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CHAPTER 198  
[Substitute Senate Bill No. 3312]  
CRIMINALLY INSANE

AN ACT Relating to the criminally insane; amending section 1, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.010; amending section 2, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.020; amending section 3, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.030; amending section 4, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.040; amending section 5, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.050; amending section 6, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.060; amending section 8, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.080; amending section 9, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.090; amending section 10, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.100; amending section 11, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.110; amending section 12, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.120; amending section 14, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.140; amending section 15, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.150; amending section 18, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.180; amending section 19, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.190; amending section 20, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.200; amending section 22, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.220; and amending section 23, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.230; and declaring an emergency.

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

Section 1. Section 1, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.010 are each amended to read as follows:

As used in this chapter:

(1) A "criminally insane" person means any person who has been acquitted of a crime charged by reason of ((mental disease or defect excluding responsibility)) insanity, and thereupon found to be a substantial danger to ((himself or)) other persons ((and in need of)) or to present a substantial likelihood of committing felonious acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions. ((No condition of mind proximately induced by the voluntary act of a

person charged with a crime shall be deemed a mental disease or defect excluding responsibility:))

(2) "Indigent" means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to himself or his family.

(3) "Secretary" means the secretary of the department of social and health services or his designee.

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

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

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

(7) No condition of mind proximately induced by the voluntary act of a person charged with a crime shall constitute "insanity".

Sec. 2. Section 2, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.020 are each amended to read as follows:

(1) At any and all stages of the proceedings pursuant to this chapter, any person subject to the provisions of this chapter shall be entitled to the assistance of counsel, and if the person is indigent ((and unable to retain counsel)) the court shall appoint counsel to assist him. A person may waive his right to counsel ((only following)); but such waiver shall only be effective if a court makes a specific finding ((by the court)) that he is or was competent to so waive. In making such findings, the court shall be guided but not limited by the following standards: Whether the person attempting to waive the assistance of counsel, does so understanding:

- (a) The nature of the charges;
- (b) The statutory offense included within them;
- (c) The range of allowable punishments thereunder;
- (d) Possible defenses to the charges and circumstances in mitigation thereof; and
- (e) All other facts essential to a broad understanding of the whole matter.

(2) Whenever any person is subjected to an ((mental status)) examination pursuant to any provision of this chapter, he may retain an expert or professional person to ((participate in the)) perform an examination in his behalf. In the case of a person who is indigent, ((either)) the court ((or the secretary)) shall upon his request assist the person in obtaining an expert or professional person to ((participate in the)) perform an examination or participate in the hearing on his behalf. An expert or professional person obtained by

an indigent person pursuant to the provisions of this chapter shall be compensated for his services out of funds of the department, in an amount determined by it to be fair and reasonable.

(3) Whenever any person has been committed under any provision of this chapter, or ordered to undergo alternative treatment following his acquittal of a crime charged by reason of ~~((mental disease or defect excluding responsibility))~~ insanity, such commitment or treatment cannot exceed the maximum possible penal sentence for any offense charged for which he was acquitted by reason of insanity. If at the end of that period the person has not been finally discharged and is still in need of commitment or treatment, civil commitment proceedings may be instituted, if appropriate.

(4) Any time the defendant is being examined by court appointed experts or professional persons pursuant to the provisions of this chapter, he shall be entitled to have his attorney present. ~~((If the defendant is indigent and unable to retain counsel, the court upon the request of the defendant shall appoint counsel to assist the defendant.))~~ The defendant may refuse to answer any question if he believes his answers may tend to incriminate him or form links leading to evidence of an incriminating nature.

Sec. 3. Section 3, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.030 are each amended to read as follows:

(1) Evidence of ~~((mental disease or defect excluding responsibility))~~ insanity is not admissible unless the defendant, at the time of arraignment or within ten days thereafter or at such later time as the court may for good cause permit, files a written notice of his intent to rely on such a defense.

(2) ~~((Mental disease or defect excluding responsibility is a))~~ Insanity is a defense which the defendant must establish by a preponderance of the evidence.

~~((3) When the defendant is acquitted on the grounds of mental disease or defect excluding responsibility, the verdict and judgment shall so state.))~~

Sec. 4. Section 4, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.040 are each amended to read as follows:

Whenever the issue of ~~((mental disease or defect excluding responsibility has been raised by the defendant))~~ insanity is submitted to the jury, the court shall instruct the jury to return a special verdict in substantially the following form:

answer  
yes or no

1. Did the defendant commit  
the ~~((crime))~~ act  
charged?

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2. If your answer to number 1 is yes, do you acquit ((hime)) him because of ((mental disease or defect excluding responsibility)) insanity existing at the time of the act charged? -----

3. If your answer to number 2 is yes, is the defendant a substantial danger to ((himself or others and in need of)) other persons unless kept under further control by the court or other persons or institutions  or  property? -----V

4. If your answer to number 2 is yes, does the defendant present a substantial likelihood of committing felonious acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions? -----

5. If your answers to either number 3 or number 4 is yes, is it in the best interests of the defendant and others that the defendant be placed in treatment that is less restrictive than detention in a state mental hospital? -----

Sec. 5. Section 5, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.050 are each amended to read as follows:

No incompetent person ((who lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of mental disease or defect)) shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues.

Sec. 6. Section 6, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.060 are each amended to read as follows:

(1) Whenever a defendant has pleaded not guilty by reason of ~~((mental disease or defect excluding responsibility))~~ insanity, or there is reason to doubt his ~~((fitness to proceed as a result of mental disease or defect))~~ competency, the court on its own motion or on the motion of any party shall either appoint~~((7))~~ or ~~((shall))~~ request the secretary to designate~~((7))~~ at least two qualified experts or professional persons, one of whom shall be approved by the prosecuting attorney, to examine and report upon the mental condition of the defendant. For purposes of the examination, the court may order the defendant committed to a hospital or other suitable facility for a period of time necessary to complete the examination, but not to exceed fifteen days.

(2) The court ~~((shall))~~ may direct that a qualified expert or professional person retained by or appointed for the defendant be permitted to witness the examination authorized by subsection (1) of this section, and that he 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 ~~((either to join in the report filed by the court appointed experts or professional persons authorized by subsection (1) of this section, or))~~ to file his own ~~((separate))~~ 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 in obtaining an an ~~((duly qualified))~~ expert or professional person ~~((to participate in the examination on the defendant's behalf))~~.

(3) The report of the examination shall include the following:

(a) A description of the nature of the examination;  
(b) A diagnosis of the mental condition of the defendant;  
(c) If the defendant suffers from a mental disease or defect, an opinion as to his ~~((capacity to understand the proceedings against him and to assist in his own defense))~~ competency;

(d) If the defendant has indicated his intention to rely on the defense of ~~((irresponsibility))~~ insanity pursuant to RCW 10.77.030, an opinion as to the ~~((extent he lacked capacity either:~~

~~(i) To know or appreciate the nature and consequences of such conduct; or~~

~~(ii) To know or appreciate the criminality of such conduct))~~  
defendant's sanity at the time of the act;

(e) When directed by the court, 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 is a substantial danger to ((himself or others and is in need of)) other persons, or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

Sec. 7. Section 8, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.080 are each amended to read as follows:

((If the report filed pursuant to RCW 10.77.060 finds that the defendant at the time of the criminal conduct charged did not have capacity to either {1} know or appreciate the nature and consequence of such conduct; or {2} know or appreciate the criminality of such conduct; the defendant, upon notification to the prosecuting attorney, may move that a judgment of acquittal on the grounds of mental disease or defect excluding responsibility be entered. If the court, after a hearing on the motion, is satisfied that such impairment was sufficient to exclude responsibility, the court shall enter judgment of acquittal on the grounds of mental disease or defect excluding responsibility. If the motion is denied, the question shall be submitted to the trier of fact in the same manner as all other issues of fact:)) The defendant may move the court for a judgment of acquittal on the grounds of insanity: PROVIDED, That a defendant so acquitted may not later contest the validity of his detention on the grounds that he did not commit the acts charged. At the hearing upon said motion the defendant shall have the burden of proving by a preponderance of the evidence that he was insane at the time of the offense or offenses with which he is charged. If the court finds that the defendant should be acquitted by reason of insanity, it shall enter specific findings in substantially the same form as set forth in RCW 10.77.040 [2], [3], [4], and [5], as now or hereafter amended. If the motion is denied, the question may be submitted to the trier of fact in the same manner as other issues of fact.

Sec. 8. Section 9, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.090 are each amended to read as follows:

(1) If at any time during the pendency of an action and prior to judgment, the court finds following a report as provided in RCW 10.77.060, as now or hereafter amended, that the defendant is ((incapable of understanding the proceedings against him or assisting in his own defense)) incompetent, the court shall order the proceedings against him be stayed, except as provided in subsection (5) of this section, and may commit the defendant to the custody of the secretary, who shall place such defendant in an appropriate facility of the department for evaluation and treatment, or the court may alternatively order the defendant to undergo evaluation and

treatment at some other facility, or under the guidance and control of some other person, until he has regained the competency necessary to understand the proceedings against him and assist in his own defense, but in any event, for no longer than a period of ninety days. ((If during the)) On or before expiration of the initial ninety day period((?)) of commitment the court ((on its own motion; or upon application of the secretary; the prosecuting attorney; or the defendant; finds by a preponderance of the evidence; after)) shall conduct a hearing, ((that)) at which it shall determine whether or not the defendant is ((now able to understand the proceedings against him and assist in his own defense; the proceedings shall be resumed)) incompetent.

(2) If ((at the end of the ninety day period)) the court finds by a preponderance of the evidence that the defendant is ((not able to understand the proceedings against him and assist in his own defense)) incompetent, the court shall have the option of extending the order of commitment or alternative treatment for an additional ninety day period, but it must at the time of extension set a date for a prompt hearing to determine the defendant's competency ((if the defendant has not been judged competent to proceed)) before the expiration of the second ninety day period. The defendant, his attorney, the prosecutor, or the judge shall have the right to demand that the ((competency)) hearing ((at the end of the)) on or before the expiration of the second ninety day ((extension)) period be before a jury. If no demand is made, the hearing shall be before the court. ((The sole issue to be determined at such a hearing is)) The court or jury shall determine whether or not the defendant has ((the competency to understand the proceedings against him and to assist in his own defense)) become competent.

(3) At the hearing upon the expiration of the second ninety day period if the jury or court, as the case may be, finds ((by a preponderance of the evidence)) that the defendant is ((unable to understand the proceedings against him and assist in his own defense)) incompetent, the charges shall be dismissed without prejudice, and either civil commitment proceedings shall ((immediately)) be instituted, if appropriate, or the court shall order the release of the defendant: PROVIDED, That ((if the jury or court; as the case may be; also finds by a preponderance of the evidence that; on or before ninety days from the expiration date of the second ninety day period; the defendant will be so improved as to be able to understand the proceedings against him and assist in his own defense; the court shall extend the order of commitment or alternative treatment for a period no longer than an additional ninety days and shall also order that if the defendant has not been

judged competent to proceed and has not been brought to trial on or before the end of said additional ninety day period; then at the end of said period; upon providing notice to the court; but without further order of the court; either civil commitment proceedings shall immediately be instituted; if appropriate; or the defendant shall be released)) the criminal charges shall not be dismissed if at the end of the second ninety day period the court or jury finds that the defendant is a substantial danger to other persons, or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security, and that there is a substantial probability that the defendant will regain competency within a reasonable period of time. In the event that the court or jury makes such a finding, the court may extend the period of commitment for an additional six months. At the end of said six month period, if the defendant remains incompetent, the charges shall be dismissed without prejudice and either civil commitment proceedings shall be instituted, if appropriate, or the court shall order release of the defendant.

(4) ((If the jury or the court, as the case may be, finds by a preponderance of the evidence that the defendant has regained the ability to understand the proceedings against him and to assist in his own defense; the criminal proceedings shall be resumed;

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

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

Sec. 9. Section 10, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.100 are each amended to read as follows:

((At any proceeding held pursuant to this chapter:

(1)) Subject to the rules of evidence, experts or professional persons who have reported pursuant to this chapter may be called as witnesses at any proceeding held pursuant to this chapter. Both the prosecution and the defendant may summon any other qualified expert or professional persons to testify ((but no one who has not examined the defendant outside of court shall be competent to testify to an expert opinion with respect to the mental condition or responsibility of the defendant; as distinguished from the validity of the procedure followed by; or the general scientific propositions stated by; another witness)).



((2) Experts or professional persons who have examined the defendant and who have been called as witnesses concerning his mental condition shall be permitted to make a statement as to the nature of his examination; his diagnosis of the mental condition of the defendant at the time of the commission of the offense charged and his opinion as to the extent, if any, the defendant lacked capacity either (1) to know or appreciate the nature and consequence of such conduct; or (2) to know or appreciate the criminality of such conduct. He shall be permitted to make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion.))

Sec. 10. Section 11, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.110 are each amended to read as follows:

If a defendant ((charged with a crime)) is acquitted by reason of ((mental disease or defect excluding responsibility)) insanity, and it is found that he is not a substantial danger to ((himself or other persons; and not in need of)) other persons, or does not present a substantial likelihood of committing felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall direct his ((release)) final discharge. If it is found that the defendant is a substantial danger to ((himself or others and in need of)) other persons, or does not present a substantial likelihood of committing felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court ((may)) shall order his hospitalization ((or may order alternative treatment)), or any appropriate alternative treatment less restrictive than detention in a state mental hospital, pursuant to the terms of this chapter. If it is found that the defendant is not a substantial danger to other persons, or does not present a substantial likelihood of committing felonious acts jeopardizing public safety or security, but that he is in need of control by the court or other persons or institutions, the court shall direct his conditional release.

Sec. 11. Section 12, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.120 are each amended to read as follows:

The secretary shall forthwith provide adequate care and individualized treatment at one or several of the state institutions or facilities under his direction and control wherein persons committed as criminally insane may be confined. Such persons shall be under the custody and control of the secretary to the same extent as are other persons who are committed to his custody, but such provision shall be made for their control, care, and treatment as is

proper in view of their condition. In order that the secretary may adequately determine the nature of the mental illness of the person committed to him as criminally insane, and in order for the secretary to place such individuals in a proper facility, all persons who are committed to the secretary as criminally insane shall be promptly examined by qualified personnel in such a manner as to provide a proper evaluation and diagnosis of such individual. Any person so committed shall not be discharged from the control of the secretary save upon the order of a court of competent jurisdiction made after a hearing and judgment of discharge.

Whenever there is a hearing which the committed person is entitled to attend, the secretary shall send him in the custody of one or more department employees to the county where the hearing is to be held at the time the case is called for trial. During the time he is absent from the facility, he shall be confined in a facility designated by and arranged for by the department, and shall at all times be deemed to be in the custody of the department employee and provided necessary treatment. If the decision of the hearing remits the person to custody, the department employee shall forthwith return him to such institution or facility designated by the secretary. If the state appeals an order of discharge, such appeal shall operate as a stay, and the person in custody shall so remain and be forthwith returned to the institution or facility designated by the secretary until a final decision has been rendered in the cause. ~~((If the state does not appeal, the order of discharge shall be sufficient acquittal to the secretary.))~~

Sec. 12. Section 14, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.140 are each amended to read as follows:

Each ~~((patient))~~ person committed to a hospital or other facility or conditionally released pursuant to this chapter shall have a current examination of his mental condition made by one or more experts or professional persons at least once every six months. ~~((The patient))~~ Said person may retain, or if he is indigent and so requests, the court may appoint a ~~((duty))~~ qualified expert or professional person to examine him, and such expert or professional person shall have access to all hospital records concerning the ~~((patient))~~ person. The secretary, upon receipt of the periodic report, shall provide written notice to the court of commitment of compliance with the requirements of this section.

Sec. 13. Section 15, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.150 are each amended to read as follows:

(1) Persons examined pursuant to RCW 10.77.140, as now or hereafter amended, 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 his commitment the person's application for conditional release as well as his recommendations concerning the application and any proposed terms and conditions upon which he reasonably believes the person can be conditionally released. Conditional release may also contemplate partial release for work, training, or educational purposes.

(2) The court of the county which ordered his commitment, upon receipt of an application for conditional release with the secretary's recommendation for conditional release, shall within thirty days schedule a hearing. The court may schedule a hearing on applications recommended for disapproval by the secretary. The prosecuting attorney shall represent the state at such hearings and shall have the right to have the patient examined by an expert or professional person of his choice. If the ((patient)) committed person is indigent, and he so requests, the court shall appoint a ((duly)) qualified expert or professional person to examine ((the patient)) him on his behalf. The issue to be determined at such a hearing is whether or not the person may be released conditionally without substantial danger to ((himself or other persons and is not in need of further control by the court or other persons or institutions)) other persons, or substantial likelihood of committing felonious acts jeopardizing public safety or security. The court, after the hearing, shall rule on the secretary's recommendations, and if it disapproves of ((said recommendations)) conditional release, may do so only on the basis of substantial evidence. The court ((7 prior to conditional release)) 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.

(3) ((A recommendation by the secretary pursuant to this section that the person should not be conditionally released does not preclude such person from applying for a writ of habeas corpus on the issue of whether he may be released without substantial danger to himself or other persons and is not in need of further control by the court or other persons or institutions, where no hearing has been held pursuant to subsection {2} of this section:

{4})) Any person, whose application for conditional release has been denied, may reapply after a period of six months from the date of denial.

Sec. 14. Section 18, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.180 are each amended to read as follows:

Each person conditionally released pursuant to RCW 10.77.150, as now or hereafter amended, shall have his case reviewed by the court which conditionally released him no later than one year after such release and no later than every two years thereafter, such time to be scheduled by the court. 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 attorney, so determines. The sole question to be determined by the court is whether the person shall continue to be conditionally released. The court in making its determination shall be aided by the periodic reports filed pursuant to RCW 10.77.140, as now or hereafter amended, and 10.77.160, and the opinions of the secretary and other experts or professional persons.

Sec. 15. Section 19, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.190 are each amended to read as follows:

(1) Any person submitting reports pursuant to \*RCW 10.77.160, the secretary, or the prosecuting attorney may petition the court to, or the court on its own motion may schedule an immediate hearing for the purpose of modifying the terms of conditional release if the petitioner or the court believes the released person is failing to adhere to the terms and conditions of his conditional release or is in need of additional care and treatment.

(2) If the prosecuting attorney, the secretary, or the court, after examining the report filed with them pursuant to \*RCW 10.77.160, or based on other information received by them, reasonably believes that a conditionally released person is failing to adhere to the terms and conditions of his conditional release, and because of that failure he has become a substantial danger to ((himself or other persons)) other persons, or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security, the court or secretary may order that the conditionally released person be apprehended and taken into custody until such time as a hearing can be scheduled to determine the facts and whether or not the ((patient should be rehospitalized)) person's conditional release should be revoked or modified. The court shall be notified before the close of the next judicial day of ((a patient's)) the apprehension. Both the prosecuting attorney and the ((patient)) conditionally released person shall have the right to request an immediate mental ((status)) examination of the ((patient)) conditionally released person. ((In the case of a patient who)) If the conditionally released person is indigent, the court or secretary shall, upon

request ((of the patient)), assist him in obtaining a ((duly)) qualified expert or professional person to conduct the examination.

(3) The court, upon receiving notification of the ((patient's)) apprehension, shall promptly schedule a hearing. The issue to be determined is whether the conditionally released person did or did not adhere to the terms and conditions of his release, and is ((likely to harm himself or other persons if not hospitalized or whether the conditions of release should be modified)) a substantial danger to other persons, or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security. Pursuant to the determination of the court upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or his conditional release shall be revoked and he shall be ((rehospitalized)) committed subject to release only in accordance with ((the)) provisions of this chapter.

Sec. 16. Section 20, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.200 are each amended to read as follows:

(1) ((If)) Upon application by the criminally insane or conditionally released person, the secretary ((determines, after such investigation as he may deem necessary, that a patient committed as criminally insane pursuant to this chapter may be finally discharged without substantial danger to himself or other persons and is not in need of further control by the court or other persons or institutions; he shall make application to the court for the final discharge)) shall determine whether or not reasonable grounds exist for final discharge. If the secretary approves the final discharge he then shall authorize said person to petition the court.

(2) The petition shall be served upon the court and the prosecuting attorney. The court, upon receipt of the ((application)) petition for final discharge, shall within forty-five days order a hearing. Continuance of the hearing date shall only be allowed for good cause shown. The prosecuting attorney shall represent the state, and shall have the right to have the ((patient)) petitioner examined by an expert or professional person of his choice. If the ((patient)) petitioner is indigent, and he so requests, the court shall appoint a ((duly)) qualified expert or professional person to examine ((the patient on his behalf)) him. The hearing shall be before a jury if demanded by either the ((patient)) petitioner or the prosecuting attorney. The ((issue to be determined at such a hearing is whether the person may be)) burden of proof shall be upon the petitioner to show by a preponderance of the evidence that the petitioner may be finally discharged without substantial danger to ((himself or others and is not in need of)) other persons, or

presents a substantial likelihood of committing felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

(3) Nothing contained in this chapter shall prohibit the patient from petitioning ((by writ of habeas corpus)) the court for final discharge or conditional release from the institution in which he or she is committed. The issue to be determined on such proceeding is whether the ((patient)) petitioner is a substantial danger to ((himself or)) other persons ((and is not in need of)), or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

Nothing contained in this chapter shall prohibit the committed person from petitioning for release by writ of habeas corpus.

Sec. 17. Section 22, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.220 are each amended to read as follows:

No person confined pursuant to this chapter shall be incarcerated in a state correctional institution or facility; PROVIDED, That nothing herein shall prohibit confinement in a mental health facility located wholly within a correctional institution.

Sec. 18. Section 23, chapter 117, Laws of 1973 1st ex. sess. and RCW 10.77.230 are each amended to read as follows:

Either party may appeal to the court of appeals the judgment of any hearing held pursuant to the provisions of this chapter. ((The procedure on appeal shall be the same as in other cases:))

NEW SECTION. Sec. 19. This 1974 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 23, 1974.  
Passed the House April 23, 1974.  
Approved by the Governor May 6, 1974, with the exception of certain items which are vetoed.  
Filed in Office of Secretary of State May 6, 1974.  
Note: Governor's explanation of partial veto is as follows:

"I am returning herewith without my approval as to certain items Substitute Senate Bill No. 3312 entitled:

"AN ACT Relating to the criminally insane."

Veto  
Message

The third of the proposed jury instructions in section 4 of the bill contains an item which is an obvious drafting error overlooked in the legislative process since that item has no meaning within the proposed jury instruction. Accordingly, I have vetoed that item.

Section 7 contains amendatory language relating to the procedure on the defendant's motion for judgment of acquittal on the grounds of insanity, and requires the court, if it finds for the defendant on such motion, to enter specific findings in substantially the same form as set forth in subsections (2) through (5) of RCW 10.77.040. The omission of subsection (1) from the required findings of the court is not explained, and raises a serious constitutional

question as to how the court can find that the defendant should be acquitted by reason of insanity if it does not first find that the defendant committed the crime charged. In order to remove the cloud of constitutionality, I have determined to veto the item consisting of the subsection references so that a court would still be required to enter findings in substantially the same form as set forth in RCW 10.77.040. Veto Message

Section 10 of the bill contains another obvious drafting error which reverses the intent of the amendatory language. Presumably, the Legislature intended that if a defendant acquitted by reason of insanity is found, among other things, to present a substantial likelihood of committing felonious acts jeopardizing public safety or security, the court would be required to order his hospitalization or other treatment less restrictive than detention in a state mental hospital. As drafted and enacted, the result would be the exact opposite. Accordingly, I have determined to veto that item in section 10 and by this veto I am restoring the language of the existing law, and urge the Legislature to make another attempt at enacting correct amendatory language at its next session. I have been urged by some to correct this drafting error by simply vetoing the word "not" contained in that item, but have determined not to do so as such a veto would be of questionable constitutionality.

With the exception of the foregoing items, I have approved the remainder of Substitute Senate Bill No. 3312."

CHAPTER 199

[Substitute House Bill No. 779]

WASHINGTON STATE TEACHERS' RETIREMENT SYSTEM

AN ACT Relating to public employment; amending section 1, chapter 80, Laws of 1947 as last amended by section 95, chapter 176, Laws of 1969 ex. sess. and RCW 41.32.010; amending section 26, chapter 80, Laws of 1947 as last amended by section 1, chapter 189, Laws of 1973 1st ex. sess. and RCW 41.32.260; amending section 16, chapter 14, Laws of 1963 ex. sess. as last amended by section 2, chapter 189, Laws of 1973 1st ex. sess. and RCW 41.32.497; amending section 3, chapter 189, Laws of 1973 1st ex. sess. and RCW 41.32.498; adding a new section to chapter 41.32 RCW; creating new sections; providing for the retroactive effect of certain provisions; and declaring an emergency.

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

Section 1. Section 1, chapter 80, Laws of 1947 as last amended by section 95, chapter 176, Laws of 1969 ex. sess. and RCW 41.32.010 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context: