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HOUSE BILL 1300

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By Representatives Hurst, Dickerson, Pearson, Klippert, O'Brien, and Smith

Read first time 01/16/09. Referred to Committee on Human Services.

1 AN ACT Relating to access to information on mental health services  
2 received by persons who have been committed for custody or supervision  
3 or who have been civilly committed after being found incompetent to  
4 stand trial for a felony; amending RCW 71.05.020, 71.05.390, 71.05.445,  
5 and 71.05.630; adding a new section to chapter 71.05 RCW; and creating  
6 a new section.

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

8 **Sec. 1.** RCW 71.05.020 and 2008 c 156 s 1 are each amended to read  
9 as follows:

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

12 (1) "Admission" or "admit" means a decision by a physician or  
13 psychiatric advanced registered nurse practitioner that a person should  
14 be examined or treated as a patient in a hospital;

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

1 (3) "Attending staff" means any person on the staff of a public or  
2 private agency having responsibility for the care and treatment of a  
3 patient;

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

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

9 (6) "Crisis stabilization unit" means a short-term facility or a  
10 portion of a facility licensed by the department of health and  
11 certified by the department of social and health services under RCW  
12 71.24.035, such as an evaluation and treatment facility or a hospital,  
13 which has been designed to assess, diagnose, and treat individuals  
14 experiencing an acute crisis without the use of long-term  
15 hospitalization;

16 (7) "Custody" means involuntary detention under the provisions of  
17 this chapter or chapter 10.77 RCW, uninterrupted by any period of  
18 unconditional release from commitment from a facility providing  
19 involuntary care and treatment;

20 (8) "Department" means the department of social and health  
21 services;

22 (9) "Designated chemical dependency specialist" means a person  
23 designated by the county alcoholism and other drug addiction program  
24 coordinator designated under RCW 70.96A.310 to perform the commitment  
25 duties described in chapters 70.96A and 70.96B RCW;

26 (10) "Designated crisis responder" means a mental health  
27 professional appointed by the county or the regional support network to  
28 perform the duties specified in this chapter;

29 (11) "Designated mental health professional" means a mental health  
30 professional designated by the county or other authority authorized in  
31 rule to perform the duties specified in this chapter;

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

34 (13) "Developmental disabilities professional" means a person who  
35 has specialized training and three years of experience in directly  
36 treating or working with persons with developmental disabilities and is  
37 a psychiatrist, psychologist, psychiatric advanced registered nurse

1 practitioner, or social worker, and such other developmental  
2 disabilities professionals as may be defined by rules adopted by the  
3 secretary;

4 (14) "Developmental disability" means that condition defined in RCW  
5 71A.10.020(3);

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

9 (16) "Evaluation and treatment facility" means any facility which  
10 can provide directly, or by direct arrangement with other public or  
11 private agencies, emergency evaluation and treatment, outpatient care,  
12 and timely and appropriate inpatient care to persons suffering from a  
13 mental disorder, and which is certified as such by the department. A  
14 physically separate and separately operated portion of a state hospital  
15 may be designated as an evaluation and treatment facility. A facility  
16 which is part of, or operated by, the department or any federal agency  
17 will not require certification. No correctional institution or  
18 facility, or jail, shall be an evaluation and treatment facility within  
19 the meaning of this chapter;

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

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

35 (19) "History of one or more violent acts" refers to the period of  
36 time ten years prior to the filing of a petition under this chapter,  
37 excluding any time spent, but not any violent acts committed, in a

1 mental health facility or in confinement as a result of a criminal  
2 conviction;

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

5 (21) "Individualized service plan" means a plan prepared by a  
6 developmental disabilities professional with other professionals as a  
7 team, for a person with developmental disabilities, which shall state:

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

10 (b) The conditions and strategies necessary to achieve the purposes  
11 of habilitation;

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

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

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

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

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

23 (22) "Information related to mental health services" means all  
24 information and records compiled, obtained, or maintained in the course  
25 of providing services to either voluntary or involuntary recipients of  
26 services by a mental health service provider. This may include  
27 documents of legal proceedings under this chapter or chapter 71.34 or  
28 10.77 RCW, or somatic health care information;

29 (23) "Judicial commitment" means a commitment by a court pursuant  
30 to the provisions of this chapter;

31 ((+23)) (24) "Legal counsel" means attorneys and staff employed by  
32 county prosecutor offices or the state attorney general acting in their  
33 capacity as legal representatives of public mental health service  
34 providers;

35 (25) "Likelihood of serious harm" means:

36 (a) A substantial risk that: (i) Physical harm will be inflicted  
37 by a person upon his or her own person, as evidenced by threats or  
38 attempts to commit suicide or inflict physical harm on oneself; (ii)

1 physical harm will be inflicted by a person upon another, as evidenced  
2 by behavior which has caused such harm or which places another person  
3 or persons in reasonable fear of sustaining such harm; or (iii)  
4 physical harm will be inflicted by a person upon the property of  
5 others, as evidenced by behavior which has caused substantial loss or  
6 damage to the property of others; or

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

9 ~~((+24))~~ (26) "Mental disorder" means any organic, mental, or  
10 emotional impairment which has substantial adverse effects on a  
11 person's cognitive or volitional functions;

12 ~~((+25))~~ (27) "Mental health professional" means a psychiatrist,  
13 psychologist, psychiatric nurse, or social worker, and such other  
14 mental health professionals as may be defined by rules adopted by the  
15 secretary pursuant to the provisions of this chapter;

16 ~~((+26))~~ (28) "Mental health service provider" means a public or  
17 private agency that provides services to persons with mental disorders  
18 as defined under this section and receives funding from public sources.  
19 This includes evaluation and treatment facilities as defined in this  
20 section, community mental health service delivery systems or community  
21 mental health programs as defined in RCW 71.24.025, and facilities  
22 conducting competency evaluations and restoration under chapter 10.77  
23 RCW;

24 (29) "Peace officer" means a law enforcement official of a public  
25 agency or governmental unit, and includes persons specifically given  
26 peace officer powers by any state law, local ordinance, or judicial  
27 order of appointment;

28 ~~((+27))~~ (30) "Private agency" means any person, partnership,  
29 corporation, or association that is not a public agency, whether or not  
30 financed in whole or in part by public funds, which constitutes an  
31 evaluation and treatment facility or private institution, or hospital,  
32 which is conducted for, or includes a department or ward conducted for,  
33 the care and treatment of persons who are mentally ill;

34 ~~((+28))~~ (31) "Professional person" means a mental health  
35 professional and shall also mean a physician, psychiatric advanced  
36 registered nurse practitioner, registered nurse, and such others as may  
37 be defined by rules adopted by the secretary pursuant to the provisions  
38 of this chapter;

1           ~~((+29+))~~ (32) "Psychiatric advanced registered nurse practitioner"  
2 means a person who is licensed as an advanced registered nurse  
3 practitioner pursuant to chapter 18.79 RCW; and who is board certified  
4 in advanced practice psychiatric and mental health nursing;

5           ~~((+30+))~~ (33) "Psychiatrist" means a person having a license as a  
6 physician and surgeon in this state who has in addition completed three  
7 years of graduate training in psychiatry in a program approved by the  
8 American medical association or the American osteopathic association  
9 and is certified or eligible to be certified by the American board of  
10 psychiatry and neurology;

11           ~~((+31+))~~ (34) "Psychologist" means a person who has been licensed  
12 as a psychologist pursuant to chapter 18.83 RCW;

13           ~~((+32+))~~ (35) "Public agency" means any evaluation and treatment  
14 facility or institution, or hospital which is conducted for, or  
15 includes a department or ward conducted for, the care and treatment of  
16 persons with mental illness, if the agency is operated directly by,  
17 federal, state, county, or municipal government, or a combination of  
18 such governments;

19           ~~((+33+))~~ (36) "Registration records" include all the records of the  
20 department, regional support networks, treatment facilities, and other  
21 persons providing services to the department, county departments, or  
22 facilities which identify persons who are receiving or who at any time  
23 have received services for mental illness;

24           ~~((+34+))~~ (37) "Release" means legal termination of the commitment  
25 under the provisions of this chapter;

26           ~~((+35+))~~ (38) "Resource management services" has the meaning given  
27 in chapter 71.24 RCW;

28           ~~((+36+))~~ (39) "Secretary" means the secretary of the department of  
29 social and health services, or his or her designee;

30           ~~((+37+))~~ (40) "Serious violent offense" has the same meaning as  
31 provided in RCW 9.94A.030;

32           (41) "Social worker" means a person with a master's or further  
33 advanced degree from an accredited school of social work or a degree  
34 deemed equivalent under rules adopted by the secretary;

35           ~~((+38+))~~ (42) "Treatment records" include registration and all  
36 other records concerning persons who are receiving or who at any time  
37 have received services for mental illness, which are maintained by the  
38 department, by regional support networks and their staffs, and by

1 treatment facilities. Treatment records include mental health  
2 information contained in a medical bill including but not limited to  
3 mental health drugs, a mental health diagnosis, provider name, and  
4 dates of service stemming from a medical service. Treatment records do  
5 not include notes or records maintained for personal use by a person  
6 providing treatment services for the department, regional support  
7 networks, or a treatment facility if the notes or records are not  
8 available to others;

9 ~~((+39+))~~ (43) "Violent act" means behavior that resulted in  
10 homicide, attempted suicide, nonfatal injuries, or substantial damage  
11 to property.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 71.05 RCW  
13 to read as follows:

14 (1) A mental health service provider, or its legal counsel, shall  
15 release to the persons authorized under subsection (2) of this section,  
16 upon request, information related to mental health services delivered  
17 to a person who:

18 (a) Is currently committed to the custody or supervision of the  
19 department of corrections or the indeterminate sentence review board  
20 under chapter 9.94A or 9.95 RCW;

21 (b) Has been convicted of a serious violent offense;

22 (c) Has been found not guilty by reason of insanity or incompetent  
23 to stand trial for a serious violent offense pursuant to chapter 10.77  
24 RCW; or

25 (d) Has been civilly committed pursuant to RCW 10.77.086(4).

26 (2) The information subject to release under subsection (1) of this  
27 section must be released to law enforcement officers, personnel of a  
28 county or city jail, public health officers, personnel of the  
29 department of corrections or the indeterminate sentence review board,  
30 prosecuting attorneys, attorneys retained to represent the person who  
31 is the subject of the information request under this section, or the  
32 court when such information is requested during the course of business  
33 and for the purpose of carrying out the responsibilities of the  
34 requesting party's office.

35 (3) Appropriate purposes for requesting information related to  
36 mental health services include but are not limited to:

- 1 (a) Completing presentence investigations or risk assessment
- 2 reports;
- 3 (b) Assessing an offender's risk to the community;
- 4 (c) Planning for and provision of supervision of an offender,
- 5 including decisions related to sanctions for violations of conditions
- 6 of community supervision;
- 7 (d) Responding to an offender's failure to report for department of
- 8 corrections supervision;
- 9 (e) Determining whether to file criminal charges, appropriate bail
- 10 amount or whether to release a person who is the subject of the request
- 11 under this section, when the person:
  - 12 (i) Has a prior conviction for an offense that involved a violent
  - 13 act;
  - 14 (ii) Was previously charged with an offense that involved a violent
  - 15 act and charges were dismissed pursuant to chapter 10.77 RCW due to
  - 16 incompetency to stand trial; or
  - 17 (iii) Was previously found not guilty of an offense that involved
  - 18 a violent act by reason of insanity under chapter 10.77 RCW.
- 19 (4) A request for information related to mental health services
- 20 under this section shall not require the consent of the subject of the
- 21 records and shall be provided in writing, except to the extent
- 22 authorized in subsection (5) of this section. A written request
- 23 includes requests made by e-mail or facsimile so long as the requesting
- 24 person is clearly identified. The request must specify the information
- 25 being requested.
- 26 (5) In the event of an emergency situation that poses a significant
- 27 risk to the public or the offender, a mental health service provider,
- 28 or its legal counsel, shall release information related to mental
- 29 health services delivered to the offender and, if known, information
- 30 regarding where the offender is likely to be found to the department of
- 31 corrections or law enforcement upon request. The initial request may
- 32 be written or oral. All oral requests must be subsequently confirmed
- 33 in writing. Information released in response to an oral request is
- 34 limited to a statement as to whether the offender is or is not being
- 35 treated by the mental health services provider and the address or
- 36 information about the location or whereabouts of the offender.
- 37 (6) The information received under this section shall remain

1 confidential and subject to the limitations on disclosure outlined in  
2 this chapter, except as provided in RCW 72.09.585.

3 (7) Disclosure under this section to state or local law enforcement  
4 authorities is mandatory for the purposes of the health insurance  
5 portability and accountability act.

6 (8) No mental health service provider or individual employed by a  
7 mental health service provider, or its legal counsel, shall be held  
8 responsible for information released to or used under the provisions of  
9 this section or rules adopted under this section except under RCW  
10 71.05.440.

11 (9) Whenever federal law or federal regulations restrict the  
12 release of information contained in the treatment records of any  
13 patient who receives treatment for alcoholism or drug dependency, the  
14 release of the information may be restricted as necessary to comply  
15 with federal law and regulations.

16 (10) This section does not modify the terms and conditions of  
17 disclosure of information related to sexually transmitted diseases  
18 under chapter 70.24 RCW.

19 **Sec. 3.** RCW 71.05.390 and 2007 c 375 s 15 are each amended to read  
20 as follows:

21 Except as provided in this section, RCW 71.05.445, 71.05.630,  
22 70.96A.150, section 2 of this act, or pursuant to a valid release under  
23 RCW 70.02.030, the fact of admission and all information and records  
24 compiled, obtained, or maintained in the course of providing services  
25 to either voluntary or involuntary recipients of services at public or  
26 private agencies shall be confidential.

27 Information and records may be disclosed only:

28 (1) In communications between qualified professional persons to  
29 meet the requirements of this chapter, in the provision of services or  
30 appropriate referrals, or in the course of guardianship proceedings.  
31 The consent of the person, or his or her personal representative or  
32 guardian, shall be obtained before information or records may be  
33 disclosed by a professional person employed by a facility unless  
34 provided to a professional person:

- 35 (a) Employed by the facility;  
36 (b) Who has medical responsibility for the patient's care;  
37 (c) Who is a designated mental health professional;

1 (d) Who is providing services under chapter 71.24 RCW;

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

4 (f) Who is providing evaluation, treatment, or follow-up services  
5 under chapter 10.77 RCW.

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

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

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

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

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

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

26 (4) To the extent necessary for a recipient to make a claim, or for  
27 a claim to be made on behalf of a recipient for aid, insurance, or  
28 medical assistance to which he or she may be entitled.

29 (5)(a) For either program evaluation or research, or both:  
30 PROVIDED, That the secretary adopts rules for the conduct of the  
31 evaluation or research, or both. Such rules shall include, but need  
32 not be limited to, the requirement that all evaluators and researchers  
33 must sign an oath of confidentiality substantially as follows:

34 "As a condition of conducting evaluation or research concerning  
35 persons who have received services from (fill in the facility, agency,  
36 or person) I, . . . . ., agree not to divulge, publish, or  
37 otherwise make known to unauthorized persons or the public any

1 information obtained in the course of such evaluation or research  
2 regarding persons who have received services such that the person who  
3 received such services is identifiable.

4 I recognize that unauthorized release of confidential information  
5 may subject me to civil liability under the provisions of state law.

6 /s/ ....."

7 (b) Nothing in this chapter shall be construed to prohibit the  
8 compilation and publication of statistical data for use by government  
9 or researchers under standards, including standards to assure  
10 maintenance of confidentiality, set forth by the secretary.

11 (6)(a) To the courts as necessary to the administration of this  
12 chapter or to a court ordering an evaluation or treatment under chapter  
13 10.77 RCW solely for the purpose of preventing the entry of any  
14 evaluation or treatment order that is inconsistent with any order  
15 entered under this chapter.

16 (b) To a court or its designee in which a motion under chapter  
17 10.77 RCW has been made for involuntary medication of a defendant for  
18 the purpose of competency restoration.

19 (c) Disclosure under this subsection is mandatory for the purpose  
20 of the health insurance portability and accountability act.

21 (7)(a) When a mental health professional is requested by a  
22 representative of a law enforcement or corrections agency, including a  
23 police officer, sheriff, community corrections officer, a municipal  
24 attorney, or prosecuting attorney to undertake an investigation or  
25 provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the  
26 mental health professional shall, if requested to do so, advise the  
27 representative in writing of the results of the investigation including  
28 a statement of reasons for the decision to detain or release the person  
29 investigated. Such written report shall be submitted within seventy-  
30 two hours of the completion of the investigation or the request from  
31 the law enforcement or corrections representative, whichever occurs  
32 later.

33 ~~((b) To law enforcement officers, public health officers, or~~  
34 ~~personnel of the department of corrections or the indeterminate~~  
35 ~~sentence review board for persons who are the subject of the records~~

1 and who are committed to the custody or supervision of the department  
2 of corrections or indeterminate sentence review board which information  
3 or records are necessary to carry out the responsibilities of their  
4 office. Except for dissemination of information released pursuant to  
5 RCW 71.05.425 and 4.24.550, regarding persons committed under this  
6 chapter under RCW 71.05.280(3) and 71.05.320 (3)(c) after dismissal of  
7 a sex offense as defined in RCW 9.94A.030, the extent of information  
8 that may be released is limited as follows:

9 (i) Only the fact, place, and date of involuntary commitment, the  
10 fact and date of discharge or release, and the last known address shall  
11 be disclosed upon request;

12 (ii) The law enforcement and public health officers or personnel of  
13 the department of corrections or indeterminate sentence review board  
14 shall be obligated to keep such information confidential in accordance  
15 with this chapter;

16 (iii) Additional information shall be disclosed only after giving  
17 notice to said person and his or her counsel and upon a showing of  
18 clear, cogent, and convincing evidence that such information is  
19 necessary and that appropriate safeguards for strict confidentiality  
20 are and will be maintained. However, in the event the said person has  
21 escaped from custody, said notice prior to disclosure is not necessary  
22 and that the facility from which the person escaped shall include an  
23 evaluation as to whether the person is of danger to persons or property  
24 and has a propensity toward violence;

25 (iv) Information and records shall be disclosed to the department  
26 of corrections pursuant to and in compliance with the provisions of RCW  
27 71.05.445 for the purposes of completing presentence investigations or  
28 risk assessment reports, supervision of an incarcerated offender or  
29 offender under supervision in the community, planning for and provision  
30 of supervision of an offender, or assessment of an offender's risk to  
31 the community; and

32 (v)) (b) Disclosure under this subsection is mandatory for the  
33 purposes of the health insurance portability and accountability act.

34 (8) To the attorney of the detained person.

35 (9) To the prosecuting attorney as necessary to carry out the  
36 responsibilities of the office under RCW 71.05.330(2) and  
37 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access  
38 to records regarding the committed person's treatment and prognosis,

1 medication, behavior problems, and other records relevant to the issue  
2 of whether treatment less restrictive than inpatient treatment is in  
3 the best interest of the committed person or others. Information shall  
4 be disclosed only after giving notice to the committed person and the  
5 person's counsel.

6 (10)(a) To appropriate law enforcement agencies and to a person,  
7 when the identity of the person is known to the public or private  
8 agency, whose health and safety has been threatened, or who is known to  
9 have been repeatedly harassed, by the patient. The person may  
10 designate a representative to receive the disclosure. The disclosure  
11 shall be made by the professional person in charge of the public or  
12 private agency or his or her designee and shall include the dates of  
13 commitment, admission, discharge, or release, authorized or  
14 unauthorized absence from the agency's facility, and only such other  
15 information that is pertinent to the threat or harassment. The  
16 decision to disclose or not shall not result in civil liability for the  
17 agency or its employees so long as the decision was reached in good  
18 faith and without gross negligence.

19 (b) Disclosure under this subsection is mandatory for the purposes  
20 of the health insurance portability and accountability act.

21 (11)(a) To appropriate corrections and law enforcement agencies all  
22 necessary and relevant information in the event of a crisis or emergent  
23 situation that poses a significant and imminent risk to the public.  
24 The decision to disclose or not shall not result in civil liability for  
25 the mental health service provider or its employees so long as the  
26 decision was reached in good faith and without gross negligence.

27 (b) Disclosure under this subsection is mandatory for the purposes  
28 of the health insurance portability and accountability act.

29 (12) To the persons designated in RCW 71.05.425 and section 2 of  
30 this act for the purposes described in (~~that~~) those sections.

31 (13) Civil liability and immunity for the release of information  
32 about a particular person who is committed to the department under RCW  
33 71.05.280(3) and 71.05.320(3)(c) after dismissal of a sex offense as  
34 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

35 (14) Upon the death of a person, his or her next of kin, personal  
36 representative, guardian, or conservator, if any, shall be notified.

37 Next of kin who are of legal age and competent shall be notified  
38 under this section in the following order: Spouse, parents, children,

1 brothers and sisters, and other relatives according to the degree of  
2 relation. Access to all records and information compiled, obtained, or  
3 maintained in the course of providing services to a deceased patient  
4 shall be governed by RCW 70.02.140.

5 (15) To the department of health for the purposes of determining  
6 compliance with state or federal licensure, certification, or  
7 registration rules or laws. However, the information and records  
8 obtained under this subsection are exempt from public inspection and  
9 copying pursuant to chapter 42.56 RCW.

10 (16) To mark headstones or otherwise memorialize patients interred  
11 at state hospital cemeteries. The department of social and health  
12 services shall make available the name, date of birth, and date of  
13 death of patients buried in state hospital cemeteries fifty years after  
14 the death of a patient.

15 (17) To law enforcement officers and to prosecuting attorneys as  
16 are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of  
17 information that may be released is limited as follows:

18 (a) Only the fact, place, and date of involuntary commitment, an  
19 official copy of any order or orders of commitment, and an official  
20 copy of any written or oral notice of ineligibility to possess a  
21 firearm that was provided to the person pursuant to RCW 9.41.047(1),  
22 shall be disclosed upon request;

23 (b) The law enforcement and prosecuting attorneys may only release  
24 the information obtained to the person's attorney as required by court  
25 rule and to a jury or judge, if a jury is waived, that presides over  
26 any trial at which the person is charged with violating RCW  
27 9.41.040(2)(a)(ii);

28 (c) Disclosure under this subsection is mandatory for the purposes  
29 of the health insurance portability and accountability act.

30 (18) When a patient would otherwise be subject to the provisions of  
31 (~~RCW 71.05.390~~) this section and disclosure is necessary for the  
32 protection of the patient or others due to his or her unauthorized  
33 disappearance from the facility, and his or her whereabouts is unknown,  
34 notice of such disappearance, along with relevant information, may be  
35 made to relatives, the department of corrections when the person is  
36 under the supervision of the department, and governmental law  
37 enforcement agencies designated by the physician in charge of the

1 patient or the professional person in charge of the facility, or his or  
2 her professional designee.

3 Except as otherwise provided in this chapter, the uniform health  
4 care information act, chapter 70.02 RCW, applies to all records and  
5 information compiled, obtained, or maintained in the course of  
6 providing services.

7 (19) The fact of admission, as well as all records, files,  
8 evidence, findings, or orders made, prepared, collected, or maintained  
9 pursuant to this chapter shall not be admissible as evidence in any  
10 legal proceeding outside this chapter without the written consent of  
11 the person who was the subject of the proceeding except as provided in  
12 section 2 of this act, in a subsequent criminal prosecution of a person  
13 committed pursuant to RCW 71.05.280(3) or 71.05.320(3)(c) on charges  
14 that were dismissed pursuant to chapter 10.77 RCW due to incompetency  
15 to stand trial, in a civil commitment proceeding pursuant to chapter  
16 71.09 RCW, or, in the case of a minor, a guardianship or dependency  
17 proceeding. The records and files maintained in any court proceeding  
18 pursuant to this chapter shall be confidential and available subsequent  
19 to such proceedings only to the person who was the subject of the  
20 proceeding or his or her attorney. In addition, the court may order  
21 the subsequent release or use of such records or files only upon good  
22 cause shown if the court finds that appropriate safeguards for strict  
23 confidentiality are and will be maintained.

24 **Sec. 4.** RCW 71.05.445 and 2005 c 504 s 711 are each amended to  
25 read as follows:

26 (1) ~~((The definitions in this subsection apply throughout this~~  
27 ~~section unless the context clearly requires otherwise.~~

28 ~~(a) "Information related to mental health services" means all~~  
29 ~~information and records compiled, obtained, or maintained in the course~~  
30 ~~of providing services to either voluntary or involuntary recipients of~~  
31 ~~services by a mental health service provider. This may include~~  
32 ~~documents of legal proceedings under this chapter or chapter 71.34 or~~  
33 ~~10.77 RCW, or somatic health care information.~~

34 ~~(b) "Mental health service provider" means a public or private~~  
35 ~~agency that provides services to persons with mental disorders as~~  
36 ~~defined under RCW 71.05.020 and receives funding from public sources.~~  
37 ~~This includes evaluation and treatment facilities as defined in RCW~~

1 ~~71.05.020, community mental health service delivery systems, or~~  
2 ~~community mental health programs as defined in RCW 71.24.025, and~~  
3 ~~facilities conducting competency evaluations and restoration under~~  
4 ~~chapter 10.77 RCW.~~

5 ~~(2)(a) Information related to mental health services delivered to~~  
6 ~~a person subject to chapter 9.94A or 9.95 RCW shall be released, upon~~  
7 ~~request, by a mental health service provider to department of~~  
8 ~~corrections personnel for whom the information is necessary to carry~~  
9 ~~out the responsibilities of their office. The information must be~~  
10 ~~provided only for the purposes of completing presentence investigations~~  
11 ~~or risk assessment reports, supervision of an incarcerated offender or~~  
12 ~~offender under supervision in the community, planning for and provision~~  
13 ~~of supervision of an offender, or assessment of an offender's risk to~~  
14 ~~the community. The request shall be in writing and shall not require~~  
15 ~~the consent of the subject of the records.~~

16 ~~(b) If an offender subject to chapter 9.94A or 9.95 RCW has failed~~  
17 ~~to report for department of corrections supervision or in the event of~~  
18 ~~an emergent situation that poses a significant risk to the public or~~  
19 ~~the offender, information related to mental health services delivered~~  
20 ~~to the offender and, if known, information regarding where the offender~~  
21 ~~is likely to be found shall be released by the mental health services~~  
22 ~~provider to the department of corrections upon request. The initial~~  
23 ~~request may be written or oral. All oral requests must be subsequently~~  
24 ~~confirmed in writing. Information released in response to an oral~~  
25 ~~request is limited to a statement as to whether the offender is or is~~  
26 ~~not being treated by the mental health services provider and the~~  
27 ~~address or information about the location or whereabouts of the~~  
28 ~~offender. Information released in response to a written request may~~  
29 ~~include information identified by rule as provided in subsections (4)~~  
30 ~~and (5) of this section. For purposes of this subsection a written~~  
31 ~~request includes requests made by e-mail or facsimile so long as the~~  
32 ~~requesting person at the department of corrections is clearly~~  
33 ~~identified. The request must specify the information being requested.~~  
34 ~~Disclosure of the information requested does not require the consent of~~  
35 ~~the subject of the records unless the offender has received relief from~~  
36 ~~disclosure under RCW 9.94A.562, 70.96A.155, or 71.05.132.~~

37 ~~(3)) (a) When a mental health service provider conducts its initial~~

1 assessment for a person receiving court-ordered treatment, the service  
2 provider shall inquire and shall be told by the offender whether he or  
3 she is subject to supervision by the department of corrections.

4 (b) When a person receiving court-ordered treatment or treatment  
5 ordered by the department of corrections discloses to his or her mental  
6 health service provider that he or she is subject to supervision by the  
7 department of corrections, the mental health services provider shall  
8 notify the department of corrections that he or she is treating the  
9 offender and shall notify the offender that his or her community  
10 corrections officer will be notified of the treatment, provided that if  
11 the offender has received relief from disclosure pursuant to RCW  
12 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the  
13 mental health services provider with a copy of the order granting  
14 relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or  
15 71.05.132, the mental health services provider is not required to  
16 notify the department of corrections that the mental health services  
17 provider is treating the offender. The notification may be written or  
18 oral and shall not require the consent of the offender. If an oral  
19 notification is made, it must be confirmed by a written notification.  
20 For purposes of this section, a written notification includes  
21 notification by e-mail or facsimile, so long as the notifying mental  
22 health service provider is clearly identified.

23 ~~((+4))~~ (2) The information to be released to the department of  
24 corrections shall include all relevant records and reports, as defined  
25 by rule, necessary for the department of corrections to carry out its  
26 duties ~~((, including those records and reports identified in subsection  
27 (2) of this section))~~.

28 ~~((+5))~~ (3) The department and the department of corrections, in  
29 consultation with regional support networks, mental health service  
30 providers as defined in ~~((subsection (1) of this section))~~ RCW  
31 71.05.020, mental health consumers, and advocates for persons with  
32 mental illness, shall adopt rules to implement the provisions of this  
33 section related to the type and scope of information to be released.  
34 These rules shall:

35 (a) Enhance and facilitate the ability of the department of  
36 corrections to carry out its responsibility of planning and ensuring  
37 community protection with respect to persons subject to sentencing

1 under chapter 9.94A or 9.95 RCW, including accessing and releasing or  
2 disclosing information of persons who received mental health services  
3 as a minor; and

4 (b) Establish requirements for the notification of persons under  
5 the supervision of the department of corrections regarding the  
6 provisions of this section.

7 ~~((+6))~~ (4) The information received by the department of  
8 corrections under this section shall remain confidential and subject to  
9 the limitations on disclosure outlined in chapter 71.05 RCW, except as  
10 provided in RCW 72.09.585.

11 ~~((+7))~~ (5) No mental health service provider or individual  
12 employed by a mental health service provider shall be held responsible  
13 for information released to or used by the department of corrections  
14 under the provisions of this section or rules adopted under this  
15 section except under RCW 71.05.440.

16 ~~((+8))~~ (6) Whenever federal law or federal regulations restrict  
17 the release of information contained in the treatment records of any  
18 patient who receives treatment for alcoholism or drug dependency, the  
19 release of the information may be restricted as necessary to comply  
20 with federal law and regulations.

21 ~~((+9))~~ (7) This section does not modify the terms and conditions  
22 of disclosure of information related to sexually transmitted diseases  
23 under chapter 70.24 RCW.

24 ~~((+10))~~ (8) The department shall, subject to available resources,  
25 electronically, or by the most cost-effective means available, provide  
26 the department of corrections with the names, last dates of services,  
27 and addresses of specific regional support networks and mental health  
28 service providers that delivered mental health services to a person  
29 subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between  
30 the departments.

31 **Sec. 5.** RCW 71.05.630 and 2007 c 191 s 1 are each amended to read  
32 as follows:

33 (1) Except as otherwise provided by law, all treatment records  
34 shall remain confidential and may be released only to the persons  
35 designated in this section, or to other persons designated in an  
36 informed written consent of the patient.

1 (2) Treatment records of a person may be released without informed  
2 written consent in the following circumstances:

3 (a) To a person, organization, or agency as necessary for  
4 management or financial audits, or program monitoring and evaluation.  
5 Information obtained under this subsection shall remain confidential  
6 and may not be used in a manner that discloses the name or other  
7 identifying information about the person whose records are being  
8 released.

9 (b) To the department, the director of regional support networks,  
10 or a qualified staff member designated by the director only when  
11 necessary to be used for billing or collection purposes. The  
12 information shall remain confidential.

13 (c) For purposes of research as permitted in chapter 42.48 RCW.

14 (d) Pursuant to lawful order of a court.

15 (e) To qualified staff members of the department, to the director  
16 of regional support networks, to resource management services  
17 responsible for serving a patient, or to service providers designated  
18 by resource management services as necessary to determine the progress  
19 and adequacy of treatment and to determine whether the person should be  
20 transferred to a less restrictive or more appropriate treatment  
21 modality or facility. The information shall remain confidential.

22 (f) Within the treatment facility where the patient is receiving  
23 treatment, confidential information may be disclosed to persons  
24 employed, serving in bona fide training programs, or participating in  
25 supervised volunteer programs, at the facility when it is necessary to  
26 perform their duties.

27 (g) Within the department as necessary to coordinate treatment for  
28 mental illness, developmental disabilities, alcoholism, or drug abuse  
29 of persons who are under the supervision of the department.

30 (h) To a licensed physician who has determined that the life or  
31 health of the person is in danger and that treatment without the  
32 information contained in the treatment records could be injurious to  
33 the patient's health. Disclosure shall be limited to the portions of  
34 the records necessary to meet the medical emergency.

35 (i) To a facility that is to receive a person who is involuntarily  
36 committed under chapter 71.05 RCW, or upon transfer of the person from  
37 one treatment facility to another. The release of records under this  
38 subsection shall be limited to the treatment records required by law,

1 a record or summary of all somatic treatments, and a discharge summary.  
2 The discharge summary may include a statement of the patient's problem,  
3 the treatment goals, the type of treatment which has been provided, and  
4 recommendation for future treatment, but may not include the patient's  
5 complete treatment record.

6 ~~(j) ((Notwithstanding the provisions of RCW 71.05.390(7), to a~~  
7 ~~correctional facility or a corrections officer who is responsible for~~  
8 ~~the supervision of a person who is receiving inpatient or outpatient~~  
9 ~~evaluation or treatment. Except as provided in RCW 71.05.445 and~~  
10 ~~71.34.345, release of records under this section is limited to:~~

11 ~~(i) An evaluation report provided pursuant to a written supervision~~  
12 ~~plan.~~

13 ~~(ii) The discharge summary, including a record or summary of all~~  
14 ~~somatic treatments, at the termination of any treatment provided as~~  
15 ~~part of the supervision plan.~~

16 ~~(iii) When a person is returned from a treatment facility to a~~  
17 ~~correctional facility, the information provided under (j)(iv) of this~~  
18 ~~subsection.~~

19 ~~(iv) Any information necessary to establish or implement changes in~~  
20 ~~the person's treatment plan or the level or kind of supervision as~~  
21 ~~determined by resource management services. In cases involving a~~  
22 ~~person transferred back to a correctional facility, disclosure shall be~~  
23 ~~made to clinical staff only.~~

24 ~~(k))~~ To the person's counsel or guardian ad litem, without  
25 modification, at any time in order to prepare for involuntary  
26 commitment or recommitment proceedings, reexaminations, appeals, or  
27 other actions relating to detention, admission, commitment, or  
28 patient's rights under chapter 71.05 RCW.

29 ~~((+l))~~ (k) To staff members of the protection and advocacy agency  
30 or to staff members of a private, nonprofit corporation for the purpose  
31 of protecting and advocating the rights of persons with mental  
32 disorders or developmental disabilities. Resource management services  
33 may limit the release of information to the name, birthdate, and county  
34 of residence of the patient, information regarding whether the patient  
35 was voluntarily admitted, or involuntarily committed, the date and  
36 place of admission, placement, or commitment, the name and address of  
37 a guardian of the patient, and the date and place of the guardian's  
38 appointment. Any staff member who wishes to obtain additional

1 information shall notify the patient's resource management services in  
2 writing of the request and of the resource management services' right  
3 to object. The staff member shall send the notice by mail to the  
4 guardian's address. If the guardian does not object in writing within  
5 fifteen days after the notice is mailed, the staff member may obtain  
6 the additional information. If the guardian objects in writing within  
7 fifteen days after the notice is mailed, the staff member may not  
8 obtain the additional information.

9 ~~((m))~~ (l) For purposes of coordinating health care, the  
10 department may release without informed written consent of the patient,  
11 information acquired for billing and collection purposes as described  
12 in (b) of this subsection to all current treating providers of the  
13 patient with prescriptive authority who have written a prescription for  
14 the patient within the last twelve months. The department shall notify  
15 the patient that billing and collection information has been released  
16 to named providers, and provide the substance of the information  
17 released and the dates of such release. The department shall not  
18 release counseling, inpatient psychiatric hospitalization, or drug and  
19 alcohol treatment information without a signed written release from the  
20 client.

21 (3) Whenever federal law or federal regulations restrict the  
22 release of information contained in the treatment records of any  
23 patient who receives treatment for chemical dependency, the department  
24 may restrict the release of the information as necessary to comply with  
25 federal law and regulations.

26 NEW SECTION. **Sec. 6.** If any part of this act is found to be in  
27 conflict with federal requirements that are a prescribed condition to  
28 the allocation of federal funds to the state, the conflicting part of  
29 this act is inoperative solely to the extent of the conflict and with  
30 respect to the agencies directly affected, and this finding does not  
31 affect the operation of the remainder of this act in its application to  
32 the agencies concerned. Rules adopted under this act must meet federal  
33 requirements that are a necessary condition to the receipt of federal  
34 funds by the state.

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