW 59.12.030(3) but subject to any requirements under the eviction resolution pilot program established under section 7 of this act. The court must consider the tenant's circumstances, including decreased income or increased expenses due to COVID-19, and the repayment plan terms offered during any unlawful detainer proceeding.

(2) Any repayment plan entered into under this section must:

(a) Not require payment until 30 days after the repayment plan is offered to the tenant;

(b) Cover rent only and not any late fees, attorneys' fees, or any other fees and charges;

(c) Allow for payments from any source of income as defined in RCW 59.18.255(5) or from pledges by nonprofit organizations, churches, religious institutions, or governmental entities;

(d) Not include provisions or be conditioned on: The tenant's compliance with the rental agreement, payment of attorneys' fees, court costs, or other costs related to litigation if the tenant defaults on the rental agreement; a requirement that the tenant apply for governmental benefits or provide proof of receipt of governmental benefits; or the tenant's waiver of any rights to a notice under RCW 59.12.030 or related provisions before a writ of restitution is issued.

(3) It is a defense to an eviction under RCW 59.12.030(3) that a landlord did not offer a repayment plan in conformity with this section.

(4) To the extent available funds exist for rental assistance from a federal, state, local, private, or nonprofit program, the tenant or landlord may continue to seek rental assistance to reduce and/or eliminate the unpaid rent balance.

**Sec. 5.** RCW 43.31.605 and 2020 c 315 s 8 and 2020 c 169 s 2 are each reenacted and amended to read as follows:

(1)(a) Subject to the availability of funds for this purpose, the landlord mitigation program is created and administered by the department. The department shall have such rule-making authority as the department deems necessary to administer the program.

(b) The following types of claims related to landlord mitigation for renting private market rental units to low-income tenants using a housing subsidy program are eligible for reimbursement from the landlord mitigation program account:

(i) Up to one thousand dollars for improvements identified in RCW 59.18.255(1)(a). In order to be eligible for reimbursement under this subsection

(1)(b)(i), the landlord must pay for the first five hundred dollars for improvements, and rent to the tenant whose housing subsidy program was conditioned on the real property passing inspection. Reimbursement under this subsection (1)(b)(i) may also include up to fourteen days of lost rental income from the date of offer of housing to the applicant whose housing subsidy program was conditioned on the real property passing inspection until move in by that applicant;

(ii) Reimbursement for damages as reflected in a judgment obtained against the tenant through either an unlawful detainer proceeding, or through a civil action in a court of competent jurisdiction after a hearing;

(iii) Reimbursement for damages established pursuant to subsection (2) of this section; and

(iv) Reimbursement for unpaid rent and unpaid utilities, provided that the landlord can evidence it to the department's satisfaction.

(c) Claims related to landlord mitigation for an unpaid judgment for rent, unpaid judgments resulting from the tenant's failure to comply with an installment payment agreement identified in RCW 59.18.610, late fees, attorneys' fees, and costs after a court order pursuant to RCW 59.18.410(3), including any unpaid portion of the judgment after the tenant defaults on the payment plan pursuant to RCW 59.18.410(3)(c), are eligible for reimbursement from the landlord mitigation program account and are exempt from any postjudgment interest required under RCW 4.56.110. Any claim for reimbursement made pursuant to RCW 59.18.410(3)(e)(ii) must be accompanied by a court order staying the writ of restitution pursuant to RCW 59.18.410(3). Any claim for reimbursement under this subsection (1)(c) is not an entitlement.

(i) The department shall provide for a form on its website for tenants and landlords to apply for reimbursement funds for the landlord pursuant to this subsection (1)(c).

(ii) The form must include: (A) Space for the landlord and tenant to provide names, mailing addresses, phone numbers, date of birth for the tenant, and any other identifying information necessary for the department to process payment; (B) the landlord's statewide vendor

identification number and how to obtain one; (C) name and address to whom payment must be made; (D) the amount of the judgment with instructions to include any other supporting documentation the department may need to process payment; (E) instructions for how the tenant is to reimburse the department under (c)(iii) of this subsection; (F) a description of the consequences if the tenant does not reimburse the department as provided in this subsection (1)(c); (G) a signature line for the landlord and tenant to confirm that they have read and understood the contents of the form and program; and (H) any other information necessary for the operation of the program. If the tenant has not signed the form after the landlord has made good faith efforts to obtain the tenant's signature, the landlord may solely submit the form but must attest to the amount of money owed and sign the form under penalty of perjury.

(iii) When a landlord has been reimbursed pursuant to this subsection (1)(c), the tenant for whom payment was made shall reimburse the department by depositing the amount disbursed from the landlord mitigation program account into the court registry of the superior court in which the judgment was entered. The tenant or other interested party may seek an ex parte order of the court under the unlawful detainer action to order such funds to be disbursed by the court. Upon entry of the order, the court clerk shall disburse the funds and include a case number with any payment issued to the department. If directed by the court, a clerk shall issue any payments made by a tenant to the department without further court order.

(iv) The department may deny an application made by a tenant who has failed to reimburse the department for prior payments issued pursuant to this subsection (1)(c).

(v) With any disbursement from the account to the landlord, the department shall notify the tenant at the address provided within the application that a disbursement has been made to the landlord on the tenant's behalf and that failure to reimburse the account for the payment through the court registry may result in a denial of a future application to the account pursuant to this subsection (1)(c). The department may include any other additional information about how to reimburse the

account it deems necessary to fully inform the tenant.

(vi) The department's duties with respect to obtaining reimbursement from the tenant to the account are limited to those specified within this subsection (1)(c).

(vii) If at any time funds do not exist in the landlord mitigation program account to reimburse claims submitted under this subsection (1)(c), the department must create and maintain a waitlist and distribute funds in the order the claims are received pursuant to subsection (6) of this section. Payment of any claims on the waitlist shall be made only from the landlord mitigation program account. The department shall not be civilly or criminally liable and may not have any penalty or cause of action of any nature arise against it regarding the provision or lack of provision of funds for reimbursement.

(d)(i) Claims related to landlord mitigation for:

(A) Up to \$15,000 in unpaid rent that accrued between March 1, 2020, and six months following the expiration of the eviction moratorium and the tenant being low-income, limited resourced or experiencing hardship, voluntarily vacated or abandoned the tenancy; or

(B) Up to \$15,000 in remaining unpaid rent if a tenant defaults on a repayment plan entered into under section 4 of this act are eligible for reimbursement from the landlord mitigation program account subject to the program requirements under this section, provided the tenancy has not been terminated at the time of reimbursement.

(ii) A landlord is ineligible for reimbursement under this subsection (1)(d) where the tenant vacated the tenancy because of an unlawful detainer action under RCW 59.12.030(3).

(iii) A landlord in receipt of reimbursement from the program pursuant to this subsection (1)(d) is prohibited from:

(A) Taking legal action against the tenant for damages or any remaining unpaid rent accrued between March 1, 2020, and six months following the expiration of the eviction moratorium attributable to the same tenancy; or

(B) Pursuing collection, or authorizing another entity to pursue



collection on the landlord's behalf, of a judgment against the tenant for damages or any remaining unpaid rent accrued between March 1, 2020, and six months following the expiration of the eviction moratorium attributable to the same tenancy.

(2) In order for a claim under subsection (1)(b)(iii) of this section to be eligible for reimbursement from the landlord mitigation program account, a landlord must:

(a) Have ensured that the rental property was inspected at the commencement of the tenancy by both the tenant and the landlord or landlord's agent and that a detailed written move-in property inspection report, as required in RCW 59.18.260, was prepared and signed by both the tenant and the landlord or landlord's agent;

(b) Make repairs and then apply for reimbursement to the department;

(c) Submit a claim on a form to be determined by the department, signed under penalty of perjury; and

(d) Submit to the department copies of the move-in property inspection report specified in (a) of this subsection and supporting materials including, but not limited to, before repair and after repair photographs, videos, copies of repair receipts for labor and materials, and such other documentation or information as the department may request.

(3) The department shall make reasonable efforts to review a claim within ten business days from the date it received properly submitted and complete claims to the satisfaction of the department. In reviewing a claim pursuant to subsection (1)(b) of this section, and determining eligibility for reimbursement, the department must receive documentation, acceptable to the department in its sole discretion, that the claim involves a private market rental unit rented to a low-income tenant who is using a housing subsidy program.

(4) Claims pursuant to subsection (1)(b) of this section related to a tenancy must total at least five hundred dollars in order for a claim to be eligible for reimbursement from the program. While claims or damages may exceed five thousand dollars, total reimbursement from the program may not exceed five thousand dollars per tenancy.

(5) Damages, beyond wear and tear, that are eligible for reimbursement include, but are not limited to: Interior wall gouges and holes; damage to doors and cabinets, including hardware; carpet stains or burns; cracked tiles or hard surfaces; broken windows; damage to household fixtures such as disposal, toilet, sink, sink handle, ceiling fan, and lighting. Other property damages beyond normal wear and tear may also be eligible for reimbursement at the department's discretion.

(6) All reimbursements for eligible claims shall be made on a first-come, first-served basis, to the extent of available funds. The department shall use best efforts to notify the tenant of the amount and the reasons for any reimbursements made.

(7) The department, in its sole discretion, may inspect the property and the landlord's records related to a claim, including the use of a third-party inspector as needed to investigate fraud, to assist in making its claim review and determination of eligibility.

(8) A landlord in receipt of reimbursement from the program pursuant to subsection (1)(b) and (d) of this section is prohibited from:

(a) Taking legal action against the tenant for damages attributable to the same tenancy; or

(b) Pursuing collection, or authorizing another entity to pursue collection on the landlord's behalf, of a judgment against the tenant for damages attributable to the same tenancy.

(9) A landlord denied reimbursement under subsection (1)(b)(iii) of this section may seek to obtain a judgment from a court of competent jurisdiction and, if successful, may resubmit a claim for damages supported by the judgment, along with a certified copy of the judgment. The department may reimburse the landlord for that portion of such judgment that is based on damages reimbursable under the landlord mitigation program, subject to the limitations set forth in this section.

(10) Determinations regarding reimbursements shall be made by the department in its sole discretion.

(11) The department must establish a website that advertises the landlord mitigation program, the availability of

reimbursement from the landlord mitigation program account, and maintains or links to the agency rules and policies established pursuant to this section.

(12) Neither the state, the department, or persons acting on behalf of the department, while acting within the scope of their employment or agency, is liable to any person for any loss, damage, harm, or other consequence resulting directly or indirectly from the department's administration of the landlord mitigation program or determinations under this section.

(13)(a) A report to the appropriate committees of the legislature on the effectiveness of the program and recommended modifications shall be submitted to the governor and the appropriate committees of the legislature by January 1, 2021. In preparing the report, the department shall convene and solicit input from a group of stakeholders to include representatives of large multifamily housing property owners or managers, small rental housing owners in both rural and urban markets, a representative of tenant advocates, and a representative of the housing authorities.

(b) The report shall include discussion of the effectiveness of the program as well as the department's recommendations to improve the program, and shall include the following:

(i) The number of total claims and total amount reimbursed to landlords by the fund;

(ii) Any indices of fraud identified by the department;

(iii) Any reports by the department regarding inspections authorized by and conducted on behalf of the department;

(iv) An outline of the process to obtain reimbursement for improvements and for damages from the fund;

(v) An outline of the process to obtain reimbursement for lost rent due to the rental inspection and tenant screening process, together with the total amount reimbursed for such damages;

(vi) An evaluation of the feasibility for expanding the use of the mitigation fund to provide up to ninety-day no interest loans to landlords who have not received timely rental payments from a

housing authority that is administering section 8 rental assistance;

(vii) Any other modifications and recommendations made by stakeholders to improve the effectiveness and applicability of the program.

(14) As used in this section:

(a) "Housing subsidy program" means a housing voucher as established under 42 U.S.C. Sec. 1437 as of January 1, 2018, or other housing subsidy program including, but not limited to, valid short-term or long-term federal, state, or local government, private nonprofit, or other assistance program in which the tenant's rent is paid either partially by the program and partially by the tenant, or completely by the program directly to the landlord;

(b) "Low-income" means income that does not exceed eighty percent of the median income for the standard metropolitan statistical area in which the private market rental unit is located; and

(c) "Private market rental unit" means any unit available for rent that is owned by an individual, corporation, limited liability company, nonprofit housing provider, or other entity structure, but does not include housing acquired, or constructed by a public housing agency under 42 U.S.C. Sec. 1437 as it existed on January 1, 2018.

**Sec. 6.** RCW 43.31.615 and 2019 c 356 s 13 are each amended to read as follows:

(1) The landlord mitigation program account is created in the custody of the state treasury. All transfers and appropriations by the legislature, repayments, private contributions, and all other sources must be deposited into the account. Expenditures from the account may only be used for the landlord mitigation program under this chapter to reimburse landlords for eligible claims related to private market rental units during the time of their rental to low-income tenants using housing subsidy programs as defined in RCW 43.31.605, for any unpaid judgment issued within an unlawful detainer action after a court order pursuant to RCW 59.18.410(3) as described in RCW 43.31.605(1)(c), for any unpaid rent as described in RCW 43.31.605(1)(d), and for the administrative costs identified in subsection (2) of this section. Only the director or the director's designee may

authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Administrative costs associated with application, distribution, and other program activities of the department may not exceed twenty percent of the annual funds available for the landlord mitigation program. Reappropriations must not be included in the calculation of the annual funds available for determining the administrative costs.

(3) Funds deposited into the landlord mitigation program account shall be prioritized by the department for allowable costs under RCW 43.31.605(1)(b), and may only be used for other allowable costs when funding available in the account exceeds the amount needed to pay claims under RCW 43.31.605(1)(b).

#### **EVICTION RESOLUTION PILOT PROGRAM**

NEW SECTION. Sec. 7. A new section is added to chapter 59.18 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the administrative office of the courts shall contract with dispute resolution centers as described under chapter 7.75 RCW within or serving each county to establish a court-based eviction resolution pilot program operated in accordance with Washington supreme court order no. 25700-B-639 and any standing judicial order of the individual superior court.

(2) The eviction resolution pilot program must be used to facilitate the resolution of nonpayment of rent cases between a landlord and tenant before the landlord files an unlawful detainer action.

(3) Prior to filing an unlawful detainer action for nonpayment of rent, the landlord must provide a notice as required under RCW 59.12.030(3) and an additional notice to the tenant informing them of the eviction resolution pilot program. The landlord must retain proof of service or mailing of the additional notice. The additional notice to the tenant must provide at least the following information regarding the eviction resolution pilot program:

(a) Contact information for the local dispute resolution center;

(b) Contact information for the county's housing justice project or, if none, a statewide organization providing housing advocacy services for low-income residents;

(c) The following statement: "The Washington state office of the attorney general has this notice in multiple languages on its website. You will also find information there on how to find a lawyer or advocate at low or no cost and any available resources to help you pay your rent. Alternatively, you may find additional information to help you at <http://www.washingtonlawhelp.org>";

(d) The name and contact information of the landlord, the landlord's attorney, if any, and the tenant; and

(e) The following statement: "Failure to respond to this notice within 14 days may result in the filing of a summons and complaint for an unlawful detainer action with the court."

(4) At the time of service or mailing of the pay or vacate notice and additional notice to the tenant, a landlord must also send copies of these notices to the local dispute resolution center serving the area where the property is located.

(5) A landlord must secure a certification of participation with the eviction resolution program by the appropriate dispute resolution center before an unlawful detainer action for nonpayment of rent may be heard by the court.

(6) The administrative office of the courts may also establish and produce any other notice forms and requirements as necessary to implement the eviction resolution pilot program.

(7) Any superior court, in collaboration with the dispute resolution center that is located within or serving the same county, participating in the eviction resolution pilot program must report annually to the administrative office of the courts beginning January 1, 2022, until January 1, 2023, on the following:

(a) The number of unlawful detainer actions for nonpayment of rent that were subject to program requirements;

(b) The number of referrals made to dispute resolution centers;

(c) The number of nonpayment of rent cases resolved by the program;

(d) How many instances the tenant had legal representation either at the conciliation stage or formal mediation stage;

(e) The number of certifications issued by dispute resolution centers and filed by landlords with the court; and

(f) Any other information that relates to the efficacy of the pilot program.

(8) By July 1, 2022, until July 1, 2023, the administrative office of the courts must provide a report to the legislature summarizing the report data shared by the superior courts and dispute resolution centers under subsection (7) of this section.

(9) This section expires July 1, 2023.

#### **RIGHT TO COUNSEL**

NEW SECTION. **Sec. 8.** A new section is added to chapter 59.18 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the court must appoint an attorney for an indigent tenant in an unlawful detainer proceeding under chapters 59.12, 59.18, and 59.20 RCW. The office of civil legal aid is responsible for implementation of this subsection as provided in section 9 of this act, and the state shall pay the costs of legal services provided by an attorney appointed pursuant to this subsection. In implementing this section, the office of civil legal aid shall assign priority to providing legal representation to indigent tenants in those counties in which the most evictions occur and to indigent tenants who are disproportionately at risk of eviction.

(2) For purposes of this section, "indigent" means any person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically,

refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Receiving an annual income, after taxes, of 200 percent or less of the current federally established poverty level.

NEW SECTION. **Sec. 9.** A new section is added to chapter 2.53 RCW to read as follows:

(1) Moneys appropriated by the legislature for legal services provided by an attorney appointed pursuant to section 8 of this act must be administered by the office of civil legal aid established under RCW 2.53.020. The office of civil legal aid must enter into contracts with attorneys and agencies for the provision of legal services under section 8 of this act to remain within appropriated amounts.

(2) The legislature recognizes that the office of civil legal aid needs time to properly implement the right to attorney legal representation for indigent tenants under and consistent with section 8 of this act. Within 90 days after the effective date of this section, the office of civil legal aid must submit to the appropriate legislative committees a plan to fully implement the tenant representation program under and consistent with section 8 of this act within 12 months of the effective date of this section.

**Sec. 10.** RCW 59.18.057 and 2020 c 315 s 2 are each amended to read as follows:

(1) Every (~~fourteen-day~~) 14-day notice served pursuant to RCW 59.12.030(3) must be in substantially the following form:

"TO:

\_\_\_\_\_  
AND TO:

\_\_\_\_\_  
ADDRESS:

#### **FOURTEEN-DAY NOTICE TO PAY RENT OR VACATE THE PREMISES**

You are receiving this notice because the landlord alleges you are not in compliance with the terms of the lease agreement by failing to pay rent and/or utilities and/or recurring or periodic charges that are past due.

(1) **Monthly rent due for (list month(s)): \$ (dollar amount)**

**AND/OR**

(2) Utilities due for (list month(s)): \$ (dollar amount)

AND/OR

(3) Other recurring or periodic charges identified in the lease for (list month(s)): \$ (dollar amount)

TOTAL AMOUNT DUE: \$ (dollar amount)

Note - payment must be made pursuant to the terms of the rental agreement or by nonelectronic means including, but not limited to, cashier's check, money order, or other certified funds.

You must pay the total amount due to your landlord within fourteen (14) days after service of this notice or you must vacate the premises. Any payment you make to the landlord must first be applied to the total amount due as shown on this notice. Any failure to comply with this notice within fourteen (14) days after service of this notice may result in a judicial proceeding that leads to your eviction from the premises.

The Washington state Office of the Attorney General has this notice in multiple languages as well as information on available resources to help you pay your rent, including state and local rental assistance programs, on its website at www.atg.wa.gov/landlord-tenant. ((You will also find information there on how to find a lawyer or advocate at low or no cost and any available resources to help you pay your rent.

~~Alternatively, for no-cost legal assistance for low-income renters)) State law provides you the right to legal representation and the court may be able to appoint a lawyer to represent you without cost to you if you are a qualifying low-income renter. If you believe you are a qualifying low-income renter and would like an attorney appointed to represent you, please contact the Eviction Defense Screening Line at 855-657-8387 or apply online at https://nwjustice.org/apply-online. For additional resources, call 2-1-1 or the Northwest Justice Project CLEAR Hotline outside King County (888) 201-1014 weekdays between 9:15 a.m. - 12:15 p.m., or (888) 387-7111 for seniors (age 60 and over). You may find additional information to help you at http://www.washingtonlawhelp.org. Free or low-cost mediation services to assist in nonpayment of rent disputes before any judicial proceedings occur are also available at dispute resolution centers~~

throughout the state. You can find your nearest dispute resolution center at https://www.resolutionwa.org.

State law also provides you the right to receive interpreter services at court.

OWNER/LANDLORD: \_\_\_\_\_ DATE: \_\_\_\_\_

WHERE TOTAL AMOUNT DUE IS TO BE PAID: \_\_\_\_\_ (owner/landlord name) \_\_\_\_\_

\_\_\_\_\_ (address) \_\_\_\_\_ "

(2) Upon expiration of the eviction resolution pilot program established under section 7 of this act:

(a) The landlord must also provide the notice required in this section to the dispute resolution center located within or serving the county in which the dwelling unit is located. It is a defense to an eviction under RCW 59.12.030 that a landlord did not provide additional notice under this subsection.

(b) Dispute resolution centers are encouraged to notify the housing justice project or northwest justice project located within or serving the county in which the dispute resolution center is located, as appropriate, once notice is received from the landlord under this subsection.

(3) The form required in this section does not abrogate any additional notice requirements to tenants as required by federal, state, or local law.

Sec. 11. RCW 59.18.365 and 2020 c 315 s 4 are each amended to read as follows:

(1) The summons must contain the names of the parties to the proceeding, the attorney or attorneys if any, the court in which the same is brought, the nature of the action, in concise terms, and the relief sought, and also the return day; and must notify the defendant to appear and answer within the time designated or that the relief sought will be taken against him or her. The summons must contain a street address for service of the notice of appearance or answer and, if available, a facsimile number for the plaintiff or the plaintiff's attorney, if represented. The summons must be served and returned in the same manner as a summons in other actions is served and returned.

(2) A defendant may serve a copy of an answer or notice of appearance by any of the following methods:

(a) By delivering a copy of the answer or notice of appearance to the person who signed the summons at the street address listed on the summons;

(b) By mailing a copy of the answer or notice of appearance addressed to the person who signed the summons to the street address listed on the summons;

(c) By facsimile to the facsimile number listed on the summons. Service by facsimile is complete upon successful transmission to the facsimile number listed upon the summons;

(d) As otherwise authorized by the superior court civil rules.

(3) The summons for unlawful detainer actions for tenancies covered by this chapter shall be substantially in the following form:

IN THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON  
IN AND  
FOR . . . . . COUNTY

Plaintiff/	}	NO.
Landlord/		
Owner,		
vs.	}	EVICTON
Defendant/		SUMMONS
Tenant/		(Residential)
Occupant.	]	

THIS IS AN IMPORTANT LEGAL DOCUMENT TO EVICT YOU.

**YOUR WRITTEN**

RESPONSE MUST BE RECEIVED BY: 5:00 p.m., on . . . . .

TO: . . . . . (Defendant's Name)

. . . . . (Defendant's Address)

**GET HELP:** If you do not respond by the deadline above, you will lose your right to defend yourself or be represented by a lawyer if you cannot afford one in court and could be evicted. ((If you cannot afford a lawyer)) The court may be

able to appoint a lawyer to represent you without cost to you if you are low-income and are unable to afford a lawyer. If you believe you are a qualifying low-income renter and would like an attorney appointed to represent you, please contact the Eviction Defense Screening Line at 855-657-8387 or apply online at <https://nwjustice.org/apply-online>. For additional resources, you may call 2-1-1 or the Northwest Justice Project CLEAR Hotline outside King County (888) 201-1014 weekdays between 9:15 a.m. - 12:15 p.m., or (888) 387-7111 for seniors (age 60 and over). ((They can refer you to free or low-cost legal help-)) You may find additional information to help you at <http://www.washingtonlawhelp.org>. Free or low-cost mediation services to assist in nonpayment of rent disputes before any judicial proceedings occur are also available at dispute resolution centers throughout the state. You can find your nearest dispute resolution center at <https://www.resolutionwa.org>.

**HOW TO RESPOND:** Phone calls to your Landlord or your Landlord's lawyer are not a response. You may respond with a "notice of appearance." This is a letter that includes the following:

- (1) A statement that you are appearing in the court case
- (2) Names of the landlord(s) and the tenant(s) (as listed above)
- (3) Your name, your address where legal documents may be sent, your signature, phone number (if any), and case number (if the case is filed)

This case  is /  is not filed with the court. If this case is filed, you need to also file your response with the court by delivering a copy to the clerk of the court at: . . . . . (Clerk's Office/Address/Room number/Business hours of court clerk)

**WHERE TO RESPOND:** You must mail, fax, or hand deliver your response letter to your Landlord's lawyer, or if no lawyer is named in the complaint, to your Landlord. If you mail the response letter, you must do it 3 days before the deadline above. Request receipt of a proof of mailing from the post office. If you hand deliver or fax it, you must do it by the deadline above. The address is:

. . . . . (Attorney/Landlord Name)

. . . . . (Address)

. . . . . (Fax - required if available)

**COURT DATE:** If you respond to this Summons, you will be notified of your hearing date in a document called an "Order to Show Cause." This is usually mailed to you. If you get notice of a hearing, **you must go to the hearing.** If you do not show up, your landlord can evict you. Your landlord might also charge you more money. If you move before the court date, you must tell your landlord or the landlord's attorney.

**LANDLORD ACCESS TO RENTAL ASSISTANCE PROGRAMS**

NEW SECTION. **Sec. 12.** A new section is added to chapter 43.185C RCW to read as follows:

The department must authorize landlords an opportunity to apply to the following programs, if feasible, and establish application and eligibility requirements and any conditions on the receipt of funds as the department deems appropriate:

- (1) Rental assistance provided through the consolidated homeless grant program;
- (2) Rental assistance provided through the emergency solutions grant program; and
- (3) Any rental assistance program funded through receipt of any federal COVID-19 relief funds.

**OTHER TENANT PROTECTIONS**

**Sec. 13.** RCW 59.12.040 and 2010 c 8 s 19007 are each amended to read as follows:

Any notice provided for in this chapter shall be served either (1) by delivering a copy personally to the person entitled thereto; or (2) if he or she be absent from the premises unlawfully held, by leaving there a copy, with some person of suitable age and discretion, and sending a copy through the mail addressed to the person entitled thereto at his or her place of residence; or (3) if the person to be notified be a tenant, or an unlawful holder of premises, and his or her place of residence is not known, or if a person of suitable age and discretion there cannot be found then by affixing a copy of the notice in a conspicuous place on the premises unlawfully held, and also delivering a copy to a person there residing, if such a person can be found,

and also sending a copy through the mail addressed to the tenant, or unlawful occupant, at the place where the premises unlawfully held are situated. Service upon a subtenant may be made in the same manner: PROVIDED, That in cases where the tenant or unlawful occupant, shall be conducting a hotel, inn, lodging house, boarding house, or shall be renting rooms while still retaining control of the premises as a whole, that the guests, lodgers, boarders, or persons renting such rooms shall not be considered as subtenants within the meaning of this chapter, but all such persons may be served by affixing a copy of the notice to be served in two conspicuous places upon the premises unlawfully held; and such persons shall not be necessary parties defendant in an action to recover possession of said premises. Service of any notice provided for in this chapter may be had upon a corporation by delivering a copy thereof to any officer, agent, or person having charge of the business of such corporation, at the premises unlawfully held, and in case no such officer, agent, or person can be found upon such premises, then service may be had by affixing a copy of such notice in a conspicuous place upon said premises and by sending a copy through the mail addressed to such corporation at the place where said premises are situated. Proof of any service under this section may be made by the affidavit of the person making the same in like manner and with like effect as the proof of service of summons in civil actions. When a copy of notice is sent through the mail, as provided in this section, service shall be deemed complete when such copy is deposited in the United States mail in the county in which the property is situated properly addressed with postage prepaid: PROVIDED, HOWEVER, That when service is made by mail one additional day shall be allowed before the commencement of an action based upon such notice. (~~RCW 59.18.375 may also apply to notice given under this chapter.~~)

**Sec. 14.** RCW 59.18.230 and 2020 c 315 s 6 and 2020 c 177 s 2 are each reenacted and amended to read as follows:

- (1)(a) Any provision of a lease or other agreement, whether oral or written, whereby any section or subsection of this chapter is waived except as provided in RCW 59.18.360 and shall be deemed against public policy and shall be unenforceable. Such unenforceability shall not affect

other provisions of the agreement which can be given effect without them.

(b) Any agreement, whether oral or written, between a landlord and tenant, or their representatives, and entered into pursuant to an unlawful detainer action under this chapter that requires the tenant to pay any amount in violation of RCW 59.18.283 or the statutory judgment amount limits under RCW 59.18.410 (1) or (2), or waives any rights of the tenant under RCW 59.18.410 or any other rights afforded under this chapter except as provided in RCW 59.18.360 is void and unenforceable. A landlord may not threaten a tenant with eviction for failure to pay nonpossessory charges limited under RCW 59.18.283.

(2) No rental agreement may provide that the tenant:

(a) Agrees to waive or to forgo rights or remedies under this chapter; or

(b) Authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(c) Agrees to pay the landlord's attorneys' fees, except as authorized in this chapter; or

(d) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith; or

(e) And landlord have agreed to a particular arbitrator at the time the rental agreement is entered into; or

(f) Agrees to pay late fees for rent that is paid within five days following its due date. If rent is more than five days past due, the landlord may charge late fees commencing from the first day after the due date until paid. Nothing in this subsection prohibits a landlord from serving a notice to pay or vacate at any time after the rent becomes due.

(3) A provision prohibited by subsection (2) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him or her to be prohibited, the tenant may recover actual damages sustained by him or her, statutory damages not to exceed ~~((five hundred dollars))~~ \$500, costs of suit, and reasonable attorneys' fees.

(4) The common law right of the landlord of distress for rent is hereby abolished for property covered by this chapter. Any provision in a rental agreement creating a lien upon the personal property of the tenant or authorizing a distress for rent is null and void and of no force and effect. Any landlord who takes or detains the personal property of a tenant without the specific written consent of the tenant to such incident of taking or detention, and who, after written demand by the tenant for the return of his or her personal property, refuses to return the same promptly shall be liable to the tenant for the value of the property retained, actual damages, and if the refusal is intentional, may also be liable for damages of up to ~~((five hundred dollars))~~ \$500 per day but not to exceed ~~((five thousand dollars))~~ \$5,000, for each day or part of a day that the tenant is deprived of his or her property. The prevailing party may recover his or her costs of suit and a reasonable attorneys' fee.

In any action, including actions pursuant to chapters 7.64 or 12.28 RCW, brought by a tenant or other person to recover possession of his or her personal property taken or detained by a landlord in violation of this section, the court, upon motion and after notice to the opposing parties, may waive or reduce any bond requirements where it appears to be to the satisfaction of the court that the moving party is proceeding in good faith and has, prima facie, a meritorious claim for immediate delivery or redelivery of said property.

**Sec. 15.** RCW 59.20.040 and 1999 c 359 s 3 are each amended to read as follows:

This chapter shall regulate and determine legal rights, remedies, and obligations arising from any rental agreement between a landlord and a tenant regarding a mobile home lot and including specified amenities within the mobile home park, mobile home park cooperative, or mobile home park subdivision, where the tenant has no ownership interest in the property or in the association which owns the property, whose uses are referred to as a part of the rent structure paid by the tenant. All such rental agreements shall be unenforceable to the extent of any conflict with any provision of this chapter. Chapter 59.12 RCW shall be applicable only in implementation of the provisions of this



chapter and not as an alternative remedy to this chapter which shall be exclusive where applicable: PROVIDED, That the provision of RCW 59.12.090, 59.12.100, and 59.12.170 shall not apply to any rental agreement included under the provisions of this chapter. RCW 59.18.055 (~~and 59.18.370~~), section 8 of this act, 59.18.365, 59.18.370, and 59.18.380 through 59.18.410 shall be applicable to any action of forcible entry or detainer or unlawful detainer arising from a tenancy under the provisions of this chapter, except when a mobile home, manufactured home, or park model or a tenancy in a mobile home lot is abandoned. Rentals of mobile homes, manufactured homes, or park models themselves are governed by the residential landlord-tenant act, chapter 59.18 RCW.

**Sec. 16.** RCW 59.18.410 and 2020 c 315 s 5 are each amended to read as follows:

(1) If at trial the verdict of the jury or, if the case is tried without a jury, the finding of the court is in favor of the landlord and against the tenant, judgment shall be entered for the restitution of the premises; and if the proceeding is for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement, or tenancy. The jury, or the court, if the proceedings are tried without a jury, shall also assess the damages arising out of the tenancy occasioned to the landlord by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved at trial, and, if the alleged unlawful detainer is based on default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the tenant liable for the forcible entry, forcible detainer, or unlawful detainer for the amount of damages thus assessed, for the rent, if any, found due, and late fees if such fees are due under the lease and do not exceed seventy-five dollars in total. The court may award statutory costs. The court may also award reasonable attorneys' fees as provided in RCW 59.18.290.

(2) When the tenant is liable for unlawful detainer after a default in the payment of rent, execution upon the judgment shall not occur until the

expiration of five court days after the entry of the judgment. Before entry of a judgment or until five court days have expired after entry of the judgment, the tenant or any subtenant, or any mortgagee of the term, or other party interested in the continuance of the tenancy, may pay into court or to the landlord the amount of the rent due, any court costs incurred at the time of payment, late fees if such fees are due under the lease and do not exceed seventy-five dollars in total, and attorneys' fees if awarded, in which event any judgment entered shall be satisfied and the tenant restored to his or her tenancy. If the tenant seeks to restore his or her tenancy after entry of a judgment, the tenant may tender the amount stated within the judgment as long as that amount does not exceed the amount authorized under subsection (1) of this section. If a tenant seeks to restore his or her tenancy and pay the amount set forth in this subsection with funds acquired through an emergency rental assistance program provided by a governmental or nonprofit entity, the tenant shall provide a copy of the pledge of emergency rental assistance provided from the appropriate governmental or nonprofit entity and have an opportunity to exercise such rights under this subsection, which may include a stay of judgment and provision by the landlord of documentation necessary for processing the assistance. The landlord shall accept any pledge of emergency rental assistance funds provided to the tenant from a governmental or nonprofit entity before the expiration of any pay or vacate notice for nonpayment of rent for the full amount of the rent owing under the rental agreement. The landlord shall accept any written pledge of emergency rental assistance funds provided to the tenant from a governmental or nonprofit entity after the expiration of the pay or vacate notice if the pledge will contribute to the total payment of both the amount of rent due, including any current rent, and other amounts if required under this subsection. The landlord shall suspend any court action for seven court days after providing necessary payment information to the nonprofit or governmental entity to allow for payment of the emergency rental assistance funds. By accepting such pledge of emergency rental assistance, the landlord is not required to enter into any additional conditions not related to the provision of necessary payment information and documentation.

If a judgment has been satisfied, the landlord shall file a satisfaction of judgment with the court. A tenant seeking to exercise rights under this subsection shall pay an additional fifty dollars for each time the tenant was reinstated after judgment pursuant to this subsection within the previous twelve months prior to payment. If payment of the amount specified in this subsection is not made within five court days after the entry of the judgment, the judgment may be enforced for its full amount and for the possession of the premises.

(3)(a) Following the entry of a judgment in favor of the landlord and against the tenant for the restitution of the premises and forfeiture of the tenancy due to nonpayment of rent, the court, at the time of the show cause hearing or trial, or upon subsequent motion of the tenant but before the execution of the writ of restitution, may stay the writ of restitution upon good cause and on such terms that the court deems fair and just for both parties. In making this decision, the court shall consider evidence of the following factors:

(i) The tenant's willful or intentional default or intentional failure to pay rent;

(ii) Whether nonpayment of the rent was caused by exigent circumstances that were beyond the tenant's control and that are not likely to recur;

(iii) The tenant's ability to timely pay the judgment;

(iv) The tenant's payment history;

(v) Whether the tenant is otherwise in substantial compliance with the rental agreement;

(vi) Hardship on the tenant if evicted; and

(vii) Conduct related to other notices served within the last six months.

(b) The burden of proof for such relief under this subsection (3) shall be on the tenant. If the tenant seeks relief pursuant to this subsection (3) at the time of the show cause hearing, the court shall hear the matter at the time of the show cause hearing or as expeditiously as possible so as to avoid unnecessary delay or hardship on the parties.

(c) In any order issued pursuant to this subsection (3):

(i) The court shall not stay the writ of restitution more than ninety days from the date of order, but may order repayment of the judgment balance within such time. If the payment plan is to exceed thirty days, the total cumulative payments for each thirty-day period following the order shall be no less than one month of the tenant's share of the rent, and the total amount of the judgment and all additional rent that is due shall be paid within ninety days.

(ii) Within any payment plan ordered by the court, the court shall require the tenant to pay to the landlord or to the court one month's rent within five court days of issuance of the order. If the date of the order is on or before the fifteenth of the month, the tenant shall remain current with ongoing rental payments as they become due for the duration of the payment plan; if the date of the order is after the fifteenth of the month, the tenant shall have the option to apportion the following month's rental payment within the payment plan, but monthly rental payments thereafter shall be paid according to the rental agreement.

(iii) The sheriff may serve the writ of restitution upon the tenant before the expiration of the five court days of issuance of the order; however, the sheriff shall not execute the writ of restitution until after expiration of the five court days in order for payment to be made of one month's rent as required by (c)(ii) of this subsection. In the event payment is made as provided in (c)(ii) of this subsection for one month's rent, the court shall stay the writ of restitution ex parte without prior notice to the landlord upon the tenant filing and presenting a motion to stay with a declaration of proof of payment demonstrating full compliance with the required payment of one month's rent. Any order staying the writ of restitution under this subsection (3)(c)(iii) shall require the tenant to serve a copy of the order on the landlord by personal delivery, first-class mail, facsimile, or email if agreed to by the parties.

(A) If the tenant has satisfied (c)(ii) of this subsection by paying one month's rent within five court days, but defaults on a subsequent payment required by the court pursuant to this subsection (3)(c), the landlord may enforce the writ of restitution after serving a notice of

default in accordance with RCW 59.12.040 informing the tenant that he or she has defaulted on rent due under the lease agreement or payment plan entered by the court. Upon service of the notice of default, the tenant shall have three calendar days from the date of service to vacate the premises before the sheriff may execute the writ of restitution.

(B) If the landlord serves the notice of default described under this subsection (3)(c)(iii), an additional day is not included in calculating the time before the sheriff may execute the writ of restitution. The notice of default must be in substantially the following form:

NOTICE OF DEFAULT FOR RENT AND/OR PAYMENT PLAN ORDERED BY COURT

NAME(S)  
ADDRESS  
CITY, STATE, ZIP

THIS IS NOTICE THAT YOU ARE IN DEFAULT OF YOUR RENT AND/OR PAYMENT PLAN ORDERED BY THE COURT. YOUR LANDLORD HAS RECEIVED THE FOLLOWING PAYMENTS:

DATE  
AMOUNT  
DATE  
AMOUNT  
DATE  
AMOUNT

THE LANDLORD MAY SCHEDULE YOUR PHYSICAL EVICTION WITHIN THREE CALENDAR DAYS OF SERVICE OF THIS NOTICE. TO STOP A PHYSICAL EVICTION, YOU ARE REQUIRED TO PAY THE BALANCE OF YOUR RENT AND/OR PAYMENT PLAN IN THE AMOUNT OF \$ . . . . .

PAYMENT MAY BE MADE TO THE COURT OR TO THE LANDLORD. IF YOU FAIL TO PAY THE BALANCE WITHIN THREE CALENDAR DAYS, THE LANDLORD MAY PROCEED WITH A PHYSICAL EVICTION FOR POSSESSION OF THE UNIT THAT YOU ARE RENTING.

DATE  
SIGNATURE  
LANDLORD/AGENT  
NAME  
ADDRESS  
PHONE

(iv) If a tenant seeks to satisfy a condition of this subsection (3)(c) by relying on an emergency rental assistance program provided by a government or nonprofit entity and provides an offer of proof, the court shall stay the writ of restitution as necessary to afford the tenant an equal opportunity to comply.

(v) The court shall extend the writ of restitution as necessary to enforce the order issued pursuant to this subsection (3)(c) in the event of default.

(d) A tenant who has been served with three or more notices to pay or vacate for failure to pay rent as set forth in RCW 59.12.040 within twelve months prior to the notice to pay or vacate upon which the proceeding is based may not seek relief under this subsection (3).

(e)(i) In any application seeking relief pursuant to this subsection (3) by either the tenant or landlord, the court shall issue a finding as to whether the tenant is low-income, limited resourced, or experiencing hardship to determine if the parties would be eligible for disbursement through the landlord mitigation program account established within RCW 43.31.605(1)(c). In making this finding, the court may include an inquiry regarding the tenant's income relative to area median income, household composition, any extenuating circumstances, or other factors, and may rely on written declarations or oral testimony by the parties at the hearing.

(ii) After a finding that the tenant is low-income, limited resourced, or experiencing hardship, the court may issue an order: (A) Finding that the landlord is eligible to receive on behalf of the tenant and may apply for reimbursement from the landlord mitigation program; and (B) directing the clerk to remit, without further order of the court, any future payments made by the tenant in order to reimburse the department of commerce pursuant to RCW 43.31.605(1)(c)(iii). In accordance with RCW 43.31.605(1)(c), such an order must be accompanied by a copy of the order staying the writ of restitution. Nothing in this subsection (3)(e) shall be deemed to obligate the department of commerce to provide assistance in claim reimbursement through the landlord mitigation program if there are not sufficient funds.

(iii) If the department of commerce fails to disburse payment to the landlord

for the judgment pursuant to this subsection (3) (e) within thirty days from submission of the application, the landlord may renew an application for a writ of restitution pursuant to RCW 59.18.370 and for other rent owed by the tenant since the time of entry of the prior judgment. In such event, the tenant may exercise rights afforded under this section.

(iv) Upon payment by the department of commerce to the landlord for the remaining or total amount of the judgment, as applicable, the judgment is satisfied and the landlord shall file a satisfaction of judgment with the court.

(v) Nothing in this subsection (3) (e) prohibits the landlord from otherwise applying for reimbursement for an unpaid judgment pursuant to RCW 43.31.605(1) (c) after the tenant defaults on a payment plan ordered pursuant to (c) of this subsection.

(vi) For the period extending one year beyond the expiration of the eviction moratorium, a tenant may demonstrate ability to pay in order to reinstate the tenancy by means of disbursement through the account established under RCW 43.31.605(1) (c); in such a case:

(A) Any restrictions imposed by subsection (3) (d) of this section shall not apply in determining if a tenant is eligible for reinstatement under subsection (3) of this section.

(B) Reimbursement on behalf of the tenant to the landlord may include up to three months of prospective rent to stabilize the tenancy as determined by the court.

(4) If a tenant seeks to stay a writ of restitution issued pursuant to this chapter, the court may issue an ex parte stay of the writ of restitution provided the tenant or tenant's attorney submits a declaration indicating good faith efforts were made to notify the other party or, if no efforts were made, why notice could not be provided prior to the application for an ex parte stay, and describing the immediate or irreparable harm that may result if an immediate stay is not granted. The court shall require service of the order and motion to stay the writ of restitution by personal delivery, mail, facsimile, or other means most likely to afford all parties notice of the court date.

(5) In all other cases the judgment may be enforced immediately. If a writ of restitution shall have been executed prior to judgment no further writ or execution for the premises shall be required.

(6) This section also applies if the writ of restitution is issued pursuant to a final judgment entered after a show cause hearing conducted in accordance with RCW 59.18.380.

NEW SECTION. Sec. 17. This act does not apply to assisted living facilities licensed under chapter 18.20 RCW, to nursing homes licensed under chapter 18.51 RCW, to adult family homes licensed under chapter 70.128 RCW, or to continuing care retirement communities registered under chapter 18.390 RCW.

NEW SECTION. Sec. 18. RCW 59.18.375 (Forcible entry or detainer or unlawful detainer actions—Payment of rent into court registry—Writ of restitution—Notice) and 2008 c 75 s 2, 2006 c 51 s 2, & 1983 c 264 s 13 are each repealed.

NEW SECTION. Sec. 19. Sections 2 through 4 of this act supersede any other provisions within chapter 59.18 or 59.12 RCW, or chapter 59.20 RCW as applicable, that conflict with sections 2 through 4 of this act.

NEW SECTION. Sec. 20. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

Correct the title.

Signed by Representatives Peterson, Chair; Taylor, Vice Chair; Barkis; Bateman; Chopp; Leavitt and Thai.

MINORITY recommendation: Without recommendation. Signed by Representatives Caldier, Ranking Minority Member Gilday, Assistant Ranking Minority Member.

Referred to Committee on Appropriations.

March 25, 2021

E2SSB 5163 Prime Sponsor, Committee on Ways & Means: Concerning the placement and treatment of conditionally released sexually violent predators. Reported by Committee on Public Safety

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that in 2008, the sex offender policy board was established to provide a more coordinated and integrated response to sex offender management in Washington state. The legislature further finds that in March 2020, the board was convened to review policies and practices related to sexually violent predators. The legislature recognizes that the board released a report and a series of recommendations regarding improvement to the current practice in order to ensure a successful transition for individuals convicted of sex offenses from total confinement back into the community. The legislature resolves to increase community safety through successful transition by enacting the recommendations of the board and other related policies.

**Sec. 2.** RCW 71.09.020 and 2015 c 278 s 2 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of social and health services.

(2) "Fair share principles" and "fair share principles of release" means that each county has adequate options for conditional release housing placements in a number generally equivalent to the number of residents from that county who are subject to total confinement pursuant to this chapter.

(3) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

~~((3))~~ (4) "Health care practitioner" means an individual or firm licensed or certified to engage actively in a regulated health profession.

~~((4))~~ (5) "Health care services" means those services provided by health professionals licensed pursuant to RCW 18.120.020(4).

~~((5))~~ (6) "Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).

~~((6))~~ (7) "Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions set forth in RCW 71.09.092. A less restrictive alternative may not include placement in the community protection program as pursuant to RCW 71A.12.230.

~~((7))~~ (8) "Likely to engage in predatory acts of sexual violence if not confined in a secure facility" means that the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

~~((8))~~ (9) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

~~((9))~~ (10) "Personality disorder" means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has onset in adolescence or early adulthood, is stable over time and leads to distress or impairment. Purported evidence of a personality disorder must be supported by testimony of a licensed forensic psychologist or psychiatrist.

~~((10))~~ (11) "Predatory" means acts directed towards: (a) Strangers; (b) individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or (c) persons of casual acquaintance with whom no substantial personal relationship exists.

~~((11))~~ (12) "Prosecuting agency" means the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney, as provided in RCW 71.09.030.

~~((12))~~ (13) "Recent overt act" means any act, threat, or combination thereof

that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act or behaviors.

~~((13))~~ (14) "Risk potential activity" or "risk potential facility" means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: Public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, public libraries, public and private youth camps, and others identified by the department following the hearings on a potential site required in RCW 71.09.315. For purposes of this chapter, "school bus stops" does not include bus stops established primarily for public transit.

~~((14))~~ (15) "Secretary" means the secretary of social and health services or the secretary's designee.

~~((15))~~ (16) "Secure community transition facility" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facility established pursuant to RCW 71.09.250(1)(a)(i) and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

~~((16))~~ (17) "Secure facility" means a residential facility for persons civilly confined under the provisions of this chapter that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement under RCW 71.09.096.

~~((17))~~ (18) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is:

(a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

~~((18))~~ (19) "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

~~((19))~~ (20) "Total confinement facility" means a secure facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a total confinement facility by the secretary.

~~((20))~~ (21) "Treatment" means the sex offender specific treatment program at the special commitment center or a specific course of sex offender treatment pursuant to RCW 71.09.092 (1) and (2).

**Sec. 3.** RCW 71.09.080 and 2012 c 257 s 6 are each amended to read as follows:

(1) Any person subjected to restricted liberty as a sexually violent predator pursuant to this chapter shall not forfeit any legal right or suffer any legal disability as a consequence of any actions taken or orders made, other than as specifically provided in this chapter, or as otherwise authorized by law.

(2)(a) Any person committed or detained pursuant to this chapter shall be prohibited from possessing or accessing a personal computer if the resident's individualized treatment plan states that access to a computer is harmful to bringing about a positive response to a specific and certain phase or course of treatment.

(b) A person who is prohibited from possessing or accessing a personal computer under (a) of this subsection shall be permitted to access a limited functioning personal computer capable of word processing and limited data storage on the computer only that does not have: (i) Internet access capability; (ii) an optical drive, external drive, universal serial bus port, or similar drive capability; or (iii) the capability to display photographs, images, videos, or motion pictures, or similar display capability from any drive or port capability listed under (b)(ii) of this subsection.

(3) Any person committed pursuant to this chapter has the right to adequate care ~~((and))~~, individualized treatment, and the development of an ongoing, clinically appropriate discharge plan as part of the treatment process. The department of social and health services shall keep records detailing all medical, expert, and professional care and treatment received by a committed person, and shall keep copies of all reports of periodic examinations made pursuant to this chapter. All such records and reports shall be made available upon request only to: The committed person, his or her attorney, the prosecuting agency, the court, the protection and advocacy agency, or another expert or professional person who, upon proper showing, demonstrates a need for access to such records.

(4) The right to the development of a discharge plan under subsection (3) of this section does not guarantee that any particular person will be determined

appropriate for discharge at any particular time. Nothing in this section precludes the department from expressing professional judgment regarding the suitability of discharge for the protection of a resident's safety or community safety. Individualized and ongoing discharge planning requires, at a minimum, and as part of a person's treatment plan, the following are addressed based on information known to the department and in accordance with policies developed by the department to implement this subsection:

(a) The resident's known physical health, functioning, and any need for health aid devices;

(b) The resident's known intellectual or cognitive level of functioning and need for specialized programming;

(c) The resident's known history of substance use and abuse;

(d) The resident's known history of risky or impulsive behaviors, criminogenic needs, and treatment interventions to address them;

(e) The resident's known ability to perform life skills and activities of daily living independently and the resident's known need for any disability accommodations;

(f) A summary of the known community services and supports the resident needs for a safe life in the community and the type of providers of such services and support; and

(g) A plan to mitigate the needs identified in this subsection that also addresses ways to develop or increase social supports, recreation opportunities, gainful employment, and if applicable, spiritual opportunities.

(5) At the time a person is taken into custody or transferred into a facility pursuant to a petition under this chapter, the professional person in charge of such facility or his or her designee shall take reasonable precautions to inventory and safeguard the personal property of the persons detained or transferred. A copy of the inventory, signed by the staff member making it, shall be given to the person detained and shall, in addition, be open to inspection to any responsible relative, subject to limitations, if any, specifically imposed by the detained person. For purposes of this subsection,

"responsible relative" includes the guardian, conservator, attorney, spouse, parent, adult child, or adult brother or sister of the person. The facility shall not disclose the contents of the inventory to any other person without consent of the patient or order of the court.

~~((45))~~ (6) Nothing in this chapter prohibits a person presently committed from exercising a right presently available to him or her for the purpose of obtaining release from confinement, including the right to petition for a writ of habeas corpus.

~~((6))~~ (7) No indigent person may be conditionally released or unconditionally discharged under this chapter without suitable clothing, and the secretary shall furnish the person with such sum of money as is required by RCW 72.02.100 for persons without ample funds who are released from correctional institutions. As funds are available, the secretary may provide payment to the indigent persons conditionally released pursuant to this chapter consistent with the optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules to do so.

~~((7))~~ (8) If a civil commitment petition is dismissed, or a trier of fact determines that a person does not meet civil commitment criteria, the person shall be released within twenty-four hours of service of the release order on the superintendent of the special commitment center, or later by agreement of the person who is the subject of the petition.

**Sec. 4.** RCW 71.09.090 and 2018 c 131 s 2 are each amended to read as follows:

(1)(a) If the secretary determines that the person's condition has so changed that ~~((either: (a) The))~~ the person no longer meets the definition of a sexually violent predator~~((or (b) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community))~~, the secretary shall authorize the person to petition the court for ~~((conditional release to a less restrictive alternative or))~~ unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for ~~((conditional release to a less~~

~~restrictive alternative or))~~ unconditional discharge, shall within ~~((forty-five))~~ 45 days order a hearing.

(b) If the secretary determines that the person's condition has so changed that conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, then the secretary shall authorize the person to petition the court for conditional release to a less restrictive alternative. Upon receipt of the petition, the court shall order the department to identify a less restrictive alternative placement that satisfies RCW 71.09.092 (1) through (4). Once identified, notice of the placement shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment as well as the person and his or her counsel. If the department cannot identify a placement available to the person that satisfies RCW 71.09.092 (1) through (4) within 90 days, the department shall provide a written certification to the court, the prosecuting agency responsible for the initial commitment, and the person and his or her counsel, detailing the efforts of the department to identify a qualifying placement. Upon the department's certification, the person may propose a placement that satisfies RCW 71.09.092 (1) through (3). After a less restrictive placement has been proposed by either the department or the person, the court shall within 45 days order a hearing.

(2)(a) Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for conditional release to a less restrictive alternative or unconditional discharge without the secretary's approval. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for conditional release to a less restrictive alternative or unconditional discharge over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall file the notice and waiver form and the annual report with the court. If the person does not affirmatively waive the right to petition, the court shall set a show cause hearing to determine whether probable cause exists to warrant a hearing on whether the person's condition has so changed that: (i) He or she no longer meets the definition of a sexually



violent predator; or (ii) conditional release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community.

(b) (i) The committed person shall have a right to have an attorney represent him or her at the show cause hearing, which may be conducted solely on the basis of affidavits or declarations, but the person is not entitled to be present at the show cause hearing. At the show cause hearing, the prosecuting agency shall present prima facie evidence establishing: (A) That the committed person continues to meet the definition of a sexually violent predator; and (B) that a less restrictive alternative is not in the best interest of the person and conditions cannot be imposed that adequately protect the community.

(ii) (A) If the state produces prima facie evidence that the committed person continues to be a sexually violent predator, then the state's burden under (b) (i) (A) of this subsection is met and an unconditional release trial may not be ordered unless the committed person produces evidence satisfying: Subsection (4) (a) of this section; and subsection (4) (b) (i) or (ii) of this section.

(B) If the state produces prima facie evidence that a less restrictive alternative is not appropriate for the committed person, then the state's burden under (b) (i) (B) of this subsection is met, and a conditional release trial may not be ordered unless the committed person:

(I) Produces evidence satisfying: Subsection (4) (a) of this section; and subsection (4) (b) (i) or (ii) of this section; and

(II) Presents the court with a specific placement satisfying the requirements of RCW 71.09.092.

(iii) In making the showing required under (b) (i) of this subsection, the state may rely exclusively upon the annual report prepared pursuant to RCW 71.09.070. The committed person may present responsive affidavits or declarations to which the state may reply.

(c) (i) If the court at the show cause hearing determines that either: ~~((+))~~ (A) The state has failed to present prima facie evidence that the committed person

continues to meet the definition of a sexually violent predator ~~((and that no proposed less restrictive alternative is in the best interest of the person and conditions cannot be imposed that would adequately protect the community));~~ or ~~((+))~~ (B) probable cause exists to believe that the person's condition has so changed that ~~((+ (A) The))~~ the person no longer meets the definition of a sexually violent predator ~~((+ or (B) release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community)),~~ then the court shall set a hearing on ~~((either or both issues))~~ the issue of unconditional discharge.

(ii) If the court at the show cause hearing determines that the state has failed to present prima facie evidence that no proposed less restrictive alternative is in the best interest of the person and conditions cannot be imposed that would adequately protect the community, the court shall enter an order directing the department to propose a less restrictive alternative that satisfies RCW 71.09.092 (1) through (4). If the department cannot identify a placement available to the person that satisfies RCW 71.09.092 (1) through (4) within 90 days, the department shall provide a written certification to the court, the prosecuting agency responsible for the initial commitment, and the person and his or her counsel, detailing the efforts of the department to identify a qualifying placement. Upon the department's certification, the person may propose a placement that satisfies RCW 71.09.092 (1) through (3). After a less restrictive placement has been proposed by either the department or the person, the court shall set a hearing on the issue of conditional release.

(iii) If the court at the show cause hearing determines, based on the evidence submitted by the person, that probable cause exists to believe that release to a less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community, the court shall set a hearing on the issue of conditional release if the person presents the court with a specific placement that satisfies the requirements of RCW 71.09.092.

(d) If the court has not previously considered the issue of release to a less

restrictive alternative, either through a trial on the merits or through the procedures set forth in RCW 71.09.094(1), or if an immediately preceding less restrictive alternative was revoked due to the loss of adequate housing or treatment for reasons other than noncompliance with housing requirements, treatment, or other conditions of the less restrictive alternative, the court shall consider whether release to a less restrictive alternative would be in the best interests of the person and conditions can be imposed that would adequately protect the community, without considering whether the person's condition has changed. ~~((The court may not find probable cause for a trial addressing less restrictive alternatives unless a proposed less restrictive alternative placement meeting the conditions of RCW 71.09.092 is presented to the court at the show cause hearing.))~~

(3)(a) At the hearing resulting from subsection (1) or (2) of this section, the committed person shall be entitled to be present and to the benefit of all constitutional protections that were afforded to the person at the initial commitment proceeding. The prosecuting agency shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The prosecuting agency shall have a right to a current evaluation of the person by experts chosen by the state. The judge may require the person to complete any or all of the following procedures or tests if requested by the evaluator: (i) A clinical interview; (ii) psychological testing; (iii) plethysmograph testing; and (iv) polygraph testing. The judge may order the person to complete any other procedures and tests relevant to the evaluation. The state is responsible for the costs of the evaluation. The committed person shall also have the right to a jury trial and the right to have experts evaluate him or her on his or her behalf and the court shall appoint an expert if the person is indigent and requests an appointment.

(b) Whenever any indigent person is subjected to an evaluation under (a) of this subsection, the office of public defense is responsible for the cost of one expert or professional person conducting an evaluation on the person's behalf. When the person wishes to be evaluated by a qualified expert or professional person of his or her own

choice, such expert or professional person must be permitted to have reasonable access to the person for the purpose of such evaluation, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon the person's request, assist the person in obtaining an expert or professional person to perform an evaluation or participate in the hearing on the person's behalf. Nothing in this chapter precludes the person from paying for additional expert services at his or her own expense.

(c) If the issue at the hearing is whether the person should be unconditionally discharged, the burden of proof shall be upon the state to prove beyond a reasonable doubt that the committed person's condition remains such that the person continues to meet the definition of a sexually violent predator. Evidence of the prior commitment trial and disposition is admissible. The recommitment proceeding shall otherwise proceed as set forth in RCW 71.09.050 and 71.09.060.

(d) If the issue at the hearing is whether the person should be conditionally released to a less restrictive alternative, the burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that conditional release to any proposed less restrictive alternative either: (i) Is not in the best interest of the committed person; or (ii) does not include conditions that would adequately protect the community. Evidence of the prior commitment trial and disposition is admissible.

(4)(a) Probable cause exists to believe that a person's condition has "so changed," under subsection (2) of this section, only when evidence exists, since the person's last commitment trial, or less restrictive alternative revocation proceeding, of a substantial change in the person's physical or mental condition such that the person either no longer meets the definition of a sexually violent predator or that a conditional release to a less restrictive alternative is in the person's best interest and conditions can be imposed to adequately protect the community.

(b) A new trial proceeding under subsection (3) of this section may be ordered, or a trial proceeding may be held, only when there is current evidence

from a licensed professional of one of the following and the evidence presents a change in condition since the person's last commitment trial proceeding:

(i) An identified physiological change to the person, such as paralysis, stroke, or dementia, that renders the committed person unable to commit a sexually violent act and this change is permanent; or

(ii) A change in the person's mental condition brought about through positive response to continuing participation in treatment which indicates that the person meets the standard for conditional release to a less restrictive alternative or that the person would be safe to be at large if unconditionally released from commitment.

(c) For purposes of this section, a change in a single demographic factor, without more, does not establish probable cause for a new trial proceeding under subsection (3) of this section. As used in this section, a single demographic factor includes, but is not limited to, a change in the chronological age, marital status, or gender of the committed person.

(5) When the court enters an order for unconditional discharge of a person from an immediately preceding less restrictive placement, the court must direct the clerk to transmit a copy of the order to the department of corrections for discharge process and termination of cause.

(6) The jurisdiction of the court over a person civilly committed pursuant to this chapter continues until such time as the person is unconditionally discharged.

~~((6))~~ (7) During any period of confinement pursuant to a criminal conviction, or for any period of detention awaiting trial on criminal charges, this section is suspended.

**Sec. 5.** RCW 71.09.092 and 2009 c 409 s 9 are each amended to read as follows:

Before the court may enter an order directing conditional release to a less restrictive alternative, it must find the following: (1) The person will be treated by a treatment provider who is qualified to provide such treatment in the state of Washington under chapter 18.155 RCW; (2) the treatment provider has presented a specific course of treatment and has

agreed to assume responsibility for such treatment and will report progress to the court on a regular basis, and will report violations immediately to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center; (3) housing exists in Washington that complies with distance restrictions, is sufficiently secure to protect the community, and the person or agency providing housing to the conditionally released person has agreed in writing to accept the person, to provide the level of security required by the court, and immediately to report to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center if the person leaves the housing to which he or she has been assigned without authorization; (4) if the department has proposed housing that is outside of the county of commitment, a documented effort was made by the department to ensure that placement is consistent with fair share principles of release; (5) the person is willing to comply with the treatment provider and all requirements imposed by the treatment provider and by the court; and ~~((45))~~ (6) the person will be under the supervision of the department of corrections and is willing to comply with supervision requirements imposed by the department of corrections.

**Sec. 6.** RCW 71.09.096 and 2015 c 278 s 3 are each amended to read as follows:

(1) If the court or jury determines that conditional release to a less restrictive alternative is in the best interest of the person and includes conditions that would adequately protect the community, and the court determines that the minimum conditions set forth in RCW 71.09.092 and in this section are met, the court shall enter judgment and direct a conditional release.

(2) The court shall impose any additional conditions necessary to ensure compliance with treatment and to protect the community. If the court finds that conditions do not exist that will both ensure the person's compliance with treatment and protect the community, then the person shall be remanded to the custody of the department of social and health services for control, care, and treatment in a secure facility as designated in RCW 71.09.060(1).

(3) If the service provider designated by the court to provide inpatient or outpatient treatment or to monitor or supervise any other terms and conditions of a person's placement in a less restrictive alternative is other than the department of social and health services or the department of corrections, then the service provider so designated must agree in writing to provide such treatment, monitoring, or supervision in accord with this section. Any person providing or agreeing to provide treatment, monitoring, or supervision services pursuant to this chapter may be compelled to testify and any privilege with regard to such person's testimony is deemed waived.

(4)(a) Prior to authorizing any release to a less restrictive alternative, the court shall impose such conditions upon the person as are necessary to ensure the safety of the community. In imposing conditions, the court must impose a restriction on the proximity of the person's residence to public or private schools providing instruction to kindergarten or any grades one through 12 in accordance with RCW 72.09.340. Courts shall require a minimum distance restriction of 500 feet on the proximity of the person's residence to child care facilities and public or private schools providing instruction to kindergarten or any grades one through 12. The court shall order the department of corrections to investigate the less restrictive alternative and, within 60 days of the order to investigate, recommend any additional conditions to the court. These conditions shall be individualized to address the person's specific risk factors and criminogenic needs and may include, but are not limited to the following: Specification of residence or restrictions on residence including distance restrictions, specification of contact with a reasonable number of individuals upon the person's request who are verified by the department of corrections to be appropriate social contacts, prohibition of contact with potential or past victims, prohibition of alcohol and other drug use, participation in a specific course of inpatient or outpatient treatment that may include monitoring by the use of polygraph and plethysmograph, monitoring through the use of global positioning ~~((satellite [global positioning system]))~~ system technology, supervision by a department of

corrections community corrections officer, a requirement that the person remain within the state unless the person receives prior authorization by the court, and any other conditions that the court determines are in the best interest of the person or others. A copy of the conditions of release shall be given to the person and to any designated service providers.

(b) To the greatest extent possible, the person, person's counsel, prosecuting agency responsible for the initial commitment, treatment provider, supervising community corrections officer, and appropriate clinical staff of the special commitment center shall meet and collaborate to craft individualized, narrowly tailored, and empirically based conditions to present to the court to help facilitate the person's successful transition to the community.

(5)(a) Prior to authorizing release to a less restrictive alternative proposed by the department, the court shall consider whether ~~((it is appropriate to release the person to the person's county of commitment))~~ the person's less restrictive alternative placement is in accordance with fair share principles. To ensure equitable distribution of releases, and prevent the disproportionate grouping of persons subject to less restrictive orders in any one county, or in any one jurisdiction or community within a county, the legislature finds it is appropriate for releases to a less restrictive alternative to occur in ~~((the person's county of commitment, unless))~~ a manner that adheres to fair share principles. The legislature recognizes that there may be reasons why the department may not recommend that a person be released to his or her county of commitment, including availability of individualized resources, the person's support needs, or when the court determines that the person's return to his or her county of commitment would be inappropriate considering any court-issued protection orders, victim safety concerns that cannot be addressed through use of global positioning system technology, the ~~((availability))~~ unavailability of appropriate treatment or facilities that would adequately protect the community, negative influences on the person, ~~((or))~~ and the location of family or other persons or organizations offering support to the person. If the court

authorizes conditional release based on the department's proposal to a county other than the county of commitment, the court shall enter specific findings regarding its decision and identify whether the release remains in line with fair share principles.

(b) (i) When the department (~~or court assists in developing a~~) develops a less restrictive alternative placement under this section (~~(which is outside of the county of commitment, and there are two or more options for placement, it shall endeavor to develop the placement in a manner that does not have a disproportionate effect on a single county)~~), it shall attempt to identify a placement satisfying the requirements of RCW 71.09.092 that is aligned with fair share principles. The department shall document its rationale for the recommended placement.

(ii) If the department does not support or recommend conditional release to a less restrictive alternative due to a clinical determination, the department shall document its objection and certify that the department is developing the less restrictive alternative pursuant to a court order and not because of a clinical determination.

(iii) When the department develops or proposes a less restrictive alternative placement under this chapter, it shall be considered a predisposition recommendation.

(iv) In developing, modifying, and enforcing less restrictive alternatives, the department shall be deemed to be performing a quasi-judicial function.

(~~(b)~~) (c) If the committed person is not conditionally released to his or her county of commitment, the department shall provide the law and justice council of the county in which the person is conditionally released with notice and a written explanation, including whether the department remains in compliance with fair share principles regarding releases under this chapter.

(~~(c)~~) (d) For purposes of this section, the person's county of commitment means the county of the court which ordered the person's commitment.

(~~(d)~~) (e) This subsection (5) does not apply to releases to a secure community transition facility under RCW 71.09.250.

(6) (a) When ordered by the court, the department must provide less restrictive alternative treatment that includes, at a minimum:

(i) The services identified in the person's discharge plan as outlined in RCW 71.09.080(4);

(ii) The assignment of a community care coordinator;

(iii) Regular contacts with providers of court-ordered treatment services;

(iv) Community escorts, if needed;

(v) A transition plan that addresses the person's access to continued services upon unconditional discharge;

(vi) Financial support for necessary housing;

(vii) Life skills training and disability accommodations, if needed; and

(viii) Assistance in pursuing benefits, education, and employment.

(b) At the time the department of corrections is ordered to investigate a proposed less restrictive alternative placement, subject to the availability of amounts appropriated for this specific purpose, the department shall assign a social worker to assist the person with discharge planning, pursuing benefits, and coordination of care prior to release.

(i) The social worker shall assist the person with completing applications for benefits prior to the person's release from total confinement.

(ii) To promote continuity of care and the individual's success in the community, the department social worker shall be responsible for initiating a clinical transition of care between the last treating clinician at the special commitment center and the person's designated community treatment provider. This transition between one clinical setting to another shall occur no later than 15 days before an individual's release from the special commitment center.

(iii) If applicable, the social worker shall assist the person with locating any needed disability accommodations in the community and with obtaining resources to help address the person's identified life skills needs prior to release from total confinement.

(7) Any service provider designated to provide inpatient or outpatient treatment shall monthly, or as otherwise directed by the court, submit to the court, to the department of social and health services facility from which the person was released, to the prosecuting agency, and to the supervising community corrections officer, a report stating whether the person is complying with the terms and conditions of the conditional release to a less restrictive alternative.

~~((47))~~ (8) Each person released to a less restrictive alternative shall have his or her case reviewed by the court that released him or her no later than one year after such release and annually thereafter until the person is unconditionally discharged. Review may occur in a shorter time or more frequently, if the court, in its discretion on its own motion, or on motion of the person, the secretary, or the prosecuting agency so determines. The ~~((sole question))~~ questions to be determined by the court ~~((is))~~ are whether the person shall continue to be conditionally released to a less restrictive alternative, and if so, whether a modification to the person's less restrictive alternative order is appropriate to ensure the conditional release remains in the best interest of the person and adequate to protect the community. The court in making its determination shall be aided by the periodic reports filed pursuant to subsection ~~((6))~~ (7) of this section and the opinions of the secretary and other experts or professional persons.

**Sec. 7.** RCW 71.09.130 and 1995 c 216 s 16 are each amended to read as follows:

(1) In the event of an escape by a person committed under this chapter from a state institution or the disappearance of such a person while on conditional release, the superintendent or community corrections officer shall notify the following as appropriate: Local law enforcement officers, other governmental agencies, the person's relatives, and any other appropriate persons about information necessary for the public safety or to assist in the apprehension of the person.

(2) If a person committed under this chapter disappears while on conditional release, the department of corrections may enter a warrant for the person's

arrest for up to 72 hours pending entry of a bench warrant by the court.

(3) The department of corrections, its officers, agents, and employees are not liable for the acts of individuals on conditional release unless the department of corrections, its officers, agency, and employees acted with gross negligence.

(4) The department, its officers, agents, and employees are not liable for the acts of individuals on conditional release unless the department, its officers, agents, and employees acted with gross negligence.

**Sec. 8.** RCW 71.09.140 and 2012 c 257 s 12 are each amended to read as follows:

(1)(a) At the earliest possible date, and in no event later than ~~((thirty))~~ 30 days before conditional release, change of address for a person on conditional release, or unconditional discharge, except in the event of escape, the department of social and health services shall send written notice of conditional release, unconditional discharge, or escape, to the following:

~~((a))~~ (i) The chief of police of the city, if any, in which the person will reside or in which placement will be made under a less restrictive alternative;

~~((b))~~ (ii) The sheriff of the county in which the person will reside or in which placement will be made under a less restrictive alternative; and

~~((c))~~ (iii) The sheriff of the county where the person was last convicted of a sexually violent offense, if the department does not know where the person will reside.

The department shall notify the state patrol of the release of all sexually violent predators and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(b) A return to total confinement or to a secure community transition facility pending revocation or modification proceedings is not considered a change of address for purposes of (a) of this subsection, and an additional community notification process is not required, unless conditional release is revoked under RCW 71.09.098 or the return lasts longer than 90 days.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific person found to be a sexually violent predator under this chapter:

(a) The victim or victims of any sexually violent offenses for which the person was convicted in the past or the victim's next of kin if the crime was a homicide. "Next of kin" as used in this section means a person's spouse, parents, siblings, and children;

(b) Any witnesses who testified against the person in his or her commitment trial under RCW 71.09.060; and

(c) Any person specified in writing by the prosecuting agency.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting agency to receive the notice, and the notice are confidential and shall not be available to the committed person.

(3) If a person committed as a sexually violent predator under this chapter escapes from a department of social and health services facility, the department shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the committed person resided immediately before his or her commitment as a sexually violent predator, or immediately before his or her incarceration for his or her most recent offense. If previously requested, the department shall also notify the witnesses and the victims of the sexually violent offenses for which the person was convicted in the past or the victim's next of kin if the crime was a homicide. If the person is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(4) If the victim or victims of any sexually violent offenses for which the person was convicted in the past or the victim's next of kin, or any witness is under the age of ~~((sixteen))~~ 16, the notice required by this section shall be sent to the parents or legal guardian of the child.

(5) The department of social and health services shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(6) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section.

**Sec. 9.** RCW 71.09.250 and 2003 c 216 s 3 are each amended to read as follows:

(1)(a) The secretary is authorized to site, construct, occupy, and operate (i) a secure community transition facility on McNeil Island for persons authorized to petition for a less restrictive alternative under RCW 71.09.090(1) and who are conditionally released; and (ii) a special commitment center on McNeil Island with up to four hundred four beds as a total confinement facility under this chapter, subject to appropriated funding for those purposes. The secure community transition facility shall be authorized for the number of beds needed to ensure compliance with the orders of the superior courts under this chapter and the federal district court for the western district of Washington. The total number of beds in the secure community transition facility shall be limited to ~~((twenty-four))~~ 24, consisting of up to ~~((fifteen))~~ 15 transitional beds and up to nine pretransitional beds. The residents occupying the transitional beds shall be the only residents eligible for transitional services occurring in Pierce county. In no event shall more than ~~((fifteen))~~ 15 residents of the secure community transition facility be participating in off-island transitional, educational, or employment activity at the same time in Pierce county. The department shall provide the Pierce county sheriff, or his or her designee, with a list of the ~~((fifteen))~~ 15 residents so designated, along with their photographs and physical descriptions, and the list shall be immediately updated whenever a residential change occurs. The Pierce county sheriff, or his or her designee, shall be provided an opportunity to confirm the residential status of each resident leaving McNeil Island.

(b) For purposes of this subsection, "transitional beds" means beds only for

residents who are judged by a qualified expert to be suitable to leave the island for treatment, education, and employment.

(2) (a) The secretary is authorized to site, either within the secure community transition facility established pursuant to subsection (1) (a) (i) of this section, or within the special commitment center, up to nine pretransitional beds.

(b) Residents assigned to pretransitional beds shall not be permitted to leave McNeil Island for education, employment, treatment, or community activities in Pierce county.

(c) For purposes of this subsection, "pretransitional beds" means beds for residents whose progress toward a less secure residential environment and transition into more complete community involvement is projected to take substantially longer than a typical resident of the special commitment center.

(3) Notwithstanding RCW 36.70A.103 or any other law, this statute preempts and supersedes local plans, development regulations, permitting requirements, inspection requirements, and all other laws as necessary to enable the secretary to site, construct, occupy, and operate a secure community transition facility on McNeil Island and a total confinement facility on McNeil Island.

(4) To the greatest extent possible, until June 30, 2003, persons who were not civilly committed from the county in which the secure community transition facility established pursuant to subsection (1) of this section is located may not be conditionally released to a setting in that same county less restrictive than that facility.

(5) As of June 26, 2001, the state shall immediately cease any efforts in effect on such date to site secure community transition facilities, other than the facility authorized by subsection (1) of this section, and shall instead site such facilities in accordance with the provisions of this section.

(6) The department must:

(a) Identify the minimum and maximum number of secure community transition facility beds in addition to the facility established under subsection (1) of this section that may be necessary for the

period of May 2004 through May 2007 and provide notice of these numbers to all counties by August 31, 2001; and

(b) Develop and publish policy guidelines for the siting and operation of secure community transition facilities.

(7) (a) The total number of secure community transition facility beds that may be required to be sited in a county between June 26, 2001, and June 30, 2008, may be no greater than the total number of persons civilly committed from that county, or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause had been made on April 1, 2001. The total number of secure community transition facility beds required to be sited in each county between July 1, 2008, and June 30, 2015, may be no greater than the total number of persons civilly committed from that county or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause had been made as of July 1, 2008.

(b) Counties and cities that provide secure community transition facility beds above the maximum number that they could be required to site under this subsection are eligible for a bonus grant under the incentive provisions in RCW 71.09.255. The county where the special commitment center is located shall receive this bonus grant for the number of beds in the facility established in subsection (1) of this section in excess of the maximum number established by this subsection.

(c) No secure community transition facilities in addition to the one established in subsection (1) of this section may be required to be sited in the county where the special commitment center is located until after June 30, 2008, provided however, that the county and its cities may elect to site additional secure community transition facilities and shall be eligible under the incentive provisions of RCW 71.09.255 for any additional facilities meeting the requirements of that section.

(8) After the department demonstrates the need for additional bed capacity to the appropriate committees of the legislature, and receives approval and funding from the appropriate committees of the legislature to build additional



bed capacity, the state is authorized to site and operate secure community transition facilities and other conditional release and transitional facilities in any county in the state in accordance with RCW 71.09.315. In identifying potential counties and sites within a county for the location of a secure community transition facility or other conditional release and transitional facilities, the department shall work with and assist local governments to provide for the equitable distribution of such facilities. In coordinating and deciding upon the siting of secure community transition facilities or other conditional release and transitional facilities within a county, great weight shall be given by the county and cities within the county to:

(a) The number and location of existing residential facility beds operated by the department of corrections or the mental health division of the department of social and health services in each jurisdiction in the county; and

(b) The number of registered sex offenders classified as level II or level III and the number of sex offenders registered as homeless residing in each jurisdiction in the county.

(9)(a) "Equitable distribution" means siting or locating secure community transition facilities and other conditional release and transitional facilities in a manner that will not cause a disproportionate grouping of similar facilities either in any one county, or in any one jurisdiction or community within a county, as relevant; and

(b) "Jurisdiction" means a city, town, or geographic area of a county in which distinct political or judicial authority may be exercised.

**NEW SECTION. Sec. 10.** A new section is added to chapter 71.09 RCW to read as follows:

To facilitate the primary role of the department in identifying less restrictive alternative placements under RCW 71.09.090 and discharge planning under RCW 71.09.080, subject to the availability of amounts appropriated for this specific purpose, the department shall conduct a study to explore the development of conditional release and transition facilities, which may include community-based state-operated living

alternatives similar to the state-operated living alternative program operated by the developmental disabilities administration. Any facilities or placements developed under this section may be identified through a request for proposal process or through direct state acquisition and development. Any contracts with facilities or placements entered into under this section shall include a provision requiring oversight by the department to ensure the programs are operating appropriately.

**NEW SECTION. Sec. 11.** A new section is added to chapter 71.09 RCW to read as follows:

(1) In accordance with RCW 71.09.090 and 71.09.096, the department shall have the primary responsibility for developing a less restrictive alternative placement. To ensure the department has sufficient less restrictive alternative placements to choose from that satisfy the requirements of RCW 71.09.092, subject to the availability of amounts appropriated for this specific purpose, the department shall use a request for proposal process to solicit and contract with housing and treatment providers from across the state and facilitate fair share principles among the counties. In order to increase the number of housing options for individuals qualifying for a less restrictive alternative, the department shall have oversight of the vendors and providers who contract with the state, including the authority to inspect and ensure compliance, negotiate the rates charged for services, ensure adequate living conditions of housing locations, and terminate contracts. The department shall maintain a statewide accounting of the contracted community housing and treatment providers in each county and provide a biannual report to the legislature and governor by December 1st on the availability and adequacy of less restrictive alternative placements and the department's compliance with fair share principles.

(2) To facilitate its duties required under this section, the department shall use the following housing matrix and considerations as a guide to planning and developing less restrictive alternative placements. The following considerations may not be used as a reason to deny a less restrictive alternative placement.

(a) Considerations for evaluating a proposed vendor's application for less restrictive alternative housing services shall include applicable state and local zoning and building codes, general housing requirements, availability of public services, and other considerations identified in accordance with RCW 71.09.315. The department shall require the housing provider to provide proof that the facility is in compliance with all local zoning and building codes.

(i) General housing requirements include running water, electricity, bedroom and living space of adequate size, and no mold or infestations.

(ii) Availability of public services include availability of chaperones and whether the placement is within a reasonable distance to a grocery store, bank, public transportation options, and offices for public services and benefits.

(iii) Other considerations include whether the placement is consistent with fair share principles across the counties, whether the placement is within reasonable distance to other current or planned components of the less restrictive alternative, whether the placement is within reasonable distance to employment opportunities, and the reliability of global positioning system technology.

(b) Factors for evaluating less restrictive alternative options for a specific individual include sex offender treatment considerations, criminogenic needs and risk factors, protective factors, and the specific needs of the client.

(i) Sex offender treatment considerations include whether the housing is within a reasonable distance from the treatment provider, whether the treatment provider is a good therapeutic match with the client, and whether the treatment provider has relevant experience and background to treat the client if the client has special needs.

(ii) Criminogenic needs and risk factors include consideration of the person's specific needs and risk factors in evaluating less restrictive alternative options.

(iii) Protective factors include whether housing is within a reasonable distance of family, friends, potential hobbies, potential employment, and educational opportunities.

(iv) Consideration of the client's specific needs includes assessing the availability of personal care assistance and in-home care assistance, and whether housing is within a reasonable distance of mental health, medical treatment options, and substance use disorder treatment options.

NEW SECTION. Sec. 12. A new section is added to chapter 71.09 RCW to read as follows:

(1) The department shall enter into a memorandum of understanding with the department of licensing to allow residents in total confinement at the special commitment center to obtain a state identification card through a written identification verification letter completed by the special commitment center and delivered to the department of licensing.

(2) The process shall occur upon the person's initial detention at the special commitment center. The process shall reoccur when the person's state identification card expires.

NEW SECTION. Sec. 13. A new section is added to chapter 71.09 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the department, the sex offender policy board, and department of health shall convene a work group to develop recommendations to increase the availability and quality of sex offender treatment providers to meet the growing number of persons qualifying for conditional release to a less restrictive alternative. The work group shall gather data on best practices in other states and make recommendations whether sex offender treatment providers should be required to contract with the department; whether annual or biannual trainings by the department should be mandatory for prospective and existing sex offender treatment providers; whether the department should provide competitive wages for services or pay that is commensurate with the years of experience or education level of the treatment provider; and whether the department should provide other incentives such as a cost-of-living pay increase or compensating providers for the cost of mandated trainings associated with the sex offender treatment provider license under chapter 18.155 RCW. A report shall

be submitted to the legislature by December 1, 2021.

(2) This section expires June 30, 2022.

NEW SECTION. **Sec. 14.** A new section is added to chapter 71.09 RCW to read as follows:

(1) In accordance with RCW 9.94A.8673, the sex offender policy board shall meet quarterly during the 2021-2023 biennium to continue its review of sexually violent predators and less restrictive alternative policies and best practices, collaborate with stakeholders and the department, provide outreach to providers and stakeholders, and monitor implementation of this act. The board shall also explore and make recommendations whether to continue or remove the prohibition on a less restrictive alternative from including a placement in the community protection program pursuant to RCW 71A.12.230. The board shall provide semiannual updates to the appropriate committees of the legislature during the 2021-2023 biennium.

(2) This section expires June 30, 2023.

NEW SECTION. **Sec. 15.** A new section is added to chapter 9.94A RCW to read as follows:

(1) In accordance with section 14 of this act, the sex offender policy board shall meet quarterly during the 2021-2023 biennium to continue its review of sexually violent predators and less restrictive alternative policies and best practices, collaborate with stakeholders and the department, provide outreach to providers and stakeholders, and monitor implementation of this act. The board shall provide semiannual updates to the appropriate committees of the legislature during the 2021-2023 biennium.

(2) This section expires June 30, 2023."

Correct the title.

Signed by Representatives Goodman, Chair; Johnson, J., Vice Chair; Davis; Hackney; Lovick; Orwall; Ramos and Simmons.

MINORITY recommendation: Without recommendation. Signed by Representatives Mosbrucker, Ranking Minority Member; Griffey and Young.

MINORITY recommendation: Do not pass. Signed by Representatives Klippert, Assistant Ranking Minority Member and Graham.

Referred to Committee on Appropriations.

March 25, 2021

ESB 5164 Prime Sponsor, Senator Darneille: Resentencing of individuals sentenced as a persistent offender due to a robbery in the second degree conviction. Reported by Committee on Public Safety

MAJORITY recommendation: Do pass. Signed by Representatives Goodman, Chair; Johnson, J., Vice Chair; Davis; Hackney; Lovick; Orwall; Ramos and Simmons.

MINORITY recommendation: Do not pass. Signed by Representative Klippert, Assistant Ranking Minority Member.

MINORITY recommendation: Without recommendation. Signed by Representatives Mosbrucker, Ranking Minority Member; Graham; Griffey and Young.

Referred to Committee on Rules for second reading.

March 26, 2021

ESSB 5172 Prime Sponsor, Committee on Labor, Commerce & Tribal Affairs: Concerning the retroactivity of overtime claims in exceptional cases. (REVISED FOR ENGROSSED: Providing overtime standards for the agricultural workforce.) Reported by Committee on Labor & Workplace Standards

MAJORITY recommendation: Do pass. Signed by Representatives Sells, Chair; Berry, Vice Chair; Hoff, Ranking Minority Member; Bronoske; Harris and Ortiz-Self.

MINORITY recommendation: Without recommendation. Signed by Representative Mosbrucker, Assistant Ranking Minority Member.

Referred to Committee on Appropriations.

March 25, 2021

SB 5177 Prime Sponsor, Senator Cleveland: Eliminating proof of nonmarriage as an element of a sex offense. Reported by Committee on Public Safety

MAJORITY recommendation: Do pass. Signed by Representatives Goodman, Chair; Johnson, J., Vice

Chair; Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Davis; Graham; Griffey; Hackney; Lovick; Orwall; Ramos; Simmons and Young.

Referred to Committee on Rules for second reading.

March 25, 2021

Referred to Committee on Rules for second reading.

March 26, 2021

SSB 5210 Prime Sponsor, Committee on Behavioral Health Subcommittee to Health & Long Term Care: Concerning updates to competency restoration order requirements. Reported by Committee on Civil Rights & Judiciary

2SSB 5293 Prime Sponsor, Committee on Ways & Means: Addressing mental health sentencing alternatives. Reported by Committee on Public Safety

MAJORITY recommendation: Do pass. Signed by Representatives Goodman, Chair; Johnson, J., Vice Chair; Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Davis; Graham; Griffey; Hackney; Lovick; Orwall; Ramos; Simmons and Young.

MAJORITY recommendation: Do pass. Signed by Representatives Hansen, Chair; Simmons, Vice Chair; Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno; Davis; Entenman; Goodman; Kirby; Klippert; Orwall; Peterson; Thai; Valdez; Walen and Ybarra.

Referred to Committee on Rules for second reading.

March 25, 2021

Referred to Committee on Rules for second reading.

March 25, 2021

SB 5242 Prime Sponsor, Senator Liias: Supporting media literacy and digital citizenship. Reported by Committee on Education

SB 5299 Prime Sponsor, Senator Wellman: Allowing the use of computer science credits for the purpose of graduation requirements. Reported by Committee on Education

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

MAJORITY recommendation: Do pass. Signed by Representatives Santos, Chair; Dolan, Vice Chair; Ybarra, Ranking Minority Member; Berg; Bergquist; Callan; Ortiz-Self; Rude; Steele and Stonier.

"Sec. 1. RCW 28A.230.300 and 2019 c 180 s 2 are each amended to read as follows:

MINORITY recommendation: Do not pass. Signed by Representatives Walsh, Assistant Ranking Minority Member and McEntire.

Referred to Committee on Appropriations.

March 26, 2021

ESSB 5263 Prime Sponsor, Committee on Law & Justice: Concerning defenses in personal injury and wrongful death actions where the person injured or killed was committing a felony. Reported by Committee on Civil Rights & Judiciary

(1) Beginning no later than the 2022-23 school year, each school district that operates a high school must, at a minimum, provide an opportunity to access an elective computer science course that is available to all high school students. School districts are encouraged to consider community-based or public-private partnerships in establishing and administering a course, but any course offered in accordance with this section must be aligned to the state learning standards for computer science or mathematics.

MAJORITY recommendation: Do pass. Signed by Representatives Hansen, Chair; Simmons, Vice Chair; Davis; Entenman; Goodman; Kirby; Orwall; Peterson; Thai; Valdez and Walen.

(2) In accordance with the requirements of this section, beginning in the 2019-20 school year, school districts may award academic credit for computer science to students based on student completion of a competency examination that is aligned with the state learning standards for computer science or mathematics and course equivalency requirements adopted by the office of the superintendent of public instruction to implement this section. Each school district board of directors

MINORITY recommendation: Do not pass. Signed by Representatives Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno; Klippert and Ybarra.

in districts that award credit under this subsection shall develop a written policy for awarding such credit that includes:

(a) A course equivalency approval procedure;

(b) Procedures for awarding competency-based credit for skills learned partially or wholly outside of a course; and

(c) An approval process for computer science courses taken before attending high school under RCW 28A.230.090 (4) and (5).

(3) Prior to the use of any competency examination under this section that may be used to award academic credit to students, the office of the superintendent of public instruction must review the examination to ensure its alignment with:

(a) The state learning standards for computer science or mathematics; and

(b) Course equivalency requirements adopted by the office of the superintendent of public instruction to implement this section.

(4)(a) For purposes of meeting graduation requirements under RCW 28A.230.090, a student may substitute a computer science course aligned to state computer science learning standards as an alternative to a third year mathematics or third year science course if:

(i) Prior to the substitution, the school counselor provides the student and the student's parent or guardian with written notification of the consequences of the substitution on postsecondary opportunities;

(ii) The student, the student's parent or guardian, and the student's school counselor or principal agree to the substitution; and

(iii) The substitution is aligned with the student's high school and beyond plan.

(b) A substitution permitted under this subsection (4) may only be used once per student.

**Sec. 2.** RCW 28A.230.090 and 2020 c 307 s 6 are each amended to read as follows:

(1) The state board of education shall establish high school graduation requirements or equivalencies for

students, except as provided in RCW 28A.230.122 and 28A.655.250 and except those equivalencies established by local high schools or school districts under RCW 28A.230.097. The purpose of a high school diploma is to declare that a student is ready for success in postsecondary education, gainful employment, and citizenship, and is equipped with the skills to be a lifelong learner.

(a) Any course in Washington state history and government used to fulfill high school graduation requirements shall consider including information on the culture, history, and government of the American Indian peoples who were the first inhabitants of the state.

(b) Except as provided otherwise in this subsection, the certificate of academic achievement requirements under RCW 28A.655.061 or the certificate of individual achievement requirements under RCW 28A.155.045 are required for graduation from a public high school but are not the only requirements for graduation. The requirement to earn a certificate of academic achievement to qualify for graduation from a public high school concludes with the graduating class of 2019. The obligation of qualifying students to earn a certificate of individual achievement as a prerequisite for graduation from a public high school concludes with the graduating class of 2021.

(c)(i) Each student must have a high school and beyond plan to guide the student's high school experience and inform course taking that is aligned with the student's goals for education or training and career after high school.

(ii)(A) A high school and beyond plan must be initiated for each student during the seventh or eighth grade. In preparation for initiating that plan, each student must first be administered a career interest and skills inventory.

(B) For students with an individualized education program, the high school and beyond plan must be developed in alignment with their individualized education program. The high school and beyond plan must be developed in a similar manner and with similar school personnel as for all other students.

(iii)(A) The high school and beyond plan must be updated to reflect high school assessment results in RCW

28A.655.070(3)(b) and to review transcripts, assess progress toward identified goals, and revised as necessary for changing interests, goals, and needs. The plan must identify available interventions and academic support, courses, or both, that are designed for students who are not on track to graduate, to enable them to fulfill high school graduation requirements. Each student's high school and beyond plan must be updated to inform junior year course taking.

(B) For students with an individualized education program, the high school and beyond plan must be updated in alignment with their school to postschool transition plan. The high school and beyond plan must be updated in a similar manner and with similar school personnel as for all other students.

(iv) School districts are encouraged to involve parents and guardians in the process of developing and updating the high school and beyond plan, and the plan must be provided to the students' parents or guardians in their native language if that language is one of the two most frequently spoken non-English languages of students in the district. Nothing in this subsection (1)(c)(iv) prevents districts from providing high school and beyond plans to parents and guardians in additional languages that are not required by this subsection.

(v) All high school and beyond plans must, at a minimum, include the following elements:

(A) Identification of career goals, aided by a skills and interest assessment;

(B) Identification of educational goals;

(C) Identification of dual credit programs and the opportunities they create for students, including eligibility for automatic enrollment in advanced classes under RCW 28A.320.195, career and technical education programs, running start programs, AP courses, international baccalaureate programs, and college in the high school programs;

(D) Information about the college bound scholarship program established in chapter 28B.118 RCW;

(E) A four-year plan for course taking that:

(I) Includes information about options for satisfying state and local graduation requirements;

(II) Satisfies state and local graduation requirements;

(III) Aligns with the student's secondary and postsecondary goals, which can include education, training, and career;

(IV) Identifies course sequences to inform academic acceleration, as described in RCW 28A.320.195 that include dual credit courses or programs and are aligned with the student's goals; and

(V) Includes information about the college bound scholarship program, the Washington college grant, and other scholarship opportunities;

(F) Evidence that the student has received the following information on federal and state financial aid programs that help pay for the costs of a postsecondary program:

(I) Information about the documentation necessary for completing the applications; application timeliness and submission deadlines; the importance of submitting applications early; information specific to students who are or have been in foster care; information specific to students who are, or are at risk of being, homeless; information specific to students whose family member or guardians will be required to provide financial and tax information necessary to complete applications; and

(II) Opportunities to participate in sessions that assist students and, when necessary, their family members or guardians, fill out financial aid applications; and

(G) By the end of the twelfth grade, a current resume or activity log that provides a written compilation of the student's education, any work experience, and any community service and how the school district has recognized the community service pursuant to RCW 28A.320.193.

(d) Any decision on whether a student has met the state board's high school graduation requirements for a high school and beyond plan shall remain at the local level. Effective with the graduating class of 2015, the state board of education may not establish a requirement for students to complete a culminating project for graduation. A district may

establish additional, local requirements for a high school and beyond plan to serve the needs and interests of its students and the purposes of this section.

(e)(i) The state board of education shall adopt rules to implement the career and college ready graduation requirement proposal adopted under board resolution on November 10, 2010, and revised on January 9, 2014, to take effect beginning with the graduating class of 2019 or as otherwise provided in this subsection (1)(e). The rules must include authorization for a school district to waive up to two credits for individual students based on a student's circumstances, provided that none of the waived credits are identified as mandatory core credits by the state board of education. School districts must adhere to written policies authorizing the waivers that must be adopted by each board of directors of a school district that grants diplomas. The rules must also provide that the content of the third credit of mathematics and the content of the third credit of science may be chosen by the student based on the student's interests and high school and beyond plan with agreement of the student's parent or guardian or agreement of the school counselor or principal, or as provided in RCW 28A.230.300(4).

(ii) School districts may apply to the state board of education for a waiver to implement the career and college ready graduation requirement proposal beginning with the graduating class of 2020 or 2021 instead of the graduating class of 2019. In the application, a school district must describe why the waiver is being requested, the specific impediments preventing timely implementation, and efforts that will be taken to achieve implementation with the graduating class proposed under the waiver. The state board of education shall grant a waiver under this subsection (1)(e) to an applying school district at the next subsequent meeting of the board after receiving an application.

(iii) A school district must update the high school and beyond plans for each student who has not earned a score of level 3 or level 4 on the middle school mathematics assessment identified in RCW 28A.655.070 by ninth grade, to ensure that the student takes a mathematics course in both ninth and tenth grades.

This course may include career and technical education equivalencies in mathematics adopted pursuant to RCW 28A.230.097.

(2)(a) In recognition of the statutory authority of the state board of education to establish and enforce minimum high school graduation requirements, the state board shall periodically reevaluate the graduation requirements and shall report such findings to the legislature in a timely manner as determined by the state board.

(b) The state board shall reevaluate the graduation requirements for students enrolled in vocationally intensive and rigorous career and technical education programs, particularly those programs that lead to a certificate or credential that is state or nationally recognized. The purpose of the evaluation is to ensure that students enrolled in these programs have sufficient opportunity to earn a certificate of academic achievement, complete the program and earn the program's certificate or credential, and complete other state and local graduation requirements.

(c) The state board shall forward any proposed changes to the high school graduation requirements to the education committees of the legislature for review. The legislature shall have the opportunity to act during a regular legislative session before the changes are adopted through administrative rule by the state board. Changes that have a fiscal impact on school districts, as identified by a fiscal analysis prepared by the office of the superintendent of public instruction, shall take effect only if formally authorized and funded by the legislature through the omnibus appropriations act or other enacted legislation.

(3) Pursuant to any requirement for instruction in languages other than English established by the state board of education or a local school district, or both, for purposes of high school graduation, students who receive instruction in American sign language or one or more American Indian languages shall be considered to have satisfied the state or local school district graduation requirement for instruction in one or more languages other than English.

(4) Unless requested otherwise by the student and the student's family, a student who has completed high school

courses before attending high school shall be given high school credit which shall be applied to fulfilling high school graduation requirements if:

(a) The course was taken with high school students, if the academic level of the course exceeds the requirements for seventh and eighth grade classes, and the student has successfully passed by completing the same course requirements and examinations as the high school students enrolled in the class; or

(b) The academic level of the course exceeds the requirements for seventh and eighth grade classes and the course would qualify for high school credit, because the course is similar or equivalent to a course offered at a high school in the district as determined by the school district board of directors.

(5) Students who have taken and successfully completed high school courses under the circumstances in subsection (4) of this section shall not be required to take an additional competency examination or perform any other additional assignment to receive credit.

(6) At the college or university level, five quarter or three semester hours equals one high school credit."

Correct the title.

Signed by Representatives Santos, Chair; Dolan, Vice Chair; Berg; Bergquist; Callan; Ortiz-Self and Stonier.

MINORITY recommendation: Do not pass. Signed by Representatives Ybarra, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; McEntire; Rude and Steele.

Referred to Committee on Rules for second reading.

March 26, 2021

**SSB 5317** Prime Sponsor, Committee on Agriculture, Water, Natural Resources & Parks: Concerning pesticide registration and pesticide licensing fees. Reported by Committee on Rural Development, Agriculture & Natural Resources

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 15.58.070 and 2008 c 285 s 15 are each amended to read as follows:

(1) All registrations issued by the department expire December 31st of the following year except that registrations issued by the department to a registrant who is applying to register an additional pesticide during the second year of the registrant's registration period shall expire December 31st of that year.

(2) An application for registration must be accompanied by a fee of (~~(three)~~) six hundred (~~(ninety)~~) fifty dollars for each pesticide, except that a registrant who is applying to register an additional pesticide during the year the registrant's registration expires shall pay a fee of (~~(one)~~) three hundred (~~(ninety-five)~~) twenty-five dollars for each additional pesticide.

(3) Fees must be deposited in the agricultural local fund to support the activities of the pesticide program within the department.

(4) Any registration approved by the director and in effect on the last day of the registration period, for which a renewal application has been made and the proper fee paid, continues in full force and effect until the director notifies the applicant that the registration has been renewed, or otherwise denied in accord with the provision of RCW 15.58.110.

(5) The department must complete and post on its website a timeline for processing completed pesticide registrations.

**Sec. 2.** RCW 15.58.180 and 2013 c 144 s 10 are each amended to read as follows:

(1) Except as provided in subsections (4) and (5) of this section, it is unlawful for any person to act in the capacity of a pesticide dealer or advertise as or assume to act as a pesticide dealer without first having obtained an annual license from the director. The license expires on the business license expiration date. A license is required for each location or outlet located within this state from which pesticides are distributed. A manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes pesticides directly into this state must obtain a pesticide dealer license for his or her principal out-of-state location or outlet, but such a licensed out-of-state pesticide dealer is exempt from the pesticide dealer manager requirements.



(2) Application for a license must be accompanied by a fee of ~~((sixty-seven))~~ eighty-eight dollars and must be made through the business licensing system and must include the full name of the person applying for the license and the name of the individual within the state designated as the pesticide dealer manager. If the applicant is a partnership, association, corporation, or organized group of persons, the full name of each member of the firm or partnership or the names of the officers of the association or corporation must be given on the application. The application must state the principal business address of the applicant in the state and elsewhere, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the director.

(3) It is unlawful for any licensed dealer outlet to operate without a pesticide dealer manager who has a license of qualification.

(4) This section does not apply to (a) a licensed pesticide applicator who sells pesticides only as an integral part of the applicator's pesticide application service when pesticides are dispensed only through apparatuses used for pesticide application, or (b) any federal, state, county, or municipal agency that provides pesticides only for its own programs.

(5) A user of a pesticide may distribute a properly labeled pesticide to another user who is legally entitled to use that pesticide without obtaining a pesticide dealer's license if the exclusive purpose of distributing the pesticide is keeping it from becoming a hazardous waste as defined in chapter ~~((70.105))~~ 70A.300 RCW.

**Sec. 3.** RCW 15.58.200 and 2008 c 285 s 17 are each amended to read as follows:

The director shall require each pesticide dealer manager to demonstrate to the director knowledge of pesticide laws and rules; pesticide hazards; and the safe distribution, use and application, and disposal of pesticides by satisfactorily passing a written examination after which the director shall issue a license of qualification. Application for a license must be accompanied by a fee of ~~((thirty-three))~~ thirty-eight dollars. The pesticide

dealer manager license expires annually on a date set by rule by the director.

**Sec. 4.** RCW 15.58.205 and 2008 c 285 s 18 are each amended to read as follows:

(1) No individual may perform services as a structural pest inspector or advertise that they perform services of a structural pest inspector without obtaining a structural pest inspector license from the director. The license expires annually on a date set by rule by the director. Application for a license must be on a form prescribed by the director and must be accompanied by a fee of ~~((sixty))~~ seventy-eight dollars.

(2) The following are exempt from the application fee requirement of this section when acting within the authorities of their existing licenses issued under this chapter or chapter 17.21 RCW: Licensed pest control consultants; licensed commercial pesticide applicators and operators; licensed private-commercial applicators; and licensed demonstration and research applicators.

(3) The following are exempt from the structural pest inspector licensing requirement: Individuals inspecting for damage caused by wood destroying organisms if the inspections are solely for the purpose of: (a) Repairing or making specific recommendations for the repair of the damage, or (b) assessing a monetary value for the structure inspected. Individuals performing wood destroying organism inspections that incorporate but are not limited to the activities described in (a) or (b) of this subsection are not exempt from the structural pest inspector licensing requirement.

(4) A structural pest inspector license is not valid for conducting a complete wood destroying organism inspection unless the inspector owns or is employed by a business with a structural pest inspection company license.

**Sec. 5.** RCW 15.58.210 and 2008 c 285 s 19 are each amended to read as follows:

(1) No individual may perform services as a pest control consultant without obtaining a license from the director. The license expires annually on a date set by rule by the director. Application for a license must be on a form prescribed by the director and must be

accompanied by a fee of (~~sixty~~) sixty-eight dollars.

(2) The following are exempt from the licensing requirements of this section when acting within the authorities of their existing licenses issued under chapter 17.21 RCW: Licensed commercial pesticide applicators and operators; licensed private-commercial applicators; and licensed demonstration and research applicators. The following are also exempt from the licensing requirements of this section: Employees of federal, state, county, or municipal agencies when acting in their official governmental capacities; and pesticide dealer managers and employees working under the direct supervision of the pesticide dealer manager and only at a licensed pesticide dealer's outlet.

**Sec. 6.** RCW 15.58.220 and 2008 c 285 s 20 are each amended to read as follows:

For the purpose of this section public pest control consultant means any individual who is employed by a governmental agency or unit to act as a pest control consultant. No person may act as a public pest control consultant without first obtaining a license from the director. The license expires annually on a date set by rule by the director. Application for a license must be on a form prescribed by the director and must be accompanied by a fee of (~~thirty-three~~) forty-three dollars. Federal and state employees whose principal responsibilities are in pesticide research, the jurisdictional health officer or a duly authorized representative, public pest control consultants licensed and working in the health vector field, and public operators licensed under RCW 17.21.220 shall be exempt from this licensing provision.

**Sec. 7.** RCW 15.58.411 and 1997 c 242 s 8 are each amended to read as follows:

(~~All~~) (1) Except as otherwise provided for in this section, all license fees collected under this chapter shall be paid to the director for use exclusively in the enforcement of this chapter.

(2) In addition to any other fees the department may collect under this chapter, the department shall collect a fee of seven dollars for each license issued by the department under this chapter. The department shall transmit the seven dollar fee required by this subsection to Washington State

University for the purpose of providing a pesticide safety education program to educate and train pesticide licensees and prospective licensees.

(3) The department shall engage with the regulated community on the status of license fees established in this chapter, including consideration of future increases, in coordination with a stakeholder work group.

(4) All moneys collected for civil penalties levied under this chapter shall be deposited in the state general fund.

**Sec. 8.** RCW 17.21.070 and 2008 c 285 s 21 are each amended to read as follows:

It is unlawful for any person to engage in the business of applying pesticides to the land of another without a commercial pesticide applicator license. Application for a commercial applicator license must be accompanied by a fee of two hundred (~~fifteen~~) forty-three dollars and in addition a fee of twenty-seven dollars for each apparatus, exclusive of one, used by the applicant in the application of pesticides.

**Sec. 9.** RCW 17.21.110 and 2008 c 285 s 22 are each amended to read as follows:

It is unlawful for any person to act as an employee of a commercial pesticide applicator and apply pesticides manually or as the operator directly in charge of any apparatus which is licensed or should be licensed under this chapter for the application of any pesticide, without having obtained a commercial pesticide operator license from the director. The commercial pesticide operator license is in addition to any other license or permit required by law for the operation or use of any such apparatus. Application for a commercial operator license must be accompanied by a fee of (~~sixty-seven~~) seventy-eight dollars. This section does not apply to any individual who is a licensed commercial pesticide applicator.

**Sec. 10.** RCW 17.21.122 and 2008 c 285 s 23 are each amended to read as follows:

It is unlawful for any person to act as a private-commercial pesticide applicator without having obtained a private-commercial pesticide applicator license from the director. Application for a private-commercial pesticide applicator license must be accompanied by a fee of (~~thirty-three~~) thirty-eight dollars.

**Sec. 11.** RCW 17.21.126 and 2008 c 285 s 24 are each amended to read as follows:

It is unlawful for any person to act as a private applicator, limited private applicator, or rancher private applicator without first complying with requirements determined by the director as necessary to prevent unreasonable adverse effects on the environment, including injury to the pesticide applicator or other persons, for each specific pesticide use.

(1) Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or class of pesticides for which the private applicator, limited private applicator, or rancher private applicator is certified must be relative to hazards of the particular type of application, class of pesticides, or handling procedure. In determining these standards the director must take into consideration standards of the EPA and is authorized to adopt these standards by rule.

(2) Application for a private applicator (~~(or a limited private applicator)~~) license must be accompanied by a fee of (~~(thirty-three)~~) thirty-eight dollars. Application for a limited private applicator license must be accompanied by a fee of thirty-three dollars. Application for a rancher private applicator license must be accompanied by a fee of one hundred three dollars. Individuals with a valid certified applicator license, pest control consultant license, or dealer manager license who qualify in the appropriate statewide or agricultural license categories are exempt from the private applicator, limited private applicator, or rancher private applicator fee requirements. However, licensed public pesticide operators, otherwise exempted from the public pesticide operator license fee requirement, are not also exempted from the fee requirements under this subsection.

**Sec. 12.** RCW 17.21.129 and 2008 c 285 s 25 are each amended to read as follows:

Except as provided in RCW 17.21.203, it is unlawful for a person to use or supervise the use of any experimental use pesticide or any restricted use pesticide on small experimental plots for research purposes when no charge is made for the pesticide and its application without a

demonstration and research applicator's license.

(1) Application for a demonstration and research license must be accompanied by a fee of (~~(thirty-three)~~) forty-three dollars.

(2) Persons licensed under this section are exempt from the requirements of RCW 17.21.160, 17.21.170, and 17.21.180.

**Sec. 13.** RCW 17.21.220 and 2008 c 285 s 26 are each amended to read as follows:

(1) All state agencies, municipal corporations, and public utilities or any other governmental agencies are subject to this chapter and its rules.

(2) It is unlawful for any employee of a state agency, municipal corporation, public utility, or any other government agency to use or to supervise the use of any restricted use pesticide, or any pesticide by means of an apparatus, without having obtained a public operator license from the director. Application for a public operator license must be accompanied by a fee of (~~(thirty-three)~~) forty-three dollars. The fee does not apply to public operators licensed and working in the health vector field. The public operator license is valid only when the operator is acting as an employee of a government agency.

(3) The jurisdictional health officer or his or her duly authorized representative is exempt from this licensing provision when applying pesticides that are not restricted use pesticides to control pests other than weeds.

(4) Agencies, municipal corporations, and public utilities are subject to legal recourse by any person damaged by such application of any pesticide, and action may be brought in the county where the damage or some part of the damage occurred.

**Sec. 14.** RCW 17.21.280 and 1997 c 242 s 18 are each amended to read as follows:

(1) Except as provided in subsections (2) and (4) of this section, all moneys collected under the provisions of this chapter shall be paid to the director and deposited in the agricultural local fund, RCW 43.23.230, for use exclusively in the enforcement of this chapter.

(2) In addition to any other fees the department may collect under this

chapter, the department shall collect a fee of seven dollars for each license issued by the department under this chapter. The department shall transmit the seven dollar fee required by this subsection to Washington State University for the purpose of providing a pesticide safety education program to educate and train pesticide licensees and prospective licensees.

(3) The department shall engage with the regulated community on the status of license fees established in this chapter, including consideration of future increases, in coordination with a stakeholder work group.

(4) All moneys collected for civil penalties levied under RCW 17.21.315 shall be deposited in the state general fund. All fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW.

NEW SECTION. Sec. 15. By December 31, 2022, the department of agriculture shall report to the legislature, in accordance with RCW 43.01.036, on the status of the fee structure for pesticide licenses. At a minimum, the report must include an outlook for potential future fee needs and describe how the department of agriculture has engaged with the regulated community on the topic of pesticide license fees in coordination with a stakeholder work group."

Correct the title.

Signed by Representatives Chapman, Chair; Shewmake, Vice Chair; Chandler, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Fitzgibbon; Klicker; Kloba; Kretz; Lekanoff; McEntire; Morgan; Orcutt; Ramos; Schmick and Springer.

Referred to Committee on Appropriations.

March 26, 2021

**SSB 5318** Prime Sponsor, Committee on Agriculture, Water, Natural Resources & Parks: Concerning fertilizer fees. Reported by Committee on Rural Development, Agriculture & Natural Resources

MAJORITY recommendation: Do pass. Signed by Representatives Chapman, Chair; Shewmake, Vice Chair; Chandler, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Fitzgibbon; Klicker; Kloba; Kretz; Lekanoff; McEntire; Morgan; Orcutt; Ramos; Schmick and Springer.

Referred to Committee on Appropriations.

March 26, 2021

**ESSB 5355** Prime Sponsor, Committee on Labor, Commerce & Tribal Affairs: Establishing wage liens. Reported by Committee on Labor & Workplace Standards

MAJORITY recommendation: Do pass. Signed by Representatives Sells, Chair; Berry, Vice Chair; Bronoske and Ortiz-Self.

MINORITY recommendation: Do not pass. Signed by Representatives Hoff, Ranking Minority Member; Mosbrucker, Assistant Ranking Minority Member and Harris.

Referred to Committee on Rules for second reading.

March 25, 2021

**ESB 5372** Prime Sponsor, Senator Stanford: Concerning a hemp processor registration process. (REVISED FOR ENGROSSED: Concerning hemp processor registration and a hemp extract certification. ) Reported by Committee on Commerce & Gaming

MAJORITY recommendation: Do pass. Signed by Representatives Kloba, Chair; Wicks, Vice Chair; MacEwen, Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Chambers; Kirby; Morgan; Vick and Wylie.

Referred to Committee on Appropriations.

March 25, 2021

**SSB 5381** Prime Sponsor, Committee on Transportation: Addressing fish passage project permit streamlining. Reported by Committee on Environment & Energy

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 77.55.181 and 2020 c 166 s 1 are each amended to read as follows:

(1)(a) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under this section and must be a project to accomplish one or more of the following tasks:

(i) Elimination of human-made or caused fish passage barriers, including:

(A) Culvert repair and replacement; and

(B) Fish passage barrier removal projects that comply with the forest practices rules, as the term "forest practices rules" is defined in RCW 76.09.020;

(ii) Restoration of an eroded or unstable stream bank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water;

(iii) Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks; or

(iv) Restoration of native kelp and eelgrass beds and restoring native oysters.

(b) The department shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety.

(c) A fish habitat enhancement project must be approved in one of the following ways in order to receive the permit review and approval process created in this section:

(i) By the department pursuant to chapter 77.95 or 77.100 RCW;

(ii) By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;

(iii) By the department as a department-sponsored fish habitat enhancement or restoration project;

(iv) Through the review and approval process for the jobs for the environment program;

(v) By conservation districts as conservation district-sponsored fish habitat enhancement or restoration projects;

(vi) Through a formal grant program established by the legislature or the department for fish habitat enhancement or restoration;

(vii) By federally recognized tribes as tribally sponsored fish habitat enhancement projects or restoration projects;

(viii) Through the department of transportation's environmental retrofit program as a stand-alone fish passage barrier correction project, or the fish passage barrier correction portion of a larger transportation project;

~~((viii))~~ (ix) Through a local, state, or federally approved fish barrier removal grant program designed to assist local governments in implementing stand-alone fish passage barrier corrections;

~~((ix))~~ (x) By a city or county for a stand-alone fish passage barrier correction project funded by the city or county;

~~((x))~~ (xi) Through the approval process established for forest practices hydraulic projects in chapter 76.09 RCW; or

~~((xi))~~ (xii) Through other formal review and approval processes established by the legislature.

(2) Fish habitat enhancement projects meeting the criteria of subsection (1) of this section are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of subsection (1) of this section and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030(2)(c).

(3)(a) A permit is required for projects that meet the criteria of subsection (1) of this section and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the office of regulatory assistance to apply for approval under this chapter. The department of transportation shall use the department's online permit application system or a joint aquatic resource permit application form developed by the office of regulatory assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the department and to each appropriate local government. Applicants for a forest practices hydraulic project that are not otherwise required to submit a joint aquatic resource permit application must

submit a copy of their forest practices application to the appropriate local government on the same day that they submit the forest practices application to the department of natural resources.

(b) Local governments shall accept the application identified in this section as notice of the proposed project. A local government shall be provided with a (~~fifteen-day~~) 15-day comment period during which it may transmit comments regarding environmental impacts to the department or, for forest practices hydraulic projects, to the department of natural resources.

(c)(i) Except for forest practices hydraulic projects, the department shall, within 45 days, either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project (~~within forty-five days~~). The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. Permitting decisions over forest practices hydraulic approvals must be made consistent with chapter 76.09 RCW.

(ii) For department of transportation fish passage barrier correction projects, the department of fish and wildlife shall, within 30 days, either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project.

(d) If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(e) Any person aggrieved by the approval, denial, conditioning, or modification of a permit other than a forest practices hydraulic project under this section may appeal the decision as provided in RCW 77.55.021(8). Appeals of a forest practices hydraulic project may be made as provided in chapter 76.09 RCW.

(4) No local government may require permits or charge fees for fish habitat

enhancement projects that meet the criteria of subsection (1) of this section and that are reviewed and approved according to the provisions of this section, except that, pursuant to chapter 86.16 RCW, a local government may impose such requirements, or charge such fees, or both, only as may be necessary in order for the local government to administer the national flood insurance program regulation requirements.

(5) No civil liability may be imposed by any court on the state or its officers and employees for any adverse impacts resulting from a fish enhancement project permitted by the department or the department of natural resources under the criteria of this section except upon proof of gross negligence or willful or wanton misconduct.

**Sec. 2.** RCW 90.58.147 and 2019 c 150 s 2 are each amended to read as follows:

(1) A public or private project that is designed to improve fish or wildlife habitat or fish passage shall be exempt from the substantial development permit requirements of this chapter when all of the following apply:

(a) The project has been approved by the department of fish and wildlife or, for forest practices hydraulic projects within the scope of RCW 77.55.181, the department of natural resources if the local government notification provisions of RCW 77.55.181 are satisfied;

(b) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW or approval of a forest practices hydraulic project within the scope of RCW 77.55.181 from the department of natural resources if the local government notification provisions of RCW 77.55.181 are satisfied; and

(c) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

(2) Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline master programs.

(3) Public projects for the primary purpose of fish passage improvement or fish passage barrier removal are exempt

from the substantial development permit requirements of this chapter.

**Sec. 3.** RCW 47.85.020 and 2015 3rd sp.s. c 17 s 3 are each amended to read as follows:

The department must streamline the permitting process by developing and maintaining positive relationships with the regulatory agencies and the Indian tribes. The department can reduce the time it takes to obtain permits by incorporating impact avoidance and minimization measures into project design and by developing complete permit applications. To streamline the permitting process, the department must:

(1) Implement a multiagency permit program, commensurate with program funding levels, consisting of appropriate regulatory agency staff with oversight and management from the department.

(a) The multiagency permit program must provide early project coordination, expedited project review, project status updates, technical and regulatory guidance, and construction support to ensure compliance.

(b) The multiagency permit program staff must assist department project teams with developing complete biological assessments and permit applications, provide suggestions for how the project can avoid and minimize impacts, and provide input regarding mitigation for unavoidable impacts;

(2) Establish, implement, and maintain programmatic agreements and permits with federal and state agencies to expedite the process of ensuring compliance with the endangered species act, section 106 of the national historic preservation act, hydraulic project approvals, the clean water act, and other federal acts as appropriate;

(3) Collaborate with permitting staff from the United States army corps of engineers, Seattle district, department of ecology, and department of fish and wildlife to develop, implement, and maintain complete permit application guidance. The guidance must identify the information that is required for agencies to consider a permit application complete; ~~((and))~~

(4) Perform internal quality assurance and quality control to ensure that permit applications are complete before

submitting them to the regulatory agencies; and

(5) Implement a multiagency effort, in coordination with the department of ecology and the department of fish and wildlife, and work with the relevant federal environmental permitting agencies to streamline the acquisition of commonly needed environmental permits and approvals for department of transportation fish passage barrier correction projects. Expected results include developing programmatic permit options that simplify the application process, reduce paperwork, and reduce the amount of time and cost it takes to acquire these permits and approvals."

Correct the title.

Signed by Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno; Berry; Boehnke; Fey; Goehner; Harris-Talley; Ramel; Shewmake and Slatter.

Referred to Committee on Rules for second reading.

March 26, 2021

2SSB 5383 Prime Sponsor, Committee on Ways & Means: Authorizing public utility districts and port districts to provide retail telecommunications services in unserved areas under certain conditions. Reported by Committee on Community & Economic Development

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** The legislature finds that the COVID-19 pandemic has made it clear that equitable access to education can only happen with equitable access to reliable broadband. Increasing broadband access to unserved areas of the state is of vital importance to increasing quality of life, broadening educational opportunities, and promoting economic inclusion in the parts of our state that, without broadband access, cannot fully participate in modern society. The legislature further finds that one of the most effective tools to ensure all Washingtonians have an opportunity to equitably access education, the job market, and health care resources is to allow our public utility districts and port districts to

provide retail telecommunications services.

**Sec. 2.** RCW 54.16.330 and 2019 c 365 s 9 are each amended to read as follows:

(1)(a) A public utility district in existence on June 8, 2000, may construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the district's limits for the following purposes:

(i) For the district's internal telecommunications needs; and

(ii) For the provision of wholesale telecommunications services ~~((within))~~ as follows:

(A) Within the district and by contract with another public utility district;

(B) Within an area in an adjoining county that is already provided electrical services by the district; or

(C) Within an adjoining county that does not have a public utility district providing electrical or telecommunications services headquartered within the county's boundaries, but only if the district providing telecommunications services is not authorized to provide electrical services.

(b) Except as provided in subsections (8) and (10) of this section, nothing in this section shall be construed to authorize public utility districts to provide telecommunications services to end users.

(2) A public utility district providing wholesale or retail telecommunications services shall ensure that rates, terms, and conditions for such services are not unduly or unreasonably discriminatory or preferential. Rates, terms, and conditions are discriminatory or preferential when a public utility district offering rates, terms, and conditions to an entity for wholesale or retail telecommunications services does not offer substantially similar rates, terms, and conditions to all other entities seeking substantially similar services.

(3) A public utility district providing wholesale or retail

telecommunications services shall not be required to, but may, establish a separate utility system or function for such purpose. In either case, a public utility district providing wholesale or retail telecommunications services shall separately account for any revenues and expenditures for those services according to standards established by the state auditor pursuant to its authority in chapter 43.09 RCW and consistent with the provisions of this title. Any revenues received from the provision of wholesale or retail telecommunications services must be dedicated to costs incurred to build and maintain any telecommunications facilities constructed, installed, or acquired to provide such services, including payments on debt issued to finance such services, until such time as any bonds or other financing instruments executed after June 8, 2000, and used to finance such telecommunications facilities are discharged or retired.

(4) When a public utility district provides wholesale or retail telecommunications services, all telecommunications services rendered to the district for the district's internal telecommunications needs shall be allocated or charged at its true and full value. A public utility district may not charge its nontelecommunications operations rates that are preferential or discriminatory compared to those it charges entities purchasing wholesale or retail telecommunications services.

(5) If a person or entity receiving retail telecommunications services from a public utility district under this section has a complaint regarding the reasonableness of the rates, terms, conditions, or services provided, the person or entity may file a complaint with the district commission.

(6) A public utility district shall not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights held by any other person or entity to telecommunications facilities.

(7) Except as otherwise specifically provided, a public utility district may exercise any of the powers granted to it under this title and other applicable laws in carrying out the powers authorized under this section. Nothing in chapter 81, Laws of 2000 limits any existing authority of a public utility district under this title.



(8) (a) If an internet service provider operating on telecommunications facilities of a public utility district that provides wholesale telecommunications services but does not provide retail telecommunications services, ceases to provide access to the internet to its end-use customers, and no other retail service providers are willing to provide service, the public utility district may provide retail telecommunications services to the end-use customers of the defunct internet service provider in order for end-use customers to maintain access to the internet until a replacement internet service provider is, or providers are, in operation.

(b) Within thirty days of an internet service provider ceasing to provide access to the internet, the public utility district must initiate a process to find a replacement internet service provider or providers to resume providing access to the internet using telecommunications facilities of a public utility district.

(c) For a maximum period of five months, following initiation of the process begun in (b) of this section, or, if earlier than five months, until a replacement internet service provider is, or providers are, in operation, the district commission may establish a rate for providing access to the internet and charge customers to cover expenses necessary to provide access to the internet.

(9) The tax treatment of the retail telecommunications services provided by a public utility district to the end-use customers during the period specified in subsection (8) of this section must be the same as if those retail telecommunications services were provided by the defunct internet service provider.

(10) (a) A public utility district may provide retail telecommunications services to end users in unserved areas.

(b) A public utility district must notify and consult with the governor's statewide broadband office within 30 days of its decision to provide retail telecommunications services to unserved areas. The governor's statewide broadband office must post notices received from a public utility district pursuant to this subsection on its public website.

(c) Any public utility district that intends to provide retail telecommunications services to unserved areas must submit a telecommunications infrastructure and service plan to the governor's statewide broadband office that will be published on the office's website. Submission of plans will enable the governor's statewide broadband office: (i) To better understand infrastructure deployment; (ii) to potentially allocate funding for unserved areas; (iii) to advance the state policy objectives; (iv) to determine whether the plan aligns with state policy objectives and broadband priorities; and (v) to measure progress toward serving those in unserved areas. The telecommunications infrastructure and service plans shall include, but not be limited to, the following:

(A) Map and description of how the deployment of proposed broadband infrastructure will achieve at a minimum 100 megabits per second download speed and at a minimum 20 megabits per second upload speed and then increases to be consistent with the stated long-term state broadband speed goals for unserved areas;

(B) Project timeline prioritization of unserved areas; and

(C) Description of potential state and federal funding available to provide service to the unserved area.

(d) (i) Except as provided in (d) (ii) of this subsection (10), a retail telecommunications project developed by a district to serve unserved areas may not provide retail telecommunications services in an area where an existing provider meets or exceeds at a minimum 100 megabits per second download speed and 20 megabits per second upload speed and then increases to be consistent with the stated long-term state broadband speed goals for unserved areas.

(ii) When building in served areas to reach the unserved area, the district may provide retail telecommunications services to residential locations. These additional locations may not include businesses and anchor institutions which include, but are not limited to, libraries, educational institutions, public safety facilities, and health care facilities.

(e) A public utility district providing retail telecommunications

services under this subsection must operate an open access network.

(f) This section does not apply to retail internet services provided by a public utility district under RCW 54.16.420.

(g) Provisions in this subsection do not apply to the provision of wholesale telecommunications services authorized in this section.

(h) For the purposes of this subsection:

(i) "Broadband service" has the same meaning as defined in RCW 43.330.530.

(ii) "Open access network" means a network that, during the useful life of the infrastructure, ensures service providers may use network services and facilities at rates, terms, and conditions that are not discriminatory or preferential between providers, and employs accountable interconnection arrangements published and available publicly.

(iii) "Unserved areas" means areas of Washington in which households and businesses lack access to broadband service of speeds at a minimum of 100 megabits per second download and at a minimum 20 megabits per second upload.

**Sec. 3.** RCW 53.08.370 and 2019 c 365 s 10 are each amended to read as follows:

(1) A port district in existence on June 8, 2000, may construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the district's limits for the following purposes:

(a) For the district's own use; and

(b) For the provision of wholesale telecommunications services within or without the district's limits. ~~((Nothing))~~ Except as provided in subsection (10) of this section, nothing in this subsection shall be construed to authorize port districts to provide telecommunications services to end users.

(2) Except as provided in subsection (9) of this section, a port district providing wholesale telecommunications services under this section shall ensure that rates, terms, and conditions for such services are not unduly or

unreasonably discriminatory or preferential. Rates, terms, and conditions are discriminatory or preferential when a port district offering such rates, terms, and conditions to an entity for wholesale telecommunications services does not offer substantially similar rates, terms, and conditions to all other entities seeking substantially similar services.

(3) When a port district establishes a separate utility function for the provision of wholesale telecommunications services, it shall account for any and all revenues and expenditures related to its wholesale telecommunications facilities and services separately from revenues and expenditures related to its internal telecommunications operations. Any revenues received from the provision of wholesale telecommunications services must be dedicated to the utility function that includes the provision of wholesale telecommunications services for costs incurred to build and maintain the telecommunications facilities until such time as any bonds or other financing instruments executed after June 8, 2000, and used to finance the telecommunications facilities are discharged or retired.

(4) When a port district establishes a separate utility function for the provision of wholesale telecommunications services, all telecommunications services rendered by the separate function to the district for the district's internal telecommunications needs shall be charged at its true and full value. A port district may not charge its nontelecommunications operations rates that are preferential or discriminatory compared to those it charges entities purchasing wholesale telecommunications services.

(5) A port district shall not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights held by any other person or entity to telecommunications facilities.

(6) Except as otherwise specifically provided, a port district may exercise any of the powers granted to it under this title and other applicable laws in carrying out the powers authorized under this section. Nothing in chapter 81, Laws

of 2000 limits any existing authority of a port district under this title.

(7) A port district that has not exercised the authorities provided in this section prior to June 7, 2018, must develop a business case plan before exercising the authorities provided in this section. The port district must procure an independent qualified consultant to review the business case plan, including the use of public funds in the provision of wholesale telecommunications services. Any recommendations or adjustments to the business case plan made during third-party review must be received and either rejected or accepted by the port commission in an open meeting.

(8) A port district with telecommunications facilities for use in the provision of wholesale telecommunications in accordance with subsection (1)(b) of this section may be subject to local leasehold excise taxes under RCW 82.29A.040.

(9)(a) A port district under this section may select a telecommunications company to operate all or a portion of the port district's telecommunications facilities.

(b) For the purposes of this section "telecommunications company" means any for-profit entity owned by investors that sells telecommunications services to end users.

(c) Nothing in this subsection (9) is intended to limit or otherwise restrict any other authority provided by law.

(10)(a) A port district may provide retail telecommunications services to end users in unserved areas.

(b) A port district must notify and consult with the governor's statewide broadband office within 30 days of its decision to provide retail telecommunications services to unserved areas. The governor's statewide broadband office must post notices received from a port district pursuant to this subsection on its public website.

(c) Any port district that intends to provide retail telecommunications services to unserved areas must submit a telecommunications infrastructure and service plan to the governor's statewide broadband office that will be published on the office's website. Submission of plans will enable the governor's

statewide broadband office: (i) To better understand infrastructure deployment; (ii) to potentially allocate funding for unserved areas; (iii) to advance the state policy objectives; (iv) to determine whether the plan aligns with state policy objectives and broadband priorities; and (v) to measure progress toward serving those in unserved areas. The telecommunications infrastructure and service plans shall include, but not be limited to, the following:

(A) Map and description of how the deployment of proposed broadband infrastructure will achieve at a minimum 100 megabits per second download speed and at a minimum 20 megabits per second upload speed and then increases to be consistent with the stated long-term state broadband speed goals for unserved areas;

(B) Project timeline prioritization of unserved areas; and

(C) Description of potential state and federal funding available to provide service to the unserved area.

(d)(i) Except as provided in (d)(ii) of this subsection (10), a retail telecommunications project developed by a port district to serve unserved areas may not provide retail telecommunications services in an area where an existing provider meets or exceeds at a minimum 100 megabits per second download speed and 20 megabits per second upload speed and then increases to be consistent with the stated long-term state broadband speed goals for unserved areas.

(ii) When building in served areas to reach the unserved area, the district may provide retail telecommunications services to residential locations. These additional locations may not include businesses and anchor institutions which include, but are not limited to, libraries, educational institutions, public safety facilities, and health care facilities.

(e) A port district providing retail telecommunications services under this subsection must operate an open access network.

(f) Provisions in this subsection do not apply to the provision of wholesale telecommunications services authorized in this section.

(g) For the purposes of this subsection:

(i) "Broadband service" has the same meaning as defined in RCW 43.330.530.

(ii) "Open access network" means a network that, during the useful life of the infrastructure, ensures service providers may use network services and facilities at rates, terms, and conditions that are not discriminatory or preferential between providers, and employs accountable interconnection arrangements published and available publicly.

(iii) "Unserved areas" means areas of Washington in which households and businesses lack access to broadband service of speeds at a minimum of 100 megabits per second download and at a minimum 20 megabits per second upload.

**Sec. 4.** RCW 43.330.538 and 2019 c 365 s 6 are each amended to read as follows:

(1)(a) Beginning January 1, 2021, and biennially thereafter, the office shall report to the legislative committees with jurisdiction over broadband policy and finance on the office's activities during the previous two years.

~~((2))~~ (b) The report must, at a minimum, contain:

~~((a))~~ (i) An analysis of the current availability and use of broadband, including average broadband speeds, within the state;

~~((b))~~ (ii) Information gathered from schools, libraries, hospitals, and public safety facilities across the state, determining the actual speed and capacity of broadband currently in use and the need, if any, for increases in speed and capacity to meet current or anticipated needs;

~~((c))~~ (iii) An overview of incumbent broadband infrastructure within the state;

~~((d))~~ (iv) A summary of the office's activities in coordinating broadband infrastructure development with the public works board, including a summary of funds awarded under RCW 43.155.160;

~~((e))~~ (v) Suggested policies, incentives, and legislation designed to accelerate the achievement of the goals under RCW 43.330.536; and

~~((f))~~ (vi) Any proposed legislative and policy initiatives.

(2)(a) By December 31, 2022, the office must submit a report to the governor and the appropriate committees of the legislature regarding the provision of retail telecommunications services to unserved areas by public utility districts and port districts as provided in RCW 54.16.330(10) and 53.08.370(10).

(b) The report must, at a minimum, contain:

(i) The number of public utility districts and port districts providing retail telecommunications services in an unserved area authorized in RCW 54.16.330(10) and 53.08.370(10); and

(ii) Any recommendations to improve the provision of retail telecommunications services in unserved areas.

NEW SECTION. Sec. 5. This act expires June 30, 2023.

NEW SECTION. Sec. 6. This act takes effect only if Engrossed Substitute House Bill No. 1336 is enacted by July 25, 2021."

Correct the title.

Signed by Representatives Ryu, Chair; Paul, Vice Chair; Frame; Johnson, J.; Lovick; Rule and Taylor.

MINORITY recommendation: Without recommendation. Signed by Representatives Boehnke, Ranking Minority Member; Chase, Assistant Ranking Minority Member; Corry; Jacobsen and Sutherland.

MINORITY recommendation: Do not pass. Signed by Representative Kraft.

Referred to Committee on Appropriations.

March 25, 2021

SB 5431

Prime Sponsor, Senator Randall: Creating the Rosa Franklin legislative internship program scholarship. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass. Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Chopp; Cody; Dolan; Dye; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude;

Ryu; Schmick; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

Referred to Committee on Rules for second reading.

**2<sup>nd</sup> SUPPLEMENTAL REPORTS OF STANDING COMMITTEES**

March 26, 2021

**E2SSB 5036** Prime Sponsor, Committee on Ways & Means: Concerning the release of incarcerated individuals from total confinement prior to the expiration of a sentence. Reported by Committee on Public Safety

**MAJORITY recommendation:** Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9.94A.030 and 2020 c 296 s 2, 2020 c 252 s 4, and 2020 c 137 s 1 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and served in the

community subject to controls placed on the offender's movement and activities by the department.

(6) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

(7) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(8) "Confinement" means total or partial confinement.

(9) "Conviction" means an adjudication of guilt pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(11) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere, and any issued certificates of restoration of opportunity pursuant to RCW 9.97.020.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon. However, when a defendant is charged with a recidivist offense, "criminal history" includes a vacated prior conviction for the sole purpose of establishing that such vacated prior conviction constitutes an element of the present recidivist offense as provided in RCW 9.94A.640(3)(b) and 9.96.060(6)(c).

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

(12) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(13) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

(14) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance

over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter 9.68 RCW).

(15) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(16) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

(17) "Department" means the department of corrections.

(18) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community custody, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(19) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not

include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(20) "Domestic violence" has the same meaning as defined in RCW 10.99.020 and 26.50.010.

(21) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense who are eligible for the option under RCW 9.94A.660.

(22) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(23) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(24) "Electronic monitoring" means tracking the location of an individual through the use of technology that is capable of determining or identifying the monitored individual's presence or absence at a particular location including, but not limited to:

(a) Radio frequency signaling technology, which detects if the monitored individual is or is not at an approved location and notifies the monitoring agency of the time that the monitored individual either leaves the approved location or tampers with or removes the monitoring device; or

(b) Active or passive global positioning system technology, which detects the location of the monitored individual and notifies the monitoring agency of the monitored individual's location and which may also include electronic monitoring with victim notification technology that is capable of notifying a victim or protected party, either directly or through a monitoring agency, if the monitored individual enters within the restricted distance of a victim or protected party, or within

the restricted distance of a designated location.

(25) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(26) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(27) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

(28) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

(29) "Home detention" is a subset of electronic monitoring and means a program of partial confinement available to offenders wherein the offender is confined in a private residence twenty-four hours a day, unless an absence from the residence is approved, authorized, or otherwise permitted in the order by the court or other supervising agency that ordered home detention, and the offender is subject to electronic monitoring.

(30) "Homelessness" or "homeless" means a condition where an individual lacks a fixed, regular, and adequate

nighttime residence and who has a primary nighttime residence that is:

(a) A supervised, publicly or privately operated shelter designed to provide temporary living accommodations;

(b) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or

(c) A private residence where the individual stays as a transient invitee.

(31) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

(32) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Sexual exploitation;

(p) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(q) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(r) Any other class B felony offense with a finding of sexual motivation;

(s) Any other felony with a deadly weapon verdict under RCW 9.94A.825;

(t) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(u)(i) A prior conviction for indecent liberties under RCW 9A.44.100(1)(a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1)(a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)(a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1)(d) or (e) as it existed from July 25, 1993, through July 27, 1997;



(v) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state felony offense must be comparable to a felony offense under this title and Title 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

(33) "Nonviolent offense" means an offense which is not a violent offense.

(34) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. In addition, for the purpose of community custody requirements under this chapter, "offender" also means a misdemeanor or gross misdemeanor probationer ordered by a superior court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and supervised by the department pursuant to RCW 9.94A.501 and 9.94A.5011. Throughout this chapter, the terms "offender," (~~and~~) "defendant," and "individual" are used interchangeably, unless the context indicates otherwise.

(35) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention, electronic monitoring, or work crew has been ordered by the court or home detention has been ordered by the department as part of the parenting program or the graduated reentry program, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, electronic monitoring, and a combination of work crew, electronic monitoring, and home detention.

(36) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by this section, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Hate Crime (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

(xix) Extortion 1 (RCW 9A.56.120);

(xx) Extortion 2 (RCW 9A.56.130);

(xxi) Intimidating a Witness (RCW 9A.72.110);

(xxii) Tampering with a Witness (RCW 9A.72.120);

(xxiii) Reckless Endangerment (RCW 9A.36.050);

(xxiv) Coercion (RCW 9A.36.070);

(xxv) Harassment (RCW 9A.46.020); or

(xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

(37) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (37)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least

one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

(38) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority; or (iv) a teacher, counselor, volunteer, or other person in authority providing home-based instruction and the victim was a student receiving home-based instruction while under his or her authority or supervision. For purposes of this subsection: (A) "Home-based instruction" has the same meaning as defined in RCW 28A.225.010; and (B) "teacher, counselor, volunteer, or other person in authority" does not include the parent or legal guardian of the victim.

(39) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

(40) "Public school" has the same meaning as in RCW 28A.150.010.

(41) "Recidivist offense" means a felony offense where a prior conviction of the same offense or other specified offense is an element of the crime including, but not limited to:

(a) Assault in the fourth degree where domestic violence is pleaded and proven, RCW 9A.36.041(3);

(b) Cyberstalking, RCW 9.61.260(3)(a);

(c) Harassment, RCW 9A.46.020(2)(b)(i);

(d) Indecent exposure, RCW 9A.88.010(2)(c);

(e) Stalking, RCW 9A.46.110(5)(b)(i) and (iii);

(f) Telephone harassment, RCW 9.61.230(2)(a); and

(g) Violation of a no-contact or protection order, RCW 26.50.110(5).

(42) "Repetitive domestic violence offense" means any:

(a)(i) Domestic violence assault that is not a felony offense under RCW 9A.36.041;

(ii) Domestic violence violation of a no-contact order under chapter 10.99 RCW that is not a felony offense;

(iii) Domestic violence violation of a protection order under chapter 26.09, ((26.10)) 26.26A, 26.26B, or 26.50 RCW that is not a felony offense;

(iv) Domestic violence harassment offense under RCW 9A.46.020 that is not a felony offense; or

(v) Domestic violence stalking offense under RCW 9A.46.110 that is not a felony offense; or

(b) Any federal, out-of-state, tribal court, military, county, or municipal conviction for an offense that under the laws of this state would be classified as a repetitive domestic violence offense under (a) of this subsection.

(43) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

(44) "Risk assessment" means the application of the risk instrument

recommended to the department by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

(45) "Serious traffic offense" means:

(a) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(46) "Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree;

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(47) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.132;

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080;

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes; or

(v) A felony violation of RCW 9A.44.132(1) (failure to register as a sex offender) if the person has been convicted of violating RCW 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130 prior to June 10, 2010, on at least one prior occasion;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(48) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(49) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(50) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

(51) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

(52) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(53) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(54) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(55) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(56) "Work crew" means a program of partial confinement consisting of civic

improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(57) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(58) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

**Sec. 2.** RCW 9.94A.501 and 2020 c 275 s 1 are each amended to read as follows:

(1) The department shall supervise the following ~~((offenders))~~ individuals who are sentenced to probation in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

(a) ~~((Offenders))~~ Individuals convicted of:

(i) Sexual misconduct with a minor second degree;

(ii) Custodial sexual misconduct second degree;

(iii) Communication with a minor for immoral purposes; and

(iv) Violation of RCW 9A.44.132(2) (failure to register); and

(b) ~~((Offenders))~~ Individuals who have:

(i) A current conviction for a repetitive domestic violence offense where domestic violence has been pleaded and proven after August 1, 2011; and

(ii) A prior conviction for a repetitive domestic violence offense where domestic violence has been pleaded and proven after August 1, 2011.

(2) ~~((Misdemeanor))~~ Individuals convicted of misdemeanor and gross misdemeanor ~~((offenders))~~ offenses supervised by the department pursuant to this section shall be placed on community custody.

(3) The department shall supervise every individual convicted of a felony ~~((offender))~~ and sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702 whose risk assessment classifies the ~~((offender))~~ individual as one who is at a high risk to reoffend.

(4) Notwithstanding any other provision of this section, the department shall supervise an ~~((offender))~~ individual sentenced to community custody regardless of risk classification if the ~~((offender))~~ individual:

(a) Has a current conviction for a sex offense or a serious violent offense and was sentenced to a term of community custody pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

(b) Has been identified by the department as a dangerous mentally ill offender pursuant to RCW 72.09.370;

(c) Has an indeterminate sentence and is subject to parole pursuant to RCW 9.95.017;

(d) Has a current conviction for violating RCW 9A.44.132(1) (failure to register) and was sentenced to a term of community custody pursuant to RCW 9.94A.701;

(e)(i) Has a current conviction for a domestic violence felony offense where domestic violence has been pleaded and proven after August 1, 2011, and a prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence was pleaded and proven after August 1, 2011. This subsection (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

(ii) Has a current conviction for a domestic violence felony offense where domestic violence was pleaded and proven. The state and its officers, agents, and employees shall not be held criminally or civilly liable for its supervision of an ~~((offender))~~ individual under this subsection (4)(e)(ii) unless the state and its officers, agents, and employees acted with gross negligence;

(f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, 9.94A.670, or 9.94A.711;

(g) Is subject to supervision pursuant to RCW 9.94A.745; or

(h) Was convicted and sentenced under RCW 46.61.520 (vehicular homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6) (felony DUI), or RCW 46.61.504(6) (felony physical control).

(5) The department shall supervise any ~~((offender who is))~~ individual released by the indeterminate sentence review board ~~((and))~~ who was sentenced to community custody or subject to community custody under the terms of release.

(6) The department shall supervise any individual granted conditional commutation pursuant to RCW 9.94A.885.

(7) The department is not authorized to, and may not, supervise any ~~((offender))~~ individual sentenced to a term of community custody or any probationer unless the ~~((offender))~~ individual or probationer is one for whom supervision is required under this section ~~((or RCW 9.94A.501))~~.

~~((7))~~ (8) The department shall conduct a risk assessment for every individual convicted of a felony ~~((offender))~~ and sentenced to a term of community custody who may be subject to supervision under this section ~~((or RCW 9.94A.501))~~.

~~((8))~~ (9) The period of time the department is authorized to supervise an ~~((offender))~~ individual under this section may not exceed the duration of community custody specified under RCW 9.94B.050, 9.94A.701 (1) through (8), or 9.94A.702, except in cases where the court has imposed an exceptional term of community custody under RCW 9.94A.535.

~~((9))~~ (10) The period of time the department is authorized to supervise an ~~((offender))~~ individual under this section may be reduced by the earned award of supervision compliance credit pursuant to RCW 9.94A.717.

**Sec. 3.** RCW 9.94A.565 and 1994 c 1 s 5 are each amended to read as follows:

(1) Nothing in this chapter ~~((1, Laws of 1994))~~ or chapter 10.95 RCW shall ever be interpreted or construed as to reduce or eliminate the power of the governor to grant a pardon or clemency to any ~~((offender))~~ individual on an individual case-by-case basis. However, the people recommend that ~~((any offender))~~:

(a) Any individual subject to total confinement for life without the possibility of parole not be considered for release until the ~~((offender))~~

individual has ~~((reached the age of at least sixty years old and has))~~ been judged to ~~((be))~~ no longer be a threat to society ~~((The people further recommend that sex offenders))~~ and has served at least 20 years in total confinement or 25 years in total confinement if the individual was sentenced pursuant to chapter 10.95 RCW;

(b) Individuals who have been convicted of a sex offense be held to the utmost scrutiny under this subsection regardless of age; and

(c) Release take the form of a conditional commutation that includes a period of law-abiding behavior in the community.

(2) Nothing in this section shall ever be interpreted or construed to grant any release for the purpose of reducing prison overcrowding. Furthermore, the governor shall provide twice yearly reports on the activities and progress of ~~((offenders))~~ individuals subject to total confinement for life without the possibility of parole who are released through executive action during his or her tenure. These reports shall continue for not less than ~~((ten))~~ 10 years after the release of the ~~((offender))~~ individual or upon the death of the released ~~((offender))~~ individual.

**Sec. 4.** RCW 9.94A.633 and 2012 1st sp.s. c 6 s 2 are each amended to read as follows:

(1)(a) An ~~((offender))~~ individual who violates any condition or requirement of a sentence may be sanctioned by the court with up to ~~((sixty))~~ 60 days' confinement for each violation or by the department with up to ~~((thirty))~~ 30 days' confinement as provided in RCW 9.94A.737.

(b) In lieu of confinement, an ~~((offender))~~ individual may be sanctioned with work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other community-based sanctions.

(2) If an ~~((offender))~~ individual was under community custody pursuant to one of the following statutes, the ~~((offender))~~ individual may be sanctioned as follows:

(a) If the ~~((offender))~~ individual was transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.728, the ~~((offender))~~ individual may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(b) If the ~~((offender))~~ individual was sentenced under the drug offender sentencing alternative set out in RCW 9.94A.660, the ~~((offender))~~ individual may be sanctioned in accordance with that section.

(c) If the ~~((offender))~~ individual was sentenced under the parenting sentencing alternative set out in RCW 9.94A.655, the ~~((offender))~~ individual may be sanctioned in accordance with that section.

(d) If the ~~((offender))~~ individual was sentenced under the special sex offender sentencing alternative set out in RCW 9.94A.670, the suspended sentence may be revoked and the ~~((offender))~~ individual committed to serve the original sentence of confinement.

(e) If the ~~((offender))~~ individual was sentenced to a work ethic camp pursuant to RCW 9.94A.690, the ~~((offender))~~ individual may be reclassified to serve the unexpired term of his or her sentence in total confinement.

(f) If ~~((a))~~ an individual convicted of a sex ~~((offender))~~ offense was sentenced pursuant to RCW 9.94A.507, the ~~((offender))~~ individual may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(g) If the individual was granted conditional commutation pursuant to RCW 9.94A.885, the individual may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(3) If a probationer is being supervised by the department pursuant to

RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be sanctioned pursuant to subsection (1) of this section. The department shall have authority to issue a warrant for the arrest of an ~~((offender))~~ individual who violates a condition of community custody, as provided in RCW 9.94A.716. Any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. Nothing in this subsection is intended to limit the power of the sentencing court to respond to a probationer's violation of conditions.

(4) The parole or probation of an ~~((offender))~~ individual who is charged with a new felony offense may be suspended and the ~~((offender))~~ individual placed in total confinement pending disposition of the new criminal charges if:

(a) The ~~((offender))~~ individual is on parole pursuant to RCW 9.95.110(1); or

(b) The ~~((offender))~~ individual is being supervised pursuant to RCW 9.94A.745 and is on parole or probation pursuant to the laws of another state.

**Sec. 5.** RCW 9.94A.728 and 2018 c 166 s 2 are each amended to read as follows:

(1) No ~~((person))~~ individual serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(a) An ~~((offender))~~ individual may earn early release time as authorized by RCW 9.94A.729;

(b) An ~~((offender))~~ individual may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, ~~((offenders))~~ individuals may leave a correctional facility when in the custody of a corrections officer or officers;

(c)(i) The secretary may authorize an extraordinary medical placement for an ~~((offender))~~ individual when all of the following conditions exist:

(A) The ~~((offender))~~ individual has a medical condition that is chronic or serious and is expected to require costly care or treatment;

(B) The ~~((offender poses a))~~ individual has been assessed as low risk to the community ~~((because he or she is~~

~~currently physically incapacitated due to age or the medical condition or is expected to be so~~) at the time of release; and

(C) It is expected that granting the extraordinary medical placement will result in a cost savings to the state.

(ii) An ~~((offender))~~ individual sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(iii) The secretary shall require electronic monitoring for all ~~((offenders))~~ individuals in extraordinary medical placement unless the electronic monitoring equipment is detrimental to the individual's health, interferes with the function of the ~~((offender's))~~ individual's medical equipment, or results in the loss of funding for the ~~((offender's))~~ individual's medical care, in which case, an alternative type of monitoring shall be utilized. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed. The requirement for electronic monitoring shall be waived if the medical condition as certified by the individual's treating physician prevents the individual from being independently mobile.

(iv) The secretary may revoke an extraordinary medical placement under this subsection (1)(c) at any time.

(v) Persistent offenders are not eligible for extraordinary medical placement;

(d) The governor, upon recommendation from the clemency and pardons board, may grant ~~((an extraordinary))~~ :

(i) Extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances; or

(ii) Conditional commutation pursuant to section 8 of this act;

(e) No more than the final ~~((twelve))~~ 12 months of the ~~((offender's))~~ individual's term of confinement may be served in partial confinement for aiding the ~~((offender))~~ individual with: Finding work as part of the work release program under chapter 72.65 RCW; or reestablishing himself or herself in the community as part of the parenting

program in RCW 9.94A.6551. This is in addition to that period of earned early release time that may be exchanged for partial confinement pursuant to RCW 9.94A.729(5)(d);

(f) No more than the final six months of the ~~((offender's))~~ individual's term of confinement may be served in partial confinement as home detention as part of the graduated reentry program developed by the department under RCW 9.94A.733;

(g) The governor may pardon any ~~((offender))~~ individual;

(h) The department may release an ~~((offender))~~ individual from confinement any time within ~~((ten))~~ 10 days before a release date calculated under this section;

(i) An ~~((offender))~~ individual may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870;

(j) Notwithstanding any other provisions of this section, an ~~((offender))~~ individual sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540; and

(k) Any ~~((person))~~ individual convicted of one or more crimes committed prior to the person's ~~((eighteenth))~~ 18th birthday may be released from confinement pursuant to RCW 9.94A.730.

(2) ~~((Offenders))~~ Individuals residing in a juvenile correctional facility placement pursuant to RCW 72.01.410(1)(a) are not subject to the limitations in this section.

**Sec. 6.** RCW 9.94A.880 and 2011 c 336 s 335 are each amended to read as follows:

(1) The clemency and pardons board is established as a board within the office of the governor. The board consists of ~~((five))~~ 10 members appointed by the governor, subject to confirmation by the senate.

(2) Board membership must consist of the following:



(a) A representative of a statewide or local organization representing communities of color or race equity;

(b) A representative of an agency representing crime victims;

(c) A representative of an association, community organization, or advocacy group with experience or interest in the formerly incarcerated with successful community reentry;

(d) A representative of a faith-based organization with interest and experience in successful community reentry;

(e) A representative of a statewide organization representing criminal defense lawyers;

(f) A law enforcement professional;

(g) A representative of a statewide organization representing prosecuting attorneys;

(h) A person with experience and interest in tribal affairs;

(i) A behavioral health professional; and

(j) A retired superior court judge.

(3) Board members must understand the principles of racial equity and restorative justice. Board members must also be knowledgeable about the impact of crime upon victims and communities.

(4) Members of the board shall serve terms of ~~((four))~~ five years ~~((and))~~, but may serve more than one term until their successors are appointed and confirmed. ~~((However, the))~~ The governor shall stagger the initial terms ~~((by appointing one of the initial members for a term of one year, one for a term of two years, one for a term of three years, and two for terms of four years))~~ so that no more than three members are up for appointment in any given year.

~~((3))~~ (5) The board shall elect a chair from among its members and shall adopt bylaws governing the operation of the board.

~~((4))~~ (6) Members of the board shall ~~((receive no compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended))~~ each severally receive salaries fixed by the governor in accordance with the provisions of RCW 43.03.040, unless

waived by the member. All members shall receive travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060.

(7) The board shall be funded adequate personnel to implement and maintain functional operations such as support, records, victim liaisons, and information technology.

~~((5))~~ (8) The attorney general shall provide ~~((a staff as needed for the operation of))~~ legal counsel to the board.

**Sec. 7.** RCW 9.94A.885 and 2009 c 325 s 6 and 2009 c 138 s 4 are each reenacted and amended to read as follows:

(1) The clemency and pardons board shall receive petitions from individuals, organizations, and the department and make recommendations to the governor for ~~((review and commutation))~~;

(a) Commutation of sentences and pardoning of ~~((offenders))~~ individuals in extraordinary cases ~~((7))~~; and ~~((shall make recommendations thereon to the governor))~~

(b) Conditional commutation of sentences pursuant to section 8 of this act.

(2) The board shall receive petitions from individuals or organizations for the restoration of civil rights lost by operation of state law as a result of convictions for federal offenses or out-of-state felonies. The board may issue certificates of restoration limited to engaging in political office. Any certifications granted by the board must be filed with the secretary of state to be effective. In all other cases, the board shall make recommendations to the governor.

(3) The board shall not recommend that the governor grant clemency or conditional commutation under subsection (1) of this section until a public hearing has been held on the petition. The board shall consider statements of victims and survivors of victims presented as set forth in RCW 7.69.032, as well as any statements from the law enforcement agency or agencies that conducted the investigation.

(4) (a) The prosecuting attorney of the county where the conviction was obtained shall be notified at least ~~((thirty))~~ 90

days prior to the scheduled hearing that a petition has been filed and the date and place at which the hearing on the petition will be held. The board may waive the ~~((thirty day))~~ 90-day notice requirement in cases where it determines that waiver is necessary to permit timely action on the petition. A copy of the petition shall be sent to the prosecuting attorney. ~~((The prosecuting attorney shall make reasonable efforts to notify victims, survivors of victims, witnesses, and the law enforcement agency or agencies that conducted the investigation, of the date and place of the hearing.))~~

(b) To facilitate victim and survivor of victim involvement, county prosecutor's offices shall make reasonable efforts to ensure that any victim impact statements and known contact information for victims of record and survivors of victims are forwarded as part of the judgment and sentence. In the event that no known victim or survivor of the victim is known or identified for the panel, the county prosecutor's office shall be given reasonable time to certify to the panel that it has exhausted all reasonable efforts in locating and providing contact information to the panel. Information regarding victims, survivors of victims, or witnesses receiving this notice are confidential and shall not be available to the ~~((offender))~~ individual seeking clemency or commutation. ~~((The board shall consider statements presented as set forth in RCW 7.69.032.))~~

(c) This subsection is intended solely for the guidance of the board. Nothing in this section is intended or may be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any person.

(5) (a) The board may recommend conditions of commutation for any individual released pursuant to this section, including a term of community custody up to the length of the court-imposed term of incarceration, partial confinement up to six months, restrictions on travel, no contact with certain persons or classes of persons, restrictions on the type of employment and any other restrictions that the board determines to be reasonable and appropriate, or any other condition which provides for community protection from the released individual.

(b) The department shall monitor the released individual's compliance with conditions of community custody imposed by the court or recommended by the board. Any violation of conditions of community custody is subject to the provisions of this chapter.

(6) Once granted, the governor may not revoke an order granting conditional commutation.

(7) Members of the board are not civilly liable for decisions made while performing their duties.

NEW SECTION. Sec. 8. A new section is added to chapter 9.94A RCW to read as follows:

(1) Notwithstanding any other provision of this chapter, an individual may petition the board for conditional commutation if the individual:

(a) Is not subject to the jurisdiction of the indeterminate sentence review board pursuant to RCW 9.94A.730 or 9.94A.507, or the individual's offense was committed prior to July 1, 1984;

(b) Has served at least 20 consecutive years of total confinement except:

(i) An individual who was sentenced as a persistent offender that included a conviction for robbery in the second degree as their third conviction towards being designated as a persistent offender may petition after serving 15 consecutive years of total confinement; and

(ii) An individual sentenced pursuant to chapter 10.95 RCW may petition only after serving 25 consecutive years of total confinement;

(c) Consents to a review of all of his or her medical, mental

health, and department files by the board; and

(d) Does not have any current appeals pending or collateral attacks pending on the case for which the individual is seeking conditional commutation.

(2) No later than five years prior to the date the individual will be eligible to petition for release, the department shall:

(a) Notify the individual regarding his or her eligibility under this section; and

(b) Conduct an assessment of the individual and identify programming and

services that would be appropriate to prepare the individual for return to the community. To the extent possible, the department shall make programming available as identified by the assessment.

(3) If the individual has a prior known or diagnosed decreased cognitive function or developmental disability, or a decreased cognitive function or developmental disability is determined during the assessment process as outlined in subsection (2)(b) of this section, the department shall assist the individual with the process of applying for review by the board or refer to additional services for such assistance.

(4) No later than 180 days from the date that the individual submits his or her petition for conditional commutation to the board, the department shall conduct, and the individual shall participate in, an examination of the individual, incorporating methodologies that are evidence-based, normed on the specific gender of the individual, and recognized by experts in the prediction of dangerousness, and including a prediction of the probability that the individual will engage in future criminal behavior if released on conditions to be set by the board. The board may consider an individual's failure to participate in an evaluation under this subsection in determining whether to release the individual.

(5) The board shall recommend the individual be released under such affirmative and other conditions as the panel determines appropriate, unless the panel determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the individual will commit new criminal law violations if released.

(6) The board may take any of the following actions: Deny a petition without a hearing because the individual does not meet the initial criteria for filing a petition; or conduct a hearing in accordance with RCW 9.94A.885 to consider additional information, and then deny the petition or recommend conditional commutation to the governor.

(7) In making its decision, the board shall consider, if available, the following factors and information:

- (a) Public safety;
- (b) The individual's criminal history;

(c) The nature and circumstances of the offenses committed, including the current and past offenses;

(d) The individual's social and medical history;

(e) The individual's acceptance of responsibility, remorse, and atonement. If the individual submitted an Alford plea, the impact that may have on an individual's ability to provide evidence of remorse, atonement, and self-reflection in relation to the offense committed;

(f) Evidence of the individual's rehabilitation, including behavior while incarcerated, job history, education participation in available rehabilitative program and treatment, and infraction history;

(g) Statements of correctional staff, program supervisors, and volunteer facilitators regarding the individual;

(h) Input from the victims of the crime;

(i) Input from the police and prosecutors in the jurisdictions where the individual's crimes were committed;

(j) Input from persons in the community pledging their support of the individual, if released;

(k) The available resources in the community to help the individual transition to life outside of prison;

(l) A risk assessment and psychological evaluation provided by the department;

(m) The sentencing judge's analysis in imposing an exceptional sentence, if any; and

(n) Any other relevant factors.

(8) Further, the board shall consider a release plan presented by the individual showing where the individual will reside and how he or she will support himself or herself during the first year after his or her release. The department shall independently review the proposed release plan and make an independent evaluation to ensure the individual is not released to an area where the victim resides or that impacts community safety.

(9) If the board recommends commutation or denies the petition, it

shall specify the reasons for the decision.

(10) The conditions for conditional commutation may include: Partial confinement for up to six months, regular drug and/or alcohol testing, no violations of law, restrictions on travel, no contact with certain individuals or classes of individuals, restrictions on the type of employment and any other restrictions that the board determines to be reasonable and appropriate, or any other condition which provides for community protection from the released individual.

(11) An individual whose petition for conditional commutation is denied may file a new petition for conditional commutation three years from the date of denial or at an earlier date as may be set by the board.

(12) The individual does not have a right to appointed counsel. Both lawyers and nonlawyers may assist the individual in the preparation of his or her petition and at the hearing.

(13) All information contained in a petition or that is submitted to the board is subject to public disclosure.

(14) The board may adopt rules setting out criteria and procedures for the review of petitions under this section and RCW 9.94A.885 as appropriate.

(15) For purposes of this section, "board" means the clemency and pardons board.

**NEW SECTION. Sec. 9.** (1) Chapter 187, Laws of 2019 removed robbery in the second degree as a most serious offense in sentencing an individual as a persistent offender. At that time, the legislature declined to require resentencing of individuals serving a life sentence as the result of a conviction for robbery in the second degree. The legislature recognizes the need to balance considerations that may have gone into the original charging decision and the inequities that may have resulted from including robbery in the second degree as a third strike offense.

(2) In exercising its duties under RCW 9.94A.885 and section 8 of this act, the clemency and pardons board shall give priority consideration to individuals who petition for conditional commutation and who have a current or past conviction for robbery in the second degree that was

used as a basis for a finding that the individual was a persistent offender.

(3) This section expires December 31, 2024."

Correct the title.

Signed by Representatives Goodman, Chair; Johnson, J., Vice Chair; Davis; Hackney; Lovick; Orwall; Ramos and Simmons.

MINORITY recommendation: Do not pass. Signed by Representatives Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Graham and Young.

MINORITY recommendation: Without recommendation. Signed by Representative Griffey.

Referred to Committee on Appropriations.

March 26, 2021

**ESSB 5044** Prime Sponsor, Committee on Early Learning & K-12 Education: Concerning professional learning, equity, cultural competency, and dismantling institutional racism in the public school system. Reported by Committee on Education

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** (1) The legislature finds that state resources have been invested to: (a) Identify model standards for cultural competency; (b) incorporate these cultural competency standards into both the standards for effective teaching and the standards of practice for paraeducators; (c) develop cultural competency training programs for school district staff from paraeducators to administrators; and (d) develop a plan for the creation and delivery of cultural competency training for school board directors and superintendents.

(2) The legislature plans to continue the important work of dismantling institutional racism in public schools and recognizes the importance of increasing equity, diversity, inclusion, antiracism, and cultural competency training throughout the entire public school system by providing training programs for classified staff, certificated instructional staff, certificated administrative staff, superintendents, and school directors

that will be provided in an ongoing manner.

NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.415 RCW to read as follows:

The definitions in this section apply throughout sections 3 through 7 of this act and RCW 28A.415.445 unless the context clearly requires otherwise.

(1) "Cultural competency" includes knowledge of student cultural histories and contexts, as well as family norms and values in different cultures; knowledge and skills in accessing community resources and community and parent outreach; and skills in adapting instruction to students' experiences and identifying cultural contexts for individual students.

(2) "Diversity" describes the presence of similarities and differences within a given setting, collective, or group based on multiple factors including race and ethnicity, gender identity, sexual orientation, disability status, age, educational status, religion, geography, primary language, culture, and other characteristics and experiences.

(3) "Equity" includes developing, strengthening, and supporting procedural and outcome fairness in systems, procedures, and resource distribution mechanisms to create equitable opportunities for all individuals. The term also includes eliminating barriers that prevent the full participation of individuals and groups.

(4) "Inclusion" describes intentional efforts and consistent sets of actions to create and sustain a sense of respect, belonging, safety, and attention to individual needs and backgrounds that ensure the full access to engagement and participation in available activities and opportunities.

NEW SECTION. **Sec. 3.** A new section is added to chapter 28A.345 RCW to read as follows:

(1) The Washington state school directors' association shall:

(a) Develop cultural competency, diversity, equity, and inclusion standards for school director governance;

(b) Collaborate with the Washington professional educator standards board to compare and align the standards for

school director governance developed under (a) of this subsection with the standards of practice developed under section 4 of this act. The review must include the educational opportunity gap oversight and accountability committee and may include the office of equity established under RCW 43.06D.020; and

(c) Maintain the final cultural competency, diversity, equity, and inclusion standards for school director governance on its website at no cost to school districts.

(2) By November 1, 2030, and every 10 years thereafter, the Washington state school directors' association shall review the definitions in section 2 of this act and the cultural competency, diversity, equity, and inclusion standards for school director governance developed under subsection (1) of this section and report, in compliance with RCW 43.01.036, to the appropriate committees of the legislature with any recommendations for revising the definitions in section 2 of this act.

NEW SECTION. **Sec. 4.** A new section is added to chapter 28A.410 RCW to read as follows:

(1) The Washington professional educator standards board shall:

(a) Develop or update cultural competency, diversity, equity, and inclusion standards of practice for preparation, continuing education, and other training of school district staff;

(b) Collaborate with the Washington state school directors' association to compare and align the standards of practice developed under (a) of this subsection with the standards of governance developed under section 3 of this act. The review must include the educational opportunity gap oversight and accountability committee and may include the office of equity established under RCW 43.06D.020; and

(c) Post on its public website the cultural competency, diversity, equity, and inclusion standards of practice for school district staff.

(2) By November 1, 2030, and every 10 years thereafter, the Washington professional educator standards board shall review the definitions in section 2 of this act and the cultural competency, diversity, equity, and inclusion standards of practice for

school district staff developed under subsection (1) of this section and report, in compliance with RCW 43.01.036, to the appropriate committees of the legislature any recommendations for revising the definitions in section 2 of this act.

NEW SECTION. **Sec. 5.** A new section is added to chapter 28A.345 RCW to read as follows:

(1) The Washington state school directors' association shall identify or develop and periodically update governance training programs that align with the cultural competency, diversity, equity, and inclusion standards for school director governance developed under section 3 of this act. The governance training programs must also include the foundational elements of cultural competence, focusing on multicultural education and principles of English language acquisition, including information regarding best practices to implement the tribal history and culture curriculum. Governance training programs may be developed in collaboration with other entities.

(2) Beginning with the 2022 calendar year, the Washington state school directors' association shall provide a governance training program identified or developed under subsection (1) of this section at the frequency necessary for school directors to meet the requirement in section 7 of this act.

NEW SECTION. **Sec. 6.** A new section is added to chapter 28A.410 RCW to read as follows:

(1) The Washington professional educator standards board shall identify, or develop and periodically update, training programs for school district staff and superintendents that align with the cultural competency, diversity, equity, and inclusion standards of practice developed under section 4 of this act. These training programs must also include the foundational elements of cultural competence, focusing on multicultural education and principles of English language acquisition, including information regarding best practices to implement the tribal history and culture curriculum. Training programs may be developed in collaboration with other entities.

(2) In establishing policies and requirements for the preparation and certification of educators under RCW

28A.410.210, the Washington professional educator standards board shall require that the programs of courses, requirements, and other activities leading to educator certification align with the cultural competency, diversity, equity, and inclusion standards of practice developed under section 4 of this act.

NEW SECTION. **Sec. 7.** A new section is added to chapter 28A.343 RCW to read as follows:

Beginning with the 2022 calendar year, each member of a board of directors shall complete a governance training program provided by the Washington state school directors' association as required by section 5 of this act once per term of elected office, except that newly elected directors must complete a governance training program within two years of election.

**Sec. 8.** RCW 28A.415.445 and 2019 c 360 s 3 are each amended to read as follows:

(1) Beginning in the 2020-21 school year, and every other school year thereafter, school districts must use one of the professional learning days funded under RCW 28A.150.415 to train school district staff in one or more of the following topics: Social-emotional learning, trauma-informed practices, using the model plan developed under RCW 28A.320.1271 related to recognition and response to emotional or behavioral distress, consideration of adverse childhood experiences, mental health literacy, antibullying strategies, or culturally sustaining practices.

(2)(a) In the 2021-22 school year, school districts must use one of the professional learning days funded under RCW 28A.150.415 to train school district staff in one or more of the following topics: Cultural competency; diversity; equity; or inclusion.

(b) Beginning in the 2023-24 school year, and every other school year thereafter, school districts must use one of the professional learning days funded under RCW 28A.150.415 to provide to school district staff a training program identified or developed under section 6 of this act.

(3) For the purposes of this section, "school district staff" includes classified staff, certificated instructional staff, certificated

administrative staff, and superintendents.

**Sec. 9.** RCW 28A.405.106 and 2016 c 72 s 202 are each amended to read as follows:

(1) Subject to funds appropriated for this purpose, the office of the superintendent of public instruction must develop and make available a professional development program to support the implementation of the evaluation systems required by RCW 28A.405.100. The program components may be organized into professional development modules for principals, administrators, and teachers. The professional development program shall include a comprehensive online training package.

(2) The training program must include, but not be limited to, the following topics:

(a) Introduction of the evaluation criteria for teachers and principals and the four-level rating system;

(b) Orientation to and use of instructional frameworks;

(c) Orientation to and use of the leadership frameworks;

(d) Best practices in developing and using data in the evaluation systems, including multiple measures, student growth data, classroom observations, and other measures and evidence;

(e) Strategies for achieving maximum rater agreement;

(f) Evaluator feedback protocols in the evaluation systems;

(g) Examples of high quality teaching and leadership; and

(h) Methods to link the evaluation process to ongoing educator professional development.

(3) The training program must also include the foundational elements of cultural competence, focusing on multicultural education and principles of English language acquisition, including information regarding best practices to implement the tribal history and culture curriculum. The content of the training must be aligned with the standards ~~((for cultural competence))~~ of practice developed by the Washington professional educator standards board under ~~((RCW 28A.410.270))~~ section 4 of

this act. The office of the superintendent of public instruction, in consultation with the Washington professional educator standards board, the steering committee established in RCW 28A.405.100, and the educational opportunity gap oversight and accountability committee, must integrate the content for cultural competence into the overall training for principals, administrators, and teachers to support the revised evaluation systems.

(4) To the maximum extent feasible, the professional development program must incorporate or adapt existing online training or curriculum, including securing materials or curriculum under contract or purchase agreements within available funds. Multiple modes of instruction should be incorporated including videos of classroom teaching, participatory exercises, and other engaging combinations of online audio, video, and print presentation.

(5) The professional development program must be developed in modules that allow:

(a) Access to material over a reasonable number of training sessions;

(b) Delivery in person or online; and

(c) Use in a self-directed manner.

(6) The office of the superintendent of public instruction must maintain a website that includes the online professional development materials along with sample evaluation forms and templates, links to relevant research on evaluation and on high quality teaching and leadership, samples of contract and collective bargaining language on key topics, examples of multiple measures of teacher and principal performance, suggestions for data to measure student growth, and other tools that will assist school districts in implementing the revised evaluation systems.

(7) The office of the superintendent of public instruction must identify the number of in-service training hours associated with each professional development module and develop a way for users to document their completion of the training. Documented completion of the training under this section is considered approved in-service training for the purposes of RCW 28A.415.020.

(8) The office of the superintendent of public instruction shall periodically

update the modules to reflect new topics and research on performance evaluation so that the training serves as an ongoing source of continuing education and professional development.

(9) The office of the superintendent of public instruction shall work with the educational service districts to provide clearinghouse services for the identification and publication of professional development opportunities for teachers and principals that align with performance evaluation criteria.

**Sec. 10.** RCW 28A.410.270 and 2019 c 386 s 3 are each amended to read as follows:

(1)(a) The Washington professional educator standards board shall adopt a set of articulated teacher knowledge, skill, and performance standards for effective teaching that are evidence-based, measurable, meaningful, and documented in high quality research as being associated with improved student learning. The standards shall be calibrated for each level along the entire career continuum.

~~(b) ((In developing the standards, the board shall, to the extent possible, incorporate standards for cultural competency along the entire continuum. For the purposes of this subsection, "cultural competency" includes knowledge of student cultural histories and contexts, as well as family norms and values in different cultures, knowledge and skills in accessing community resources and community and parent outreach, and skills in adapting instruction to students' experiences and identifying cultural contexts for individual students.~~

~~(e))~~ By January 1, 2020, in order to ensure that teachers can recognize signs of emotional or behavioral distress in students and appropriately refer students for assistance and support, the Washington professional educator standards board shall incorporate along the entire continuum the social-emotional learning standards and benchmarks recommended by the social-emotional learning benchmarks work group in its October 1, 2016, final report titled, "addressing social emotional learning in Washington's K-12 public schools." In incorporating the social-emotional learning standards and benchmarks, the Washington professional educator standards board must include

related competencies, such as trauma-informed practices, consideration of adverse childhood experiences, mental health literacy, antibullying strategies, and culturally sustaining practices.

(2) The Washington professional educator standards board shall adopt a definition of master teacher, with a comparable level of increased competency between professional certification level and master level as between professional certification level and national board certification. Within the definition established by the Washington professional educator standards board, teachers certified through the national board for professional teaching standards shall be considered master teachers.

(3) The Washington professional educator standards board shall maintain a uniform, statewide, valid, and reliable classroom-based means of evaluating teacher effectiveness as a culminating measure at the preservice level that is to be used during the student-teaching field experience. This assessment shall include multiple measures of teacher performance in classrooms, evidence of positive impact on student learning, and shall include review of artifacts, such as use of a variety of assessment and instructional strategies, and student work.

(4) Award of a professional certificate shall be based on a minimum of two years of successful teaching experience as defined by the board, and may not require candidates to enroll in a professional certification program.

(5) Educator preparation programs approved to offer the residency teaching certificate shall be required to demonstrate how the program produces effective teachers as evidenced by the measures established under this section and other criteria established by the Washington professional educator standards board.

**Sec. 11.** RCW 28A.413.050 and 2019 c 386 s 5 are each amended to read as follows:

(1) The board shall adopt state standards of practice for paraeducators that are based on the recommendations of the paraeducator work group established in chapter 136, Laws of 2014. These standards must include:



(a) Supporting instructional opportunities;

(b) Demonstrating professionalism and ethical practices;

(c) Supporting a positive and safe learning environment;

(d) Communicating effectively and participating in the team process; and

(e) ~~((Demonstrating cultural competency aligned with))~~ The standards of practice developed by the Washington professional educator standards board under ~~((RCW 28A.410.270))~~ section 4 of this act.

(2) By January 1, 2020, in order to ensure that paraeducators can recognize signs of emotional or behavioral distress in students and appropriately refer students for assistance and support, the board shall incorporate into the standards of practice for paraeducators adopted under subsection (1) of this section the social-emotional learning standards, benchmarks, and related competencies described in RCW 28A.410.270.

**Sec. 12.** RCW 28B.50.891 and 2017 c 237 s 20 are each amended to read as follows:

Beginning with the 2015-16 academic year, any community or technical college that offers an apprenticeship program or certificate program for paraeducators must provide candidates the opportunity to earn transferable course credits within the program. The programs must also incorporate the standards ~~((for cultural competence, including))~~ of practice developed by the Washington professional educator standards board under section 4 of this act and include multicultural education and principles of language acquisition ~~((, developed by the professional educator standards board under RCW 28A.410.270))~~. Subject to the availability of amounts appropriated for this specific purpose, by September 1, 2018, the paraeducator apprenticeship and certificate programs must also incorporate the state paraeducator standards of practice adopted by the paraeducator board under RCW 28A.413.050.

**NEW SECTION. Sec. 13.** The following acts or parts of acts are each repealed:

(1) RCW 28A.345.100 (Cultural competency training for school board

directors and superintendents) and 2016 c 72 s 201;

(2) RCW 28A.410.260 (Washington professional educator standards board—Model standards for cultural competency—Recommendations) and 2009 c 468 s 5;

(3) RCW 28A.415.420 (Cultural competence professional development and training) and 2016 c 72 s 204; and

(4) RCW 28A.415.440 (Professional learning days—Social-emotional learning) and 2019 c 386 s 7."

Correct the title.

Signed by Representatives Santos, Chair; Dolan, Vice Chair; Berg; Bergquist; Callan; Ortiz-Self and Stonier.

**MINORITY recommendation:** Do not pass. Signed by Representatives Walsh, Assistant Ranking Minority Member; McCaslin and McEntire.

**MINORITY recommendation:** Without recommendation. Signed by Representatives Ybarra, Ranking Minority Member; Rude and Steele.

Referred to Committee on Appropriations.

March 26, 2021

**2SSB 5265** Prime Sponsor, Committee on Ways & Means: Creating a bridge year pilot program. Reported by Committee on Education

**MAJORITY recommendation:** Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** (1) The legislature recognizes that the ongoing COVID-19 pandemic has created an unprecedented disruption to the education of students throughout the state, and uniquely impacted students who are or were nearing the completion of graduation requirements.

(2) Although remote and hybrid instruction, supported by the exceptional efforts of teachers and other education professionals, has proven satisfactory for many students, some courses, subjects, and critical attributes of in-person learning experiences cannot be replicated through highly modified learning environments. Additionally, some education experiences, including full course offerings and extracurricular

activities, were reduced or eliminated in response to the pandemic.

(3) The legislature, therefore, in recognition of the extraordinary impacts of an ongoing pandemic, intends to establish a temporary two-year program to provide an opportunity for students in the graduating classes of 2021 and 2022 to complete up to one additional school year to pursue academic and experiential opportunities that were diminished or eliminated as a result of the COVID-19 pandemic. The legislature also intends for the program to be, in part, offered to students as an alternative to the individual student emergency waiver program established in chapter 7, Laws of 2021.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.630 RCW to read as follows:

(1)(a) The bridge year program is established to provide an opportunity for students in the graduating classes of 2021 and 2022 to complete up to one additional school year to pursue academic and experiential opportunities that were identified in their high school and beyond plans but diminished or eliminated as a result of the COVID-19 pandemic. The program is temporary, expires as provided in section 8 of this act, and shall be administered by the state board of education.

(b) The objective of a bridge year is for qualifying students, with the support of the applicable high school, to remedy or otherwise address:

(i) Learning loss, including learning loss that may be attributable to fewer opportunities for in-person instruction during the 2020-21 school year, learning loss evidenced by academic performances that were inconsistent with previous efforts of the student, and the loss of opportunity to learn in the manner traditionally accessed by the student;

(ii) Unmet graduation requirements, including opportunities for meeting graduation requirements that were not available during the 2020-21 school year;

(iii) Fewer opportunities to access and earn 24 credits;

(iv) Fewer opportunities to access courses traditionally offered to students, including career and technical education courses and dual credit courses;

(v) Fewer or significantly modified opportunities for mastering academic skills, including diminished opportunities for accessing: Applied learning experiences and learning experiences traditionally associated with the synchronous efforts of other students, such as music and drama, and services provided to students in accordance with individualized education programs; and

(vi) Fewer or significantly modified opportunities for social-emotional learning, and extracurricular and cocurricular activities.

(2)(a) Each public school and school district that applied to the state board of education for authorization to grant individual student emergency waivers under section 2, chapter 7, Laws of 2021 must offer the bridge year program to requesting students of the applicable public school or school district in the graduating classes of 2021 and 2022.

(b) Private schools subject to requirements under chapter 28A.195 RCW may participate in the applicable provisions of the program, as determined by rule of the state board of education.

(3)(a) Each public high school participating in the program shall designate a school staff member as a program liaison to assist students and families with the implementation of the program. Nothing in this section requires a school or school district to hire an individual to serve as a program liaison.

(b) The program liaison shall provide individual student advising to help students determine whether the program is appropriate for their needs and, if so, assist each student in developing an addendum to their high school and beyond plan. The addendum must define the academic goals and objectives to be achieved during the student's bridge year, examples of which include increased mastery of academic concepts, completion of dual credit courses, career and technical education courses, or both, and additional experiences in applied learning environments. The addendum also must detail activities and strategies for accomplishing the goals and objectives, including counseling, academic support, coursework, and extracurricular and cocurricular activities.

(4) Each high school participating in the program shall maintain records as necessary and as required by rule of the

state board of education to demonstrate compliance with this section.

(5) Students, with the written permission of their parent or guardian, may participate in the program for up to one academic year. Student participation in the program is voluntary and may not be mandated by a school or school district. In addition to other requirements established by this section and the state board of education, participating students must either:

(a) Have met all applicable graduation requirements without having received an emergency waiver authorized by sections 2 and 3, chapter 7, Laws of 2021 and elect to defer graduation for one year as required by the program; or

(b) Have not met all applicable graduation requirements and not be in receipt or pursuit of an emergency waiver authorized by sections 2 and 3, chapter 7, Laws of 2021. Students who participate in the program in accordance with this subsection (5)(b) must:

(i) Have had their ability to complete one or more graduation requirements impeded by the COVID-19 pandemic;

(ii) Have been reasonably expected to graduate in the academic year prior to their participation in the program; and

(iii) Provide the applicable school with a written proposal that aligns with their high school and beyond plan and demonstrates a reasonable and achievable plan for meeting defined learning goals and objectives by the conclusion of their bridge year.

(6)(a) Except as provided in (b) of this subsection (6), students who are eligible to participate in the program must be 19 years of age or younger and must not turn 20 years of age at any time during their bridge year.

(b) Students who receive services pursuant to an individualized education program and will turn 20 years of age during their bridge year are eligible to participate in the program.

(7) Schools and school districts participating in the program shall expunge any "D" or "F" grades, or their equivalent, from a participating student's transcript if the student completes the course with a higher grade during their bridge year.

(8)(a) Students participating in the program who elect to defer graduation for one year in accordance with subsection (5)(a) of this section may participate in graduation ceremonies with the graduating class of 2021 or 2022, as applicable, but the high school may not issue diplomas to those students until the conclusion of the bridge year or upon a student's withdrawal from the program.

(b) Students who have met all graduation requirements have graduated with their initial graduation cohort for purposes of calculating the four-year graduation rate for that cohort.

(9) A student who withdraws from the program or meets the goals and objectives of the high school and beyond plan addendum before completing the academic year is, upon withdrawal or completion of the goals and objectives, ineligible to participate in interschool athletic activities and other interschool extracurricular activities of an athletic, cultural, social, or recreational nature authorized under section 3 of this act.

(10) For purposes of funding allocations and student enrollment, students participating in the program who enroll in running start courses count as running start students for time spent in running start courses.

(11) School districts, charter schools, and state-tribal education compact schools participating in the program are eligible for funds provided in accordance with chapters 28A.150, 28A.710, and 28A.715 RCW, as applicable.

(12) The state board of education shall adopt, and may amend as necessary, rules to implement this section.

(13) For the purposes of this section:

(a) "Bridge year" means the full or partial academic year during which a student is participating in the program; and

(b) "Program" means the bridge year program established by this section.

**NEW SECTION. Sec. 3.** A new section is added to chapter 28A.630 RCW to read as follows:

(1) A student who pursues a bridge year pursuant to section 2 of this act may participate in activities sanctioned by the Washington interscholastic activities association and

extracurricular activities at the student's host high school.

(2) A student participating in a sport or extracurricular activity during the student's bridge year shall pay applicable student athletic and activities fees and be subject to the host high school's student code of conduct, athletic code of conduct, and any other applicable codes, rules, or policies required for student participation in these activities.

(3) Except as provided in subsection (4) of this section, nothing in this section or section 2 of this act supersedes the governance or eligibility rules established by a local, state, or national organization with bona fide authority over a particular extracurricular activity.

(4) For students participating in an interscholastic activity under this section, the Washington interscholastic activities association shall make all participating students aware of the eligibility appeal process related to season limitations.

(5) Notwithstanding the provisions of any law, rule, or regulation to the contrary, an insurer doing business in the state and issuing liability insurance policies to school districts must provide coverage for students participating in a sport or extracurricular activity under this section as part of a school or school district's liability insurance policy.

(6) For purposes of this section, "host high school," for persons who have met all applicable graduation requirements prior to participating in the program established in section 2 of this act, means the high school that the student attended at the beginning of grade 12. For persons who have not met all applicable graduation requirements prior to participating in the program established in section 2 of this act, "host high school" means the high school the student is enrolled in at the beginning of grade 12.

**NEW SECTION. Sec. 4.** A new section is added to chapter 28A.630 RCW to read as follows:

(1) The state board of education, in accordance with RCW 43.01.036, shall report its finding and recommendations regarding the bridge year program established in section 2 of this act to

the governor, the superintendent of public instruction, and the education committees of the legislature by February 1, 2023.

(2) The report required by this section must include:

(a) The number of students, schools, and school districts that participated in the program, by school year;

(b) Reasons identified by students for participating in the program, by school year;

(c) The number and percentage of students who completed the requirements of the program, by school year;

(d) The average number of high school and postsecondary credits earned by students participating in the program, by school year;

(e) The number and percentage of students who did not complete the requirements of the program and the reasons identified by students for not doing so, by school year; and

(f) Any other information deemed relevant by the state board of education.

(3) Student-level data required by this section for participating students must be disaggregated in a manner that is consistent with RCW 28A.300.042(3).

(4) The office of the superintendent of public instruction shall collect the data necessary for the report required by this section and provide the data to the state board of education by December 31, 2022.

**Sec. 5.** RCW 28A.600.290 and 2015 c 202 s 3 are each amended to read as follows:

(1)(a) Subject to the availability of amounts appropriated for this specific purpose and commencing with the 2015-16 school year, funding may be allocated at an amount per college credit for eleventh and twelfth grade students ~~((~~≠~~))~~, students who have not yet received a high school diploma or its equivalent and are eligible to be in the eleventh or twelfth grade, and students participating in a bridge year under section 2 of this act, who are enrolled in college in the high school courses under this section as specified in the omnibus appropriations act and adjusted for inflation from the 2015-16 school year. The maximum annual number of allocated credits per participating student shall be specified

in the omnibus appropriations act, which must not exceed ten credits. Funding shall be prioritized in the following order:

(i) High schools offering a running start in the high school program in school year 2014-15. These schools shall only receive prioritized funding in school year 2015-16;

(ii) Students whose residence or the high school in which they are enrolled is located twenty driving miles or more as measured by the most direct route from the nearest eligible institution of higher education offering a running start program, whichever is greater; and

(iii) High schools eligible for the small school funding enhancement in the omnibus appropriations act.

(b)(i) Subject to the availability of amounts appropriated for this specific purpose and commencing with the 2015-16 school year, and only after the programs in (a) of this subsection are funded, a subsidy may be provided per college credit for eleventh and twelfth grade students ~~((or))~~, students who have not yet received a high school diploma or its equivalent and are eligible to be in the eleventh or twelfth grade, and students participating in a bridge year under section 2 of this act, who have been deemed eligible for free or reduced-price lunch and are enrolled in college in the high school courses under this section as specified in the omnibus appropriations act and adjusted for inflation from the 2015-16 school year. The maximum annual number of subsidized credits per participating student shall be specified in the omnibus appropriations act, which must not exceed five credits.

(ii) Districts wishing to participate in the subsidy program must apply to the office of the superintendent of public instruction by July 1st of each year and report the preliminary estimate of eligible students to receive the subsidy and the total number of projected credit hours.

(iii) The office of the superintendent of public instruction shall notify districts by September 1st of each school year if the district's students will receive the subsidy. If more districts apply than funding is available, the office of the superintendent of public instruction shall prioritize the district applications. The superintendent shall develop factors to

determine priority including, but not limited to, the number of dual credit opportunities available for low-income students in the districts.

(c) Districts shall remit any allocations or subsidies on behalf of participating students under (a) and (b) of this subsection to the participating institution of higher education and those students shall not be required to pay for the credits.

(d) The minimum allocation and subsidy under this section is sixty-five dollars per quarter credit for credit-bearing postsecondary coursework. The office of the superintendent of public instruction, the student achievement council, the state board for community and technical colleges, and the public baccalaureate institutions shall review funding levels for the program every four years beginning in 2017 and recommend changes.

(e) Students may pay college in the high school fees with advanced college tuition payment program tuition units at a rate set by the advanced college tuition payment program governing body under chapter 28B.95 RCW.

(2) For the purposes of funding students enrolled in the college in the high school program in accordance with subsection (1) of this section, college in the high school is defined as a dual credit program located on a high school campus or in a high school environment in which a high school student, or a student participating in a bridge year under section 2 of this act, is able to earn both high school and postsecondary credit by completing postsecondary level courses with a passing grade.

(3) College in the high school programs may include both academic and career and technical education.

(4) College in the high school programs shall each be governed by a local contract between the district and the participating institution of higher education, in compliance with the rules adopted by the superintendent of public instruction under this section.

(5) The college in the high school program must include the provisions in this subsection.

(a) The high school and participating institution of higher education together shall define the criteria for student

eligibility. The institution of higher education may charge tuition fees to participating students. If specific funding is provided in the omnibus appropriations act for the per credit allocations and per credit subsidies under subsection (1) of this section, the maximum per credit fee charged to any enrolled student may not exceed the amount of the per credit allocation or subsidy.

(b) The funds received by the participating institution of higher education may not be deemed tuition or operating fees and may be retained by the institution of higher education.

(c) Enrollment information on persons registered under this section must be maintained by the institution of higher education separately from other enrollment information and may not be included in official enrollment reports, nor may such persons be considered in any enrollment statistics that would affect higher education budgetary determinations.

(d) A school district must grant high school credit to a student enrolled in a program course if the student successfully completes the course. If no comparable course is offered by the school district, the school district superintendent shall determine how many credits to award for the course. The determination shall be made in writing before the student enrolls in the course. The credits shall be applied toward graduation requirements and subject area requirements. Evidence of successful completion of each program course shall be included in the student's secondary school records and transcript.

(e) A participating institution of higher education must grant college credit to a student enrolled in a program course if the student successfully completes the course. The college credit shall be applied toward general education requirements or degree requirements at institutions of higher education. Evidence of successful completion of each program course must be included in the student's college transcript.

(f) Tenth, eleventh, and twelfth grade students or students who have not yet received a high school diploma or its equivalent and are eligible to be in the tenth, eleventh, or twelfth grades, and students participating in a bridge year under section 2 of this act, may

participate in the college in the high school program.

(g) Participating school districts must provide general information about the college in the high school program to all students in grades nine through twelve and to the parents and guardians of those students.

(h) Full-time and part-time faculty at institutions of higher education, including adjunct faculty, are eligible to teach program courses.

(6) The superintendent of public instruction shall adopt rules for the administration of this section. The rules shall be jointly developed by the superintendent of public instruction, the state board for community and technical colleges, the student achievement council, and the public baccalaureate institutions. The association of Washington school principals must be consulted during the rules development. The rules must outline quality and eligibility standards that are informed by nationally recognized standards or models. In addition, the rules must encourage the maximum use of the program and may not narrow or limit the enrollment options.

(7) The definitions in this subsection apply throughout this section.

(a) "Institution of higher education" has the definition in RCW 28B.10.016, and also includes a public tribal college located in Washington and accredited by the Northwest commission on colleges and universities or another accrediting association recognized by the United States department of education.

(b) "Program course" means a college course offered in a high school under the college in the high school program.

**Sec. 6.** RCW 28A.600.310 and 2019 c 252 s 115 and 2019 c 176 s 2 are each reenacted and amended to read as follows:

(1)(a) Eleventh and twelfth grade students (~~(or)~~) students who have not yet received the credits required for the award of a high school diploma and are eligible to be in the eleventh or twelfth grades, and students participating in a bridge year under section 2 of this act, may apply to a participating institution of higher education to enroll in courses or programs offered by the institution of higher education.

(b) The course sections and programs offered as running start courses must also be open for registration to matriculated students at the participating institution of higher education and may not be a course consisting solely of high school students offered at a high school campus.

(c) A student receiving home-based instruction enrolling in a public high school for the sole purpose of participating in courses or programs offered by institutions of higher education shall not be counted by the school district in any required state or federal accountability reporting if the student's parents or guardians filed a declaration of intent to provide home-based instruction and the student received home-based instruction during the school year before the school year in which the student intends to participate in courses or programs offered by the institution of higher education. Students receiving home-based instruction under chapter 28A.200 RCW and students attending private schools approved under chapter 28A.195 RCW shall not be required to meet the student learning goals or to learn the state learning standards. However, students are eligible to enroll in courses or programs in participating universities only if the board of directors of the student's school district has decided to participate in the program. Participating institutions of higher education, in consultation with school districts, may establish admission standards for these students. If the institution of higher education accepts a secondary school pupil for enrollment under this section, the institution of higher education shall send written notice to the pupil and the pupil's school district within ten days of acceptance. The notice shall indicate the course and hours of enrollment for that pupil.

(2)(a) In lieu of tuition and fees, as defined in RCW 28B.15.020 and 28B.15.041:

(i) Running start students shall pay to the community or technical college all other mandatory fees as established by each community or technical college and, in addition, the state board for community and technical colleges may authorize a fee of up to ten percent of tuition and fees as defined in RCW 28B.15.020 and 28B.15.041; and

(ii) All other institutions of higher education operating a running start program may charge running start students a fee of up to ten percent of tuition and fees as defined in RCW 28B.15.020 and 28B.15.041 in addition to technology fees.

(b) The fees charged under this subsection (2) shall be prorated based on credit load.

(c) Students may pay fees under this subsection with advanced college tuition payment program tuition units at a rate set by the advanced college tuition payment program governing body under chapter 28B.95 RCW.

(3)(a) The institutions of higher education must make available fee waivers for low-income running start students. A student shall be considered low income and eligible for a fee waiver upon proof that the student is currently qualified to receive free or reduced-price lunch. Acceptable documentation of low-income status may also include, but is not limited to, documentation that a student has been deemed eligible for free or reduced-price lunches in the last five years, or other criteria established in the institution's policy.

(b)(i) By the beginning of the 2020-21 school year, school districts, upon knowledge of a low-income student's enrollment in running start, must provide documentation of the student's low-income status, under (a) of this subsection, directly to institutions of higher education.

(ii) Subject to the availability of amounts appropriated for this specific purpose, the office of the superintendent of public instruction, in consultation with the Washington student achievement council, shall develop a centralized process for school districts to provide students' low-income status to institutions of higher education to meet the requirements of (b)(i) of this subsection.

(c) Institutions of higher education, in collaboration with relevant student associations, shall aim to have students who can benefit from fee waivers take advantage of these waivers. Institutions shall make every effort to communicate to students and their families the benefits of the waivers and provide assistance to students and their families on how to apply. Information about waivers shall, to the greatest extent possible, be

incorporated into financial aid counseling, admission information, and individual billing statements. Institutions also shall, to the greatest extent possible, use all means of communication, including but not limited to web sites, online catalogues, admission and registration forms, mass email messaging, social media, and outside marketing to ensure that information about waivers is visible, compelling, and reaches the maximum number of students and families that can benefit.

(4) The pupil's school district shall transmit to the institution of higher education an amount per each full-time equivalent college student at statewide uniform rates for vocational and nonvocational students. The superintendent of public instruction shall separately calculate and allocate moneys appropriated for basic education under RCW 28A.150.260 to school districts for purposes of making such payments and for granting school districts seven percent thereof to offset program related costs. The calculations and allocations shall be based upon the estimated statewide annual average per full-time equivalent high school student allocations under RCW 28A.150.260, excluding small high school enhancements, and applicable rules adopted under chapter 34.05 RCW. The superintendent of public instruction, participating institutions of higher education, and the state board for community and technical colleges shall consult on the calculation and distribution of the funds. The funds received by the institution of higher education from the school district shall not be deemed tuition or operating fees and may be retained by the institution of higher education. A student enrolled under this subsection shall be counted for the purpose of meeting enrollment targets in accordance with terms and conditions specified in the omnibus appropriations act.

**Sec. 7.** RCW 28A.600.330 and 1994 c 205 s 4 are each amended to read as follows:

(1) A pupil who enrolls in an institution of higher education in grade eleven may not enroll in postsecondary courses under RCW 28A.600.300 through 28A.600.390 for high school credit and postsecondary credit for more than the equivalent of the coursework for two

academic years. A pupil who first enrolls in an institution of higher education in grade twelve may not enroll in postsecondary courses under this section for high school credit and postsecondary credit for more than the equivalent of the coursework for one academic year.

(2) The credit limitations in this section do not apply to students participating in the bridge year program created in section 2 of this act.

**NEW SECTION. Sec. 8.** This act expires July 31, 2023.

**NEW SECTION. Sec. 9.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

Correct the title.

Signed by Representatives Santos, Chair; Dolan, Vice Chair; Ybarra, Ranking Minority Member; Berg; Bergquist; Callan; McEntire; Ortiz-Self and Stonier.

**MINORITY recommendation:** Without recommendation. Signed by Representatives Rude and Steele.

**MINORITY recommendation:** Do not pass. Signed by Representatives Walsh, Assistant Ranking Minority Member and McCaslin.

Referred to Committee on Appropriations.

March 26, 2021

**ESSB 5295** Prime Sponsor, Committee on Environment, Energy & Technology: Transforming the regulation of gas and electrical companies toward multiyear rate plans and performance-based rate making. Reported by Committee on Environment & Energy

**MAJORITY recommendation:** Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** (1) To provide clarity and certainty to stakeholders on the details of performance-based regulation, the utilities and transportation commission is directed to conduct a proceeding to develop a policy statement addressing alternatives to traditional cost of service rate making, including performance measures or goals, targets, performance incentives, and



penalty mechanisms. As part of such a proceeding, the utilities and transportation commission must consider factors including, but not limited to, lowest reasonable cost planning, affordability, increases in energy burden, cost of service, customer satisfaction and engagement, service reliability, clean energy or renewable procurement, conservation acquisition, demand side management expansion, rate stability, timely execution of competitive procurement practices, attainment of state energy and emissions reduction policies, rapid integration of renewable energy resources, and fair compensation of utility employees.

(2) In developing its policy statement, the utilities and transportation commission must in its proceeding allow for participation and consultation with regulated utilities, the attorney general's office, and other interested stakeholders including, but not limited to, residential, industrial, commercial, and low-income customers and organizations, as well as environmental or community organizations and stakeholders.

(3) By January 1, 2022, the utilities and transportation commission shall notify the chairs and ranking members of the appropriate committees of the legislature of the process to date, the expected duration of, and work plan associated with this proceeding.

NEW SECTION. Sec. 2. A new section is added to chapter 80.28 RCW to read as follows:

(1) Beginning January 1, 2022, every general rate case filing of a gas or electrical company must include a proposal for a multiyear rate plan as provided in this chapter. The commission may, by order after an adjudicative proceeding as provided by chapter 34.05 RCW, approve, approve with conditions, or reject, a multiyear rate plan proposal made by a gas or electrical company or an alternative proposal made by one or more parties, or any combination thereof. The commission's consideration of a proposal for a multiyear rate plan is subject to the same standards applicable to other rate filings made under this title, including the public interest and fair, just, reasonable, and sufficient rates. In determining the public interest, the commission may consider such factors including, but not limited to, environmental health and greenhouse gas

emissions reductions, health and safety concerns, economic development, and equity, to the extent such factors affect the rates, services, and practices of a gas or electrical company regulated by the commission.

(2) The commission may approve, disapprove, or approve with modifications any proposal to recover from ratepayers up to five percent of the total revenue requirement approved by the commission for each year of a multiyear rate plan for tariffs that reduce the energy burden of low-income residential customers including, but not limited to: (a) Bill assistance programs; or (b) one or more special rates. For any multiyear rate plan approved under this section resulting in a rate increase, the commission must approve an increase in the amount of low-income bill assistance to take effect in each year of the rate plan where there is a rate increase. At a minimum, the amount of such low-income assistance increase must be equal to double the percentage increase, if any, in the residential base rates approved for each year of the rate plan. The commission may approve a larger increase to low-income bill assistance based on an appropriate record.

(3) (a) If it approves a multiyear rate plan, the commission shall separately approve rates for each of the initial rate year, the second rate year and, if applicable, the third rate year, and the fourth rate year.

(b) The commission shall ascertain and determine the fair value for rate-making purposes of the property of any gas or electrical company that is or will be used and useful under RCW 80.04.250 for service in this state by or during each rate year of the multiyear rate plan. For the initial rate year, the commission shall, at a minimum, ascertain and determine the fair value for rate-making purposes of the property of any gas or electrical company that is used and useful for service in this state as of the rate effective date. The commission may order refunds to customers if property expected to be used and useful by the rate effective date when the commission approves a multiyear rate plan is in fact not used and useful by such a date.

(c) The commission shall ascertain and determine the revenues and operating expenses for rate-making purposes of any

gas or electrical company for each rate year of the multiyear rate plan.

(d) In ascertaining and determining the fair value of property of a gas or electrical company pursuant to (b) of this subsection and projecting the revenues and operating expenses of a gas or electrical company pursuant to (c) of this subsection, the commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at fair, just, reasonable, and sufficient rates.

(e) If the commission approves a multiyear rate plan with a duration of three or four years, then the electrical company must update its power costs as of the rate effective date of the third rate year. The proceeding to update the electrical company's power costs is subject to the same standards that apply to other rate filings made under this title.

(4) Subject to subsection (5) of this section, the commission may by order establish terms, conditions, and procedures for a multiyear rate plan and ensure that rates remain fair, just, reasonable, and sufficient during the course of the plan.

(5) Notwithstanding subsection (4) of this section, a gas or electrical company is bound by the terms of the multiyear rate plan approved by the commission for each of the initial rate year and the second rate year. A gas or electrical company may file a new multiyear rate plan in accordance with this section for the third rate year and fourth rate year, if any, of a multiyear rate plan.

(6) If the annual commission basis report for a gas or electrical company demonstrates that the reported rate of return on rate base of the company for the 12-month period ending as of the end of the period for which the annual commission basis report is filed is more than .5 percent higher than the rate of return authorized by the commission in the multiyear rate plan for such a company, the company shall defer all revenues that are in excess of .5 percent higher than the rate of return authorized by the commission for refunds to customers or another determination by the commission in a subsequent adjudicative proceeding. If a multistate electrical company with fewer than 250,000 customers in Washington files a multiyear rate plan that provides for no increases in base

rates in consecutive years beyond the initial rate year, the commission shall waive the requirements of this subsection provided that such a waiver results in just and reasonable rates.

(7) The commission must, in approving a multiyear rate plan, determine a set of performance measures that will be used to assess a gas or electrical company operating under a multiyear rate plan. These performance measures may be based on proposals made by the gas or electrical company in its initial application, by any other party to the proceeding in its response to the company's filing, or in the testimony and evidence admitted in the proceeding. In developing performance measures, incentives, and penalty mechanisms, the commission may consider factors including, but not limited to, lowest reasonable cost planning, affordability, increases in energy burden, cost of service, customer satisfaction and engagement, service reliability, clean energy or renewable procurement, conservation acquisition, demand side management expansion, rate stability, timely execution of competitive procurement practices, attainment of state energy and emissions reduction policies, rapid integration of renewable energy resources, and fair compensation of utility employees.

(8) Nothing in this section precludes any gas or electrical company from making filings required or permitted by the commission.

(9) The commission shall align, to the extent practical, the timing of approval of a multiyear rate plan of an electrical company submitted pursuant to this section with the clean energy implementation plan of the electrical company filed pursuant to RCW 19.405.060.

(10) The provisions of this section may not be construed to limit the existing rate-making authority of the commission.

**Sec. 3.** RCW 80.28.068 and 2009 c 32 s 1 are each amended to read as follows:

~~((Upon))~~ (1) Upon its own motion, or upon request by an electrical or gas company, or other party to a general rate case hearing, or other proceeding to set rates, the commission may approve rates, charges, services, and/or physical facilities at a discount, or through grants, for low-income senior customers

and low-income customers. Expenses and lost revenues as a result of these discounts or grants shall be included in the company's cost of service and recovered in rates to other customers. Each gas or electrical company must propose a discount rate for low-income senior customers and low-income customers. The commission shall approve or approve with modifications each gas or electrical company's discount rate proposal for low-income senior customers and low-income customers. The gas or electrical company must use reasonable and good faith efforts to seek approval for low-income program design, eligibility, operation, outreach, and funding proposals from its low-income and equity advisory groups in advance of filing such proposals with the commission. In order to remove barriers and to expedite assistance, low-income discounts or grants approved under this section must be provided in coordination with community-based organizations in the gas or electrical company's service territory including, but not limited to, grantees of the department of commerce, community action agencies, and community-based nonprofit organizations. Nothing in this section may be construed as limiting the commission's authority to approve or modify tariffs authorizing low-income discounts or grants.

(2) Eligibility for a low-income discount rate or grant established in this section may be established upon verification of a low-income customer's receipt of any means-tested public benefit, or verification of eligibility for the low-income home energy assistance program, or its successor program, for which eligibility does not exceed the low-income definition set by the commission pursuant to RCW 19.405.020. The public benefits may include, but are not limited to, assistance that provides cash, housing, food, or medical care including, but not limited to, temporary assistance for needy families, supplemental security income, emergency assistance to elders, disabled, and children, supplemental nutrition assistance program benefits, public housing, federally subsidized or state-subsidized housing, the low-income home energy assistance program, veterans' benefits, and similar benefits.

(3) Each gas or electrical company shall conduct substantial outreach efforts to make the low-income discounts or grants available to eligible customers

and must provide annual reports to the commission as to the gas or electrical company's outreach activities and results. Such outreach: (a) Shall be made at least semiannually to inform customers of available rebates, discounts, credits, and other cost-saving mechanisms that can help them lower their monthly bills for gas or electrical service; and (b) may be in the form of any customary and usual methods of communication or distribution including, without limitation, widely broadcast communications with customers, direct mailing, telephone calls, electronic communications, social media postings, in-person contacts, websites of the gas or electrical company, press releases, and print and electronic media, that are designed to increase access to and participation in bill assistance programs.

(4) Outreach may include establishing an automated program of matching customer accounts with lists of recipients of the means-tested public benefit programs and, based on the results of the matching program, to presumptively offer a low-income discount rate or grant to eligible customers so identified. However, the gas or electrical company must within 60 days of the presumptive enrollment inform such a low-income customer of the presumptive enrollment and all rights and obligations of a customer under the program, including the right to withdraw from the program without penalty.

(5) A residential customer eligible for a low-income discount rate must receive the service on demand.

(6) A residential customer may not be charged for initiating or terminating low-income discount rates, grants, or any other form of energy assistance.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Energy burden" has the same meaning as defined in RCW 19.405.020.

(b) "Low-income" has the same meaning as defined in RCW 19.405.020.

(c) "Physical facilities" includes, but may not be limited to, a community solar project as defined in RCW 80.28.370.

**NEW SECTION. Sec. 4.** A new section is added to chapter 80.28 RCW to read as follows:

(1) A gas company or electrical company shall, upon request, enter into one or more written agreements with organizations that represent broad customer interests in regulatory proceedings conducted by the commission, subject to commission approval in accordance with subsection (2) of this section, including but not limited to organizations representing low-income, commercial, and industrial customers, vulnerable populations, or highly impacted communities. The agreement must govern the manner in which financial assistance may be provided to the organization. More than one gas company, electrical company, or organization representing customer interests may join in a single agreement. Any agreement entered into under this section must be approved, approved with modifications, or rejected by the commission. The commission must consider whether the agreement is consistent with a reasonable allocation of financial assistance provided to organizations pursuant to this section among classes of customers of the gas or electrical company.

(2) Before administering an agreement entered into under subsection (1) of this section, the commission shall, by rule or order, determine:

(a) The amount of financial assistance, if any, that may be provided to any organization;

(b) The manner in which the financial assistance is distributed;

(c) The manner in which the financial assistance is recovered in the rates of the gas company or electrical company under subsection (3) of this section; and

(d) Other matters necessary to administer the agreement.

(3) The commission shall allow a gas company or electrical company that provides financial assistance under this section to recover the amounts provided in rates. The commission shall allow a gas company or electrical company to defer inclusion of those amounts in rates if the gas company or electrical company so elects. An agreement under this section may not provide for payment of any amounts to the commission.

(4) Organizations representing vulnerable populations or highly impacted communities must be prioritized for funding under this section.

**Sec. 5.** RCW 80.28.074 and 1988 c 166 s 1 are each amended to read as follows:

The legislature declares it is the policy of the state to:

(1) Preserve affordable (~~(natural gas and electric)~~) energy services to the residents of the state;

(2) Maintain and advance the efficiency and availability of (~~(natural gas and electric)~~) energy services to the residents of the state of Washington;

(3) Ensure that customers pay only reasonable charges for (~~(natural gas and electric service)~~) energy services;

(4) Permit flexible pricing of (~~(natural gas and electric)~~) energy services.

NEW SECTION. **Sec. 6.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

Correct the title.

Signed by Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno; Berry; Boehnke; Fey; Goehner; Harris-Talley; Ramel; Shewmake and Slatter.

Referred to Committee on Rules for second reading.

March 26, 2021

SB 5345

Prime Sponsor, Senator Brown: Establishing a statewide industrial waste coordination program. Reported by Committee on Environment & Energy

**MAJORITY recommendation:** Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds that industrial symbiosis networks create valuable collaborative opportunities where the underutilized resources of one company, such as waste, by-products, residues, energy, water, logistics, capacity, expertise, equipment, and materials may be used by another. The legislature further finds that many existing businesses and organizations in the state have the potential to partner in the establishment

of these networks, and the formation of industrial symbiosis innovation hubs at the state and local level would facilitate a systems approach that identifies business opportunities to improve resource utilization and productivity for a more sustainable and integrated industrial economy.

Therefore, the legislature intends to establish a statewide industrial waste coordination program in order to nurture and coordinate existing industrial symbiosis efforts and to catalyze new industrial symbiosis opportunities. Furthermore, the legislature intends to establish the program in order to: Find ways of turning waste and by-products into valued resource inputs; reduce waste management costs; generate new business opportunities; increase the size and diversity of business networks; identify means of improving environmental performance; achieve environmental justice in goals and policies; incentivize pathways to family-wage, green jobs; expand the regional circular economy; and drive innovation.

NEW SECTION. Sec. 2. A new section is added to chapter 43.31 RCW to read as follows:

(1) An industrial waste coordination program is established in order to provide expertise, technical assistance, and best practices to support local industrial symbiosis projects.

(2) The industrial waste coordination program must be administered by the department of commerce and administered regionally, with each region provided with a dedicated facilitator and technical and administrative support.

(3) The industrial waste coordination program must facilitate waste exchange by:

(a) Developing inventories of industrial waste innovation currently in operation;

(b) Generating a material flow data collection system in order to capture and manage data on resource availability and potential synergies;

(c) Establishing guidance and best practices for emerging local industrial resource hubs, which must include a consideration of steps to avoid creating or worsening negative impacts to overburdened communities as identified by tools such as the department of

health's environmental health disparities map;

(d) Identifying access to capital in order to fund projects, including federal, state, local, and private funding;

(e) Developing economic, environmental, and health disparities metrics to measure the results of industrial or commercial hubs;

(f) Hosting workshops and connecting regional businesses, governments, utilities, research institutions, and other organizations in order to identify opportunities for resource collaboration;

(g) Assisting entities throughout the entire life cycle of industrial symbiosis projects, from identification of opportunities to full project implementation;

(h) Developing economic cluster initiatives in order to spur growth and innovation; and

(i) Making any additional recommendations to the legislature in order to incentivize and facilitate industrial symbiosis.

(4) The department of commerce may coordinate with other agencies, representatives of business and manufacturing networks, and other entities in order to develop material flow generation data and increase multisectoral outreach.

(5) In generating the material flow data collection system under subsections (3)(b) and (4) of this section, the department of commerce may only use publicly available data or data voluntarily provided by program participants. No entity may be required to disclose material flow data. The department of commerce must keep any proprietary business information confidential and such information is exempt from public disclosure, as provided in RCW 42.56.270.

NEW SECTION. Sec. 3. A new section is added to chapter 43.31 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, a competitive industrial symbiosis grant program is established in order to provide grants for the research,

development, and deployment of local waste coordination projects.

(2) Grants may go towards:

(a) Existing industrial symbiosis efforts by public or private sector organizations;

(b) Emerging industrial symbiosis opportunities involving public or private sector organizations, including projects arising from:

(i) The industrial waste coordination program established in section 2 of this act;

(ii) Conceptual work completed by public utilities to redirect their wastes to productive use; or

(iii) Existing inventories or project concepts involving specific biobased wastes converted to renewable natural gas;

(c) Research on product development using a specific waste flow;

(d) Feasibility studies to evaluate potential biobased resources;

(e) Feasibility studies for publicly owned utilities to evaluate business models to transform to multiutility operations or for the evaluation of potential symbiosis connections with other regional businesses; or

(f) Other local waste coordination projects as determined by the department of commerce.

(3) The department of commerce must develop a method and criteria for the allocation of grants, subject to the following:

(a) Project allocation should reflect geographic diversity, with grants being distributed equally in western and eastern parts of the state, urban and rural areas, and small towns and large cities;

(b) Project allocation should consider factors such as time to implementation and scale of economic or environmental benefits;

(c) Grants must require a one-to-one nonstate to state match;

(d) Individual grant awards may not exceed \$500,000; and

(e) Project allocation should avoid creating or worsening environmental health disparities and should make use of

tools such as the department of health's environmental health disparities map.

**Sec. 4.** RCW 42.56.270 and 2020 c 238 s 11 are each amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750; (b) highway construction or improvement as required by RCW 47.28.070; or (c) alternative public works contracting procedures as required by RCW 39.10.200 through 39.10.905;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10) (a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), marijuana producer, processor, or retailer license, liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(c) Valuable formulae or financial or proprietary commercial information records received during a consultative visit or while providing consultative services to a licensed marijuana business in accordance with RCW 69.50.561;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services or the health care authority for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12) (a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and

provided to the department of commerce pursuant to RCW 43.330.050(8); ~~((and))~~

(ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business; and

(iii) Financial or proprietary information collected from any person and provided to the department of commerce pursuant to section 2 (3)(b) and (4) of this act;

(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter ~~((70.95N))~~ 70A.500 RCW to implement chapter ~~((70.95N))~~ 70A.500 RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under RCW 43.330.502, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form

that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information;

(21) Market share data submitted by a manufacturer under RCW ~~((70.95N.190(4))~~ 70A.500.190(4);

(22) Financial information supplied to the department of financial institutions, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW

21.20.880 or when filed by or on behalf of an investor for the purpose of purchasing such securities;

(23) Unaggregated or individual notices of a transfer of crude oil that is financial, proprietary, or commercial information, submitted to the department of ecology pursuant to RCW 90.56.565(1)(a), and that is in the possession of the department of ecology or any entity with which the department of ecology has shared the notice pursuant to RCW 90.56.565;

(24) Financial institution and retirement account information, and building security plan information, supplied to the liquor and cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345, when filed by or on behalf of a licensee or prospective licensee for the purpose of obtaining, maintaining, or renewing a license to produce, process, transport, or sell marijuana as allowed under chapter 69.50 RCW;

(25) Marijuana transport information, vehicle and driver identification data, and account numbers or unique access identifiers issued to private entities for traceability system access, submitted by an individual or business to the liquor and cannabis board under the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345 for the purpose of marijuana product traceability. Disclosure to local, state, and federal officials is not considered public disclosure for purposes of this section;

(26) Financial and commercial information submitted to or obtained by the retirement board of any city that is responsible for the management of an employees' retirement system pursuant to the authority of chapter 35.39 RCW, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the retirement fund or to result in private loss to the providers of this information except that (a) the names and commitment amounts of the private funds in which retirement funds are invested and (b) the aggregate quarterly performance results for a retirement fund's portfolio of investments in such funds are subject to disclosure;

(27) Proprietary financial, commercial, operations, and technical



and research information and data submitted to or obtained by the liquor and cannabis board in applications for marijuana research licenses under RCW 69.50.372, or in reports submitted by marijuana research licensees in accordance with rules adopted by the liquor and cannabis board under RCW 69.50.372;

(28) Trade secrets, technology, proprietary information, and financial considerations contained in any agreements or contracts, entered into by a licensed marijuana business under RCW 69.50.395, which may be submitted to or obtained by the state liquor and cannabis board;

(29) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the Andy Hill cancer research endowment program in applications for, or delivery of, grants under chapter 43.348 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(30) Proprietary information filed with the department of health under chapter 69.48 RCW;

(31) Records filed with the department of ecology under chapter ~~((70.375))~~ 70A.515 RCW that a court has determined are confidential valuable commercial information under RCW ~~((70.375.130))~~ 70A.515.130; and

(32) Unaggregated financial, proprietary, or commercial information submitted to or obtained by the liquor and cannabis board in applications for licenses under RCW 66.24.140 or 66.24.145, or in any reports or remittances submitted by a person licensed under RCW 66.24.140 or 66.24.145 under rules adopted by the liquor and cannabis board under chapter 66.08 RCW.

NEW SECTION. Sec. 5. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2021, in the omnibus appropriations act, this act is null and void."

Correct the title.

Signed by Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Abbarno; Berry; Boehnke; Fey; Goehner; Harris-Talley; Ramel; Shewmake and Slatter.

MINORITY recommendation: Do not pass. Signed by Representatives Dye, Ranking Minority Member Klicker, Assistant Ranking Minority Member.

Referred to Committee on Appropriations.

March 26, 2021

ESSB 5353 Prime Sponsor, Committee on Law & Justice: Creating a partnership model that facilitates community engagement with law enforcement. Reported by Committee on Public Safety

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that community engagement is a foundational principle of successful community policing practices. When individuals and neighborhood groups are encouraged to partner with law enforcement, a powerful alliance can be built on mutual trust and respect and mitigate polarization between police departments and community groups. A successful community-police partnership leads to the achievement of shared goals of improving safety and quality of life and ensuring that public safety services are tailored to the needs of local communities.

The legislature recognizes current efforts in Washington to mobilize communities to insist on equitable and accountable practices that will result in community participation in public safety efforts as well as establish cooperative lines of communication between civilians and law enforcement. Laudable community engagement models such as the safe streets campaign in Pierce county, safe Yakima in Yakima county, and the Okanogan county community coalition are recognized to mitigate crime trends by engaging the community and law enforcement in cooperative efforts to improve public safety.

The department of commerce intends to foster community engagement with law enforcement officers through the creation of a community engagement project in 15 communities across the state of Washington with a mix of urban, rural, and suburban areas to facilitate community-law enforcement partnerships and improve police-community relations. The department will implement a project evaluation to measure and examine the

impact of local initiatives on community engagement, neighborhood safety, and positive community-police relations.

The funded projects will facilitate the empowerment of communities to engage in crime prevention efforts through neighborhood organizing, law enforcement-community partnerships, youth mobilization, and business engagement.

NEW SECTION. **Sec. 2.** A new section is added to chapter 43.330 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, a project is created in the department to foster community engagement through neighborhood organizing, law enforcement-community partnerships, youth mobilization, and business engagement. The department shall administer the project. The project must include 12 to 15 grant awards in those counties that have demonstrated their commitment to programs that promote community engagement in public safety including the following counties: Spokane, Pierce, King, Okanogan, Yakima, Cowlitz, Clark, Chelan-Douglas, Walla-Walla, Benton-Franklin, Grant, and Snohomish.

(2) The department shall adopt policies and procedures necessary to administer the project including: (a) An application process; (b) disbursement of the grant award to selected applicants; (c) tracking compliance and proper use of funds; and (d) measuring outcomes.

(3) Eligible applicants must:

(a) Be a public agency or nongovernmental organization, that is not a law enforcement agency;

(b) Have demonstrated experience with community engagement initiatives that impact public safety;

(c) Have community engagement;

(d) Have established or be willing to establish a coordinated effort with committed partners, which must include law enforcement and organizations committed to diversity, equity, and inclusion of community members, including organizations whose leadership specifically reflects the communities most impacted by racism; and

(e) Have established priorities, policies, and measurable goals in

compliance with the requirements of the project as provided in subsection (4) of this section.

(4) The grant recipient shall:

(a) Lead and facilitate neighborhood organizing initiatives, including:

(i) Empowering community members with tools, skills, confidence, and connections to identify, eradicate, and prevent illegal activity;

(ii) Making neighborhood improvements to deter future criminal activity; and

(iii) Educating community members regarding how to connect with city, county, and law enforcement resources;

(b) Build substantive law enforcement-community partnerships, including:

(i) Building trust between community members and law enforcement by facilitating purposeful antiracist practices and the development of policies that lead to equal treatment under the law;

(ii) Establishing clear expectations for law enforcement to be competent to practice fair and equitable treatment including facilitating dialogue between law enforcement and community members to increase understanding of the impact of historical racist practices and current conflicts;

(iii) Community members regularly informing law enforcement, through presentations, workshops, or forums, on community perceptions of law enforcement and public safety issues;

(iv) Educating community members on the role and function of law enforcement in the community;

(v) Clarifying expectations of law enforcement and of the role of the community in crime prevention;

(vi) Educating community members on the best practices for reporting emergency and nonemergency activities;

(vii) Recognizing community members for effective engagement and community leadership; and

(viii) Recognizing law enforcement officials for efforts to engage underrepresented communities, improve community engagement and empowerment, and reform law enforcement practices;

(c) Mobilize youth to partner with neighborhood groups and law enforcement to prevent violence by:

(i) Helping them develop knowledge and skills to serve as leaders in their communities;

(ii) Focusing on prevention of violence and substance abuse; and

(iii) Empowering youth to bring their voice to community issues that impact healthy police-community relations;

(d) Engage businesses to help prevent crimes, such as vandalism and burglaries, through safety training and other prevention initiatives;

(e) Provide training and technical assistance on how to implement community engagement, improving law enforcement and community partnership, youth engagement, and business engagement;

(f) Identify and maintain consistent, experienced, and committed leadership for managing the grant, including an administrator who acts as an available point of contact with the department; and

(g) Collect and report data and information required by the department.

(5) The department shall, in consultation with the Washington state institute for public policy, develop reporting guidelines for the grant recipient in order to measure whether the safe streets pilot project had an impact on crime rates and community engagement with, and perceptions of, law enforcement. The department shall submit a preliminary report to the legislature with details on the selected grant recipients and the reporting guidelines by January 1, 2022. The department shall submit a final report on the safe streets pilot project, including an analysis of the reported data required under this subsection, by December 1, 2023.

(6) This section expires January 1, 2024."

Correct the title.

Signed by Representatives Goodman, Chair; Johnson, J., Vice Chair; Davis; Hackney; Lovick; Orwall; Ramos and Simmons.

MINORITY recommendation: Without recommendation. Signed by Representatives Mosbrucker, Ranking Minority Member; Graham; Griffey and Young.

MINORITY recommendation: Do not pass. Signed by Representative Klippert, Assistant Ranking Minority Member.

Referred to Committee on Appropriations.

March 26, 2021

SSB 5361 Prime Sponsor, Committee on Law & Justice: Concerning the resentencing of persons convicted of drug offenses. Reported by Committee on Public Safety

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9.94A.519 and 2020 c 55 s 1 are each amended to read as follows:

(1) Except as provided in subsection (3) of this section, any offender sentenced for a violation of chapter 69.50 or 69.52 RCW that was committed prior to July 1, 2004, and who is serving a ~~((term of incarceration))~~ current sentence under custody of the department of corrections for that offense on June 11, 2020, is entitled to a resentencing hearing. The prosecuting attorney for the county in which any offender was sentenced and to whom this section applies must review the sentencing documents. If the offender is serving a term of incarceration for a violation of chapter 69.50 or 69.52 RCW that was committed prior to July 1, 2004, the prosecuting attorney shall, or the offender may, make a motion for relief from sentence to the original sentencing court.

(2) The sentencing court shall grant the motion if it finds that the offender is serving a sentence for a violation of chapter 69.50 or 69.52 RCW that was committed prior to July 1, 2004, and shall immediately set an expedited date for resentencing. At resentencing, the court shall sentence the offender as if the offender had not previously been sentenced, provided the new sentence is no greater than the initial sentence. Notwithstanding the provisions of RCW 9.94A.345, the court shall sentence the offender based on the sentencing guidelines in effect on the effective date of this section.

(3) An offender is not entitled to resentencing under this section if the offender has been convicted of a ~~((most~~

~~serious offense or violent offense))~~  
violent offense or sex offense involving  
a child.

(4) This section expires July 1,  
 ((2021)) 2022.

**Sec. 2.** RCW 9.94A.345 and 2000 c 26 s  
 2 are each amended to read as follows:

~~((Any))~~ Except as otherwise provided  
 in this chapter, any sentence imposed  
 under this chapter shall be determined in  
 accordance with the law in effect when  
 the current offense was committed.

NEW SECTION. **Sec. 3.** This act is  
 necessary for the immediate preservation  
 of the public peace, health, or safety,  
 or support of the state government and  
 its existing public institutions, and  
 takes effect immediately."

Correct the title.

Signed by Representatives Goodman, Chair; Johnson, J.,  
 Vice Chair; Mosbrucker, Ranking Minority Member;  
 Klippert, Assistant Ranking Minority Member; Davis;  
 Graham; Griffey; Hackney; Lovick; Orwall; Ramos;  
 Simmons and Young.

Referred to Committee on Rules for second reading.

There being no objection, the bills listed on the day's  
 committee reports and supplemental committee reports  
 under the fifth order of business were referred to the  
 committees so designated.

There being no objection, the House adjourned until  
 12:00 p.m., March 28, 2021, the 77th Legislative Day of the  
 Regular Session.

LAURIE JINKINS, Speaker

BERNARD DEAN, Chief Clerk

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