
HOUSE BILL 2513

State of Washington

56th Legislature

2000 Regular Session

By Representatives Ballasiotes, O'Brien, Koster and Hurst; by request of Department of Social and Health Services and Department of Corrections

Read first time 01/14/2000. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to information concerning mental health services;
2 amending RCW 71.05.630, 71.05.390, and 71.34.200; reenacting and
3 amending RCW 9.94A.110; adding a new section to chapter 71.34 RCW;
4 adding a new section to chapter 71.05 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
7 enhance and facilitate the ability of the department of corrections to
8 carry out its responsibility of planning and ensuring community
9 protection with respect to persons subject to sentencing under chapter
10 9.94A RCW by authorizing access to and release or disclosure of
11 necessary information related to mental health services. This includes
12 accessing and releasing or disclosing information of persons who
13 received mental health services as a minor. It is not the intent of
14 the legislature to readdress access to information and records
15 regarding continuity of care.

16 The legislature recognizes that persons with mental illness have a
17 right to the confidentiality of information related to mental health
18 services, including the fact of their receiving such services, unless
19 there is a state interest that supersedes this right. It is the intent

1 of the legislature to balance that right of the individual with the
2 state interest to enhance public safety.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 71.34 RCW
4 to read as follows:

5 (1) The definitions in this subsection apply throughout this
6 section unless the context clearly requires otherwise.

7 (a) "Information related to mental health services" means all
8 information and records compiled, obtained, or maintained in the course
9 of providing services to either voluntary or involuntary recipients of
10 services by a mental health service provider. This may include
11 documents of legal proceedings under chapter 71.34 or 10.77 RCW, or
12 somatic health care information.

13 (b) "Mental health service provider" means a public or private
14 agency that provides services specifically to persons with mental
15 disorders as defined under RCW 71.34.020 and receives funding from
16 public sources. This includes evaluation and treatment facilities as
17 defined in RCW 71.34.020, community mental health service delivery
18 systems, or community mental health programs, as defined in RCW
19 71.24.025, and facilities conducting competency evaluations and
20 restoration under chapter 10.77 RCW.

21 (2) Information related to mental health services delivered to a
22 person subject to chapter 9.94A RCW shall be, upon request, released to
23 the department of corrections by a mental health service provider for
24 the purpose of completing presentence investigations, supervision of an
25 incarcerated person, planning for and provision of supervision of a
26 person, or determination of a person's risk to the community. The
27 request shall be in writing and shall not require the consent of the
28 subject of the records.

29 (3) The information to be released to the department of corrections
30 shall include all relevant records and reports, as defined by rule,
31 necessary for the department of corrections to carry out its duties,
32 including those records and reports identified in subsection (2) of
33 this section.

34 (4) The department and the department of corrections, in
35 consultation with regional support networks, mental health service
36 providers as defined in subsection (1) of this section, mental health
37 consumers, and advocates for persons with mental illness, shall adopt
38 rules to implement the provisions of this section including the type

1 and scope of information to be released. These rules shall also
2 establish requirements for the notification of persons under the
3 supervision of the department of corrections regarding the provisions
4 of this section.

5 (5) The information received by the department of corrections under
6 this section shall remain confidential and subject to the limitations
7 on disclosure outlined in RCW 71.34.200, except:

8 (a) The information received by the department of corrections under
9 this section may be released to the indeterminate sentence review
10 board. Further disclosure by the indeterminate sentence review board
11 must be consistent with the written policy of the indeterminate
12 sentence review board. The decision to disclose or not shall not
13 result in civil liability for the indeterminate sentence review board
14 or its employees so long as the decision was reached in good faith.

15 (b) The information received by the department of corrections under
16 this section may be used to meet the statutory duties of the department
17 of corrections to provide evidence or report to the court. Disclosure
18 to the public of information related to mental health services may be
19 limited in accordance with RCW 9.94A.110.

20 (c) The information received by the department of corrections under
21 this section may be disclosed by the department of corrections, as
22 required by subsection (2) of this section, to other agencies or to the
23 general public, in a manner consistent with the written policy
24 established by the secretary of the department of corrections. The
25 decision to disclose or not shall not result in civil liability for the
26 department of corrections or its employees so long as the decision was
27 reached in good faith.

28 (6) No mental health service provider or individual employed by a
29 mental health service provider shall be held responsible for
30 information released to or used by the department of corrections under
31 the provisions of this section or rules adopted under this section.

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

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

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 71.05 RCW
2 to read as follows:

3 (1) The definitions in this subsection apply throughout this
4 section unless the context clearly requires otherwise.

5 (a) "Information related to mental health services" means all
6 information and records compiled, obtained, or maintained in the course
7 of providing services to either voluntary or involuntary recipients of
8 services by a mental health service provider. This may include
9 documents of legal proceedings under chapter 71.05 or 10.77 RCW, or
10 somatic health care information.

11 (b) "Mental health service provider" means a public or private
12 agency that provides services specifically to persons with mental
13 disorders as defined under RCW 71.05.020 and receives funding from
14 public sources. This includes evaluation and treatment facilities as
15 defined in RCW 71.05.020, community mental health service delivery
16 systems, or community mental health programs as defined in RCW
17 71.24.025, and facilities conducting competency evaluations and
18 restoration under chapter 10.77 RCW.

19 (2) Information related to mental health services delivered to a
20 person subject to chapter 9.94A RCW shall be, upon request, released to
21 the department of corrections by a mental health service provider for
22 the purpose of completing presentence investigations, supervision of an
23 incarcerated person, planning for and provision of supervision of a
24 person, or determination of a person's risk to the community. The
25 request shall be in writing and shall not require the consent of the
26 subject of the records.

27 (3) The information to be released to the department of corrections
28 shall include all relevant records and reports, as defined by rule,
29 necessary for the department of corrections to carry out its duties,
30 including those records and reports identified in subsection (2) of
31 this section.

32 (4) The department and the department of corrections, in
33 consultation with regional support networks, mental health service
34 providers as defined in subsection (1) of this section, mental health
35 consumers, and advocates for persons with mental illness, shall adopt
36 rules to implement the provisions of this section including the type
37 and scope of information to be released. These rules shall also
38 establish requirements for the notification of persons under the

1 supervision of the department of corrections regarding the provisions
2 of this section.

3 (5) The information received by the department of corrections under
4 this section shall remain confidential and subject to the limitations
5 on disclosure outlined in chapter 71.05 RCW, except:

6 (a) The information received by the department of corrections under
7 this section may be released to the indeterminate sentence review
8 board. Further disclosure by the indeterminate sentence review board
9 must be consistent with the written policy of the indeterminate
10 sentence review board. The decision to disclose or not shall not
11 result in civil liability for the indeterminate sentence review board
12 or its employees so long as the decision was reached in good faith.

13 (b) The information received by the department of corrections under
14 this section may be used to meet the statutory duties of the department
15 of corrections to provide evidence or report to the court. Disclosure
16 to the public of information related to mental health services may be
17 limited in accordance with RCW 9.94A.110.

18 (c) The information received by the department of corrections under
19 this section may be disclosed by the department of corrections, as
20 required by section 2(2) of this act, to other agencies or to the
21 general public, in a manner consistent with the written policy
22 established by the secretary of the department of corrections. The
23 decision to disclose or not shall not result in civil liability for the
24 department of corrections or its employees so long as the decision was
25 reached in good faith.

26 (6) No mental health service provider or individual employed by a
27 mental health service provider shall be held responsible for
28 information released to or used by the department of corrections under
29 the provisions of this section or rules adopted under this section
30 except under RCW 71.05.670 and 71.05.440.

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

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

1 **Sec. 4.** RCW 71.05.630 and 1989 c 205 s 13 are each amended to read
2 as follows:

3 (1) Except as otherwise provided by law, all treatment records
4 shall remain confidential. Treatment records may be released only to
5 the persons designated in this section, or to other persons designated
6 in an informed written consent of the patient.

7 (2) Treatment records of an individual may be released without
8 informed written consent in the following circumstances:

9 (a) To an individual, organization, or agency as necessary for
10 management or financial audits, or program monitoring and evaluation.
11 Information obtained under this subsection shall remain confidential
12 and may not be used in a manner that discloses the name or other
13 identifying information about the individual whose records are being
14 released.

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

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

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

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

28 (f) Within the treatment facility where the patient is receiving
29 treatment, confidential information may be disclosed to individuals
30 employed, serving in bona fide training programs, or participating in
31 supervised volunteer programs, at the facility when it is necessary to
32 perform their duties.

33 (g) Within the department as necessary to coordinate treatment for
34 mental illness, developmental disabilities, alcoholism, or drug abuse
35 of individuals who are under the supervision of the department.

36 (h) To a licensed physician who has determined that the life or
37 health of the individual is in danger and that treatment without the
38 information contained in the treatment records could be injurious to

1 the patient's health. Disclosure shall be limited to the portions of
2 the records necessary to meet the medical emergency.

3 (i) To a facility that is to receive an individual who is
4 involuntarily committed under chapter 71.05 RCW, or upon transfer of
5 the individual from one treatment facility to another. The release of
6 records under this subsection shall be limited to the treatment records
7 required by law, a record or summary of all somatic treatments, and a
8 discharge summary. The discharge summary may include a statement of
9 the patient's problem, the treatment goals, the type of treatment which
10 has been provided, and recommendation for future treatment, but may not
11 include the patient's complete treatment record.

12 ~~(j) ((Notwithstanding the provisions of RCW 71.05.390(7), to a
13 correctional facility or a corrections officer who is responsible for
14 the supervision of an individual who is receiving inpatient or
15 outpatient evaluation or treatment. Every person who is under the
16 supervision of the department of corrections who receives evaluation or
17 treatment under chapter 9.94A RCW shall be notified of the provisions
18 of this section by the individual's corrections officer. Release of
19 records under this section is limited to:~~

20 ~~(i) An evaluation report provided pursuant to a written supervision
21 plan.~~

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

25 ~~(iii) When an individual is returned from a treatment facility to
26 a correctional facility, the information provided under (j)(iv) of this
27 subsection.~~

28 ~~(iv) Any information necessary to establish or implement changes in
29 the individual's treatment plan or the level or kind of supervision as
30 determined by resource management services. In cases involving a
31 person transferred back to a correctional facility, disclosure shall be
32 made to clinical staff only. In cases involving a person under
33 supervision of the department of corrections, disclosure shall be made
34 to the supervising corrections officer only.~~

35 ~~(k))~~ To the individual's counsel or guardian ad litem, without
36 modification, at any time in order to prepare for involuntary
37 commitment or recommitment proceedings, reexaminations, appeals, or
38 other actions relating to detention, admission, commitment, or
39 patient's rights under chapter 71.05 RCW.

1 (~~(l)~~) ~~To a corrections officer of the department who has custody of~~
2 ~~or is responsible for the supervision of an individual who is~~
3 ~~transferred or discharged from a treatment facility.~~

4 (~~m~~)) (k) To staff members of the protection and advocacy agency or
5 to staff members of a private, nonprofit corporation for the purpose of
6 protecting and advocating the rights of persons with mental illness or
7 developmental disabilities. Resource management services may limit the
8 release of information to the name, birthdate, and county of residence
9 of the patient, information regarding whether the patient was
10 voluntarily admitted, or involuntarily committed, the date and place of
11 admission, placement, or commitment, the name and address of a guardian
12 of the patient, and the date and place of the guardian's appointment.
13 Any staff member who wishes to obtain additional information shall
14 notify the patient's resource management services in writing of the
15 request and of the resource management services' right to object. The
16 staff member shall send the notice by mail to the guardian's address.
17 If the guardian does not object in writing within fifteen days after
18 the notice is mailed, the staff member may obtain the additional
19 information. If the guardian objects in writing within fifteen days
20 after the notice is mailed, the staff member may not obtain the
21 additional information.

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

27 **Sec. 5.** RCW 71.05.390 and 1999 c 12 s 1 are each amended to read
28 as follows:

29 Except as provided in this section, the fact of admission and all
30 information and records compiled, obtained, or maintained in the course
31 of providing services to either voluntary or involuntary recipients of
32 services at public or private agencies shall be confidential.

33 Information and records may be disclosed only:

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

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

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

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

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

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

24 "As a condition of conducting evaluation or research concerning
25 persons who have received services from (fill in the facility, agency,
26 or person) I,, agree not to divulge, publish, or
27 otherwise make known to unauthorized persons or the public any
28 information obtained in the course of such evaluation or research
29 regarding persons who have received services such that the person who
30 received such services is identifiable.

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

33 /s/"

34 (6) To the courts as necessary to the administration of this
35 chapter.

36 (7) To law enforcement officers, public health officers, or
37 personnel of the department of corrections or the indeterminate
38 sentence review board for persons who are the subject of the records

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

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

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

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

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

26 (9) To the prosecuting attorney as necessary to carry out the
27 responsibilities of the office under RCW 71.05.330(2) and
28 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access
29 to records regarding the committed person's treatment and prognosis,
30 medication, behavior problems, and other records relevant to the issue
31 of whether treatment less restrictive than inpatient treatment is in
32 the best interest of the committed person or others. Information shall
33 be disclosed only after giving notice to the committed person and the
34 person's counsel.

35 (10) To appropriate law enforcement agencies and to a person, when
36 the identity of the person is known to the public or private agency,
37 whose health and safety has been threatened, or who is known to have
38 been repeatedly harassed, by the patient. The person may designate a
39 representative to receive the disclosure. The disclosure shall be made

1 by the professional person in charge of the public or private agency or
2 his or her designee and shall include the dates of admission,
3 discharge, authorized or unauthorized absence from the agency's
4 facility, and only such other information that is pertinent to the
5 threat or harassment. The decision to disclose or not shall not result
6 in civil liability for the agency or its employees so long as the
7 decision was reached in good faith and without gross negligence.

8 (11) To appropriate law enforcement agencies, upon request, all
9 necessary and relevant information in the event of a crisis or emergent
10 situation that poses a significant and imminent risk to the public.
11 The decision to disclose or not shall not result in civil liability for
12 the mental health service provider or its employees so long as the
13 decision was reached in good faith.

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

16 (~~(12)~~) (13) Civil liability and immunity for the release of
17 information about a particular person who is committed to the
18 department under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal
19 of a sex offense as defined in RCW 9.94A.030, is governed by RCW
20 4.24.550.

21 (~~(13)~~) (14) To a patient's next of kin, guardian, or conservator,
22 if any, in the event of death, as provided in RCW 71.05.400.

23 (~~(14)~~) (15) To the department of health ((ef)) for the purposes
24 of determining compliance with state or federal licensure,
25 certification, or registration rules or laws. However, the information
26 and records obtained under this subsection are exempt from public
27 inspection and copying pursuant to chapter 42.17 RCW.

28 The fact of admission, as well as all records, files, evidence,
29 findings, or orders made, prepared, collected, or maintained pursuant
30 to this chapter shall not be admissible as evidence in any legal
31 proceeding outside this chapter without the written consent of the
32 person who was the subject of the proceeding except in a subsequent
33 criminal prosecution of a person committed pursuant to RCW 71.05.280(3)
34 or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter
35 10.77 RCW due to incompetency to stand trial or in a civil commitment
36 proceeding pursuant to chapter 71.09 RCW. The records and files
37 maintained in any court proceeding pursuant to this chapter shall be
38 confidential and available subsequent to such proceedings only to the
39 person who was the subject of the proceeding or his or her attorney.

1 In addition, the court may order the subsequent release or use of such
2 records or files only upon good cause shown if the court finds that
3 appropriate safeguards for strict confidentiality are and will be
4 maintained.

5 **Sec. 6.** RCW 71.34.200 and 1985 c 354 s 18 are each amended to read
6 as follows:

7 The fact of admission and all information obtained through
8 treatment under this chapter is confidential. Confidential information
9 may be disclosed only:

10 (1) In communications between mental health professionals to meet
11 the requirements of this chapter, in the provision of services to the
12 minor, or in making appropriate referrals;

13 (2) In the course of guardianship or dependency proceedings;

14 (3) To persons with medical responsibility for the minor's care;

15 (4) To the minor, the minor's parent, and the minor's attorney,
16 subject to RCW 13.50.100;

17 (5) When the minor or the minor's parent (~~designate[s]~~)
18 designates in writing the persons to whom information or records may be
19 released;

20 (6) To the extent necessary to make a claim for financial aid,
21 insurance, or medical assistance to which the minor may be entitled or
22 for the collection of fees or costs due to providers for services
23 rendered under this chapter;

24 (7) To the courts as necessary to the administration of this
25 chapter;

26 (8) To law enforcement officers or public health officers as
27 necessary to carry out the responsibilities of their office. However,
28 only the fact and date of admission, and the date of discharge, the
29 name and address of the treatment provider, if any, and the last known
30 address shall be disclosed upon request;

31 (9) To law enforcement officers, public health officers, relatives,
32 and other governmental law enforcement agencies, if a minor has escaped
33 from custody, disappeared from an evaluation and treatment facility,
34 violated conditions of a less restrictive treatment order, or failed to
35 return from an authorized leave, and then only such information as may
36 be necessary to provide for public safety or to assist in the
37 apprehension of the minor. The officers are obligated to keep the
38 information confidential in accordance with this chapter;

1 (10) To the secretary for assistance in data collection and program
2 evaluation or research, provided that the secretary adopts rules for
3 the conduct of such evaluation and research. The rules shall include,
4 but need not be limited to, the requirement that all evaluators and
5 researchers sign an oath of confidentiality substantially as follows:

6 "As a condition of conducting evaluation or research concerning
7 persons who have received services from (fill in the facility, agency,
8 or person) I,, agree not to divulge, publish, or otherwise
9 make known to unauthorized persons or the public any information
10 obtained in the course of such evaluation or research regarding minors
11 who have received services in a manner such that the minor is
12 identifiable.

13 I recognize that unauthorized release of confidential information
14 may subject me to civil liability under state law.

15 /s/ "

16 (11) To appropriate law enforcement agencies, upon request, all
17 necessary and relevant information in the event of a crisis or emergent
18 situation that poses a significant and imminent risk to the public.
19 The decision to disclose or not shall not result in civil liability for
20 the mental health service provider or its employees so long as the
21 decision was reached in good faith;

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

34 ((+12+)) (13) To a minor's next of kin, attorney, guardian, or
35 conservator, if any, the information that the minor is presently in the
36 facility or that the minor is seriously physically ill and a statement
37 evaluating the mental and physical condition of the minor as well as a
38 statement of the probable duration of the minor's confinement;

1 (~~(13)~~) (14) Upon the death of a minor, to the minor's next of
2 kin;

3 (~~(14)~~) (15) To a facility in which the minor resides or will
4 reside.

5 This section shall not be construed to prohibit the compilation and
6 publication of statistical data for use by government or researchers
7 under standards, including standards to assure maintenance of
8 confidentiality, set forth by the secretary. The fact of admission and
9 all information obtained pursuant to this chapter are not admissible as
10 evidence in any legal proceeding outside this chapter, except
11 guardianship or dependency, without the written consent of the minor or
12 the minor's parent.

13 **Sec. 7.** RCW 9.94A.110 and 1999 c 197 s 3 and 1999 c 196 s 4 are
14 each reenacted and amended to read as follows:

15 Before imposing a sentence upon a defendant, the court shall
16 conduct a sentencing hearing. The sentencing hearing shall be held
17 within forty court days following conviction. Upon the motion of
18 either party for good cause shown, or on its own motion, the court may
19 extend the time period for conducting the sentencing hearing.

20 Except in cases where the defendant shall be sentenced to a term of
21 total confinement for life without the possibility of release or, when
22 authorized by RCW 10.95.030 for the crime of aggravated murder in the
23 first degree, sentenced to death, the court may order the department to
24 complete a risk assessment report. If available before sentencing, the
25 report shall be provided to the court.

26 Unless specifically waived by the court, the court shall order the
27 department to complete a chemical dependency screening report before
28 imposing a sentence upon a defendant who has been convicted of a
29 violation of the uniform controlled substances act under chapter 69.50
30 RCW or a criminal solicitation to commit such a violation under chapter
31 9A.28 RCW where the court finds that the offender has a chemical
32 dependency that has contributed to his or her offense. In addition,
33 the court shall, at the time of plea or conviction, order the
34 department to complete a presentence report before imposing a sentence
35 upon a defendant who has been convicted of a felony sexual offense.
36 The department of corrections shall give priority to presentence
37 investigations for sexual offenders. If the court determines that the
38 defendant may be a mentally ill person as defined in RCW 71.24.025,

1 although the defendant has not established that at the time of the
2 crime he or she lacked the capacity to commit the crime, was
3 incompetent to commit the crime, or was insane at the time of the
4 crime, the court shall order the department to complete a presentence
5 report before imposing a sentence.

6 The court shall consider the risk assessment report and presentence
7 reports, if any, including any victim impact statement and criminal
8 history, and allow arguments from the prosecutor, the defense counsel,
9 the offender, the victim, the survivor of the victim, or a
10 representative of the victim or survivor, and an investigative law
11 enforcement officer as to the sentence to be imposed.

12 If the court is satisfied by a preponderance of the evidence that
13 the defendant has a criminal history, the court shall specify the
14 convictions it has found to exist. All of this information shall be
15 part of the record. Copies of all risk assessment reports and
16 presentence reports presented to the sentencing court and all written
17 findings of facts and conclusions of law as to sentencing entered by
18 the court shall be sent to the department by the clerk of the court at
19 the conclusion of the sentencing and shall accompany the offender if
20 the offender is committed to the custody of the department. Court
21 clerks shall provide, without charge, certified copies of documents
22 relating to criminal convictions requested by prosecuting attorneys.

23 In a sentencing hearing or any other hearing in which the
24 department may present a risk assessment or make a recommendation to
25 the court, on motion of the defendant, or on the court's own motion,
26 the court may exclude the public from the hearing, seal portions of the
27 hearing record or case file, or grant other relief as may be necessary
28 to prevent disclosure to the public of information related to mental
29 health services as defined in either section 2 of this act, or section
30 3 of this act, or both.

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