
SENATE BILL 5056

State of Washington

62nd Legislature

2011 Regular Session

By Senators Kline, Carrell, Hargrove, Pflug, Nelson, Harper, Kohl-
Welles, Regala, and Roach

Read first time 01/12/11. Referred to Committee on Judiciary.

1 AN ACT Relating to bail and pretrial release practices; amending
2 RCW 2.56.030, 10.19.090, 10.19.100, 10.19.160, 18.185.010, 18.185.020,
3 18.185.040, 18.185.050, 18.185.070, 18.185.100, 18.185.110, and
4 71.05.385; reenacting and amending RCW 42.56.360 and 71.05.390; adding
5 a new section to chapter 2.56 RCW; adding a new section to chapter
6 10.16 RCW; adding new sections to chapter 10.19 RCW; adding a new
7 section to chapter 10.31 RCW; adding a new section to chapter 18.185
8 RCW; creating new sections; and making appropriations.

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

10 **Sec. 1.** RCW 2.56.030 and 2009 c 479 s 2 are each amended to read
11 as follows:

12 The administrator for the courts shall, under the supervision and
13 direction of the chief justice:

14 (1) Examine the administrative methods and systems employed in the
15 offices of the judges, clerks, stenographers, and employees of the
16 courts and make recommendations, through the chief justice, for the
17 improvement of the same;

18 (2) Examine the state of the dockets of the courts and determine
19 the need for assistance by any court;

1 (3) Make recommendations to the chief justice relating to the
2 assignment of judges where courts are in need of assistance and carry
3 out the direction of the chief justice as to the assignments of judges
4 to counties and districts where the courts are in need of assistance;

5 (4) Collect and compile statistical and other data and make reports
6 of the business transacted by the courts and transmit the same to the
7 chief justice to the end that proper action may be taken in respect
8 thereto;

9 (5) Prepare and submit budget estimates of state appropriations
10 necessary for the maintenance and operation of the judicial system and
11 make recommendations in respect thereto;

12 (6) Collect statistical and other data and make reports relating to
13 the expenditure of public moneys, state and local, for the maintenance
14 and operation of the judicial system and the offices connected
15 therewith;

16 (7) Obtain reports from clerks of courts in accordance with law or
17 rules adopted by the supreme court of this state on cases and other
18 judicial business in which action has been delayed beyond periods of
19 time specified by law or rules of court and make report thereof to
20 supreme court of this state;

21 (8) Act as secretary of the judicial conference referred to in RCW
22 2.56.060;

23 (9) Submit annually, as of February 1st, to the chief justice, a
24 report of the activities of the administrator's office for the
25 preceding calendar year including activities related to courthouse
26 security;

27 (10) Administer programs and standards for the training and
28 education of judicial personnel;

29 (11) Examine the need for new superior court and district court
30 judge positions under an objective workload analysis. The results of
31 the objective workload analysis shall be reviewed by the board for
32 judicial administration which shall make recommendations to the
33 legislature. It is the intent of the legislature that an objective
34 workload analysis become the basis for creating additional district and
35 superior court positions, and recommendations should address that
36 objective;

37 (12) Provide staff to the judicial retirement account plan under
38 chapter 2.14 RCW;

1 (13) Attend to such other matters as may be assigned by the supreme
2 court of this state;

3 (14) Within available funds, develop a curriculum for a general
4 understanding of child development, placement, and treatment resources,
5 as well as specific legal skills and knowledge of relevant statutes
6 including chapters 13.32A, 13.34, and 13.40 RCW, cases, court rules,
7 interviewing skills, and special needs of the abused or neglected
8 child. This curriculum shall be completed and made available to all
9 juvenile court judges, court personnel, and service providers and be
10 updated yearly to reflect changes in statutes, court rules, or case
11 law;

12 (15) Develop, in consultation with the entities set forth in RCW
13 2.56.150(3), a comprehensive statewide curriculum for persons who act
14 as guardians ad litem under Title 13 or 26 RCW. The curriculum shall
15 be made available July 1, 2008, and include specialty sections on child
16 development, child sexual abuse, child physical abuse, child neglect,
17 domestic violence, clinical and forensic investigative and interviewing
18 techniques, family reconciliation and mediation services, and relevant
19 statutory and legal requirements. The curriculum shall be made
20 available to all superior court judges, court personnel, and all
21 persons who act as guardians ad litem;

22 (16) Develop a curriculum for a general understanding of crimes of
23 malicious harassment, as well as specific legal skills and knowledge of
24 RCW 9A.36.080, relevant cases, court rules, and the special needs of
25 malicious harassment victims. This curriculum shall be made available
26 to all superior court and court of appeals judges and to all justices
27 of the supreme court;

28 (17) Develop, in consultation with the criminal justice training
29 commission and the commissions established under chapters 43.113,
30 43.115, and 43.117 RCW, a curriculum for a general understanding of
31 ethnic and cultural diversity and its implications for working with
32 youth of color and their families. The curriculum shall be available
33 to all superior court judges and court commissioners assigned to
34 juvenile court, and other court personnel. Ethnic and cultural
35 diversity training shall be provided annually so as to incorporate
36 cultural sensitivity and awareness into the daily operation of juvenile
37 courts statewide;

1 (18) Authorize the use of closed circuit television and other
2 electronic equipment in judicial proceedings. The administrator shall
3 promulgate necessary standards and procedures and shall provide
4 technical assistance to courts as required;

5 (19) Develop a Washington family law handbook in accordance with
6 RCW 2.56.180;

7 (20) Administer state funds for improving the operation of the
8 courts and provide support for court coordinating councils, under the
9 direction of the board for judicial administration;

10 (21) Administer the family and juvenile court improvement grant
11 program;

12 (22)(a) Administer and distribute amounts appropriated under RCW
13 43.08.250(2) for district court judges' and qualifying elected
14 municipal court judges' salary contributions. The administrator for
15 the courts shall develop a distribution formula for these amounts that
16 does not differentiate between district and elected municipal court
17 judges.

18 (b) A city qualifies for state contribution of elected municipal
19 court judges' salaries under (a) of this subsection if:

20 (i) The judge is serving in an elected position;

21 (ii) The city has established by ordinance that a full-time judge
22 is compensated at a rate equivalent to at least ninety-five percent,
23 but not more than one hundred percent, of a district court judge salary
24 or for a part-time judge on a pro rata basis the same equivalent; and

25 (iii) The city has certified to the office of the administrator for
26 the courts that the conditions in (b)(i) and (ii) of this subsection
27 have been met;

28 (23) Subject to the availability of funds specifically appropriated
29 therefor, assist courts in the development and implementation of
30 language assistance plans required under RCW 2.43.090;

31 (24) Provide superior courts and courts of limited jurisdiction
32 access to the risk assessment tool developed by the Washington state
33 institute for public policy and used by the department of corrections
34 to assist judges in the pretrial release and detention process.

35 NEW SECTION. Sec. 2. A new section is added to chapter 2.56 RCW
36 to read as follows:

37 (1) The Washington state center for court research shall research,

1 evaluate, monitor, and report on the validity of the risk assessment
2 tool developed by the Washington state institute for public policy to
3 ensure the predictive value of the tool. Specifically, it shall:

4 (a) Monitor and report on the implementation of the risk assessment
5 tool to assess the extent to which bail setting practices are
6 responsive to risk for recidivism levels derived from the risk
7 assessment tool;

8 (b) Monitor and report on the accuracy of the risk assessment tool
9 in predicting recidivism; and

10 (c) Provide quality assurance and technical assistance to the
11 courts for the implementation and use of the risk assessment tool.

12 (2) By December 1, 2012, and every two years thereafter, the
13 Washington center for court research shall submit a report and
14 recommendations regarding the validity of the risk assessment tool to
15 the governor, the supreme court, and the legislature.

16 NEW SECTION. **Sec. 3.** A new section is added to chapter 10.16 RCW
17 to read as follows:

18 At the preliminary appearance or a subsequent hearing to reconsider
19 conditions of pretrial release or detention, the court may issue an
20 order requesting information related to mental health services, as
21 defined in RCW 71.05.020, that have been provided to the defendant. On
22 motion of the defendant or on the court's own motion, the court may
23 exclude the public from the hearing, seal portions of the hearing
24 record or court files, or grant other relief as may be necessary to
25 prevent disclosure to the public of information related to mental
26 health services, as defined in RCW 71.05.020.

27 NEW SECTION. **Sec. 4.** A new section is added to chapter 10.19 RCW
28 to read as follows:

29 The Washington state institute for public policy shall develop and
30 validate a pretrial risk assessment tool to measure the likelihood that
31 a defendant will fail to appear in court as required. The Washington
32 state institute for public policy shall complete the development and
33 validation of the pretrial risk assessment tool by December 1, 2011.
34 The institute shall submit a final report to the governor, the supreme
35 court, and the legislature by December 1, 2011. The report shall

1 describe the methodology for developing and validating the pretrial
2 risk assessment tool and the predictive value of the tool.

3 **Sec. 5.** RCW 10.19.090 and 1986 c 322 s 2 are each amended to read
4 as follows:

5 In criminal cases where a recognizance for the appearance of any
6 person, either as a witness or to appear and answer, shall have been
7 taken and a default entered, the recognizance shall be declared
8 forfeited by the court, and at the time of adjudging such forfeiture
9 said court shall enter judgment against the principal and sureties
10 named in such recognizance for the sum therein mentioned, and execution
11 may issue thereon the same as upon other judgments. If the surety is
12 not notified by the court in writing of the unexplained failure of the
13 defendant to appear within (~~thirty~~) fourteen calendar days of the
14 date for appearance, then the forfeiture shall be null and void and the
15 recognizance exonerated.

16 **Sec. 6.** RCW 10.19.100 and 1891 c 28 s 86 are each amended to read
17 as follows:

18 The parties, or either of them, against whom such judgment may be
19 entered in the superior or supreme courts, may stay said execution for
20 sixty days from the date of the notification by the court by giving a
21 bond with two or more sureties, to be approved by the clerk,
22 conditioned for the payment of such judgment at the expiration of sixty
23 days, unless the same shall be vacated before the expiration of that
24 time.

25 **Sec. 7.** RCW 10.19.160 and 1986 c 322 s 5 are each amended to read
26 as follows:

27 The surety on the bond may return a person to custody (~~a person~~)
28 for good cause in a criminal case under the surety's bond if the
29 surrender is accompanied by a notice of forfeiture or a notarized
30 affidavit specifying the reasons for the surrender. If a court
31 determines that good cause does not exist for the surety to surrender
32 a person, the surety shall return the premium paid by, or on behalf of,
33 the person, as well as any recovery fee. Good cause for surrender
34 includes, but is not limited to, a substantial increase in the
35 likelihood of the risk of flight, violation of a court order, failure

1 to appear, or the concealment or intentional misrepresentation of
2 information by the person. The surrender shall be made to the facility
3 in which the person was originally held in custody or the county or
4 city jail affiliated with the court issuing the warrant resulting in
5 bail.

6 NEW SECTION. Sec. 8. A new section is added to chapter 10.19 RCW
7 to read as follows:

8 The presiding judge of a court shall notify the administrative
9 office of the courts when the court revokes the justification or
10 certification of a bail bond agent to post bonds in the court. The
11 notice to the administrative office of the courts must include the
12 reasons for the revocation. Upon receiving the notification, the
13 administrative office of the courts shall notify superior courts and
14 courts of limited jurisdiction statewide. No civil liability may be
15 imposed by any court on the administrative office of the courts or its
16 employees under this section except upon proof of bad faith or willful
17 or wanton misconduct or gross negligence.

18 NEW SECTION. Sec. 9. A new section is added to chapter 10.31 RCW
19 to read as follows:

20 A police officer shall complete a standardized form at the time of
21 arrest that includes, to the extent that it is available, information
22 regarding the defendant's mental health and any history of domestic
23 violence. The standardized form must also include, to the extent that
24 it is available, victim input regarding the pretrial release of the
25 defendant.

26 **Sec. 10.** RCW 18.185.010 and 2004 c 186 s 2 are each amended to
27 read as follows:

28 Unless the context clearly requires otherwise, the definitions in
29 this section apply throughout this chapter.

30 (1) "Department" means the department of licensing.

31 (2) "Director" means the director of licensing.

32 (3) "Commission" means the criminal justice training commission.

33 (4) "Collateral or security" means property of any kind given as
34 security to obtain a bail bond.

1 (5) "Bail bond agency" means a business that sells and issues
2 corporate surety bail bonds or that provides security in the form of
3 personal or real property to ensure the appearance of a criminal
4 defendant before the courts of this state or the United States.

5 (6) "Qualified agent" means an owner, sole proprietor, partner,
6 manager, officer, or chief operating officer of a corporation who meets
7 the requirements set forth in this chapter for obtaining a bail bond
8 agency license.

9 (7) "Bail bond agent" means a person who is employed by a bail bond
10 agency and engages in the sale or issuance of bail bonds, but does not
11 mean a clerical, secretarial, or other support person who does not
12 participate in the sale or issuance of bail bonds.

13 (8) "Licensee" means a bail bond agency, a bail bond agent, a
14 qualified agent, or a bail bond recovery agent.

15 (9) "Branch office" means any office physically separated from the
16 principal place of business of the licensee from which the licensee or
17 an employee or agent of the licensee conducts any activity meeting the
18 criteria of a bail bond agency.

19 (10) "Bail bond recovery agent" means a person who is under
20 contract with a bail bond agent to receive compensation, reward, or any
21 other form of lawful consideration for locating, apprehending, and
22 surrendering a fugitive criminal defendant for whom a bail bond has
23 been posted. "Bail bond recovery agent" does not include a general
24 authority Washington peace officer or a limited authority Washington
25 peace officer.

26 ~~(11) ("Contract" means a written agreement between a bail bond~~
27 ~~agent or qualified agent and a bail bond recovery agent for the purpose~~
28 ~~of locating, apprehending, and surrendering a fugitive criminal~~
29 ~~defendant in exchange for lawful consideration.~~

30 (+12+)) "Planned forced entry" means a premeditated forcible entry
31 into a dwelling, building, or other structure without the occupant's
32 knowledge or consent for the purpose of apprehending a fugitive
33 criminal defendant subject to a bail bond. "Planned forced entry" does
34 not include situations where, during an imminent or actual chase or
35 pursuit of a fleeing fugitive criminal defendant, or during a casual or
36 unintended encounter with the fugitive, the bail bond recovery agent
37 forcibly enters into a dwelling, building, or other structure without
38 advanced planning.

1 (12) "Bond limit" means the maximum amount that a bail bond agent
2 may write on any single commercial surety bond or any single commercial
3 property bond.

4 (13) "Commercial property bond" means a bail bond executed for
5 compensation the security for which is real property, tangible personal
6 property, or other assets.

7 (14) "Commercial surety bond" means a bail bond that is guaranteed
8 by an insurance company that has been qualified to transact surety
9 insurance business in Washington state by the insurance commissioner.

10 **Sec. 11.** RCW 18.185.020 and 1993 c 260 s 3 are each amended to
11 read as follows:

12 An applicant must meet the following minimum requirements to obtain
13 a bail bond agent license:

14 (1) Be at least eighteen years of age;

15 (2) Be a citizen or resident alien of the United States;

16 (3) Not have been convicted of a crime in any jurisdiction in the
17 preceding ten years, if the director determines that the applicant's
18 particular crime directly relates to a capacity to perform the duties
19 of a bail bond agent and the director determines that the license
20 should be withheld to protect the citizens of Washington state. If the
21 director shall make a determination to withhold a license because of
22 previous convictions, the determination shall be consistent with the
23 restoration of employment rights act, chapter 9.96A RCW;

24 (4) Be employed by a bail bond agency or be licensed as a bail bond
25 agency; (~~and~~)

26 (5) Pay the required fee; and

27 (6) Demonstrate proof of financial responsibility.

28 **Sec. 12.** RCW 18.185.040 and 2004 c 186 s 4 are each amended to
29 read as follows:

30 (1) Applications for licenses required under this chapter shall be
31 filed with the director on a form provided by the director. The
32 director may require any information and documentation that reasonably
33 relates to the need to determine whether the applicant meets the
34 criteria, including fingerprints.

35 (2) An applicant who intends to post commercial surety bonds shall
36 file the following information and documents with the department:

1 (a) Any outstanding bonds in Washington not yet exonerated,
2 including the court name, the name of the defendant, the amount of the
3 bond, and the date issued;

4 (b) Any bond forfeitures that have not yet been paid or are in
5 dispute;

6 (c) A declaration listing all criminal convictions and previous
7 disciplinary action or investigations undertaken by the department;

8 (d) A copy of the power of attorney for each surety;

9 (e) A copy of the applicant's license issued by the office of the
10 insurance commissioner; and

11 (f) A copy of the corporate surety's certificate of authority
12 issued by the office of the insurance commissioner.

13 (3) An applicant who intends to post commercial property bonds
14 shall file the following information and documents with the department:

15 (a) Any outstanding bonds in Washington not yet exonerated,
16 including the court name, the name of the defendant, the amount of the
17 bond, and the date issued;

18 (b) Any bond forfeitures that have not yet been paid or are in
19 dispute;

20 (c) A declaration listing all criminal convictions and previous
21 disciplinary action or investigations undertaken by the department;

22 (d) A list of all real property owned by the applicant and located
23 in Washington, including an appraisal by a qualified real estate
24 appraiser dated not more than two years prior to the date of
25 application, a title letter, and property tax statements;

26 (e) A list of tangible personal property owned by the applicant and
27 located in Washington; and

28 (f) A list of any irrevocable letters of credit or other bank
29 accounts that are accessible only to a court for the purpose of paying
30 a forfeited bond.

31 (4) Applicants for licensure or endorsement as a bail bond agent or
32 a bail bond recovery agent must complete a records check through the
33 Washington state patrol criminal identification system and through the
34 federal bureau of investigation at the applicant's expense. Such
35 record check shall include a fingerprint check using a Washington state
36 patrol approved fingerprint card. The Washington state patrol shall
37 forward the fingerprints of applicants to the federal bureau of
38 investigation for a national criminal history records check. The

1 director may accept proof of a recent national crime information
2 center/III criminal background report or any national or interstate
3 criminal background report in addition to fingerprints to accelerate
4 the licensing and endorsement process. The director is authorized to
5 periodically perform a background investigation of licensees to
6 identify criminal convictions subsequent to the renewal of a license or
7 endorsement.

8 **Sec. 13.** RCW 18.185.050 and 1993 c 260 s 6 are each amended to
9 read as follows:

10 (1) The director shall issue a bail bond agent license card to each
11 licensed bail bond agent. The bail bond agent license card must
12 indicate the licensee's bond limit for commercial surety bonds and
13 commercial property bonds. A bail bond agent shall carry the license
14 card whenever he or she is performing the duties of a bail bond agent
15 and shall exhibit the card upon request.

16 (2) The director shall issue a license certificate to each licensed
17 bail bond agency.

18 (a) Within seventy-two hours after receipt of the license
19 certificate, the licensee shall post and display the certificate in a
20 conspicuous place in the principal office of the licensee within the
21 state.

22 (b) It is unlawful for any person holding a license certificate to
23 knowingly and willfully post the license certificate upon premises
24 other than those described in the license certificate or to materially
25 alter a license certificate.

26 (c) Every advertisement by a licensee that solicits or advertises
27 business shall contain the name of the licensee, the address of record,
28 and the license number as they appear in the records of the director.

29 (d) The licensee shall notify the director within thirty days of
30 any change in the licensee's officers or directors or any material
31 change in the information furnished or required to be furnished to the
32 director.

33 **Sec. 14.** RCW 18.185.070 and 1993 c 260 s 8 are each amended to
34 read as follows:

35 (1) No bail bond agency license may be issued under the provisions
36 of this chapter unless the qualified agent files with the director a

1 bond, executed by a surety company authorized to do business in this
2 state, in the sum of (~~ten~~) one hundred thousand dollars conditioned
3 to recover against the agency and its servants, officers, agents, and
4 employees by reason of its violation of the provisions of RCW
5 18.185.100. The bond shall be made payable to the state of Washington,
6 and anyone so injured by the agency or its servants, officers, agents,
7 or employees may bring suit upon the bond in any county in which
8 jurisdiction over the licensee may be obtained. The suit must be
9 brought not later than two years after the failure to return property
10 in accordance with RCW 18.185.100. If valid claims against the bond
11 exceed the amount of the bond or deposit, each claimant shall be
12 entitled only to a pro rata amount, based on the amount of the claim as
13 it is valid against the bond, without regard to the date of filing of
14 any claim or action.

15 (2) Every licensed bail bond agency must at all times maintain on
16 file with the director the bond required by this section in full force
17 and effect. Upon failure by a licensee to do so, the director shall
18 suspend the licensee's license and shall not reinstate the license
19 until this requirement is met.

20 (3) In lieu of posting a bond, a qualified agent may deposit in an
21 interest-bearing account, (~~ten~~) one hundred thousand dollars.

22 (4) The director may waive the bond requirements of this section,
23 in his or her discretion, pursuant to adopted rules.

24 **Sec. 15.** RCW 18.185.100 and 2004 c 186 s 8 are each amended to
25 read as follows:

26 (1)(a) Every qualified agent shall keep adequate records for three
27 years of all collateral and security received, all trust accounts
28 required by this section, and all bail bond transactions handled by the
29 bail bond agency, as specified by rule. The records shall be open to
30 inspection without notice by the director or authorized representatives
31 of the director.

32 (b) The department may audit licensee trust accounts every two
33 years unless the licensee submits a financial report prepared by a
34 certified public accountant to the department on an annual basis.

35 (2) Every qualified agent who receives collateral or security is a
36 fiduciary of the property and shall keep adequate records for three
37 years of the receipt, safekeeping, and disposition of the collateral or

1 security. Every qualified agent shall maintain a trust account in a
2 federally insured financial institution located in this state. All
3 moneys, including cash, checks, money orders, wire transfers, and
4 credit card sales drafts, received as collateral or security or
5 otherwise held for a bail bond agency's client shall be deposited in
6 the trust account not later than the third banking day following
7 receipt of the funds or money. A qualified agent shall not in any way
8 encumber the corpus of the trust account or commingle any other moneys
9 with moneys properly maintained in the trust account. Each qualified
10 agent required to maintain a trust account shall report annually under
11 oath to the director the account number and balance of the trust
12 account, and the name and address of the institution that holds the
13 trust account, and shall report to the director within ten business
14 days whenever the trust account is changed or relocated or a new trust
15 account is opened.

16 (3) Whenever a bail bond is exonerated by the court, the qualified
17 agent shall, within five business days after written notification of
18 exoneration, return all collateral or security to the person entitled
19 thereto.

20 (4) Records of contracts for fugitive apprehension must be retained
21 by the bail bond agent and by the bail bond recovery agent for a period
22 of three years.

23 **Sec. 16.** RCW 18.185.110 and 2008 c 105 s 4 are each amended to
24 read as follows:

25 In addition to the unprofessional conduct described in RCW
26 18.235.130, the following conduct, acts, or conditions constitute
27 unprofessional conduct:

28 (1) Violating any of the provisions of this chapter or the rules
29 adopted under this chapter;

30 (2) Failing to meet the qualifications set forth in RCW 18.185.020,
31 18.185.030, and 18.185.250;

32 (3) Knowingly committing, or being a party to, any material fraud,
33 misrepresentation, concealment, conspiracy, collusion, trick, scheme,
34 or device whereby any other person lawfully relies upon the word,
35 representation, or conduct of the licensee. However, this subsection
36 (3) does not prevent a bail bond recovery agent from using any pretext

1 to locate or apprehend a fugitive criminal defendant or gain any
2 information regarding the fugitive;

3 (4) Assigning or transferring any license issued pursuant to the
4 provisions of this chapter, except as provided in RCW 18.185.030 or
5 18.185.250;

6 (5) Conversion of any money or contract, deed, note, mortgage, or
7 other evidence of title, to his or her own use or to the use of his or
8 her principal or of any other person, when delivered to him or her in
9 trust or on condition, in violation of the trust or before the
10 happening of the condition; and failure to return any money or
11 contract, deed, note, mortgage, or other evidence of title within
12 thirty days after the owner is entitled to possession, and makes demand
13 for possession, shall be prima facie evidence of conversion;

14 (6) Entering into a contract, including a general power of
15 attorney, with a person that gives the bail bond agent full authority
16 over the person's finances, assets, real property, or personal
17 property;

18 (7) Failing to keep records, maintain a trust account, or return
19 collateral or security, as required by RCW 18.185.100;

20 ((+7)) (8) Any conduct in a bail bond transaction which
21 demonstrates bad faith, dishonesty, or untrustworthiness;

22 ((+8)) (9) Violation of an order to cease and desist that is
23 issued by the director under chapter 18.235 RCW;

24 ((+9)) (10) Wearing, displaying, holding, or using badges not
25 approved by the department;

26 ((+10)) (11) Making any statement that would reasonably cause
27 another person to believe that the bail bond recovery agent is a sworn
28 peace officer;

29 ((+11)) (12) Failing to carry a copy of the contract or to present
30 a copy of the contract as required under RCW 18.185.270(1);

31 ((+12)) (13) Using the services of an unlicensed bail bond
32 recovery agent or using the services of a bail bond recovery agent
33 without issuing the proper contract;

34 ((+13)) (14) Misrepresenting or knowingly making a material
35 misstatement or omission in the application for a license;

36 ((+14)) (15) Using the services of a person performing the
37 functions of a bail bond recovery agent who has not been licensed by
38 the department as required by this chapter;

1 (~~(15)~~) (16) Performing the functions of a bail bond recovery
2 agent without being both (a) licensed under this chapter or supervised
3 by a licensed bail bond recovery agent under RCW 18.185.290; and (b)
4 under contract with a bail bond agent;

5 (~~(16)~~) (17) Performing the functions of a bail bond recovery
6 agent without exercising due care to protect the safety of persons
7 other than the defendant and the property of persons other than the
8 defendant; or

9 (~~(17)~~) (18) Using a dog in the apprehension of a fugitive
10 criminal defendant.

11 NEW SECTION. **Sec. 17.** A new section is added to chapter 18.185
12 RCW to read as follows:

13 (1) To determine whether an applicant has demonstrated proof of
14 financial responsibility as required by RCW 18.185.020, the department
15 shall consider the information and documents filed under RCW
16 18.185.040. For purposes of determining financial responsibility, the
17 department may not take into consideration a bank account other than an
18 irrevocable letter of credit or other bank account that is accessible
19 only to a court for the purpose of paying a forfeited bond.

20 (2) Once the department has determined that an applicant has
21 demonstrated proof of financial responsibility, the department shall
22 determine the applicant's bond limit for commercial surety bonds and
23 commercial property bonds.

24 NEW SECTION. **Sec. 18.** The Legislature intends, in response to
25 *Koenig v. Thurston County*, 155 Wn. App. 398 (2010), to clarify that
26 public inspection of or access to information related to mental health
27 is subject to chapter 71.05 RCW and not the public records act, chapter
28 42.56 RCW.

29 **Sec. 19.** RCW 42.56.360 and 2010 c 128 s 3 and 2010 c 52 s 6 are
30 each reenacted and amended to read as follows:

31 (1) The following health care information is exempt from disclosure
32 under this chapter:

33 (a) Information obtained by the board of pharmacy as provided in
34 RCW 69.45.090;

1 (b) Information obtained by the board of pharmacy or the department
2 of health and its representatives as provided in RCW 69.41.044,
3 69.41.280, and 18.64.420;

4 (c) Information and documents created specifically for, and
5 collected and maintained by a quality improvement committee under RCW
6 43.70.510, 70.230.080, or 70.41.200, or by a peer review committee
7 under RCW 4.24.250, or by a quality assurance committee pursuant to RCW
8 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056,
9 for reporting of health care-associated infections under RCW 43.70.056,
10 a notification of an incident under RCW 70.56.040(5), and reports
11 regarding adverse events under RCW 70.56.020(2)(b), regardless of which
12 agency is in possession of the information and documents;

13 (d)(i) Proprietary financial and commercial information that the
14 submitting entity, with review by the department of health,
15 specifically identifies at the time it is submitted and that is
16 provided to or obtained by the department of health in connection with
17 an application for, or the supervision of, an antitrust exemption
18 sought by the submitting entity under RCW 43.72.310;

19 (ii) If a request for such information is received, the submitting
20 entity must be notified of the request. Within ten business days of
21 receipt of the notice, the submitting entity shall provide a written
22 statement of the continuing need for confidentiality, which shall be
23 provided to the requester. Upon receipt of such notice, the department
24 of health shall continue to treat information designated under this
25 subsection (1)(d) as exempt from disclosure;

26 (iii) If the requester initiates an action to compel disclosure
27 under this chapter, the submitting entity must be joined as a party to
28 demonstrate the continuing need for confidentiality;

29 (e) Records of the entity obtained in an action under RCW 18.71.300
30 through 18.71.340;

31 (f) Complaints filed under chapter 18.130 RCW after July 27, 1997,
32 to the extent provided in RCW 18.130.095(1);

33 (g) Information obtained by the department of health under chapter
34 70.225 RCW;

35 (h) Information collected by the department of health under chapter
36 70.245 RCW except as provided in RCW 70.245.150;

37 (i) Cardiac and stroke system performance data submitted to

1 national, state, or local data collection systems under RCW
2 70.168.150(2)(b); and

3 (j) All documents, including completed forms, received pursuant to
4 a wellness program under RCW 41.04.362, but not statistical reports
5 that do not identify an individual.

6 (2) Chapters 70.02 and 71.05 RCW (~~((applies))~~) apply to public
7 inspection and copying of health care information (~~((of patients))~~) and
8 information related to mental health services.

9 (3)(a) Documents related to infant mortality reviews conducted
10 pursuant to RCW 70.05.170 are exempt from disclosure as provided for in
11 RCW 70.05.170(3).

12 (b)(i) If an agency provides copies of public records to another
13 agency that are exempt from public disclosure under this subsection
14 (3), those records remain exempt to the same extent the records were
15 exempt in the possession of the originating entity.

16 (ii) For notice purposes only, agencies providing exempt records
17 under this subsection (3) to other agencies may mark any exempt records
18 as "exempt" so that the receiving agency is aware of the exemption,
19 however whether or not a record is marked exempt does not affect
20 whether the record is actually exempt from disclosure.

21 **Sec. 20.** RCW 71.05.385 and 2009 c 320 s 2 are each amended to read
22 as follows:

23 (1) A mental health service provider shall release to the persons
24 authorized under subsection (2) of this section, upon request:

25 (a) The fact, place, and date of an involuntary commitment, the
26 fact and date of discharge or release, and the last known address of a
27 person who has been committed under this chapter.

28 (b) Information related to mental health services, in the format
29 determined under subsection (9) of this section, concerning a person
30 who:

31 (i) Is currently committed to the custody or supervision of the
32 department of corrections or the indeterminate sentence review board
33 under chapter 9.94A or 9.95 RCW;

34 (ii) Has been convicted or found not guilty by reason of insanity
35 of a serious violent offense; or

36 (iii) Was charged with a serious violent offense and such charges
37 were dismissed under RCW 10.77.086.

1 Legal counsel may release such information to the persons
2 authorized under subsection (2) of this section on behalf of the mental
3 health service provider, provided that nothing in this subsection shall
4 require the disclosure of attorney work product or attorney-client
5 privileged information.

6 (2) The information subject to release under subsection (1) of this
7 section shall be released to law enforcement officers, personnel of a
8 county or city jail, prosecuting attorneys, designated mental health
9 professionals, public health officers, (~~(therapeutic)~~) court personnel,
10 personnel of the department of corrections, or personnel of the
11 indeterminate sentence review board, when such information is requested
12 during the course of business and for the purpose of carrying out the
13 responsibilities of the requesting person's office. No mental health
14 service provider or person employed by a mental health service
15 provider, or its legal counsel, shall be liable for information
16 released to or used under the provisions of this section or rules
17 adopted under this section except under RCW 71.05.440.

18 (3) A person who requests information under subsection (1)(b) of
19 this section must comply with the following restrictions:

20 (a) Information must be requested only for the purposes permitted
21 by this subsection and for the purpose of carrying out the
22 responsibilities of the requesting person's office. Appropriate
23 purposes for requesting information under this section include:

24 (i) Completing presentence investigations or risk assessment
25 reports;

26 (ii) Assessing a person's risk to the community;

27 (iii) Assessing a person's risk of harm to self or others when
28 confined in a city or county jail;

29 (iv) Planning for and provision of supervision of an offender,
30 including decisions related to sanctions for violations of conditions
31 of community supervision; and

32 (v) Responding to an offender's failure to report for department of
33 corrections supervision.

34 (b) Information shall not be requested under this section unless
35 the requesting person has reasonable suspicion that the individual who
36 is the subject of the information:

37 (i) Has engaged in activity indicating that a crime or a violation

1 of community custody or parole has been committed or, based upon his or
2 her current or recent past behavior, is likely to be committed in the
3 near future; or

4 (ii) Is exhibiting signs of a deterioration in mental functioning
5 which may make the individual appropriate for civil commitment under
6 this chapter.

7 (c) Any information received under this section shall be held
8 confidential and subject to the limitations on disclosure outlined in
9 this chapter, except:

10 (i) Such information may be shared with other persons who have the
11 right to request similar information under subsection (2) of this
12 section, solely for the purpose of coordinating activities related to
13 the individual who is the subject of the information in a manner
14 consistent with the official responsibilities of the persons involved;

15 (ii) Such information may be shared with a prosecuting attorney
16 acting in an advisory capacity for a person who receives information
17 under this section. A prosecuting attorney under this subsection shall
18 be subject to the same restrictions and confidentiality limitations as
19 the person who requested the information; and

20 (iii) As provided in RCW 72.09.585.

21 (4) A request for information related to mental health services
22 under this section shall not require the consent of the subject of the
23 records. Such request shall be provided in writing, except to the
24 extent authorized in subsection (5) of this section. A written request
25 may include requests made by e-mail or facsimile so long as the
26 requesting person is clearly identified. The request must specify the
27 information being requested.

28 (5) In the event of an emergency situation that poses a significant
29 risk to the public or the offender, a mental health service provider,
30 or its legal counsel, shall release information related to mental
31 health services delivered to the offender and, if known, information
32 regarding where the offender is likely to be found to the department of
33 corrections or law enforcement upon request. The initial request may
34 be written or oral. All oral requests must be subsequently confirmed
35 in writing. Information released in response to an oral request is
36 limited to a statement as to whether the offender is or is not being
37 treated by the mental health service provider and the address or
38 information about the location or whereabouts of the offender.

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

4 (7) Whenever federal law or federal regulations restrict the
5 release of information contained in the treatment records of any
6 patient who receives treatment for alcoholism or drug dependency, the
7 release of the information may be restricted as necessary to comply
8 with federal law and regulations.

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

12 (9) In collaboration with interested organizations, the department
13 shall develop a standard form for requests for information related to
14 mental health services made under this section and a standard format
15 for information provided in response to such requests. Consistent with
16 the goals of the health information privacy provisions of the federal
17 health insurance portability and accountability act, in developing the
18 standard form for responsive information, the department shall design
19 the form in such a way that the information disclosed is limited to the
20 minimum necessary to serve the purpose for which the information is
21 requested.

22 **Sec. 21.** RCW 71.05.390 and 2009 c 320 s 3 and 2009 c 217 s 6 are
23 each reenacted and amended to read as follows:

24 Except as provided in this section, RCW 71.05.445, 71.05.630,
25 70.96A.150, 71.05.385, or pursuant to a valid release under RCW
26 70.02.030, the fact of admission and all information and records
27 compiled, obtained, or maintained in the course of providing services
28 to either voluntary or involuntary recipients of services at public or
29 private agencies shall be confidential.

30 Information and records may be disclosed only:

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

- 1 (a) Employed by the facility;
2 (b) Who has medical responsibility for the patient's care;
3 (c) Who is a designated mental health professional;
4 (d) Who is providing services under chapter 71.24 RCW;
5 (e) Who is employed by a state or local correctional facility where
6 the person is confined or supervised; or
7 (f) Who is providing evaluation, treatment, or follow-up services
8 under chapter 10.77 RCW.

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

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

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

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

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

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

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

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

37 "As a condition of conducting evaluation or research concerning
38 persons who have received services from (fill in the facility, agency,

1 or person) I,, agree not to divulge, publish, or
2 otherwise make known to unauthorized persons or the public any
3 information obtained in the course of such evaluation or research
4 regarding persons who have received services such that the person who
5 received such services is identifiable.

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

8 /s/"

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

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

18 (b) To a court or its designee in which a motion under chapter
19 10.77 RCW has been made for involuntary medication of a defendant for
20 the purpose of competency restoration.

21 (c) To a court, prosecuting attorney, and defense attorney for the
22 purpose of determining conditions of pretrial release or detention.

23 (d) 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, 10.31.110, or 71.05.153, the
30 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-

1 two hours of the completion of the investigation or the request from
2 the law enforcement or corrections representative, whichever occurs
3 later.

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

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

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

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

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

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

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

1 (12) To the persons designated in RCW 71.05.425 and 71.05.385 for
2 the purposes described in those sections.

3 (13) Civil liability and immunity for the release of information
4 about a particular person who is committed to the department under RCW
5 71.05.280(3) and 71.05.320(3)(c) after dismissal of a sex offense as
6 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

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

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

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

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

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

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

33 (b) The law enforcement and prosecuting attorneys may only release
34 the information obtained to the person's attorney as required by court
35 rule and to a jury or judge, if a jury is waived, that presides over
36 any trial at which the person is charged with violating RCW
37 9.41.040(2)(a)(ii);

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

3 (18) When a patient would otherwise be subject to the provisions of
4 this section and disclosure is necessary for the protection of the
5 patient or others due to his or her unauthorized disappearance from the
6 facility, and his or her whereabouts is unknown, notice of such
7 disappearance, along with relevant information, may be made to
8 relatives, the department of corrections when the person is under the
9 supervision of the department, and governmental law enforcement
10 agencies designated by the physician or psychiatric advanced registered
11 nurse practitioner in charge of the patient or the professional person
12 in charge of the facility, or his or her professional designee.

13 Except as otherwise provided in this chapter, the uniform health
14 care information act, chapter 70.02 RCW, applies to all records and
15 information compiled, obtained, or maintained in the course of
16 providing services.

17 (19) The fact of admission, as well as all records, files,
18 evidence, findings, or orders made, prepared, collected, or maintained
19 pursuant to this chapter shall not be admissible as evidence in any
20 legal proceeding outside this chapter without the written consent of
21 the person who was the subject of the proceeding except as provided in
22 RCW 71.05.385, in a subsequent criminal prosecution of a person
23 committed pursuant to RCW 71.05.280(3) or 71.05.320(3)(c) on charges
24 that were dismissed pursuant to chapter 10.77 RCW due to incompetency
25 to stand trial, in a civil commitment proceeding pursuant to chapter
26 71.09 RCW, or, in the case of a minor, a guardianship or dependency
27 proceeding. The records and files maintained in any court proceeding
28 pursuant to this chapter shall be confidential and available subsequent
29 to such proceedings only to the person who was the subject of the
30 proceeding or his or her attorney. In addition, the court may order
31 the subsequent release or use of such records or files only upon good
32 cause shown if the court finds that appropriate safeguards for strict
33 confidentiality are and will be maintained.

34 NEW SECTION. **Sec. 22.** The sum of two hundred thousand dollars, or
35 as much thereof as may be necessary, is appropriated for the fiscal
36 year ending June 30, 2012, from the general fund to the administrative

1 office of the courts for the purpose of providing access to the risk
2 assessment tool for pretrial release and detention purposes.

3 NEW SECTION. **Sec. 23.** The sum of ninety thousand dollars, or as
4 much thereof as may be necessary, is appropriated for the fiscal year
5 ending June 30, 2012, from the general fund to the administrative
6 office of the courts to be distributed to the Washington state center
7 for court research for the purpose of maintaining the validity of the
8 risk assessment tool.

9 NEW SECTION. **Sec. 24.** The sum of twenty-five thousand dollars, or
10 as much thereof as may be necessary, is appropriated for the fiscal
11 year ending June 30, 2012, from the general fund to The Evergreen State
12 College to be distributed to the Washington state institute for public
13 policy for the purpose of developing the failure to appear risk
14 assessment tool.

15 NEW SECTION. **Sec. 25.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19 NEW SECTION. **Sec. 26.** If any part of this act is found to be in
20 conflict with federal requirements that are a prescribed condition to
21 the allocation of federal funds to the state, the conflicting part of
22 this act is inoperative solely to the extent of the conflict and with
23 respect to the agencies directly affected, and this finding does not
24 affect the operation of the remainder of this act in its application to
25 the agencies concerned. Rules adopted under this act must meet federal
26 requirements that are a necessary condition to the receipt of federal
27 funds by the state.

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