

subject to such board markup and state liquor taxes in an amount to approximate the revenue that would have been realized from such markup and taxes had the alcoholic beverages been purchased in Washington: PROVIDED, That the board's markup shall be applied on spirituous liquor only. Such common carriers shall report such sales and/or service and pay such markup and taxes in accordance with procedures prescribed by the board.

(2) Where such an interstate federally licensed common carrier does not sell spirituous liquor, wine, or beer at retail for passenger consumption while within or over the territorial limits of this state, but the business operation of the interstate common carrier requires the bringing in and storing of liquor within the state the license fee shall be four hundred dollars per annum (class CCI-3): PROVIDED, That where such transporting and/or storage of alcoholic beverages by such common carrier does not include spirituous liquor, the license fee shall be one hundred dollars per annum (class CCI-4).

(3) Alcoholic beverages sold and delivered in this state to interstate common carriers for use under the provisions of this section shall be considered exported from the state, subject to the conditions provided in subsection (1) (b). The storage facilities for liquor within the state by common carriers licensed under this section shall be subject to written approval by the board.

NEW SECTION. Sec. 3. Section 23L added to chapter 62, Laws of 1933 ex. sess. by section 1, chapter 217, Laws of 1937 and RCW 66.24.390 are each hereby repealed.

Passed the Senate May 12, 1975.

Passed the House June 7, 1975.

Approved by the Governor June 26, 1975.

Filed in Office of Secretary of State June 27, 1975.

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## CHAPTER 246

[Engrossed Senate Bill No. 2735]

### MENTALLY AND/OR PHYSICALLY DEFICIENT PERSONS—STATE CARE

AN ACT Relating to mentally and/or physically deficient persons; amending section 72.33.020, chapter 28, Laws of 1959 as amended by section 101, chapter 154, Laws of 1973 1st ex. sess. and RCW 72.33.020; amending section 72.33.130, chapter 28, Laws of 1959 and RCW 72.33.130; amending section 72.33.140, chapter 28, Laws of 1959 and RCW 72.33.140; amending section 72.33.150, chapter 28, Laws of 1959 and RCW 72.33.150; amending section 72.33.160, chapter 28, Laws of 1959 as amended by section 4, chapter 166, Laws of 1969 ex. sess. and RCW 72.33.160; amending section 72.33.170, chapter 28, Laws of 1959 and RCW 72.33.170; amending section 72.33.200, chapter 28, Laws of 1959 and RCW 72.33.200; amending section 72.33.220, chapter 28, Laws of 1959 and RCW 72.33.220; amending section 72.33.240, chapter 28, Laws of 1959 as amended by section 135, chapter 81, Laws of 1971 and RCW 72.33.240; adding new sections to chapter 72.33 RCW; and repealing section 72.33.120, chapter 28, Laws of 1959, section 1, chapter 154, Laws of 1959 and RCW 72.33.120.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 72.33.020, chapter 28, Laws of 1959 as amended by section 101, chapter 154, Laws of 1973 1st ex. sess. and RCW 72.33.020 are each amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Mental deficiency" is a state of subnormal development of the human organism in consequence of which the individual affected is mentally incapable of assuming those responsibilities expected of the socially adequate person such as self-direction, self-support and social participation.

(2) "Physical deficiency" is a state of physical impairment of the human organism in consequence of which the individual affected is physically incapable of assuming those responsibilities expected of the socially adequate person such as self-direction, self-support and social participation.

(3) "Parent" is the person or persons having the legal right to custody of a child by reason of kinship by birth or adoption.

(4) "State school" shall mean any residential school of the department established, operated and maintained by the state of Washington for the education, guidance, care, treatment and rehabilitation of mentally and/or physically deficient persons as defined herein.

(5) "Resident of a state school" shall mean a person, whose mental and/or physical involvement requires the specialized care, treatment and educational instruction therein provided, and who has been admitted upon parental or guardian's application, or found in need of residential care by proper court and duly received.

(6) "Court" shall mean the superior court of the state of Washington.

(7) "Division" shall mean the division of children and youth services of the department of institutions or its successor.

(8) "Resident of the state of Washington" shall mean a person who has acquired his domicile in this state by continuously residing within the state for a period of not less than one year before application for admission is made: PROVIDED, That the residence of an unemancipated minor shall be imputed from the residence of the parents if they are living together, or from the residence of the parent with whom the child resides, and if the parental rights and responsibilities regarding a minor have been transferred by the court, then the residence of such minor shall be imputed from the person to whom such have been awarded.

(9) "Superintendent" shall mean the superintendent of Lakeland Village, Rainier school and other like residential schools that may be hereafter established.

(10) "Custody" shall mean ~~((the right of))~~ immediate physical attendance, retention and supervision.

(11) "Placement" shall mean an extramural status for the resident's best interests granted ~~((by the superintendent))~~ after reasonable notice and consultation with the parents or guardian ~~((of))~~ and such resident.

(12) "Discharge" shall mean the relinquishment by ~~((a))~~ the state ~~((school))~~ of all rights and responsibilities it may have acquired by reason of the acceptance for admission of any resident.

(13) "Residential placement" is any out-of-home placement providing domiciliary type care among other services for which the state makes payment in whole or in part including, but not limited to, state residential schools, group homes, group training homes, boarding homes and nursing homes, but does not include placement in a state juvenile or adult correctional facility without consultation as provided for in section 6 of this 1975 amendatory act.

(14) "Domiciliary care services" shall mean the furnishing of necessary room, board, laundry, clothing, housekeeping, and other personal care services.

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

NEW SECTION. Sec. 2. There is added to chapter 72.33 RCW a new section to read as follows:

(1) In order to provide ongoing points of contact with the mentally deficient and/or physically deficient individual and his family so that they may have a place of entry for state services and return to the community as the need may appear; to provide a link between those individuals and services of the community and state operated services so that the individuals with mental or physical deficiencies and their families may have access to the facilities best suited to them throughout the life of the individual; to offer viable alternatives to state residential school admission; and to encourage the placement of persons from state residential schools, the secretary of social and health services or his designee, pursuant to rules and regulations of the department, shall receive applications of persons for care, treatment, hospitalization, support, training, or rehabilitation provided by state programs or services for the mentally and/or physically deficient. Written applications shall be submitted in accordance with the following requirements:

(a) In the case of a minor person, the application shall be made by his parents or by the parent, guardian, person or agency legally entitled to custody, which application shall be in the form and manner required by the department; and

(b) In the case of an adult person, the application shall be made by such person, by his parents, or by a parent, guardian, or agency legally entitled to custody, which application shall be in the form and manner required by the department.

(2) Upon receipt of the written application the secretary shall determine if the individual to receive services has a mental deficiency and/or a physical deficiency as defined in RCW 72.33.020 qualifying him for services. In order to determine eligibility for services, the secretary may require a supporting affidavit of a physician or a clinical psychologist, or one of each profession, certifying that the individual is mentally and/or physically deficient as herein defined.

(3) After determination of eligibility because of mental and/or physical deficiency, the secretary shall determine the necessary services to be provided for the individual. Individuals may be temporarily admitted, for a period not to exceed thirty days, to departmental residential facilities for observation prior to determination of needed services, where such observation is necessary to determine the extent and necessity of services to be provided.

Sec. 3. Section 72.33.130, chapter 28, Laws of 1959 and RCW 72.33.130 are each amended to read as follows:

In the event a minor person under the age of eighteen years shall be found under the juvenile court law to be "dependent" or "delinquent" and mentally and/or physically deficient as herein defined, and that placement for care, custody, treatment, or education in a state school is to the minor's welfare, the ~~((superintendent))~~ secretary shall receive such minor upon commitment from the superior court pursuant to such terms and conditions as may therein be set forth for placement by the department in a facility most appropriate to his needs, subject to the provisions of RCW 72.33.070.

Sec. 4. Section 72.33.140, chapter 28, Laws of 1959 and RCW 72.33.140 are each amended to read as follows:

Subject to the provisions of RCW 72.33.150, as now or hereafter amended, no person ~~((accepted))~~ under the age of eighteen years residing at a state school ((upon voluntary application as herein provided, and no person over eighteen years regardless of the manner of his admittance to the school,)) or in other residential placement pursuant to section 2 of this 1975 amendatory act shall be retained therein for more than ~~((thirty days))~~ forty-eight hours after the parent entitled to custody or the guardian has given notice of their desire to remove such person from said state school or facility unless held pursuant to court order. Subject to the provisions of RCW 72.33.150 as now or hereafter amended, no person over eighteen years residing at a state school or in other residential placement pursuant to section 3 of this 1975 amendatory act shall be retained therein for more than forty-eight hours after said person, his guardian, or his court appointed personal representative entitled to custody has given notice of desire to remove such person unless held pursuant to court order.

Such notice shall indicate to the superintendent or other person in charge the proposed plan of future residence of such person and whether placement or discharge ~~((from the state school))~~ is desired. In the event withdrawal is upon a placement basis, it shall be understood that readmission will be available to the former resident if it is found necessary to return such person to the school. In the event withdrawal is upon a discharge basis it shall be understood that ~~((if the parent or guardian desires to apply for readmission for such former resident, such person shall wait his turn for admission))~~ application for readmission shall be considered as if it were a first application.

Sec. 5. Section 72.33.150, chapter 28, Laws of 1959 and RCW 72.33.150 are each amended to read as follows:

Whenever it is deemed not to be the best interests of a resident that he should be removed from ~~((a state school))~~ residential custody, the ~~((superintendent))~~ secretary shall promptly file a petition in the probate department of the superior court of the county of residence of such person setting forth his reasons why continued residence is indicated.

If a petition is filed the department may continue its custody over the individual for a period not to exceed five days pending disposition of the petition or preliminary hearing as to temporary custody.

Upon due notice and hearing, the court shall resolve the matter and in the event the person is found in need of further residential care ~~((in a state school))~~ the court shall so order and ~~((in such proceeding))~~ shall name a fit and proper person to serve as guardian or other personal representative over the resident pursuant to state law if none has been previously named.

Sec. 6. Section 72.33.160, chapter 28, Laws of 1959 as amended by section 4, chapter 166, Laws of 1969 ex. sess. and RCW 72.33.160 are each amended to read as follows:

Whenever in the judgment of the ~~((superintendent of any state school))~~ secretary, the treatment and training of any resident of a state residential school has progressed to the point that it is deemed advisable to return such resident to the community, the ~~((superintendent))~~ secretary may grant placement on such terms

and conditions as he may deem advisable after reasonable notice to and consultation with the resident, and with any available parent, ((entitled to custody or the acting)) guardian, or other court appointed personal representative of such person.

~~((Whenever any person who has been a resident of a state school leaves said school on placement, responsibility of the school to provide care, support or medical attention shall cease unless such person shall be returned to such state school or unless arrangements have been made either to assume special expenses of such person while on placement, or to assume all or a portion of the costs of care, support and training for such person while on placement in a group home:))~~

The department of ~~((institutions))~~ social and health services shall periodically evaluate at reasonable intervals the adjustment of the resident to the placement to determine whether the resident should be continued in the placement or returned to the institution or given a different placement.

Sec. 7. Section 72.33.170, chapter 28, Laws of 1959 and RCW 72.33.170 are each amended to read as follows:

Whenever in the judgment of ~~((a superintendent of a state school))~~ the secretary a person no longer needs the services ~~((of such school))~~ provided by the department for mentally and/or physically deficient persons, he may be discharged from services after reasonable notice and consultation with the person to be discharged and any available parent, ((or)) guardian ((and if neither exists then approval for such discharge shall first be obtained from the supervisor of the division)), or other court appointed personal representative.

Sec. 8. Section 72.33.200, chapter 28, Laws of 1959 and RCW 72.33.200 are each amended to read as follows:

The department shall not be responsible for the support, welfare or actions of any person until such person ~~((attains the status of a resident at a state school))~~ is admitted to a residential school or other state-operated facility for services pursuant to section 2 of this 1975 amendatory act.

Sec. 9. Section 72.33.220, chapter 28, Laws of 1959 and RCW 72.33.220 are each amended to read as follows:

Whenever it appears to serve the best interests of the resident concerned, the department ~~((acting through the division;)),~~ after consultation as provided for in section 6 of this 1975 amendatory act, shall have authority to transfer such resident between state schools and other residential placements conducting or having access to the type of program contemplated by this chapter.

Sec. 10. Section 72.33.240, chapter 28, Laws of 1959 as amended by section 135, chapter 81, Laws of 1971 and RCW 72.33.240 are each amended to read as follows:

Any parent or guardian feeling aggrieved by an adverse decision ~~((of a superintendent of a state school))~~ pertaining to admission, placement, or discharge of his ward may apply to the ~~((supervisor of the division))~~ secretary in writing within thirty days of notification of the decision for a review and reconsideration of the decision. ((The supervisor shall rule)) An administrative hearing shall be held within ten days from the date of receipt of the written request for review. In the event of an unfavorable ruling by the ((supervisor)) secretary, such parent or guardian may institute proceedings in the superior court of the state of

Washington in the county of residence of such parent or guardian, otherwise in Thurston county, and have such decision reviewed and its correctness, reasonableness, and lawfulness decided in an appeal heard as in initial proceeding on an original application. Said parent or guardian shall have the right to appeal from the decision of the superior court to the supreme court or the court of appeals of the state of Washington, as in civil cases.

NEW SECTION. Sec. 11. There is added to chapter 72.33 RCW a new section to read as follows:

The secretary of social and health services is authorized to make payments for nonresidential services which exceed the cost of caring for an average individual at home, and which are reasonably necessary for the care, treatment, maintenance, support, and training of mentally and/or physically deficient persons, upon application pursuant to section 2 of this 1975 amendatory act. The department shall adopt rules and regulations determining the extent and type of care and training for which the department will pay all or a portion of the costs.

NEW SECTION. Sec. 12. Section 72.33.120, chapter 28, Laws of 1959, section 1, chapter 154, Laws of 1959 and RCW 72.33.120 are each repealed.

Passed the Senate May 23, 1975.

Passed the House June 7, 1975.

Approved by the Governor June 26, 1975.

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## CHAPTER 247

[Engrossed Senate Bill No. 2840]

### CONVICTED FIRST DEGREE RAPISTS— PAROLE OR WORK RELEASE ELIGIBILITY

AN ACT Relating to the sentencing of persons convicted of criminal offenses; amending section 4, chapter 14, Laws of 1975 1st ex. sess. and RCW \_\_\_\_\_.; defining crimes; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 4, chapter 14, Laws of 1975 1st ex. sess. and RCW \_\_\_\_\_. are each amended to read as follows:

(1) A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person not married to the perpetrator by forcible compulsion where the perpetrator or an accessory:

- (a) Uses or threatens to use a deadly weapon; or
- (b) Kidnaps the victim; or
- (c) Inflicts serious physical injury; or
- (d) Feloniously enters into the building or vehicle where the victim is situated.

(2) Rape in the first degree is a felony, and shall be punished by imprisonment in the state penitentiary for a term of not less than twenty years. No person convicted of rape in the first degree shall be granted a deferred or suspended sentence except for the purpose of commitment to an inpatient treatment facility: PROVIDED, That every person convicted of rape in the first degree shall be confined for a minimum of three years: PROVIDED FURTHER, That the board of prison