

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5533

60th Legislature
2007 Regular Session

Passed by the Senate April 16, 2007
YEAS 47 NAYS 0

President of the Senate

Passed by the House April 9, 2007
YEAS 98 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5533** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5533

AS AMENDED BY THE HOUSE

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Pflug, Hargrove, Kline, Swecker, Delvin, Stevens, Holmquist, Parlette and Hewitt)

READ FIRST TIME 02/22/07.

1 AN ACT Relating to procedures for individuals who are mentally ill
2 and engaged in acts constituting criminal behavior; amending RCW
3 71.05.020, 71.05.150, 71.05.157, 49.19.010, 71.34.600, 71.24.035,
4 71.05.160, and 71.05.360; reenacting and amending RCW 71.05.390; adding
5 a new section to chapter 10.31 RCW; adding new sections to chapter
6 10.77 RCW; adding a new section to chapter 71.05 RCW; creating new
7 sections; and repealing RCW 10.77.090.

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

9 NEW SECTION. **Sec. 1.** The legislature finds that RCW 10.77.090
10 contains laws relating to three discrete subjects. Therefore, one
11 purpose of this act is to reorganize some of those laws by creating new
12 sections in the Revised Code of Washington that clarify and identify
13 these discrete subjects.

14 The legislature further finds that there are disproportionate
15 numbers of individuals with mental illness in jail. The needs of
16 individuals with mental illness and the public safety needs of society
17 at large are better served when individuals with mental illness are
18 provided an opportunity to obtain treatment and support.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 10.31 RCW
2 to read as follows:

3 (1) When a police officer has reasonable cause to believe that the
4 individual has committed acts constituting a nonfelony crime that is
5 not a serious offense as identified in RCW 10.77.092 and the individual
6 is known by history or consultation with the regional support network
7 to suffer from a mental disorder, the arresting officer may:

8 (a) Take the individual to a crisis stabilization unit as defined
9 in RCW 71.05.020(6). Individuals delivered to a crisis stabilization
10 unit pursuant to this section may be held by the facility for a period
11 of up to twelve hours: PROVIDED, that they are examined by a mental
12 health professional within three hours of their arrival;

13 (b) Refer the individual to a mental health professional for
14 evaluation for initial detention and proceeding under chapter 71.05
15 RCW; or

16 (c) Release the individual upon agreement to voluntary
17 participation in outpatient treatment.

18 (2) In deciding whether to refer the individual to treatment under
19 this section, the police officer shall be guided by standards mutually
20 agreed upon with the prosecuting authority, which address, at a
21 minimum, the length, seriousness, and recency of the known criminal
22 history of the individual, the mental health history of the individual,
23 where available, and the circumstances surrounding the commission of
24 the alleged offense.

25 (3) Any agreement to participate in treatment shall not require
26 individuals to stipulate to any of the alleged facts regarding the
27 criminal activity as a prerequisite to participation in a mental health
28 treatment alternative. The agreement is inadmissible in any criminal
29 or civil proceeding. The agreement does not create immunity from
30 prosecution for the alleged criminal activity.

31 (4) If an individual violates such agreement and the mental health
32 treatment alternative is no longer appropriate:

33 (a) The mental health provider shall inform the referring law
34 enforcement agency of the violation; and

35 (b) The original charges may be filed or referred to the
36 prosecutor, as appropriate, and the matter may proceed accordingly.

37 (5) The police officer is immune from liability for any good faith
38 conduct under this section.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 10.77 RCW
2 to read as follows:

3 GENERAL STAY PROVISIONS. (1)(a) If at any time during the pendency
4 of an action and prior to judgment the court finds, following a report
5 as provided in RCW 10.77.060, a defendant is incompetent, the court
6 shall order the proceedings against the defendant be stayed except as
7 provided in subsection (4) of this section.

8 (b) A defendant found incompetent shall be evaluated at the
9 direction of the secretary and a determination made whether the
10 defendant is an individual with a developmental disability. Such
11 evaluation and determination shall be accomplished as soon as possible
12 following the court's placement of the defendant in the custody of the
13 secretary.

14 (i) When appropriate, and subject to available funds, if the
15 defendant is determined to be an individual with a developmental
16 disability, he or she may be placed in a program specifically reserved
17 for the treatment and training of persons with developmental
18 disabilities where the defendant shall have the right to habilitation
19 according to an individualized service plan specifically developed for
20 the particular needs of the defendant. A copy of the evaluation shall
21 be sent to the program.

22 (A) The program shall be separate from programs serving persons
23 involved in any other treatment or habilitation program.

24 (B) The program shall be appropriately secure under the
25 circumstances and shall be administered by developmental disabilities
26 professionals who shall direct the habilitation efforts.

27 (C) The program shall provide an environment affording security
28 appropriate with the charged criminal behavior and necessary to protect
29 the public safety.

30 (ii) The department may limit admissions of such persons to this
31 specialized program in order to ensure that expenditures for services
32 do not exceed amounts appropriated by the legislature and allocated by
33 the department for such services.

34 (iii) The department may establish admission priorities in the
35 event that the number of eligible persons exceeds the limits set by the
36 department.

37 (c) At the end of the mental health treatment and restoration
38 period, or at any time a professional person determines competency has

1 been, or is unlikely to be, restored, the defendant shall be returned
2 to court for a hearing. If, after notice and hearing, competency has
3 been restored, the stay entered under (a) of this subsection shall be
4 lifted. If competency has not been restored, the proceedings shall be
5 dismissed. If the court concludes that competency has not been
6 restored, but that further treatment within the time limits established
7 by section 4 or 5 of this act is likely to restore competency, the
8 court may order that treatment for purposes of competency restoration
9 be continued. Such treatment may not extend beyond the combination of
10 time provided for in section 4 or 5 of this act.

11 (d) If at any time during the proceeding the court finds, following
12 notice and hearing, a defendant is not likely to regain competency, the
13 proceedings shall be dismissed and the defendant shall be evaluated for
14 civil commitment proceedings.

15 (2) If the defendant is referred to the designated mental health
16 professional for consideration of initial detention proceedings under
17 chapter 71.05 RCW pursuant to this chapter, the designated mental
18 health professional shall provide prompt written notification of the
19 results of the determination whether to commence initial detention
20 proceedings under chapter 71.05 RCW and whether the person was
21 detained. The notification shall be provided to the court in which the
22 criminal action was pending, the prosecutor, the defense attorney in
23 the criminal action, and the facility that evaluated the defendant for
24 competency.

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

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

33 (5) At or before the conclusion of any commitment period provided
34 for by this section, the facility providing evaluation and treatment
35 shall provide to the court a written report of examination which meets
36 the requirements of RCW 10.77.060(3).

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 10.77 RCW
2 to read as follows:

3 **FELONY PROCEDURE.** (1) If the defendant is charged with a felony
4 and determined to be incompetent, until he or she has regained the
5 competency necessary to understand the proceedings against him or her
6 and assist in his or her own defense, or has been determined unlikely
7 to regain competency pursuant to section 3(1)(c) of this act, but in
8 any event for a period of no longer than ninety days, the court:

9 (a) Shall commit the defendant to the custody of the secretary who
10 shall place such defendant in an appropriate facility of the department
11 for evaluation and treatment; or

12 (b) May alternatively order the defendant to undergo evaluation and
13 treatment at some other facility as determined by the department, or
14 under the guidance and control of a professional person.

15 (2) On or before expiration of the initial ninety-day period of
16 commitment under subsection (1) of this section the court shall conduct
17 a hearing, at which it shall determine whether or not the defendant is
18 incompetent.

19 (3) If the court finds by a preponderance of the evidence that a
20 defendant charged with a felony is incompetent, the court shall have
21 the option of extending the order of commitment or alternative
22 treatment for an additional ninety-day period, but the court must at
23 the time of extension set a date for a prompt hearing to determine the
24 defendant's competency before the expiration of the second ninety-day
25 period. The defendant, the defendant's attorney, or the prosecutor has
26 the right to demand that the hearing be before a jury. No extension
27 shall be ordered for a second ninety-day period, nor for any subsequent
28 period as provided in subsection (4) of this section, if the
29 defendant's incompetence has been determined by the secretary to be
30 solely the result of a developmental disability which is such that
31 competence is not reasonably likely to be regained during an extension.

32 (4) For persons charged with a felony, at the hearing upon the
33 expiration of the second ninety-day period or at the end of the first
34 ninety-day period, in the case of a defendant with a developmental
35 disability, if the jury or court finds that the defendant is
36 incompetent, the charges shall be dismissed without prejudice, and
37 either civil commitment proceedings shall be instituted or the court
38 shall order the release of the defendant. The criminal charges shall

1 not be dismissed if the court or jury finds that: (a) The defendant
2 (i) is a substantial danger to other persons; or (ii) presents a
3 substantial likelihood of committing criminal acts jeopardizing public
4 safety or security; and (b) there is a substantial probability that the
5 defendant will regain competency within a reasonable period of time.
6 In the event that the court or jury makes such a finding, the court may
7 extend the period of commitment for up to an additional six months.

8 NEW SECTION. **Sec. 5.** A new section is added to chapter 10.77 RCW
9 to read as follows:

10 MISDEMEANOR PROCEDURE. (1)(a) If the defendant is charged with a
11 nonfelony crime which is a serious offense as identified in RCW
12 10.77.092 and found by the court to be not competent, then the court
13 shall order the secretary to place the defendant:

14 (i) At a secure mental health facility in the custody of the
15 department or an agency designated by the department for mental health
16 treatment and restoration of competency. The placement shall not
17 exceed fourteen days in addition to any unused time of the evaluation
18 under RCW 10.77.060. The court shall compute this total period and
19 include its computation in the order. The fourteen-day period plus any
20 unused time of the evaluation under RCW 10.77.060 shall be considered
21 to include only the time the defendant is actually at the facility and
22 shall be in addition to reasonable time for transport to or from the
23 facility;

24 (ii) On conditional release for up to ninety days for mental health
25 treatment and restoration of competency; or

26 (iii) Any combination of this subsection.

27 (b)(i) If the proceedings are dismissed under section 3 of this act
28 and the defendant was on conditional release at the time of dismissal,
29 the court shall order the designated mental health professional within
30 that county to evaluate the defendant pursuant to chapter 71.05 RCW.
31 The evaluation may be conducted in any location chosen by the
32 professional.

33 (ii) If the defendant was in custody and not on conditional release
34 at the time of dismissal, the defendant shall be detained and sent to
35 an evaluation and treatment facility for up to seventy-two hours,
36 excluding Saturdays, Sundays, and holidays, for evaluation for purposes
37 of filing a petition under chapter 71.05 RCW. The seventy-two-hour

1 period shall commence upon the next nonholiday weekday following the
2 court order and shall run to the end of the last nonholiday weekday
3 within the seventy-two-hour period.

4 (2) If the defendant is charged with a nonfelony crime that is not
5 a serious offense as defined in RCW 10.77.092:

6 The court may stay or dismiss proceedings and detain the defendant
7 for sufficient time to allow the designated mental health professional
8 to evaluate the defendant and consider initial detention proceedings
9 under chapter 71.05 RCW. The court must give notice to all parties at
10 least twenty-four hours before the dismissal of any proceeding under
11 this subsection, and provide an opportunity for a hearing on whether to
12 dismiss the proceedings.

13 **Sec. 6.** RCW 71.05.020 and 2005 c 504 s 104 are each amended to
14 read as follows:

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

17 (1) "Admission" or "admit" means a decision by a physician that a
18 person should be examined or treated as a patient in a hospital;

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

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

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

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

31 (6) "Crisis stabilization unit" means a short-term facility or a
32 portion of a facility licensed by the department of health and
33 certified by the department of social and health services under RCW
34 71.24.035, such as an evaluation and treatment facility or a hospital,
35 which has been designed to assess, diagnose, and treat individuals
36 experiencing an acute crisis without the use of long-term
37 hospitalization;

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

5 ~~((+7))~~ (8) "Department" means the department of social and health
6 services;

7 ~~((+8))~~ (9) "Designated chemical dependency specialist" means a
8 person designated by the county alcoholism and other drug addiction
9 program coordinator designated under RCW 70.96A.310 to perform the
10 commitment duties described in chapters 70.96A and 70.96B RCW;

11 ~~((+9))~~ (10) "Designated crisis responder" means a mental health
12 professional appointed by the county or the regional support network to
13 perform the duties specified in this chapter;

14 ~~((+10))~~ (11) "Designated mental health professional" means a
15 mental health professional designated by the county or other authority
16 authorized in rule to perform the duties specified in this chapter;

17 ~~((+11))~~ (12) "Detention" or "detain" means the lawful confinement
18 of a person, under the provisions of this chapter;

19 ~~((+12))~~ (13) "Developmental disabilities professional" means a
20 person who has specialized training and three years of experience in
21 directly treating or working with persons with developmental
22 disabilities and is a psychiatrist, psychologist, or social worker, and
23 such other developmental disabilities professionals as may be defined
24 by rules adopted by the secretary;

25 ~~((+13))~~ (14) "Developmental disability" means that condition
26 defined in RCW 71A.10.020(3);

27 ~~((+14))~~ (15) "Discharge" means the termination of hospital medical
28 authority. The commitment may remain in place, be terminated, or be
29 amended by court order;

30 ~~((+15))~~ (16) "Evaluation and treatment facility" means any
31 facility which can provide directly, or by direct arrangement with
32 other public or private agencies, emergency evaluation and treatment,
33 outpatient care, and timely and appropriate inpatient care to persons
34 suffering from a mental disorder, and which is certified as such by the
35 department. A physically separate and separately operated portion of
36 a state hospital may be designated as an evaluation and treatment
37 facility. A facility which is part of, or operated by, the department

1 or any federal agency will not require certification. No correctional
2 institution or facility, or jail, shall be an evaluation and treatment
3 facility within the meaning of this chapter;

4 ~~((16))~~ (17) "Gravely disabled" means a condition in which a
5 person, as a result of a mental disorder: (a) Is in danger of serious
6 physical harm resulting from a failure to provide for his or her
7 essential human needs of health or safety; or (b) manifests severe
8 deterioration in routine functioning evidenced by repeated and
9 escalating loss of cognitive or volitional control over his or her
10 actions and is not receiving such care as is essential for his or her
11 health or safety;

12 ~~((17))~~ (18) "Habilitative services" means those services provided
13 by program personnel to assist persons in acquiring and maintaining
14 life skills and in raising their levels of physical, mental, social,
15 and vocational functioning. Habilitative services include education,
16 training for employment, and therapy. The habilitative process shall
17 be undertaken with recognition of the risk to the public safety
18 presented by the person being assisted as manifested by prior charged
19 criminal conduct;

20 ~~((18))~~ (19) "History of one or more violent acts" refers to the
21 period of time ten years prior to the filing of a petition under this
22 chapter, excluding any time spent, but not any violent acts committed,
23 in a mental health facility or in confinement as a result of a criminal
24 conviction;

25 ~~((19))~~ (20) "Imminent" means the state or condition of being
26 likely to occur at any moment or near at hand, rather than distant or
27 remote;

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

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

33 (b) The conditions and strategies necessary to achieve the purposes
34 of habilitation;

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

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

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

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

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

8 ~~((+20+))~~ (22) "Judicial commitment" means a commitment by a court
9 pursuant to the provisions of this chapter;

10 ~~((+21+))~~ (23) "Likelihood of serious harm" means:

11 (a) A substantial risk that: (i) Physical harm will be inflicted
12 by a person upon his or her own person, as evidenced by threats or
13 attempts to commit suicide or inflict physical harm on oneself; (ii)
14 physical harm will be inflicted by a person upon another, as evidenced
15 by behavior which has caused such harm or which places another person
16 or persons in reasonable fear of sustaining such harm; or (iii)
17 physical harm will be inflicted by a person upon the property of
18 others, as evidenced by behavior which has caused substantial loss or
19 damage to the property of others; or

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

22 ~~((+22+))~~ (24) "Mental disorder" means any organic, mental, or
23 emotional impairment which has substantial adverse effects on a
24 person's cognitive or volitional functions;

25 ~~((+23+))~~ (25) "Mental health professional" means a psychiatrist,
26 psychologist, psychiatric nurse, or social worker, and such other
27 mental health professionals as may be defined by rules adopted by the
28 secretary pursuant to the provisions of this chapter;

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

33 ~~((+25+))~~ (27) "Private agency" means any person, partnership,
34 corporation, or association that is not a public agency, whether or not
35 financed in whole or in part by public funds, which constitutes an
36 evaluation and treatment facility or private institution, or hospital,
37 which is conducted for, or includes a department or ward conducted for,
38 the care and treatment of persons who are mentally ill;

1 ~~((+26+))~~ (28) "Professional person" means a mental health
2 professional and shall also mean a physician, registered nurse, and
3 such others as may be defined by rules adopted by the secretary
4 pursuant to the provisions of this chapter;

5 ~~((+27+))~~ (29) "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 ~~((+28+))~~ (30) "Psychologist" means a person who has been licensed
12 as a psychologist pursuant to chapter 18.83 RCW;

13 ~~((+29+))~~ (31) "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 ~~((who are mentally ill))~~ with mental illness, if the agency is
17 operated directly by, federal, state, county, or municipal government,
18 or a combination of such governments;

19 ~~((+30+))~~ (32) "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 ~~((+31+))~~ (33) "Release" means legal termination of the commitment
25 under the provisions of this chapter;

26 ~~((+32+))~~ (34) "Resource management services" has the meaning given
27 in chapter 71.24 RCW;

28 ~~((+33+))~~ (35) "Secretary" means the secretary of the department of
29 social and health services, or his or her designee;

30 ~~((+34+))~~ (36) "Social worker" means a person with a master's or
31 further advanced degree from an accredited school of social work or a
32 degree deemed equivalent under rules adopted by the secretary;

33 ~~((+35+))~~ (37) "Treatment records" include registration and all
34 other records concerning persons who are receiving or who at any time
35 have received services for mental illness, which are maintained by the
36 department, by regional support networks and their staffs, and by
37 treatment facilities. Treatment records do not include notes or

1 records maintained for personal use by a person providing treatment
2 services for the department, regional support networks, or a treatment
3 facility if the notes or records are not available to others;

4 ~~((+36+))~~ (38) "Violent act" means behavior that resulted in
5 homicide, attempted suicide, nonfatal injuries, or substantial damage
6 to property.

7 **Sec. 7.** RCW 71.05.150 and 1998 c 297 s 8 are each amended to read
8 as follows:

9 NONEMERGENT DETENTION. (1)~~((+a+))~~ When a ~~((county))~~ designated
10 mental health professional receives information alleging that a person,
11 as a result of a mental disorder: (i) Presents a likelihood of serious
12 harm; or (ii) is gravely disabled; the ~~((county))~~ designated mental
13 health professional may, after investigation and evaluation of the
14 specific facts alleged and of the reliability and credibility of any
15 person providing information to initiate detention, if satisfied that
16 the allegations are true and that the person will not voluntarily seek
17 appropriate treatment, file a petition for initial detention. Before
18 filing the petition, the ~~((county))~~ designated mental health
19 professional must personally interview the person, unless the person
20 refuses an interview, and determine whether the person will voluntarily
21 receive appropriate evaluation and treatment at an evaluation and
22 treatment facility or in a crisis stabilization unit.

23 ~~((b) Whenever it appears, by petition for initial detention, to
24 the satisfaction of a judge of the superior court that a person
25 presents, as a result of a mental disorder, a likelihood of serious
26 harm, or is gravely disabled, and that the person has refused or failed
27 to accept appropriate evaluation and treatment voluntarily, the judge
28 may issue an order requiring the person to appear within twenty four
29 hours after service of the order at a designated evaluation and
30 treatment facility for not more than a seventy two hour evaluation and
31 treatment period. The order shall state the address of the evaluation
32 and treatment facility to which the person is to report and whether the
33 required seventy two hour evaluation and treatment services may be
34 delivered on an outpatient or inpatient basis and that if the person
35 named in the order fails to appear at the evaluation and treatment
36 facility at or before the date and time stated in the order, such
37 person may be involuntarily taken into custody for evaluation and~~

1 ~~treatment. The order shall also designate retained counsel or, if~~
2 ~~counsel is appointed from a list provided by the court, the name,~~
3 ~~business address, and telephone number of the attorney appointed to~~
4 ~~represent the person.~~

5 (e)) (2)(a) An order to detain to a designated evaluation and
6 treatment facility for not more than a seventy-two-hour evaluation and
7 treatment period may be issued by a judge of the superior court upon
8 request of a designated mental health professional, whenever it appears
9 to the satisfaction of a judge of the superior court:

10 (i) That there is probable cause to support the petition; and

11 (ii) That the person has refused or failed to accept appropriate
12 evaluation and treatment voluntarily.

13 (b) The petition for initial detention, signed under penalty of
14 perjury, or sworn telephonic testimony may be considered by the court
15 in determining whether there are sufficient grounds for issuing the
16 order.

17 (c) The order shall designate retained counsel or, if counsel is
18 appointed from a list provided by the court, the name, business
19 address, and telephone number of the attorney appointed to represent
20 the person.

21 (3) The ((county)) designated mental health professional shall then
22 serve or cause to be served on such person, his or her guardian, and
23 conservator, if any, a copy of the order ((to appear)) together with a
24 notice of rights, and a petition for initial detention. After service
25 on such person the ((county)) designated mental health professional
26 shall file the return of service in court and provide copies of all
27 papers in the court file to the evaluation and treatment facility and
28 the designated attorney. The ((county)) designated mental health
29 professional shall notify the court and the prosecuting attorney that
30 a probable cause hearing will be held within seventy-two hours of the
31 date and time of outpatient evaluation or admission to the evaluation
32 and treatment facility. The person shall be permitted ((to remain in
33 his or her home or other place of his or her choosing prior to the time
34 of evaluation and shall be permitted)) to be accompanied by one or more
35 of his or her relatives, friends, an attorney, a personal physician, or
36 other professional or religious advisor to the place of evaluation. An
37 attorney accompanying the person to the place of evaluation shall be
38 permitted to be present during the admission evaluation. Any other

1 individual accompanying the person may be present during the admission
2 evaluation. The facility may exclude the individual if his or her
3 presence would present a safety risk, delay the proceedings, or
4 otherwise interfere with the evaluation.

5 ~~((d) If the person ordered to appear does appear on or before the
6 date and time specified, the evaluation and treatment facility may
7 admit such person as required by RCW 71.05.170 or may provide treatment
8 on an outpatient basis. If the person ordered to appear fails to
9 appear on or before the date and time specified, the evaluation and
10 treatment facility shall immediately notify))~~

11 (4) The ~~((county))~~ designated mental health professional ~~((who))~~
12 may notify a peace officer to take such person or cause such person to
13 be taken into custody and placed in an evaluation and treatment
14 facility. ~~((Should the county designated mental health professional
15 notify a peace officer authorizing him or her to take a person into
16 custody under the provisions of this subsection, he or she shall file
17 with the court a copy of such authorization and a notice of
18 detention.))~~ At the time such person is taken into custody there shall
19 commence to be served on such person, his or her guardian, and
20 conservator, if any, a copy of the original order together with a
21 ~~((notice of detention, a))~~ notice of rights~~((7))~~ and a petition for
22 initial detention.

23 ~~((2) When a county designated mental health professional receives
24 information alleging that a person, as the result of a mental disorder,
25 presents an imminent likelihood of serious harm, or is in imminent
26 danger because of being gravely disabled, after investigation and
27 evaluation of the specific facts alleged and of the reliability and
28 credibility of the person or persons providing the information if any,
29 the county designated mental health professional may take such person,
30 or cause by oral or written order such person to be taken into
31 emergency custody in an evaluation and treatment facility for not more
32 than seventy two hours as described in RCW 71.05.180.~~

33 ~~(3) A peace officer may take such person or cause such person to be
34 taken into custody and placed in an evaluation and treatment facility
35 pursuant to subsection (1)(d) of this section.~~

36 ~~(4) A peace officer may, without prior notice of the proceedings
37 provided for in subsection (1) of this section, take or cause such~~

1 ~~person to be taken into custody and immediately delivered to an~~
2 ~~evaluation and treatment facility or the emergency department of a~~
3 ~~local hospital;~~

4 ~~(a) Only pursuant to subsections (1)(d) and (2) of this section; or~~

5 ~~(b) When he or she has reasonable cause to believe that such person~~
6 ~~is suffering from a mental disorder and presents an imminent likelihood~~
7 ~~of serious harm or is in imminent danger because of being gravely~~
8 ~~disabled.~~

9 ~~(5) Persons delivered to evaluation and treatment facilities by~~
10 ~~peace officers pursuant to subsection (4)(b) of this section may be~~
11 ~~held by the facility for a period of up to twelve hours: PROVIDED,~~
12 ~~That they are examined by a mental health professional within three~~
13 ~~hours of their arrival. Within twelve hours of their arrival, the~~
14 ~~county designated mental health professional must file a supplemental~~
15 ~~petition for detention, and commence service on the designated attorney~~
16 ~~for the detained person.))~~

17 NEW SECTION. **Sec. 8.** A new section is added to chapter 71.05 RCW
18 to read as follows:

19 EMERGENT DETENTION. (1) When a designated mental health
20 professional receives information alleging that a person, as the result
21 of a mental disorder, presents an imminent likelihood of serious harm,
22 or is in imminent danger because of being gravely disabled, after
23 investigation and evaluation of the specific facts alleged and of the
24 reliability and credibility of the person or persons providing the
25 information if any, the designated mental health professional may take
26 such person, or cause by oral or written order such person to be taken
27 into emergency custody in an evaluation and treatment facility for not
28 more than seventy-two hours as described in RCW 71.05.180.

29 (2) A peace officer may take or cause such person to be taken into
30 custody and immediately delivered to a crisis stabilization unit, an
31 evaluation and treatment facility, or the emergency department of a
32 local hospital under the following circumstances:

33 (a) Pursuant to subsection (1) of this section; or

34 (b) When he or she has reasonable cause to believe that such person
35 is suffering from a mental disorder and presents an imminent likelihood
36 of serious harm or is in imminent danger because of being gravely
37 disabled.

1 (3) Persons delivered to a crisis stabilization unit, evaluation
2 and treatment facility, or the emergency department of a local hospital
3 by peace officers pursuant to subsection (2) of this section may be
4 held by the facility for a period of up to twelve hours: PROVIDED,
5 That they are examined by a mental health professional within three
6 hours of their arrival. Within twelve hours of their arrival, the
7 designated mental health professional must determine whether the
8 individual meets detention criteria. If the individual is detained,
9 the designated mental health professional shall file a petition for
10 detention or a supplemental petition as appropriate and commence
11 service on the designated attorney for the detained person.

12 **Sec. 9.** RCW 71.05.157 and 2005 c 504 s 507 are each amended to
13 read as follows:

14 (1) When a designated mental health professional is notified by a
15 jail that a defendant or offender who was subject to a discharge review
16 under RCW 71.05.232 is to be released to the community, the designated
17 mental health professional shall evaluate the person within seventy-two
18 hours of release.

19 (2) When an offender is under court-ordered treatment in the
20 community and the supervision of the department of corrections, and the
21 treatment provider becomes aware that the person is in violation of the
22 terms of the court order, the treatment provider shall notify the
23 designated mental health professional and the department of corrections
24 of the violation and request an evaluation for purposes of revocation
25 of the less restrictive alternative.

26 (3) When a designated mental health professional becomes aware that
27 an offender who is under court-ordered treatment in the community and
28 the supervision of the department of corrections is in violation of a
29 treatment order or a condition of supervision that relates to public
30 safety, or the designated mental health professional detains a person
31 under this chapter, the designated mental health professional shall
32 notify the person's treatment provider and the department of
33 corrections.

34 (4) When an offender who is confined in a state correctional
35 facility or is under supervision of the department of corrections in
36 the community is subject to a petition for involuntary treatment under
37 this chapter, the petitioner shall notify the department of corrections

1 and the department of corrections shall provide documentation of its
2 risk assessment or other concerns to the petitioner and the court if
3 the department of corrections classified the offender as a high risk or
4 high needs offender.

5 (5) Nothing in this section creates a duty on any treatment
6 provider or designated mental health professional to provide offender
7 supervision.

8 (6) No jail or state correctional facility may be considered a less
9 restrictive alternative to an evaluation and treatment facility.

10 **Sec. 10.** RCW 49.19.010 and 2000 c 94 s 18 are each amended to read
11 as follows:

12 For purposes of this chapter:

13 (1) "Health care setting" means:

14 (a) Hospitals as defined in RCW 70.41.020;

15 (b) Home health, hospice, and home care agencies under chapter
16 70.127 RCW, subject to RCW 49.19.070;

17 (c) Evaluation and treatment facilities as defined in RCW
18 71.05.020(~~(+12)~~); and

19 (d) Community mental health programs as defined in RCW
20 71.24.025(5).

21 (2) "Department" means the department of labor and industries.

22 (3) "Employee" means an employee as defined in RCW 49.17.020.

23 (4) "Violence" or "violent act" means any physical assault or
24 verbal threat of physical assault against an employee of a health care
25 setting.

26 **Sec. 11.** RCW 71.34.600 and 2005 c 371 s 4 are each amended to read
27 as follows:

28 (1) A parent may bring, or authorize the bringing of, his or her
29 minor child to an evaluation and treatment facility or an inpatient
30 facility licensed under chapter 70.41, 71.12, or 72.23 RCW and request
31 that the professional person (~~as defined in RCW 71.05.020(24)~~)
32 examine the minor to determine whether the minor has a mental disorder
33 and is in need of inpatient treatment.

34 (2) The consent of the minor is not required for admission,
35 evaluation, and treatment if the parent brings the minor to the
36 facility.

1 (3) An appropriately trained professional person may evaluate
2 whether the minor has a mental disorder. The evaluation shall be
3 completed within twenty-four hours of the time the minor was brought to
4 the facility, unless the professional person determines that the
5 condition of the minor necessitates additional time for evaluation. In
6 no event shall a minor be held longer than seventy-two hours for
7 evaluation. If, in the judgment of the professional person, it is
8 determined it is a medical necessity for the minor to receive inpatient
9 treatment, the minor may be held for treatment. The facility shall
10 limit treatment to that which the professional person determines is
11 medically necessary to stabilize the minor's condition until the
12 evaluation has been completed. Within twenty-four hours of completion
13 of the evaluation, the professional person shall notify the department
14 if the child is held for treatment and of the date of admission.

15 (4) No provider is obligated to provide treatment to a minor under
16 the provisions of this section except that no provider may refuse to
17 treat a minor under the provisions of this section solely on the basis
18 that the minor has not consented to the treatment. No provider may
19 admit a minor to treatment under this section unless it is medically
20 necessary.

21 (5) No minor receiving inpatient treatment under this section may
22 be discharged from the facility based solely on his or her request.

23 (6) Prior to the review conducted under RCW 71.34.610, the
24 professional person shall notify the minor of his or her right to
25 petition superior court for release from the facility.

26 (7) For the purposes of this section "professional person" means
27 "professional person" as defined in RCW 71.05.020.

28 **Sec. 12.** RCW 71.24.035 and 2006 c 333 s 201 are each amended to
29 read as follows:

30 (1) The department is designated as the state mental health
31 authority.

32 (2) The secretary shall provide for public, client, and licensed
33 service provider participation in developing the state mental health
34 program, developing contracts with regional support networks, and any
35 waiver request to the federal government under medicaid.

36 (3) The secretary shall provide for participation in developing the

1 state mental health program for children and other underserved
2 populations, by including representatives on any committee established
3 to provide oversight to the state mental health program.

4 (4) The secretary shall be designated as the regional support
5 network if the regional support network fails to meet state minimum
6 standards or refuses to exercise responsibilities under RCW 71.24.045.

7 (5) The secretary shall:

8 (a) Develop a biennial state mental health program that
9 incorporates regional biennial needs assessments and regional mental
10 health service plans and state services for (~~mentally ill~~) adults and
11 children with mental illness. The secretary shall also develop a six-
12 year state mental health plan;

13 (b) Assure that any regional or county community mental health
14 program provides access to treatment for the region's residents in the
15 following order of priority: (i) (~~The acutely mentally ill~~) Persons
16 with acute mental illness; (ii) (~~chronically mentally ill~~) adults
17 with chronic mental illness and children who are severely emotionally
18 disturbed (~~children~~); and (iii) (~~the~~) persons who are seriously
19 disturbed. Such programs shall provide:

20 (A) Outpatient services;

21 (B) Emergency care services for twenty-four hours per day;

22 (C) Day treatment for (~~mentally ill~~) persons with mental illness
23 which includes training in basic living and social skills, supported
24 work, vocational rehabilitation, and day activities. Such services may
25 include therapeutic treatment. In the case of a child, day treatment
26 includes age-appropriate basic living and social skills, educational
27 and prevocational services, day activities, and therapeutic treatment;

28 (D) Screening for patients being considered for admission to state
29 mental health facilities to determine the appropriateness of admission;

30 (E) Employment services, which may include supported employment,
31 transitional work, placement in competitive employment, and other work-
32 related services, that result in (~~mentally ill~~) persons with mental
33 illness becoming engaged in meaningful and gainful full or part-time
34 work. Other sources of funding such as the division of vocational
35 rehabilitation may be utilized by the secretary to maximize federal
36 funding and provide for integration of services;

37 (F) Consultation and education services; and

38 (G) Community support services;

1 (c) Develop and adopt rules establishing state minimum standards
2 for the delivery of mental health services pursuant to RCW 71.24.037
3 including, but not limited to:

4 (i) Licensed service providers. These rules shall permit a county-
5 operated mental health program to be licensed as a service provider
6 subject to compliance with applicable statutes and rules. The
7 secretary shall provide for deeming of compliance with state minimum
8 standards for those entities accredited by recognized behavioral health
9 accrediting bodies recognized and having a current agreement with the
10 department;

11 (ii) Regional support networks; and

12 (iii) Inpatient services, evaluation and treatment services and
13 facilities under chapter 71.05 RCW, resource management services, and
14 community support services;

15 (d) Assure that the special needs of persons who are minorities,
16 (~~the~~) elderly, disabled, children, and low-income (~~persons~~) are met
17 within the priorities established in this section;

18 (e) Establish a standard contract or contracts, consistent with
19 state minimum standards and RCW 71.24.320, 71.24.330, and 71.24.3201,
20 which shall be used in contracting with regional support networks. The
21 standard contract shall include a maximum fund balance, which shall be
22 consistent with that required by federal regulations or waiver
23 stipulations;

24 (f) Establish, to the extent possible, a standardized auditing
25 procedure which minimizes paperwork requirements of regional support
26 networks and licensed service providers. The audit procedure shall
27 focus on the outcomes of service and not the processes for
28 accomplishing them;

29 (g) Develop and maintain an information system to be used by the
30 state and regional support networks that includes a tracking method
31 which allows the department and regional support networks to identify
32 mental health clients' participation in any mental health service or
33 public program on an immediate basis. The information system shall not
34 include individual patient's case history files. Confidentiality of
35 client information and records shall be maintained as provided in this
36 chapter and in RCW 71.05.390, 71.05.420, and 71.05.440;

37 (h) License service providers who meet state minimum standards;

- 1 (i) Certify regional support networks that meet state minimum
2 standards;
- 3 (j) Periodically monitor the compliance of certified regional
4 support networks and their network of licensed service providers for
5 compliance with the contract between the department, the regional
6 support network, and federal and state rules at reasonable times and in
7 a reasonable manner;
- 8 (k) Fix fees to be paid by evaluation and treatment centers to the
9 secretary for the required inspections;
- 10 (l) Monitor and audit regional support networks and licensed
11 service providers as needed to assure compliance with contractual
12 agreements authorized by this chapter;
- 13 (m) Adopt such rules as are necessary to implement the department's
14 responsibilities under this chapter; (~~and~~)
- 15 (n) Assure the availability of an appropriate amount, as determined
16 by the legislature in the operating budget by amounts appropriated for
17 this specific purpose, of community-based, geographically distributed
18 residential services; and
- 19 (o) Certify crisis stabilization units that meet state minimum
20 standards.
- 21 (6) The secretary shall use available resources only for regional
22 support networks, except to the extent authorized, and in accordance
23 with any priorities or conditions specified, in the biennial
24 appropriations act.
- 25 (7) Each certified regional support network and licensed service
26 provider shall file with the secretary, on request, such data,
27 statistics, schedules, and information as the secretary reasonably
28 requires. A certified regional support network or licensed service
29 provider which, without good cause, fails to furnish any data,
30 statistics, schedules, or information as requested, or files fraudulent
31 reports thereof, may have its certification or license revoked or
32 suspended.
- 33 (8) The secretary may suspend, revoke, limit, or restrict a
34 certification or license, or refuse to grant a certification or license
35 for failure to conform to: (a) The law; (b) applicable rules and
36 regulations; (c) applicable standards; or (d) state minimum standards.
- 37 (9) The superior court may restrain any regional support network or
38 service provider from operating without certification or a license or

1 any other violation of this section. The court may also review,
2 pursuant to procedures contained in chapter 34.05 RCW, any denial,
3 suspension, limitation, restriction, or revocation of certification or
4 license, and grant other relief required to enforce the provisions of
5 this chapter.

6 (10) Upon petition by the secretary, and after hearing held upon
7 reasonable notice to the facility, the superior court may issue a
8 warrant to an officer or employee of the secretary authorizing him or
9 her to enter at reasonable times, and examine the records, books, and
10 accounts of any regional support network or service provider refusing
11 to consent to inspection or examination by the authority.

12 (11) Notwithstanding the existence or pursuit of any other remedy,
13 the secretary may file an action for an injunction or other process
14 against any person or governmental unit to restrain or prevent the
15 establishment, conduct, or operation of a regional support network or
16 service provider without certification or a license under this chapter.

17 (12) The standards for certification of evaluation and treatment
18 facilities shall include standards relating to maintenance of good
19 physical and mental health and other services to be afforded persons
20 pursuant to this chapter and chapters 71.05 and 71.34 RCW, and shall
21 otherwise assure the effectuation of the purposes of these chapters.

22 (13) The standards for certification of crisis stabilization units
23 shall include standards that:

24 (a) Permit location of the units at a jail facility if the unit is
25 physically separate from the general population of the jail;

26 (b) Require administration of the unit by mental health
27 professionals who direct the stabilization and rehabilitation efforts;
28 and

29 (c) Provide an environment affording security appropriate with the
30 alleged criminal behavior and necessary to protect the public safety.

31 (14) The department shall distribute appropriated state and federal
32 funds in accordance with any priorities, terms, or conditions specified
33 in the appropriations act.

34 ((+14)) (15) The secretary shall assume all duties assigned to the
35 nonparticipating regional support networks under chapters 71.05, 71.34,
36 and 71.24 RCW. Such responsibilities shall include those which would
37 have been assigned to the nonparticipating counties in regions where
38 there are not participating regional support networks.

1 The regional support networks, or the secretary's assumption of all
2 responsibilities under chapters 71.05, 71.34, and 71.24 RCW, shall be
3 included in all state and federal plans affecting the state mental
4 health program including at least those required by this chapter, the
5 medicaid program, and P.L. 99-660. Nothing in these plans shall be
6 inconsistent with the intent and requirements of this chapter.

7 ~~((+15+))~~ (16) The secretary shall:

8 (a) Disburse funds for the regional support networks within sixty
9 days of approval of the biennial contract. The department must either
10 approve or reject the biennial contract within sixty days of receipt.

11 (b) Enter into biennial contracts with regional support networks.
12 The contracts shall be consistent with available resources. No
13 contract shall be approved that does not include progress toward
14 meeting the goals of this chapter by taking responsibility for: (i)
15 Short-term commitments; (ii) residential care; and (iii) emergency
16 response systems.

17 (c) Notify regional support networks of their allocation of
18 available resources at least sixty days prior to the start of a new
19 biennial contract period.

20 (d) Deny all or part of the funding allocations to regional support
21 networks based solely upon formal findings of noncompliance with the
22 terms of the regional support network's contract with the department.
23 Regional support networks disputing the decision of the secretary to
24 withhold funding allocations are limited to the remedies provided in
25 the department's contracts with the regional support networks.

26 ~~((+16+))~~ (17) The department, in cooperation with the state
27 congressional delegation, shall actively seek waivers of federal
28 requirements and such modifications of federal regulations as are
29 necessary to allow federal medicaid reimbursement for services provided
30 by free-standing evaluation and treatment facilities certified under
31 chapter 71.05 RCW. The department shall periodically report its
32 efforts to the appropriate committees of the senate and the house of
33 representatives.

34 **Sec. 13.** RCW 71.05.160 and 1998 c 297 s 9 are each amended to read
35 as follows:

36 Any facility receiving a person pursuant to RCW 71.05.150 or
37 section 8 of this act shall require the designated mental health

1 professional to prepare a petition for initial detention stating the
2 circumstances under which the person's condition was made known and
3 stating that (~~such officer or person has~~) there is evidence, as a
4 result of his or her personal observation or investigation, that the
5 actions of the person for which application is made constitute a
6 likelihood of serious harm, or that he or she is gravely disabled, and
7 stating the specific facts known to him or her as a result of his or
8 her personal observation or investigation, upon which he or she bases
9 the belief that such person should be detained for the purposes and
10 under the authority of this chapter.

11 If a person is involuntarily placed in an evaluation and treatment
12 facility pursuant to RCW 71.05.150 or section 8 of this act, on the
13 next judicial day following the initial detention, the (~~county~~)
14 designated mental health professional shall file with the court and
15 serve the designated attorney of the detained person the petition or
16 supplemental petition for initial detention, proof of service of
17 notice, and a copy of a notice of emergency detention.

18 **Sec. 14.** RCW 71.05.360 and 2005 c 504 s 107 are each amended to
19 read as follows:

20 (1)(a) Every person involuntarily detained or committed under the
21 provisions of this chapter shall be entitled to all the rights set
22 forth in this chapter, which shall be prominently posted in the
23 facility, and shall retain all rights not denied him or her under this
24 chapter except as chapter 9.41 RCW may limit the right of a person to
25 purchase or possess a firearm or to qualify for a concealed pistol
26 license.

27 (b) No person shall be presumed incompetent as a consequence of
28 receiving an evaluation or voluntary or involuntary treatment for a
29 mental disorder, under this chapter or any prior laws of this state
30 dealing with mental illness. Competency shall not be determined or
31 withdrawn except under the provisions of chapter (~~10.97~~) 10.77 or
32 11.88 RCW.

33 (c) Any person who leaves a public or private agency following
34 evaluation or treatment for mental disorder shall be given a written
35 statement setting forth the substance of this section.

36 (2) Each person involuntarily detained or committed pursuant to

1 this chapter shall have the right to adequate care and individualized
2 treatment.

3 (3) The provisions of this chapter shall not be construed to deny
4 to any person treatment by spiritual means through prayer in accordance
5 with the tenets and practices of a church or religious denomination.

6 (4) Persons receiving evaluation or treatment under this chapter
7 shall be given a reasonable choice of an available physician or other
8 professional person qualified to provide such services.

9 (5) Whenever any person is detained for evaluation and treatment
10 pursuant to this chapter, both the person and, if possible, a
11 responsible member of his or her immediate family, personal
12 representative, guardian, or conservator, if any, shall be advised as
13 soon as possible in writing or orally, by the officer or person taking
14 him or her into custody or by personnel of the evaluation and treatment
15 facility where the person is detained that unless the person is
16 released or voluntarily admits himself or herself for treatment within
17 seventy-two hours of the initial detention:

18 (a) A judicial hearing in a superior court, either by a judge or
19 court commissioner thereof, shall be held not more than seventy-two
20 hours after the initial detention to determine whether there is
21 probable cause to detain the person after the seventy-two hours have
22 expired for up to an additional fourteen days without further automatic
23 hearing for the reason that the person is a person whose mental
24 disorder presents a likelihood of serious harm or that the person is
25 gravely disabled;

26 (b) The person has a right to communicate immediately with an
27 attorney; has a right to have an attorney appointed to represent him or
28 her before and at the probable cause hearing if he or she is indigent;
29 and has the right to be told the name and address of the attorney that
30 the mental health professional has designated pursuant to this chapter;

31 (c) The person has the right to remain silent and that any
32 statement he or she makes may be used against him or her;

33 (d) The person has the right to present evidence and to cross-
34 examine witnesses who testify against him or her at the probable cause
35 hearing; and

36 (e) The person has the right to refuse psychiatric medications,
37 including antipsychotic medication beginning twenty-four hours prior to
38 the probable cause hearing.

1 (6) When proceedings are initiated under (~~RCW 71.05.150 (2), (3),~~
2 ~~or (4)(b))~~) section 8 of this act, no later than twelve hours after
3 such person is admitted to the evaluation and treatment facility the
4 personnel of the evaluation and treatment facility or the designated
5 mental health professional shall serve on such person a copy of the
6 petition for initial detention and the name, business address, and
7 phone number of the designated attorney and shall forthwith commence
8 service of a copy of the petition for initial detention on the
9 designated attorney.

10 (7) The judicial hearing described in subsection (5) of this
11 section is hereby authorized, and shall be held according to the
12 provisions of subsection (5) of this section and rules promulgated by
13 the supreme court.

14 (8) At the probable cause hearing the detained person shall have
15 the following rights in addition to the rights previously specified:

16 (a) To present evidence on his or her behalf;

17 (b) To cross-examine witnesses who testify against him or her;

18 (c) To be proceeded against by the rules of evidence;

19 (d) To remain silent;

20 (e) To view and copy all petitions and reports in the court file.

21 (9) The physician-patient privilege or the psychologist-client
22 privilege shall be deemed waived in proceedings under this chapter
23 relating to the administration of antipsychotic medications. As to
24 other proceedings under this chapter, the privileges shall be waived
25 when a court of competent jurisdiction in its discretion determines
26 that such waiver is necessary to protect either the detained person or
27 the public.

28 The waiver of a privilege under this section is limited to records
29 or testimony relevant to evaluation of the detained person for purposes
30 of a proceeding under this chapter. Upon motion by the detained person
31 or on its own motion, the court shall examine a record or testimony
32 sought by a petitioner to determine whether it is within the scope of
33 the waiver.

34 The record maker shall not be required to testify in order to
35 introduce medical or psychological records of the detained person so
36 long as the requirements of RCW 5.45.020 are met except that portions
37 of the record which contain opinions as to the detained person's mental

1 state must be deleted from such records unless the person making such
2 conclusions is available for cross-examination.

3 (10) Insofar as danger to the person or others is not created, each
4 person involuntarily detained, treated in a less restrictive
5 alternative course of treatment, or committed for treatment and
6 evaluation pursuant to this chapter shall have, in addition to other
7 rights not specifically withheld by law, the following rights:

8 (a) To wear his or her own clothes and to keep and use his or her
9 own personal possessions, except when deprivation of same is essential
10 to protect the safety of the resident or other persons;

11 (b) To keep and be allowed to spend a reasonable sum of his or her
12 own money for canteen expenses and small purchases;

13 (c) To have access to individual storage space for his or her
14 private use;

15 (d) To have visitors at reasonable times;

16 (e) To have reasonable access to a telephone, both to make and
17 receive confidential calls, consistent with an effective treatment
18 program;

19 (f) To have ready access to letter writing materials, including
20 stamps, and to send and receive uncensored correspondence through the
21 mails;

22 (g) To discuss treatment plans and decisions with professional
23 persons;

24 (h) Not to consent to the administration of antipsychotic
25 medications and not to thereafter be administered antipsychotic
26 medications unless ordered by a court under RCW 71.05.217 or pursuant
27 to an administrative hearing under RCW 71.05.215;

28 (i) Not to consent to the performance of electroconvulsant therapy
29 or surgery, except emergency life-saving surgery, unless ordered by a
30 court under RCW 71.05.217;

31 (j) Not to have psychosurgery performed on him or her under any
32 circumstances;

33 (k) To dispose of property and sign contracts unless such person
34 has been adjudicated an incompetent in a court proceeding directed to
35 that particular issue.

36 (11) Every person involuntarily detained shall immediately be
37 informed of his or her right to a hearing to review the legality of his
38 or her detention and of his or her right to counsel, by the

1 professional person in charge of the facility providing evaluation and
2 treatment, or his or her designee, and, when appropriate, by the court.
3 If the person so elects, the court shall immediately appoint an
4 attorney to assist him or her.

5 (12) A person challenging his or her detention or his or her
6 attorney((~~τ~~)) shall have the right to designate and have the court
7 appoint a reasonably available independent physician or licensed mental
8 health professional to examine the person detained, the results of
9 which examination may be used in the proceeding. The person shall, if
10 he or she is financially able, bear the cost of such expert
11 ((~~information—[examination]~~)) examination, otherwise such expert
12 examination shall be at public expense.

13 (13) Nothing contained in this chapter shall prohibit the patient
14 from petitioning by writ of habeas corpus for release.

15 (14) Nothing in this chapter shall prohibit a person committed on
16 or prior to January 1, 1974, from exercising a right available to him
17 or her at or prior to January 1, 1974, for obtaining release from
18 confinement.

19 (15) Nothing in this section permits any person to knowingly
20 violate a no-contact order or a condition of an active judgment and
21 sentence or an active condition of supervision by the department of
22 corrections.

23 **Sec. 15.** RCW 71.05.390 and 2005 c 504 s 109, 2005 c 453 s 5, and
24 2005 c 274 s 346 are each reenacted and amended to read as follows:

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

31 Information and records may be disclosed only:

32 (1) In communications between qualified professional persons to
33 meet the requirements of this chapter, in the provision of services or
34 appropriate referrals, or in the course of guardianship proceedings.
35 The consent of the person, or his or her personal representative or
36 guardian, shall be obtained before information or records may be

1 disclosed by a professional person employed by a facility unless
2 provided to a professional person:

3 (a) Employed by the facility;

4 (b) Who has medical responsibility for the patient's care;

5 (c) Who is a designated mental health professional;

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

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

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

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

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

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

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

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

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

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

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

1 "As a condition of conducting evaluation or research concerning
2 persons who have received services from (fill in the facility, agency,
3 or person) I,, agree not to divulge, publish, or
4 otherwise make known to unauthorized persons or the public any
5 information obtained in the course of such evaluation or research
6 regarding persons who have received services such that the person who
7 received such services is identifiable.

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

10 /s/ "

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

15 (6)(a) To the courts as necessary to the administration of this
16 chapter or to a court ordering an evaluation or treatment under chapter
17 10.77 RCW solely for the purpose of preventing the entry of any
18 evaluation or treatment order that is inconsistent with any order
19 entered under this chapter.

20 (b) To a court or its designee in which a motion under chapter
21 10.77 RCW has been made for involuntary medication of a defendant for
22 the purpose of competency restoration.

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

25 (7)(a) When a mental health professional is requested by a
26 representative of a law enforcement or corrections agency, including a
27 police officer, sheriff, community corrections officer, a municipal
28 attorney, or prosecuting attorney to undertake an investigation or
29 provide treatment under RCW 71.05.150 or section 2 or 8 of this act,
30 the mental health professional shall, if requested to do so, advise the
31 representative in writing of the results of the investigation including
32 a statement of reasons for the decision to detain or release the person
33 investigated. Such written report shall be submitted within seventy-
34 two hours of the completion of the investigation or the request from

1 the law enforcement or corrections representative, whichever occurs
2 later.

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

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

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

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

30 (iv) Information and records shall be disclosed to the department
31 of corrections pursuant to and in compliance with the provisions of RCW
32 71.05.445 for the purposes of completing presentence investigations or
33 risk assessment reports, supervision of an incarcerated offender or
34 offender under supervision in the community, planning for and provision
35 of supervision of an offender, or assessment of an offender's risk to
36 the community; and

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

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

2 (9) To the prosecuting attorney as necessary to carry out the
3 responsibilities of the office under RCW 71.05.330(2) and
4 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access
5 to records regarding the committed person's treatment and prognosis,
6 medication, behavior problems, and other records relevant to the issue
7 of whether treatment less restrictive than inpatient treatment is in
8 the best interest of the committed person or others. Information shall
9 be disclosed only after giving notice to the committed person and the
10 person's counsel.

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

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

30 (12) To the persons designated in RCW 71.05.425 for the purposes
31 described in that section.

32 (13) Civil liability and immunity for the release of information
33 about a particular person who is committed to the department under RCW
34 71.05.280(3) and 71.05.320(~~(+2)~~) (3)(c) after dismissal of a sex
35 offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

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

1 Next of kin who are of legal age and competent shall be notified
2 under this section in the following order: Spouse, parents, children,
3 brothers and sisters, and other relatives according to the degree of
4 relation. Access to all records and information compiled, obtained, or
5 maintained in the course of providing services to a deceased patient
6 shall be governed by RCW 70.02.140.

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

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

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

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

25 (b) The law enforcement and prosecuting attorneys may only release
26 the information obtained to the person's attorney as required by court
27 rule and to a jury or judge, if a jury is waived, that presides over
28 any trial at which the person is charged with violating RCW
29 9.41.040(2)(a)(ii);

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

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

1 agencies designated by the physician in charge of the patient or the
2 professional person in charge of the facility, or his or her
3 professional designee.

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

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

25 NEW SECTION. **Sec. 16.** Nothing in this act shall be construed to
26 alter or diminish a prosecutor's inherent authority to divert or pursue
27 the prosecution of criminal offenders.

28 NEW SECTION. **Sec. 17.** RCW 10.77.090 (Stay of proceedings--
29 Commitment--Findings--Evaluation, treatment--Extensions of commitment--
30 Alternative procedures--Procedure in nonfelony charge) and 2000 c 74 s
31 3, 1998 c 297 s 38, 1989 c 420 s 5, 1979 ex.s. c 215 s 3, 1974 ex.s. c
32 198 s 8, & 1973 1st ex.s. c 117 s 9 are each repealed.

33 NEW SECTION. **Sec. 18.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 19.** Captions used in this act are not any part
4 of the law.

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