

SHB 1300 - S COMM AMD

By Committee on Human Services & Corrections

NOT ADOPTED 04/15/2009

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 71.05.020 and 2008 c 156 s 1 are each amended to read  
4 as follows:

5 The definitions in this section apply throughout this chapter  
6 unless the context clearly requires otherwise.

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

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

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

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

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

22 (6) "Crisis stabilization unit" means a short-term facility or a  
23 portion of a facility licensed by the department of health and  
24 certified by the department of social and health services under RCW  
25 71.24.035, such as an evaluation and treatment facility or a hospital,  
26 which has been designed to assess, diagnose, and treat individuals  
27 experiencing an acute crisis without the use of long-term  
28 hospitalization;

29 (7) "Custody" means involuntary detention under the provisions of

1 this chapter or chapter 10.77 RCW, uninterrupted by any period of  
2 unconditional release from commitment from a facility providing  
3 involuntary care and treatment;

4 (8) "Department" means the department of social and health  
5 services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (b) The conditions and strategies necessary to achieve the purposes  
32 of habilitation;

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

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

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

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

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

7 (22) "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 this chapter or chapter 71.34 or  
12 10.77 RCW, or somatic health care information;

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

15 ((+23+)) (24) "Legal counsel" means attorneys and staff employed by  
16 county prosecutor offices or the state attorney general acting in their  
17 capacity as legal representatives of public mental health service  
18 providers under RCW 71.05.130;

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

20 (a) A substantial risk that: (i) Physical harm will be inflicted  
21 by a person upon his or her own person, as evidenced by threats or  
22 attempts to commit suicide or inflict physical harm on oneself; (ii)  
23 physical harm will be inflicted by a person upon another, as evidenced  
24 by behavior which has caused such harm or which places another person  
25 or persons in reasonable fear of sustaining such harm; or (iii)  
26 physical harm will be inflicted by a person upon the property of  
27 others, as evidenced by behavior which has caused substantial loss or  
28 damage to the property of others; or

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

31 ((+24+)) (26) "Mental disorder" means any organic, mental, or  
32 emotional impairment which has substantial adverse effects on a  
33 person's cognitive or volitional functions;

34 ((+25+)) (27) "Mental health professional" means a psychiatrist,  
35 psychologist, psychiatric nurse, or social worker, and such other  
36 mental health professionals as may be defined by rules adopted by the  
37 secretary pursuant to the provisions of this chapter;

1        ~~((+26+))~~ (28) "Mental health service provider" means a public or  
2 private agency that provides mental health services to persons with  
3 mental disorders as defined under this section and receives funding  
4 from public sources. This includes, but is not limited to, hospitals  
5 licensed under chapter 70.41 RCW, evaluation and treatment facilities  
6 as defined in this section, community mental health service delivery  
7 systems or community mental health programs as defined in RCW  
8 71.24.025, facilities conducting competency evaluations and restoration  
9 under chapter 10.77 RCW, and correctional facilities operated by state  
10 and local governments;

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

15        ~~((+27+))~~ (30) "Private agency" means any person, partnership,  
16 corporation, or association that is not a public agency, whether or not  
17 financed in whole or in part by public funds, which constitutes an  
18 evaluation and treatment facility or private institution, or hospital,  
19 which is conducted for, or includes a department or ward conducted for,  
20 the care and treatment of persons who are mentally ill;

21        ~~((+28+))~~ (31) "Professional person" means a mental health  
22 professional and shall also mean a physician, psychiatric advanced  
23 registered nurse practitioner, registered nurse, and such others as may  
24 be defined by rules adopted by the secretary pursuant to the provisions  
25 of this chapter;

26        ~~((+29+))~~ (32) "Psychiatric advanced registered nurse practitioner"  
27 means a person who is licensed as an advanced registered nurse  
28 practitioner pursuant to chapter 18.79 RCW; and who is board certified  
29 in advanced practice psychiatric and mental health nursing;

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

36        ~~((+31+))~~ (34) "Psychologist" means a person who has been licensed  
37 as a psychologist pursuant to chapter 18.83 RCW;

1        ~~((+32+))~~ (35) "Public agency" means any evaluation and treatment  
2 facility or institution, or hospital which is conducted for, or  
3 includes a department or ward conducted for, the care and treatment of  
4 persons with mental illness, if the agency is operated directly by,  
5 federal, state, county, or municipal government, or a combination of  
6 such governments;

7        ~~((+33+))~~ (36) "Registration records" include all the records of the  
8 department, regional support networks, treatment facilities, and other  
9 persons providing services to the department, county departments, or  
10 facilities which identify persons who are receiving or who at any time  
11 have received services for mental illness;

12        ~~((+34+))~~ (37) "Release" means legal termination of the commitment  
13 under the provisions of this chapter;

14        ~~((+35+))~~ (38) "Resource management services" has the meaning given  
15 in chapter 71.24 RCW;

16        ~~((+36+))~~ (39) "Secretary" means the secretary of the department of  
17 social and health services, or his or her designee;

18        ~~((+37+))~~ (40) "Serious violent offense" has the same meaning as  
19 provided in RCW 9.94A.030;

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

23        ~~((+38+))~~ (42) "Therapeutic court personnel" means the staff of a  
24 mental health court or other therapeutic court which has jurisdiction  
25 over defendants who are dually diagnosed with mental disorders,  
26 including court personnel, probation officers, a court monitor,  
27 prosecuting attorney, or defense counsel acting within the scope of  
28 therapeutic court duties;

29        (43) "Treatment records" include registration and all other records  
30 concerning persons who are receiving or who at any time have received  
31 services for mental illness, which are maintained by the department, by  
32 regional support networks and their staffs, and by treatment  
33 facilities. Treatment records include mental health information  
34 contained in a medical bill including but not limited to mental health  
35 drugs, a mental health diagnosis, provider name, and dates of service  
36 stemming from a medical service. Treatment records do not include  
37 notes or records maintained for personal use by a person providing

1 treatment services for the department, regional support networks, or a  
2 treatment facility if the notes or records are not available to others;  
3 ~~((+39+))~~ (44) "Violent act" means behavior that resulted in  
4 homicide, attempted suicide, nonfatal injuries, or substantial damage  
5 to property.

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

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

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

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

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

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

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

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

28 (2) The information subject to release under subsection (1) of this  
29 section shall be released to law enforcement officers, personnel of a  
30 county or city jail, designated mental health professionals, public  
31 health officers, therapeutic court personnel, personnel of the  
32 department of corrections, or personnel of the indeterminate sentence  
33 review board, when such information is requested during the course of  
34 business and for the purpose of carrying out the responsibilities of  
35 the requesting person's office. No mental health service provider or  
36 person employed by a mental health service provider, or its legal

1 counsel, shall be liable for information released to or used under the  
2 provisions of this section or rules adopted under this section except  
3 under RCW 71.05.440.

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

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

10 (i) Completing presentence investigations or risk assessment  
11 reports;

12 (ii) Assessing an offender's risk to the community;

13 (iii) Planning for and provision of supervision of an offender,  
14 including decisions related to sanctions for violations of conditions  
15 of community supervision; and

16 (iv) Responding to an offender's failure to report for department  
17 of corrections supervision.

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

21 (i) Has engaged in an activity which constitutes a crime or a  
22 violation of community custody or parole; or

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

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

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

34 (ii) Such information may be shared with a prosecuting attorney  
35 acting in an advisory capacity for a person who receives information  
36 under this section. A prosecuting attorney under this subsection  
37 shall be subject to the same restrictions and confidentiality  
38 limitations as the person who requested the information; and



1 (iii) As provided in RCW 72.09.585.

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

9 (5) In the event of an emergency situation that poses a significant  
10 risk to the public or the offender, a mental health service provider,  
11 or its legal counsel, shall release information related to mental  
12 health services delivered to the offender and, if known, information  
13 regarding where the offender is likely to be found to the department of  
14 corrections or law enforcement upon request. The initial request may  
15 be written or oral. All oral requests must be subsequently confirmed  
16 in writing. Information released in response to an oral request is  
17 limited to a statement as to whether the offender is or is not being  
18 treated by the mental health service provider and the address or  
19 information about the location or whereabouts of the offender.

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

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

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

31 (9) In collaboration with interested organizations, the department  
32 shall develop a standard form for requests for information related to  
33 mental health services made under this section and a standard format  
34 for information provided in response to such requests. Consistent with  
35 the goals of the health information privacy provisions of the federal  
36 health insurance portability and accountability act, in developing the  
37 standard form for responsive information, the department shall design

1 the form in such a way that the information disclosed is limited to the  
2 minimum necessary to serve the purpose for which the information is  
3 requested.

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

6 Except as provided in this section, RCW 71.05.445, 71.05.630,  
7 70.96A.150, section 2 of this act, or pursuant to a valid release under  
8 RCW 70.02.030, the fact of admission and all information and records  
9 compiled, obtained, or maintained in the course of providing services  
10 to either voluntary or involuntary recipients of services at public or  
11 private agencies shall be confidential.

12 Information and records may be disclosed only:

13 (1) In communications between qualified professional persons to  
14 meet the requirements of this chapter, in the provision of services or  
15 appropriate referrals, or in the course of guardianship proceedings.  
16 The consent of the person, or his or her personal representative or  
17 guardian, shall be obtained before information or records may be  
18 disclosed by a professional person employed by a facility unless  
19 provided to a professional person:

- 20 (a) Employed by the facility;
- 21 (b) Who has medical responsibility for the patient's care;
- 22 (c) Who is a designated mental health professional;
- 23 (d) Who is providing services under chapter 71.24 RCW;
- 24 (e) Who is employed by a state or local correctional facility where  
25 the person is confined or supervised; or
- 26 (f) Who is providing evaluation, treatment, or follow-up services  
27 under chapter 10.77 RCW.

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

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

36 (b) A public or private agency shall release to a person's next of

1 kin, attorney, personal representative, guardian, or conservator, if  
2 any:

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

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

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

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

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

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

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

29 /s/ ....."

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

34 (6)(a) To the courts as necessary to the administration of this  
35 chapter or to a court ordering an evaluation or treatment under chapter

1 10.77 RCW solely for the purpose of preventing the entry of any  
2 evaluation or treatment order that is inconsistent with any order  
3 entered under this chapter.

4 (b) To a court or its designee in which a motion under chapter  
5 10.77 RCW has been made for involuntary medication of a defendant for  
6 the purpose of competency restoration.

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

9 (7)(a) When a mental health professional is requested by a  
10 representative of a law enforcement or corrections agency, including a  
11 police officer, sheriff, community corrections officer, a municipal  
12 attorney, or prosecuting attorney to undertake an investigation or  
13 provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the  
14 mental health professional shall, if requested to do so, advise the  
15 representative in writing of the results of the investigation including  
16 a statement of reasons for the decision to detain or release the person  
17 investigated. Such written report shall be submitted within seventy-  
18 two hours of the completion of the investigation or the request from  
19 the law enforcement or corrections representative, whichever occurs  
20 later.

21 ~~((b) To law enforcement officers, public health officers, or~~  
22 ~~personnel of the department of corrections or the indeterminate~~  
23 ~~sentence review board for persons who are the subject of the records~~  
24 ~~and who are committed to the custody or supervision of the department~~  
25 ~~of corrections or indeterminate sentence review board which information~~  
26 ~~or records are necessary to carry out the responsibilities of their~~  
27 ~~office. Except for dissemination of information released pursuant to~~  
28 ~~RCW 71.05.425 and 4.24.550, regarding persons committed under this~~  
29 ~~chapter under RCW 71.05.280(3) and 71.05.320 (3)(c) after dismissal of~~  
30 ~~a sex offense as defined in RCW 9.94A.030, the extent of information~~  
31 ~~that may be released is limited as follows:~~

32 ~~(i) Only the fact, place, and date of involuntary commitment, the~~  
33 ~~fact and date of discharge or release, and the last known address shall~~  
34 ~~be disclosed upon request;~~

35 ~~(ii) The law enforcement and public health officers or personnel of~~  
36 ~~the department of corrections or indeterminate sentence review board~~  
37 ~~shall be obligated to keep such information confidential in accordance~~  
38 ~~with this chapter;~~

1       ~~(iii) Additional information shall be disclosed only after giving~~  
2 ~~notice to said person and his or her counsel and upon a showing of~~  
3 ~~clear, cogent, and convincing evidence that such information is~~  
4 ~~necessary and that appropriate safeguards for strict confidentiality~~  
5 ~~are and will be maintained. However, in the event the said person has~~  
6 ~~escaped from custody, said notice prior to disclosure is not necessary~~  
7 ~~and that the facility from which the person escaped shall include an~~  
8 ~~evaluation as to whether the person is of danger to persons or property~~  
9 ~~and has a propensity toward violence;~~

10       ~~(iv) Information and records shall be disclosed to the department~~  
11 ~~of corrections pursuant to and in compliance with the provisions of RCW~~  
12 ~~71.05.445 for the purposes of completing presentence investigations or~~  
13 ~~risk assessment reports, supervision of an incarcerated offender or~~  
14 ~~offender under supervision in the community, planning for and provision~~  
15 ~~of supervision of an offender, or assessment of an offender's risk to~~  
16 ~~the community; and~~

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

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

20       (9) To the prosecuting attorney as necessary to carry out the  
21 responsibilities of the office under RCW 71.05.330(2) and  
22 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access  
23 to records regarding the committed person's treatment and prognosis,  
24 medication, behavior problems, and other records relevant to the issue  
25 of whether treatment less restrictive than inpatient treatment is in  
26 the best interest of the committed person or others. Information shall  
27 be disclosed only after giving notice to the committed person and the  
28 person's counsel.

29       (10)(a) To appropriate law enforcement agencies and to a person,  
30 when the identity of the person is known to the public or private  
31 agency, whose health and safety has been threatened, or who is known to  
32 have been repeatedly harassed, by the patient. The person may  
33 designate a representative to receive the disclosure. The disclosure  
34 shall be made by the professional person in charge of the public or  
35 private agency or his or her designee and shall include the dates of  
36 commitment, admission, discharge, or release, authorized or  
37 unauthorized absence from the agency's facility, and only such other  
38 information that is pertinent to the threat or harassment. The

1 decision to disclose or not shall not result in civil liability for the  
2 agency or its employees so long as the decision was reached in good  
3 faith and without gross negligence.

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

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

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

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

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

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

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

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

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

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

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

9 (b) The law enforcement and prosecuting attorneys may only release  
10 the information obtained to the person's attorney as required by court  
11 rule and to a jury or judge, if a jury is waived, that presides over  
12 any trial at which the person is charged with violating RCW  
13 9.41.040(2)(a)(ii);

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

16 (18) When a patient would otherwise be subject to the provisions of  
17 (~~RCW 71.05.390~~) this section and disclosure is necessary for the  
18 protection of the patient or others due to his or her unauthorized  
19 disappearance from the facility, and his or her whereabouts is unknown,  
20 notice of such disappearance, along with relevant information, may be  
21 made to relatives, the department of corrections when the person is  
22 under the supervision of the department, and governmental law  
23 enforcement agencies designated by the physician in charge of the  
24 patient or the professional person in charge of the facility, or his or  
25 her professional designee.

26 Except as otherwise provided in this chapter, the uniform health  
27 care information act, chapter 70.02 RCW, applies to all records and  
28 information compiled, obtained, or maintained in the course of  
29 providing services.

30 (19) The fact of admission, as well as all records, files,  
31 evidence, findings, or orders made, prepared, collected, or maintained  
32 pursuant to this chapter shall not be admissible as evidence in any  
33 legal proceeding outside this chapter without the written consent of  
34 the person who was the subject of the proceeding except as provided in  
35 section 2 of this act, in a subsequent criminal prosecution of a person  
36 committed pursuant to RCW 71.05.280(3) or 71.05.320(3)(c) on charges  
37 that were dismissed pursuant to chapter 10.77 RCW due to incompetency  
38 to stand trial, in a civil commitment proceeding pursuant to chapter

1 71.09 RCW, or, in the case of a minor, a guardianship or dependency  
2 proceeding. The records and files maintained in any court proceeding  
3 pursuant to this chapter shall be confidential and available subsequent  
4 to such proceedings only to the person who was the subject of the  
5 proceeding or his or her attorney. In addition, the court may order  
6 the subsequent release or use of such records or files only upon good  
7 cause shown if the court finds that appropriate safeguards for strict  
8 confidentiality are and will be maintained.

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

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

13 ~~(a) "Information related to mental health services" means all~~  
14 ~~information and records compiled, obtained, or maintained in the course~~  
15 ~~of providing services to either voluntary or involuntary recipients of~~  
16 ~~services by a mental health service provider. This may include~~  
17 ~~documents of legal proceedings under this chapter or chapter 71.34 or~~  
18 ~~10.77 RCW, or somatic health care information.~~

19 ~~(b) "Mental health service provider" means a public or private~~  
20 ~~agency that provides services to persons with mental disorders as~~  
21 ~~defined under RCW 71.05.020 and receives funding from public sources.~~  
22 ~~This includes evaluation and treatment facilities as defined in RCW~~  
23 ~~71.05.020, community mental health service delivery systems, or~~  
24 ~~community mental health programs as defined in RCW 71.24.025, and~~  
25 ~~facilities conducting competency evaluations and restoration under~~  
26 ~~chapter 10.77 RCW.~~

27 ~~(2)(a) Information related to mental health services delivered to~~  
28 ~~a person subject to chapter 9.94A or 9.95 RCW shall be released, upon~~  
29 ~~request, by a mental health service provider to department of~~  
30 ~~corrections personnel for whom the information is necessary to carry~~  
31 ~~out the responsibilities of their office. The information must be~~  
32 ~~provided only for the purposes of completing presentence investigations~~  
33 ~~or risk assessment reports, supervision of an incarcerated offender or~~  
34 ~~offender under supervision in the community, planning for and provision~~  
35 ~~of supervision of an offender, or assessment of an offender's risk to~~  
36 ~~the community. The request shall be in writing and shall not require~~  
37 ~~the consent of the subject of the records.~~



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

22       ~~(3))~~(a) When a mental health service provider conducts its initial  
23 assessment for a person receiving court-ordered treatment, the service  
24 provider shall inquire and shall be told by the offender whether he or  
25 she is subject to supervision by the department of corrections.

26       (b) When a person receiving court-ordered treatment or treatment  
27 ordered by the department of corrections discloses to his or her mental  
28 health service provider that he or she is subject to supervision by the  
29 department of corrections, the mental health service(~~s~~) provider  
30 shall notify the department of corrections that he or she is treating  
31 the offender and shall notify the offender that his or her community  
32 corrections officer will be notified of the treatment, provided that if  
33 the offender has received relief from disclosure pursuant to RCW  
34 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the  
35 mental health service(~~s~~) provider with a copy of the order granting  
36 relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or  
37 71.05.132, the mental health service(~~s~~) provider is not required to  
38 notify the department of corrections that the mental health

1 service(~~(s)~~) provider is treating the offender. The notification may  
2 be written or oral and shall not require the consent of the offender.  
3 If an oral notification is made, it must be confirmed by a written  
4 notification. For purposes of this section, a written notification  
5 includes notification by e-mail or facsimile, so long as the notifying  
6 mental health service provider is clearly identified.

7 ~~((+4))~~ (2) The information to be released to the department of  
8 corrections shall include all relevant records and reports, as defined  
9 by rule, necessary for the department of corrections to carry out its  
10 duties(~~(, including those records and reports identified in subsection~~  
11 ~~(2) of this section)~~).

12 ~~((+5))~~ (3) The department and the department of corrections, in  
13 consultation with regional support networks, mental health service  
14 providers as defined in (~~subsection (1) of this section~~) RCW  
15 71.05.020, mental health consumers, and advocates for persons with  
16 mental illness, shall adopt rules to implement the provisions of this  
17 section related to the type and scope of information to be released.  
18 These rules shall:

19 (a) Enhance and facilitate the ability of the department of  
20 corrections to carry out its responsibility of planning and ensuring  
21 community protection with respect to persons subject to sentencing  
22 under chapter 9.94A or 9.95 RCW, including accessing and releasing or  
23 disclosing information of persons who received mental health services  
24 as a minor; and

25 (b) Establish requirements for the notification of persons under  
26 the supervision of the department of corrections regarding the  
27 provisions of this section.

28 ~~((+6))~~ (4) The information received by the department of  
29 corrections under this section shall remain confidential and subject to  
30 the limitations on disclosure outlined in chapter 71.05 RCW, except as  
31 provided in RCW 72.09.585.

32 ~~((+7))~~ (5) No mental health service provider or individual  
33 employed by a mental health service provider shall be held responsible  
34 for information released to or used by the department of corrections  
35 under the provisions of this section or rules adopted under this  
36 section except under RCW 71.05.440.

37 ~~((+8))~~ (6) Whenever federal law or federal regulations restrict  
38 the release of information contained in the treatment records of any

1 patient who receives treatment for alcoholism or drug dependency, the  
2 release of the information may be restricted as necessary to comply  
3 with federal law and regulations.

4 ~~((9))~~ (7) This section does not modify the terms and conditions  
5 of disclosure of information related to sexually transmitted diseases  
6 under chapter 70.24 RCW.

7 ~~((10))~~ (8) The department shall, subject to available resources,  
8 electronically, or by the most cost-effective means available, provide  
9 the department of corrections with the names, last dates of services,  
10 and addresses of specific regional support networks and mental health  
11 service providers that delivered mental health services to a person  
12 subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between  
13 the departments.

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

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

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

22 (a) To a person, organization, or agency as necessary for  
23 management or financial audits, or program monitoring and evaluation.  
24 Information obtained under this subsection shall remain confidential  
25 and may not be used in a manner that discloses the name or other  
26 identifying information about the person whose records are being  
27 released.

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

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

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

34 (e) To qualified staff members of the department, to the director  
35 of regional support networks, to resource management services  
36 responsible for serving a patient, or to service providers designated  
37 by resource management services as necessary to determine the progress

1 and adequacy of treatment and to determine whether the person should be  
2 transferred to a less restrictive or more appropriate treatment  
3 modality or facility. The information shall remain confidential.

4 (f) Within the treatment facility where the patient is receiving  
5 treatment, confidential information may be disclosed to persons  
6 employed, serving in bona fide training programs, or participating in  
7 supervised volunteer programs, at the facility when it is necessary to  
8 perform their duties.

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

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

17 (i) To a facility that is to receive a person who is involuntarily  
18 committed under chapter 71.05 RCW, or upon transfer of the person from  
19 one treatment facility to another. The release of records under this  
20 subsection shall be limited to the treatment records required by law,  
21 a record or summary of all somatic treatments, and a discharge summary.  
22 The discharge summary may include a statement of the patient's problem,  
23 the treatment goals, the type of treatment which has been provided, and  
24 recommendation for future treatment, but may not include the patient's  
25 complete treatment record.

26 (j) ~~((Notwithstanding the provisions of RCW 71.05.390(7), to a~~  
27 ~~correctional facility or a corrections officer who is responsible for~~  
28 ~~the supervision of a person who is receiving inpatient or outpatient~~  
29 ~~evaluation or treatment. Except as provided in RCW 71.05.445 and~~  
30 ~~71.34.345, release of records under this section is limited to:~~

31 ~~(i) An evaluation report provided pursuant to a written supervision~~  
32 ~~plan.~~

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

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

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

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

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

29       ~~((+m))~~) (l) For purposes of coordinating health care, the  
30 department may release without informed written consent of the patient,  
31 information acquired for billing and collection purposes as described  
32 in (b) of this subsection to all current treating providers of the  
33 patient with prescriptive authority who have written a prescription for  
34 the patient within the last twelve months. The department shall notify  
35 the patient that billing and collection information has been released  
36 to named providers, and provide the substance of the information  
37 released and the dates of such release. The department shall not

1 release counseling, inpatient psychiatric hospitalization, or drug and  
2 alcohol treatment information without a signed written release from the  
3 client.

4 (3) 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 chemical dependency, the department  
7 may restrict the release of the information as necessary to comply with  
8 federal law and regulations.

9 NEW SECTION. **Sec. 6.** If any part of this act is found to be in  
10 conflict with federal requirements that are a prescribed condition to  
11 the allocation of federal funds to the state, the conflicting part of  
12 this act is inoperative solely to the extent of the conflict and with  
13 respect to the agencies directly affected, and this finding does not  
14 affect the operation of the remainder of this act in its application to  
15 the agencies concerned. Rules adopted under this act must meet federal  
16 requirements that are a necessary condition to the receipt of federal  
17 funds by the state."

**SHB 1300** - S COMM AMD

By Committee on Human Services & Corrections

**NOT ADOPTED 04/15/2009**

18 On page 1, line 4 of the title, after "felony;" strike the  
19 remainder of the title and insert "amending RCW 71.05.020, 71.05.390,  
20 71.05.445, and 71.05.630; adding a new section to chapter 71.05 RCW;  
21 and creating a new section."

EFFECT: Mental health treatment information may only be requested  
when there is reasonable suspicion that the person who is the subject  
of the information has engaged in an activity which constitutes a crime  
or a violation of community custody or parole, or is exhibiting signs  
of a deterioration in mental functioning which may make the individual

appropriate for civil commitment under chapter 71.05 RCW. Mental health treatment information may be requested by law enforcement, jail personnel, DMHPs, DOC, or the ISRB. These persons may share the information with each other for the purposes of coordinating activity related to the offender, or with a prosecuting attorney acting in an advisory capacity. The mental health treatment information must relate to a person who is under supervision by DOC or the ISRB, or who has been convicted, found NGRI, or found incompetent of a serious violent offense.

--- END ---