
SUBSTITUTE SENATE BILL 5071

State of Washington

67th Legislature

2021 Regular Session

By Senate Behavioral Health Subcommittee to Health & Long Term Care (originally sponsored by Senators Dhingra, Darneille, Das, Hunt, Kuderer, Nguyen, and Wilson, C.)

READ FIRST TIME 02/09/21.

1 AN ACT Relating to creating transition teams to assist specified
2 persons under civil commitment; amending RCW 10.77.150, 71.05.320,
3 71.05.320, 10.77.060, 70.02.230, 70.02.240, and 71.24.035; adding a
4 new section to chapter 10.77 RCW; creating a new section; providing
5 an effective date; and providing an expiration date.

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

7 **Sec. 1.** RCW 10.77.150 and 2010 c 263 s 5 are each amended to
8 read as follows:

9 (1) Persons examined pursuant to RCW 10.77.140 may make
10 application to the secretary for conditional release. The secretary
11 shall, after considering the reports of experts or professional
12 persons conducting the examination pursuant to RCW 10.77.140, forward
13 to the court of the county which ordered the person's commitment the
14 person's application for conditional release as well as the
15 secretary's recommendations concerning the application and any
16 proposed terms and conditions upon which the secretary reasonably
17 believes the person can be conditionally released. Conditional
18 release may also contemplate partial release for work, training, or
19 educational purposes.

20 (2) In instances in which persons examined pursuant to RCW
21 10.77.140 have not made application to the secretary for conditional

1 release, but the secretary, after considering the reports of experts
2 or professional persons conducting the examination pursuant to RCW
3 10.77.140, reasonably believes the person may be conditionally
4 released, the secretary may submit a recommendation for release to
5 the court of the county that ordered the person's commitment. The
6 secretary's recommendation must include any proposed terms and
7 conditions upon which the secretary reasonably believes the person
8 may be conditionally released. Conditional release may also include
9 partial release for work, training, or educational purposes. Notice
10 of the secretary's recommendation under this subsection must be
11 provided to the person for whom the secretary has made the
12 recommendation for release and to his or her attorney.

13 (3) (a) The court of the county which ordered the person's
14 commitment, upon receipt of an application or recommendation for
15 conditional release with the secretary's recommendation for
16 conditional release terms and conditions, shall within thirty days
17 schedule a hearing. The court may schedule a hearing on applications
18 recommended for disapproval by the secretary.

19 (b) The prosecuting attorney shall represent the state at such
20 hearings and shall have the right to have the ~~((patient))~~ person
21 examined by an expert or professional person of the prosecuting
22 attorney's choice. If the committed person is indigent, and he or she
23 so requests, the court shall appoint a qualified expert or
24 professional person to examine the person on his or her behalf.

25 (c) The issue to be determined at such a hearing is whether or
26 not the person may be released conditionally to less restrictive
27 alternative treatment under the supervision of a multidisciplinary
28 transition team under conditions imposed by the court, including
29 access to services under section 4 of this act without substantial
30 danger to other persons, or substantial likelihood of committing
31 criminal acts jeopardizing public safety or security.

32 ~~((The court, after the hearing, shall rule on the secretary's~~
33 ~~recommendations, and if it disapproves of conditional release, may de~~
34 ~~se)) In cases that come before the court under subsection (1) or (2)
35 of this section, the court may deny conditional release to a less
36 restrictive alternative only on the basis of substantial evidence.
37 The court may modify the suggested terms and conditions on which the
38 person is to be conditionally released. Pursuant to the determination
39 of the court after hearing, the committed person shall thereupon be~~

1 released on such conditions as the court determines to be necessary,
2 or shall be remitted to the custody of the secretary.

3 (4) If the order of conditional release (~~((includes a))~~) provides
4 for the conditional release of the person to a less restrictive
5 alternative, including residential treatment or treatment in the
6 community, the conditional release order must also include:

7 (a) A requirement for the committed person to (~~(report to a))~~ be
8 supervised by a multidisciplinary transition team, including a
9 specially trained community corrections officer, (~~(the order shall~~
10 also specify that the conditionally released person shall be under
11 the supervision of the secretary of corrections or such person as the
12 secretary of corrections may designate and shall follow explicitly
13 the instructions of the secretary of corrections including)) a
14 representative of the department of social and health services, and a
15 representative of the community behavioral health agency providing
16 treatment to the person under section 4 of this act.

17 (i) The court may omit appointment of the representative of the
18 community behavioral health agency if the conditional release order
19 does not require participation in behavioral health treatment;

20 (ii) The court may omit the appointment of a community
21 corrections officer if it makes a special finding that the
22 appointment of a community corrections officer would not facilitate
23 the success of the person, or the safety of the person and the
24 community;

25 (b) A requirement for the person to comply with conditions of
26 supervision established by the court which shall include at a minimum
27 reporting as directed to a (~~(community corrections officer))~~
28 designated member of the transition team, remaining within prescribed
29 geographical boundaries, and notifying the (~~(community corrections~~
30 officer)) transition team prior to making any change in the
31 (~~(offender's))~~ person's address or employment. If the (~~(order of~~
32 conditional release includes a requirement for the committed person
33 to report to a community corrections officer, the community
34 corrections officer shall notify the secretary or the secretary's
35 designee, if the)) person is not in compliance with the court-ordered
36 conditions of release(~~(-))~~), the community corrections officer or
37 another designated transition team member shall notify the secretary
38 or the secretary's designee; and

39 (~~(4))~~ (c) If the court (~~(determines that receiving regular or~~
40 periodic medication or other medical treatment shall be a condition

1 ~~of the committed person's release, then the court shall require him~~
2 ~~or her to report to a physician or other medical or mental health~~
3 ~~practitioner for the medication or treatment. In addition to~~
4 ~~submitting any report required by RCW 10.77.160, the physician or~~
5 ~~other medical or mental health practitioner shall immediately upon~~
6 ~~the released person's failure to appear for the)) requires~~
7 participation in behavioral health treatment, the name of the
8 licensed or certified behavioral health agency responsible for
9 identifying the services the person will receive under section 4 of
10 this act, and a requirement that the person cooperate with the
11 services planned by the licensed or certified behavioral health
12 agency. The licensed or certified behavioral health agency must
13 comply with the reporting requirements of RCW 10.77.160, and must
14 immediately report to the court, prosecutor, and defense counsel any
15 substantial withdrawal or disengagement from medication or treatment,
16 or ((upon a)) any change in the person's mental health condition that
17 renders ((the patient)) him or her a potential risk to the public
18 ((report to the court, to the prosecuting attorney of the county in
19 which the released person was committed, to the secretary, and to the
20 supervising community corrections officer)).

21 (5) The role of the transition team appointed under subsection
22 (4) of this section shall be to facilitate the success of the person
23 on the conditional release order by monitoring the person's progress
24 in treatment, compliance with court-ordered conditions, and to
25 problem solve around extra support the person may need or
26 circumstances that may arise that threaten the safety of the person
27 or the community. The transition team may develop a monitoring plan
28 that may be carried out by any member of the team. The transition
29 team shall meet according to a schedule developed by the team, and
30 shall communicate as needed if issues arise that require the
31 immediate attention of the team.

32 (6) The department of corrections shall collaborate with the
33 department to develop specialized training for community corrections
34 officers under this section. The lack of a trained community
35 corrections officer must not be the cause of delay to entry of a
36 conditional release order. Another community corrections officer may
37 be appointed if no specially trained officer is available.

38 (7) Any person, whose application for conditional release has
39 been denied, may reapply after a period of six months from the date
40 of denial, or sooner with the support of the department.

1 **Sec. 2.** RCW 71.05.320 and 2020 c 302 s 45 are each amended to
2 read as follows:

3 (1)(a) Subject to (b) of this subsection, if the court or jury
4 finds that grounds set forth in RCW 71.05.280 have been proven and
5 that the best interests of the person or others will not be served by
6 a less restrictive treatment which is an alternative to detention,
7 the court shall remand him or her to the custody of the department of
8 social and health services or to a facility certified for ninety day
9 treatment by the department for a further period of intensive
10 treatment not to exceed ninety days from the date of judgment.

11 (b) If the order for inpatient treatment is based on a substance
12 use disorder, treatment must take place at an approved substance use
13 disorder treatment program. The court may only enter an order for
14 commitment based on a substance use disorder if there is an available
15 approved substance use disorder treatment program with adequate space
16 for the person.

17 (c) If the grounds set forth in RCW 71.05.280(3) are the basis of
18 commitment, then the period of treatment may be up to but not exceed
19 one hundred eighty days from the date of judgment to the custody of
20 the department of social and health services or to a facility
21 certified for one hundred eighty-day treatment by the department or
22 under RCW 71.05.745.

23 (2) If the court or jury finds that grounds set forth in RCW
24 71.05.280 have been proven, but finds that treatment less restrictive
25 than detention will be in the best interest of the person or others,
26 then the court shall remand him or her to the custody of the
27 department of social and health services or to a facility certified
28 for ninety day treatment by the department or to a less restrictive
29 alternative for a further period of less restrictive treatment not to
30 exceed ninety days from the date of judgment. If the grounds set
31 forth in RCW 71.05.280(3) are the basis of commitment, then the
32 period of treatment may be up to but not exceed one hundred eighty
33 days from the date of judgment. If the court or jury finds that the
34 grounds set forth in RCW 71.05.280(5) have been proven, and provide
35 the only basis for commitment, the court must enter an order for less
36 restrictive alternative treatment for up to ninety days from the date
37 of judgment and may not order inpatient treatment.

38 (3) An order for less restrictive alternative treatment entered
39 under subsection (2) of this section must name the behavioral health
40 service provider responsible for identifying the services the person

1 will receive in accordance with RCW 71.05.585, and must include a
2 requirement that the person cooperate with the services planned by
3 the behavioral health service provider.

4 (4) The person shall be released from involuntary treatment at
5 the expiration of the period of commitment imposed under subsection
6 (1) or (2) of this section unless the superintendent or professional
7 person in charge of the facility in which he or she is confined, or
8 in the event of a less restrictive alternative, the designated crisis
9 responder, files a new petition for involuntary treatment on the
10 grounds that the committed person:

11 (a) During the current period of court ordered treatment: (i) Has
12 threatened, attempted, or inflicted physical harm upon the person of
13 another, or substantial damage upon the property of another, and (ii)
14 as a result of a behavioral health disorder or developmental
15 disability presents a likelihood of serious harm; or

16 (b) Was taken into custody as a result of conduct in which he or
17 she attempted or inflicted serious physical harm upon the person of
18 another, and continues to present, as a result of a behavioral health
19 disorder or developmental disability, a likelihood of serious harm;
20 or

21 (c) (i) Is in custody pursuant to RCW 71.05.280(3) and as a result
22 of a behavioral health disorder or developmental disability continues
23 to present a substantial likelihood of repeating acts similar to the
24 charged criminal behavior, when considering the person's life
25 history, progress in treatment, and the public safety.

26 (ii) In cases under this subsection where the court has made an
27 affirmative special finding under RCW 71.05.280(3)(b), the commitment
28 shall continue for up to an additional one hundred eighty-day period
29 whenever the petition presents prima facie evidence that the person
30 continues to suffer from a behavioral health disorder or
31 developmental disability that results in a substantial likelihood of
32 committing acts similar to the charged criminal behavior, unless the
33 person presents proof through an admissible expert opinion that the
34 person's condition has so changed such that the behavioral health
35 disorder or developmental disability no longer presents a substantial
36 likelihood of the person committing acts similar to the charged
37 criminal behavior. The initial or additional commitment period may
38 include transfer to a specialized program of intensive support and
39 treatment, which may be initiated prior to or after discharge from
40 the state hospital; or

1 (d) Continues to be gravely disabled; or

2 (e) Is in need of assisted outpatient behavioral health
3 treatment.

4 If the conduct required to be proven in (b) and (c) of this
5 subsection was found by a judge or jury in a prior trial under this
6 chapter, it shall not be necessary to prove such conduct again.

7 If less restrictive alternative treatment is sought, the petition
8 shall set forth any recommendations for less restrictive alternative
9 treatment services.

10 (5) A new petition for involuntary treatment filed under
11 subsection (4) of this section shall be filed and heard in the
12 superior court of the county of the facility which is filing the new
13 petition for involuntary treatment unless good cause is shown for a
14 change of venue. The cost of the proceedings shall be borne by the
15 state.

16 (6) (a) The hearing shall be held as provided in RCW 71.05.310,
17 and if the court or jury finds that the grounds for additional
18 confinement as set forth in this section are present, subject to
19 subsection (1) (b) of this section, the court may order the committed
20 person returned for an additional period of treatment not to exceed
21 one hundred eighty days from the date of judgment, except as provided
22 in subsection (7) of this section. If the court's order is based
23 solely on the grounds identified in subsection (4) (e) of this
24 section, the court may enter an order for less restrictive
25 alternative treatment not to exceed one hundred eighty days from the
26 date of judgment, and may not enter an order for inpatient treatment.
27 An order for less restrictive alternative treatment must name the
28 behavioral health service provider responsible for identifying the
29 services the person will receive in accordance with RCW 71.05.585,
30 and must include a requirement that the person cooperate with the
31 services planned by the behavioral health service provider.

32 (i) In cases where the court has ordered less restrictive
33 alternative treatment and has previously made an affirmative special
34 finding under RCW 71.05.280(3) (b), the court shall appoint a
35 multidisciplinary transition team to supervise and assist the person
36 on the order for less restrictive treatment, which shall include a
37 representative of the community behavioral health agency providing
38 treatment under RCW 71.05.585, and a specially trained supervising
39 community corrections officer. The court may omit the appointment of
40 a community corrections officer if it makes a special finding that

1 the appointment of a community corrections officer would not
2 facilitate the success of the person, or the safety of the person and
3 the community under (a) (ii) of this subsection.

4 (ii) The role of the transition team shall be to facilitate the
5 success of the person on the less restrictive alternative order by
6 monitoring the person's progress in treatment, compliance with court-
7 ordered conditions, and to problem solve around extra support the
8 person may need or circumstances which may arise that threaten the
9 safety of the person or the community. The transition team may
10 develop a monitoring plan which may be carried out by any member of
11 the team. The transition team shall meet according to a schedule
12 developed by the team, and shall communicate as needed if issues
13 arise that require the immediate attention of the team.

14 (iii) The department of corrections shall collaborate with the
15 department to develop specialized training for community corrections
16 officers under this section. The lack of a trained community
17 corrections officer must not be the cause of delay to entry of a less
18 restrictive alternative order.

19 (b) At the end of the one hundred eighty-day period of
20 commitment, or one-year period of commitment if subsection (7) of
21 this section applies, the committed person shall be released unless a
22 petition for an additional one hundred eighty-day period of continued
23 treatment is filed and heard in the same manner as provided in this
24 section. Successive one hundred eighty-day commitments are
25 permissible on the same grounds and pursuant to the same procedures
26 as the original one hundred eighty-day commitment.

27 (7) An order for less restrictive treatment entered under
28 subsection (6) of this section may be for up to one year when the
29 person's previous commitment term was for intensive inpatient
30 treatment in a state hospital.

31 (8) No person committed as provided in this section may be
32 detained unless a valid order of commitment is in effect. No order of
33 commitment can exceed one hundred eighty days in length except as
34 provided in subsection (7) of this section.

35 **Sec. 3.** RCW 71.05.320 and 2020 c 302 s 46 are each amended to
36 read as follows:

37 (1) If the court or jury finds that grounds set forth in RCW
38 71.05.280 have been proven and that the best interests of the person
39 or others will not be served by a less restrictive treatment which is

1 an alternative to detention, the court shall remand him or her to the
2 custody of the department of social and health services or to a
3 facility certified for ninety day treatment by the department for a
4 further period of intensive treatment not to exceed ninety days from
5 the date of judgment.

6 If the order for inpatient treatment is based on a substance use
7 disorder, treatment must take place at an approved substance use
8 disorder treatment program. If the grounds set forth in RCW
9 71.05.280(3) are the basis of commitment, then the period of
10 treatment may be up to but not exceed one hundred eighty days from
11 the date of judgment to the custody of the department of social and
12 health services or to a facility certified for one hundred eighty-day
13 treatment by the department or under RCW 71.05.745.

14 (2) If the court or jury finds that grounds set forth in RCW
15 71.05.280 have been proven, but finds that treatment less restrictive
16 than detention will be in the best interest of the person or others,
17 then the court shall remand him or her to the custody of the
18 department of social and health services or to a facility certified
19 for ninety day treatment by the department or to a less restrictive
20 alternative for a further period of less restrictive treatment not to
21 exceed ninety days from the date of judgment. If the grounds set
22 forth in RCW 71.05.280(3) are the basis of commitment, then the
23 period of treatment may be up to but not exceed one hundred eighty
24 days from the date of judgment. If the court or jury finds that the
25 grounds set forth in RCW 71.05.280(5) have been proven, and provide
26 the only basis for commitment, the court must enter an order for less
27 restrictive alternative treatment for up to ninety days from the date
28 of judgment and may not order inpatient treatment.

29 (3) An order for less restrictive alternative treatment entered
30 under subsection (2) of this section must name the behavioral health
31 service provider responsible for identifying the services the person
32 will receive in accordance with RCW 71.05.585, and must include a
33 requirement that the person cooperate with the services planned by
34 the behavioral health service provider.

35 (4) The person shall be released from involuntary treatment at
36 the expiration of the period of commitment imposed under subsection
37 (1) or (2) of this section unless the superintendent or professional
38 person in charge of the facility in which he or she is confined, or
39 in the event of a less restrictive alternative, the designated crisis

1 responder, files a new petition for involuntary treatment on the
2 grounds that the committed person:

3 (a) During the current period of court ordered treatment: (i) Has
4 threatened, attempted, or inflicted physical harm upon the person of
5 another, or substantial damage upon the property of another, and (ii)
6 as a result of a behavioral health disorder or developmental
7 disability presents a likelihood of serious harm; or

8 (b) Was taken into custody as a result of conduct in which he or
9 she attempted or inflicted serious physical harm upon the person of
10 another, and continues to present, as a result of a behavioral health
11 disorder or developmental disability, a likelihood of serious harm;
12 or

13 (c) (i) Is in custody pursuant to RCW 71.05.280(3) and as a result
14 of a behavioral health disorder or developmental disability continues
15 to present a substantial likelihood of repeating acts similar to the
16 charged criminal behavior, when considering the person's life
17 history, progress in treatment, and the public safety.

18 (ii) In cases under this subsection where the court has made an
19 affirmative special finding under RCW 71.05.280(3)(b), the commitment
20 shall continue for up to an additional one hundred eighty-day period
21 whenever the petition presents prima facie evidence that the person
22 continues to suffer from a behavioral health disorder or
23 developmental disability that results in a substantial likelihood of
24 committing acts similar to the charged criminal behavior, unless the
25 person presents proof through an admissible expert opinion that the
26 person's condition has so changed such that the behavioral health
27 disorder or developmental disability no longer presents a substantial
28 likelihood of the person committing acts similar to the charged
29 criminal behavior. The initial or additional commitment period may
30 include transfer to a specialized program of intensive support and
31 treatment, which may be initiated prior to or after discharge from
32 the state hospital; or

33 (d) Continues to be gravely disabled; or

34 (e) Is in need of assisted outpatient behavioral health
35 treatment.

36 If the conduct required to be proven in (b) and (c) of this
37 subsection was found by a judge or jury in a prior trial under this
38 chapter, it shall not be necessary to prove such conduct again.

1 If less restrictive alternative treatment is sought, the petition
2 shall set forth any recommendations for less restrictive alternative
3 treatment services.

4 (5) A new petition for involuntary treatment filed under
5 subsection (4) of this section shall be filed and heard in the
6 superior court of the county of the facility which is filing the new
7 petition for involuntary treatment unless good cause is shown for a
8 change of venue. The cost of the proceedings shall be borne by the
9 state.

10 (6) (a) The hearing shall be held as provided in RCW 71.05.310,
11 and if the court or jury finds that the grounds for additional
12 confinement as set forth in this section are present, the court may
13 order the committed person returned for an additional period of
14 treatment not to exceed one hundred eighty days from the date of
15 judgment, except as provided in subsection (7) of this section. If
16 the court's order is based solely on the grounds identified in
17 subsection (4) (e) of this section, the court may enter an order for
18 less restrictive alternative treatment not to exceed one hundred
19 eighty days from the date of judgment, and may not enter an order for
20 inpatient treatment. An order for less restrictive alternative
21 treatment must name the behavioral health service provider
22 responsible for identifying the services the person will receive in
23 accordance with RCW 71.05.585, and must include a requirement that
24 the person cooperate with the services planned by the behavioral
25 health service provider.

26 (i) In cases where the court has ordered less restrictive
27 alternative treatment and has previously made an affirmative special
28 finding under RCW 71.05.280(3)(b), the court shall appoint a
29 multidisciplinary transition team to supervise and assist the person
30 on the order for less restrictive treatment, which shall include a
31 representative of the community behavioral health agency providing
32 treatment under RCW 71.05.585, and a specially trained supervising
33 community corrections officer. The court may omit the appointment of
34 a community corrections officer if it makes a special finding that
35 the appointment of a community corrections officer would not
36 facilitate the success of the person, or the safety of the person and
37 the community under (a)(ii) of this subsection.

38 (ii) The role of the transition team shall be to facilitate the
39 success of the person on the less restrictive alternative order by
40 monitoring the person's progress in treatment, compliance with court-

1 ordered conditions, and to problem solve around extra support the
2 person may need or circumstances which may arise that threaten the
3 safety of the person or the community. The transition team may
4 develop a monitoring plan which may be carried out by any member of
5 the team. The transition team shall meet according to a schedule
6 developed by the team, and shall communicate as needed if issues
7 arise that require the immediate attention of the team.

8 (iii) The department of corrections shall collaborate with the
9 department to develop specialized training for community corrections
10 officers under this section. The lack of a trained community
11 corrections officer must not be the cause of delay to entry of a less
12 restrictive alternative order.

13 (b) At the end of the one hundred eighty-day period of
14 commitment, or one-year period of commitment if subsection (7) of
15 this section applies, the committed person shall be released unless a
16 petition for an additional one hundred eighty-day period of continued
17 treatment is filed and heard in the same manner as provided in this
18 section. Successive one hundred eighty-day commitments are
19 permissible on the same grounds and pursuant to the same procedures
20 as the original one hundred eighty-day commitment.

21 (7) An order for less restrictive treatment entered under
22 subsection (6) of this section may be for up to one year when the
23 person's previous commitment term was for intensive inpatient
24 treatment in a state hospital.

25 (8) No person committed as provided in this section may be
26 detained unless a valid order of commitment is in effect. No order of
27 commitment can exceed one hundred eighty days in length except as
28 provided in subsection (7) of this section.

29 NEW SECTION. Sec. 4. A new section is added to chapter 10.77
30 RCW to read as follows:

31 (1) Conditional release planning should start at admission and
32 proceed in coordination between the department and the person's
33 managed care organization, or behavioral health administrative
34 services organization if the person is not eligible for medical
35 assistance under chapter 74.09 RCW. If needed, the department shall
36 assist the person to enroll in medical assistance in suspense status
37 under RCW 74.09.670. The state hospital liaison for the managed care
38 organization or behavioral health administrative services

1 organization shall facilitate conditional release planning in
2 collaboration with the department.

3 (2) Less restrictive alternative treatment pursuant to a
4 conditional release order, at a minimum, includes the following
5 services:

6 (a) Assignment of a care coordinator;

7 (b) An intake evaluation with the provider of the conditional
8 treatment;

9 (c) A psychiatric evaluation or a substance use disorder
10 evaluation, or both;

11 (d) A schedule of regular contacts with the provider of the less
12 restrictive alternative treatment services for the duration of the
13 order;

14 (e) A transition plan addressing access to continued services at
15 the expiration of the order;

16 (f) An individual crisis plan;

17 (g) Consultation about the formation of a mental health advance
18 directive under chapter 71.32 RCW; and

19 (h) Appointment of a transition team under RCW 10.77.150;

20 (i) Notification to the care coordinator assigned in (a) of this
21 subsection and to the transition team as provided in RCW 10.77.150 if
22 reasonable efforts to engage the client fail to produce substantial
23 compliance with court-ordered treatment conditions.

24 (3) Less restrictive alternative treatment pursuant to a
25 conditional release order may additionally include requirements to
26 participate in the following services:

27 (a) Medication management;

28 (b) Psychotherapy;

29 (c) Nursing;

30 (d) Substance use disorder counseling;

31 (e) Residential treatment;

32 (f) Support for housing, benefits, education, and employment; and

33 (g) Periodic court review.

34 (4) Nothing in this section prohibits items in subsection (2) of
35 this section from beginning before the conditional release of the
36 individual.

37 (5) If the person was provided with involuntary medication under
38 RCW 71.05.215 or pursuant to a judicial order during the involuntary
39 commitment period, the less restrictive alternative treatment
40 pursuant to the conditional release order may authorize the less

1 restrictive alternative treatment provider or its designee to
2 administer involuntary antipsychotic medication to the person if the
3 provider has attempted and failed to obtain the informed consent of
4 the person and there is a concurring medical opinion approving the
5 medication by a psychiatrist, physician assistant working with a
6 supervising psychiatrist, psychiatric advanced registered nurse
7 practitioner, or physician or physician assistant in consultation
8 with an independent mental health professional with prescribing
9 authority.

10 (6) Less restrictive alternative treatment pursuant to a
11 conditional release order must be administered by a provider that is
12 certified or licensed to provide or coordinate the full scope of
13 services required under the less restrictive alternative order and
14 that has agreed to assume this responsibility.

15 (7) The care coordinator assigned to a person ordered to less
16 restrictive alternative treatment pursuant to a conditional release
17 order must submit an individualized plan for the person's treatment
18 services to the court that entered the order. An initial plan must be
19 submitted as soon as possible following the intake evaluation and a
20 revised plan must be submitted upon any subsequent modification in
21 which a type of service is removed from or added to the treatment
22 plan.

23 (8) A care coordinator may disclose information and records
24 related to mental health treatment under RCW 70.02.230(2)(k) for
25 purposes of implementing less restrictive alternative treatment
26 pursuant to a conditional release order.

27 (9) For the purpose of this section, "care coordinator" means a
28 clinical practitioner within the community behavioral health agency
29 providing less restrictive alternative treatment who coordinates the
30 activities of less restrictive alternative treatment pursuant to a
31 conditional release order. The care coordinator coordinates
32 activities with the person's transition team that are necessary for
33 enforcement and continuation of the conditional release order and is
34 responsible for coordinating service activities with other agencies
35 and establishing and maintaining a therapeutic relationship with the
36 individual on a continuing basis.

37 **Sec. 5.** RCW 10.77.060 and 2016 sp.s. c 29 s 408 are each amended
38 to read as follows:

1 (1) (a) Whenever a defendant has pleaded not guilty by reason of
2 insanity, or there is reason to doubt his or her competency, the
3 court on its own motion or on the motion of any party shall either
4 appoint or request the secretary to designate a qualified expert or
5 professional person, who shall be approved by the prosecuting
6 attorney, to evaluate and report upon the mental condition of the
7 defendant.

8 (b) The signed order of the court shall serve as authority for
9 the evaluator to be given access to all records held by any mental
10 health, medical, educational, or correctional facility that relate to
11 the present or past mental, emotional, or physical condition of the
12 defendant. If the court is advised by any party that the defendant
13 may have a developmental disability, the evaluation must be performed
14 by a developmental disabilities professional.

15 (c) The evaluator shall assess the defendant in a jail, detention
16 facility, in the community, or in court to determine whether a period
17 of inpatient commitment will be necessary to complete an accurate
18 evaluation. If inpatient commitment is needed, the signed order of
19 the court shall serve as authority for the evaluator to request the
20 jail or detention facility to transport the defendant to a hospital
21 or secure mental health facility for a period of commitment not to
22 exceed fifteen days from the time of admission to the facility.
23 Otherwise, the evaluator shall complete the evaluation.

24 (d) The court may commit the defendant for evaluation to a
25 hospital or secure mental health facility without an assessment if:
26 (i) The defendant is charged with murder in the first or second
27 degree; (ii) the court finds that it is more likely than not that an
28 evaluation in the jail will be inadequate to complete an accurate
29 evaluation; or (iii) the court finds that an evaluation outside the
30 jail setting is necessary for the health, safety, or welfare of the
31 defendant. The court shall not order an initial inpatient evaluation
32 for any purpose other than a competency evaluation.

33 (e) The order shall indicate whether, in the event the defendant
34 is committed to a hospital or secure mental health facility for
35 evaluation, all parties agree to waive the presence of the defendant
36 or to the defendant's remote participation at a subsequent competency
37 hearing or presentation of an agreed order if the recommendation of
38 the evaluator is for continuation of the stay of criminal
39 proceedings, or if the opinion of the evaluator is that the defendant
40 remains incompetent and there is no remaining restoration period, and

1 the hearing is held prior to the expiration of the authorized
2 commitment period.

3 (f) When a defendant is ordered to be (~~committed for inpatient~~
4 ~~evaluation~~) evaluated under this subsection (1), or when a party or
5 the court determines at first appearance that an order for evaluation
6 under this subsection will be requested or ordered if charges are
7 pursued, the court may delay granting bail until the defendant has
8 been evaluated for competency or sanity and appears before the court.
9 Following the evaluation, in determining bail the court shall
10 consider: (i) Recommendations of the evaluator regarding the
11 defendant's competency, sanity, or diminished capacity; (ii) whether
12 the defendant has a recent history of one or more violent acts; (iii)
13 whether the defendant has previously been acquitted by reason of
14 insanity or found incompetent; (iv) whether it is reasonably likely
15 the defendant will fail to appear for a future court hearing; and (v)
16 whether the defendant is a threat to public safety.

17 (2) The court may direct that a qualified expert or professional
18 person retained by or appointed for the defendant be permitted to
19 witness the evaluation authorized by subsection (1) of this section,
20 and that the defendant shall have access to all information obtained
21 by the court appointed experts or professional persons. The
22 defendant's expert or professional person shall have the right to
23 file his or her own report following the guidelines of subsection (3)
24 of this section. If the defendant is indigent, the court shall upon
25 the request of the defendant assist him or her in obtaining an expert
26 or professional person.

27 (3) The report of the evaluation shall include the following:

28 (a) A description of the nature of the evaluation;

29 (b) A diagnosis or description of the current mental status of
30 the defendant;

31 (c) If the defendant suffers from a mental disease or defect, or
32 has a developmental disability, an opinion as to competency;

33 (d) If the defendant has indicated his or her intention to rely
34 on the defense of insanity pursuant to RCW 10.77.030, and an
35 evaluation and report by an expert or professional person has been
36 provided concluding that the defendant was criminally insane at the
37 time of the alleged offense, an opinion as to the defendant's sanity
38 at the time of the act, and an opinion as to whether the defendant
39 presents a substantial danger to other persons, or presents a
40 substantial likelihood of committing criminal acts jeopardizing

1 public safety or security, unless kept under further control by the
2 court or other persons or institutions, provided that no opinion
3 shall be rendered under this subsection (3)(d) unless the evaluator
4 or court determines that the defendant is competent to stand trial;

5 (e) When directed by the court, if an evaluation and report by an
6 expert or professional person has been provided concluding that the
7 defendant lacked the capacity at the time of the offense to form the
8 mental state necessary to commit the charged offense, an opinion as
9 to the capacity of the defendant to have a particular state of mind
10 which is an element of the offense charged;

11 (f) An opinion as to whether the defendant should be evaluated by
12 a designated crisis responder under chapter 71.05 RCW.

13 (4) The secretary may execute such agreements as appropriate and
14 necessary to implement this section and may choose to designate more
15 than one evaluator.

16 **Sec. 6.** RCW 70.02.230 and 2020 c 256 s 402 are each amended to
17 read as follows:

18 (1) (~~Except as provided in this section, RCW 70.02.050,~~
19 ~~71.05.445, 74.09.295, 70.02.210, 70.02.240, 70.02.250, 70.02.260, and~~
20 ~~70.02.265, or pursuant to a valid authorization under RCW 70.02.030,~~
21 ~~the~~) The fact of admission to a provider for mental health services
22 and all information and records compiled, obtained, or maintained in
23 the course of providing mental health services to either voluntary or
24 involuntary recipients of services at public or private agencies
25 ((must be confidential)) may not be disclosed except as provided in
26 this section, RCW 70.02.050, 71.05.445, 74.09.295, 70.02.210,
27 70.02.240, 70.02.250, 70.02.260, and 70.02.265, or pursuant to a
28 valid authorization under RCW 70.02.030.

29 (2) Information and records related to mental health services,
30 other than those obtained through treatment under chapter 71.34 RCW,
31 may be disclosed (~~only~~):

32 (a) In communications between qualified professional persons to
33 meet the requirements of chapter 71.05 RCW, including Indian health
34 care providers, in the provision of services or appropriate
35 referrals, or in the course of guardianship proceedings if provided
36 to a professional person:

37 (i) Employed by the facility;

38 (ii) Who has medical responsibility for the patient's care;

39 (iii) Who is a designated crisis responder;

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

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

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

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

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

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

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

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

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

27 (d)(i) To the courts, including tribal courts, as necessary to
28 the administration of chapter 71.05 RCW or to a court ordering an
29 evaluation or treatment under chapter 10.77 RCW solely for the
30 purpose of preventing the entry of any evaluation or treatment order
31 that is inconsistent with any order entered under chapter 71.05 RCW.

32 (ii) To a court or its designee in which a motion under chapter
33 10.77 RCW has been made for involuntary medication of a defendant for
34 the purpose of competency restoration.

35 (iii) Disclosure under this subsection is mandatory for the
36 purpose of the federal health insurance portability and
37 accountability act;

38 (e)(i) When a mental health professional or designated crisis
39 responder is requested by a representative of a law enforcement or
40 corrections agency, including a police officer, sheriff, community

1 corrections officer, a municipal attorney, or prosecuting attorney to
2 undertake an investigation or provide treatment under RCW 71.05.150,
3 10.31.110, or 71.05.153, the mental health professional or designated
4 crisis responder shall, if requested to do so, advise the
5 representative in writing of the results of the investigation
6 including a statement of reasons for the decision to detain or
7 release the person investigated. The written report must be submitted
8 within seventy-two hours of the completion of the investigation or
9 the request from the law enforcement or corrections representative,
10 whichever occurs later.

11 (ii) Disclosure under this subsection is mandatory for the
12 purposes of the federal health insurance portability and
13 accountability act;

14 (f) To the attorney of the detained person;

15 (g) To the prosecuting attorney as necessary to carry out the
16 responsibilities of the office under RCW 71.05.330(2),
17 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided
18 access to records regarding the committed person's treatment and
19 prognosis, medication, behavior problems, and other records relevant
20 to the issue of whether treatment less restrictive than inpatient
21 treatment is in the best interest of the committed person or others.
22 Information must be disclosed only after giving notice to the
23 committed person and the person's counsel;

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

37 (ii) Disclosure under this subsection is mandatory for the
38 purposes of the federal health insurance portability and
39 accountability act;

1 (i)(i) To appropriate corrections and law enforcement agencies
2 all necessary and relevant information in the event of a crisis or
3 emergent situation that poses a significant and imminent risk to the
4 public. The mental health service agency or its employees are not
5 civilly liable for the decision to disclose or not so long as the
6 decision was reached in good faith and without gross negligence.

7 (ii) Disclosure under this subsection is mandatory for the
8 purposes of the health insurance portability and accountability act;

9 (j) To the persons designated in RCW 71.05.425 for the purposes
10 described in those sections;

11 (k) By a care coordinator under RCW 71.05.585 or section 4 of
12 this act assigned to a person ordered to receive less restrictive
13 alternative treatment for the purpose of sharing information to
14 parties necessary for the implementation of proceedings under chapter
15 71.05 or 10.77 RCW;

16 (l) Upon the death of a person. The person's next of kin,
17 personal representative, guardian, or conservator, if any, must be
18 notified. Next of kin who are of legal age and competent must be
19 notified under this section in the following order: Spouse, parents,
20 children, brothers and sisters, and other relatives according to the
21 degree of relation. Access to all records and information compiled,
22 obtained, or maintained in the course of providing services to a
23 deceased patient are governed by RCW 70.02.140;

24 (~~(l)~~) (m) To mark headstones or otherwise memorialize patients
25 interred at state hospital cemeteries. The department of social and
26 health services shall make available the name, date of birth, and
27 date of death of patients buried in state hospital cemeteries fifty
28 years after the death of a patient;

29 (~~(m)~~) (n) To law enforcement officers and to prosecuting
30 attorneys as are necessary to enforce RCW 9.41.040(2)(a)(iv). The
31 extent of information that may be released is limited as follows:

32 (i) Only the fact, place, and date of involuntary commitment, an
33 official copy of any order or orders of commitment, and an official
34 copy of any written or oral notice of ineligibility to possess a
35 firearm that was provided to the person pursuant to RCW 9.41.047(1),
36 must be disclosed upon request;

37 (ii) The law enforcement and prosecuting attorneys may only
38 release the information obtained to the person's attorney as required
39 by court rule and to a jury or judge, if a jury is waived, that

1 presides over any trial at which the person is charged with violating
2 RCW 9.41.040(2)(a)(iv);

3 (iii) Disclosure under this subsection is mandatory for the
4 purposes of the federal health insurance portability and
5 accountability act;

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

17 ~~((o))~~ (p) Pursuant to lawful order of a court, including a
18 tribal court;

19 ~~((p))~~ (q) To qualified staff members of the department, to the
20 authority, to behavioral health administrative services
21 organizations, to managed care organizations, to resource management
22 services responsible for serving a patient, or to service providers
23 designated by resource management services as necessary to determine
24 the progress and adequacy of treatment and to determine whether the
25 person should be transferred to a less restrictive or more
26 appropriate treatment modality or facility;

27 ~~((q))~~ (r) Within the mental health service agency or Indian
28 health care provider facility where the patient is receiving
29 treatment, confidential information may be disclosed to persons
30 employed, serving in bona fide training programs, or participating in
31 supervised volunteer programs, at the facility when it is necessary
32 to perform their duties;

33 ~~((r))~~ (s) Within the department and the authority as necessary
34 to coordinate treatment for mental illness, developmental
35 disabilities, alcoholism, or substance use disorder of persons who
36 are under the supervision of the department;

37 ~~((s))~~ (t) Between the department of social and health services,
38 the department of children, youth, and families, and the health care
39 authority as necessary to coordinate treatment for mental illness,
40 developmental disabilities, alcoholism, or drug abuse of persons who

1 are under the supervision of the department of social and health
2 services or the department of children, youth, and families;

3 ~~((t))~~ (u) To a licensed physician or psychiatric advanced
4 registered nurse practitioner who has determined that the life or
5 health of the person is in danger and that treatment without the
6 information and records related to mental health services could be
7 injurious to the patient's health. Disclosure must be limited to the
8 portions of the records necessary to meet the medical emergency;

9 ~~((u))~~ (v)(i) Consistent with the requirements of the federal
10 health insurance portability and accountability act, to:

11 (A) A health care provider, including an Indian health care
12 provider, who is providing care to a patient, or to whom a patient
13 has been referred for evaluation or treatment; or

14 (B) Any other person who is working in a care coordinator role
15 for a health care facility, health care provider, or Indian health
16 care provider, or is under an agreement pursuant to the federal
17 health insurance portability and accountability act with a health
18 care facility or a health care provider and requires the information
19 and records to assure coordinated care and treatment of that patient.

20 (ii) A person authorized to use or disclose information and
21 records related to mental health services under this subsection (2)
22 ~~((u))~~ (v) must take appropriate steps to protect the information
23 and records relating to mental health services.

24 (iii) Psychotherapy notes may not be released without
25 authorization of the patient who is the subject of the request for
26 release of information;

27 ~~((v))~~ (w) To administrative and office support staff designated
28 to obtain medical records for those licensed professionals listed in
29 ~~((u))~~ (v) of this subsection;

30 ~~((w))~~ (x) To a facility that is to receive a person who is
31 involuntarily committed under chapter 71.05 RCW, or upon transfer of
32 the person from one evaluation and treatment facility to another. The
33 release of records under this subsection is limited to the
34 information and records related to mental health services required by
35 law, a record or summary of all somatic treatments, and a discharge
36 summary. The discharge summary may include a statement of the
37 patient's problem, the treatment goals, the type of treatment which
38 has been provided, and recommendation for future treatment, but may
39 not include the patient's complete treatment record;

1 (~~(x)~~) (y) To the person's counsel or guardian ad litem, without
2 modification, at any time in order to prepare for involuntary
3 commitment or recommitment proceedings, reexaminations, appeals, or
4 other actions relating to detention, admission, commitment, or
5 patient's rights under chapter 71.05 RCW;

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

24 (~~(z)~~) (aa) To all current treating providers, including Indian
25 health care providers, of the patient with prescriptive authority who
26 have written a prescription for the patient within the last twelve
27 months. For purposes of coordinating health care, the department or
28 the authority may release without written authorization of the
29 patient, information acquired for billing and collection purposes as
30 described in RCW 70.02.050(1)(d). The department, or the authority,
31 if applicable, shall notify the patient that billing and collection
32 information has been released to named providers, and provide the
33 substance of the information released and the dates of such release.
34 Neither the department nor the authority may release counseling,
35 inpatient psychiatric hospitalization, or drug and alcohol treatment
36 information without a signed written release from the client;

37 (~~(aa)~~) (bb) (i) To the secretary of social and health services
38 and the director of the health care authority for either program
39 evaluation or research, or both so long as the secretary or director,
40 where applicable, adopts rules for the conduct of the evaluation or

1 research, or both. Such rules must include, but need not be limited
2 to, the requirement that all evaluators and researchers sign an oath
3 of confidentiality substantially as follows:

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

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

13 /s/"

14 (ii) Nothing in this chapter may be construed to prohibit the
15 compilation and publication of statistical data for use by government
16 or researchers under standards, including standards to assure
17 maintenance of confidentiality, set forth by the secretary, or
18 director, where applicable;

19 ~~((bb))~~ (cc) To any person if the conditions in RCW 70.02.205
20 are met;

21 ~~((ee))~~ (dd) To the secretary of health for the purposes of the
22 maternal mortality review panel established in RCW 70.54.450;

23 ~~((dd))~~ (ee) To a tribe or Indian health care provider to carry
24 out the requirements of RCW 71.05.150(7).

25 (3) Whenever federal law or federal regulations restrict the
26 release of information contained in the information and records
27 related to mental health services of any patient who receives
28 treatment for a substance use disorder, the department or the
29 authority may restrict the release of the information as necessary to
30 comply with federal law and regulations.

31 (4) Civil liability and immunity for the release of information
32 about a particular person who is committed to the department of
33 social and health services or the authority under RCW 71.05.280(3)
34 and 71.05.320(4)(c) after dismissal of a sex offense as defined in
35 RCW 9.94A.030, is governed by RCW 4.24.550.

36 (5) The fact of admission to a provider of mental health
37 services, as well as all records, files, evidence, findings, or
38 orders made, prepared, collected, or maintained pursuant to chapter
39 71.05 RCW are not admissible as evidence in any legal proceeding

1 outside that chapter without the written authorization of the person
2 who was the subject of the proceeding except as provided in RCW
3 70.02.260, in a subsequent criminal prosecution of a person committed
4 pursuant to RCW 71.05.280(3) or 71.05.320(4)(c) on charges that were
5 dismissed pursuant to chapter 10.77 RCW due to incompetency to stand
6 trial, in a civil commitment proceeding pursuant to chapter 71.09
7 RCW, or, in the case of a minor, a guardianship or dependency
8 proceeding. The records and files maintained in any court proceeding
9 pursuant to chapter 71.05 RCW must be confidential and available
10 subsequent to such proceedings only to the person who was the subject
11 of the proceeding or his or her attorney. In addition, the court may
12 order the subsequent release or use of such records or files only
13 upon good cause shown if the court finds that appropriate safeguards
14 for strict confidentiality are and will be maintained.

15 (6)(a) Except as provided in RCW 4.24.550, any person may bring
16 an action against an individual who has willfully released
17 confidential information or records concerning him or her in
18 violation of the provisions of this section, for the greater of the
19 following amounts:

20 (i) One thousand dollars; or

21 (ii) Three times the amount of actual damages sustained, if any.

22 (b) It is not a prerequisite to recovery under this subsection
23 that the plaintiff suffered or was threatened with special, as
24 contrasted with general, damages.

25 (c) Any person may bring an action to enjoin the release of
26 confidential information or records concerning him or her or his or
27 her ward, in violation of the provisions of this section, and may in
28 the same action seek damages as provided in this subsection.

29 (d) The court may award to the plaintiff, should he or she
30 prevail in any action authorized by this subsection, reasonable
31 attorney fees in addition to those otherwise provided by law.

32 (e) If an action is brought under this subsection, no action may
33 be brought under RCW 70.02.170.

34 **Sec. 7.** RCW 70.02.240 and 2019 c 381 s 20 are each amended to
35 read as follows:

36 The fact of admission and all information and records related to
37 mental health services obtained through inpatient or outpatient
38 treatment of a minor under chapter 71.34 RCW must be kept
39 confidential, except as authorized by this section or under RCW

1 70.02.050, 70.02.210, 70.02.230, 70.02.250, 70.02.260, and 70.02.265.

2 Confidential information under this section may be disclosed only:

3 (1) In communications between mental health professionals to meet
4 the requirements of chapter 71.34 RCW, in the provision of services
5 to the minor, or in making appropriate referrals;

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

7 (3) To the minor, the minor's parent, including those acting as a
8 parent as defined in RCW 71.34.020 for purposes of family-initiated
9 treatment, and the minor's attorney, subject to RCW 13.50.100;

10 (4) To the courts as necessary to administer chapter 71.34 RCW;

11 (5) By a care coordinator under RCW 71.34.755 or section 4 of
12 this act assigned to a person ordered to receive less restrictive
13 alternative treatment for the purpose of sharing information to
14 parties necessary for the implementation of proceedings under chapter
15 71.34 or 10.77 RCW;

16 (6) To law enforcement officers or public health officers as
17 necessary to carry out the responsibilities of their office. However,
18 only the fact and date of admission, and the date of discharge, the
19 name and address of the treatment provider, if any, and the last
20 known address must be disclosed upon request;

21 ~~((6))~~ (7) To law enforcement officers, public health officers,
22 relatives, and other governmental law enforcement agencies, if a
23 minor has escaped from custody, disappeared from an evaluation and
24 treatment facility, violated conditions of a less restrictive
25 treatment order, or failed to return from an authorized leave, and
26 then only such information as may be necessary to provide for public
27 safety or to assist in the apprehension of the minor. The officers
28 are obligated to keep the information confidential in accordance with
29 this chapter;

30 ~~((7))~~ (8) To the secretary of social and health services and
31 the director of the health care authority for assistance in data
32 collection and program evaluation or research so long as the
33 secretary or director, where applicable, adopts rules for the conduct
34 of such evaluation and research. The rules must include, but need not
35 be limited to, the requirement that all evaluators and researchers
36 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,
39 agency, or person) I,, agree not to divulge, publish, or

1 otherwise make known to unauthorized persons or the public any
2 information obtained in the course of such evaluation or research
3 regarding minors who have received services in a manner such that the
4 minor is identifiable.

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

7 /s/";

8 ~~((8))~~ (9) To appropriate law enforcement agencies, upon
9 request, all necessary and relevant information in the event of a
10 crisis or emergent situation that poses a significant and imminent
11 risk to the public. The mental health service agency or its employees
12 are not civilly liable for the decision to disclose or not, so long
13 as the decision was reached in good faith and without gross
14 negligence;

15 ~~((9))~~ (10) To appropriate law enforcement agencies and to a
16 person, when the identity of the person is known to the public or
17 private agency, whose health and safety has been threatened, or who
18 is known to have been repeatedly harassed, by the patient. The person
19 may designate a representative to receive the disclosure. The
20 disclosure must be made by the professional person in charge of the
21 public or private agency or his or her designee and must include the
22 dates of admission, discharge, authorized or unauthorized absence
23 from the agency's facility, and only any other information that is
24 pertinent to the threat or harassment. The agency or its employees
25 are not civilly liable for the decision to disclose or not, so long
26 as the decision was reached in good faith and without gross
27 negligence;

28 ~~((10))~~ (11) To a minor's next of kin, attorney, guardian, or
29 conservator, if any, the information that the minor is presently in
30 the facility or that the minor is seriously physically ill and a
31 statement evaluating the mental and physical condition of the minor
32 as well as a statement of the probable duration of the minor's
33 confinement;

34 ~~((11))~~ (12) Upon the death of a minor, to the minor's next of
35 kin;

36 ~~((12))~~ (13) To a facility in which the minor resides or will
37 reside;

1 (~~(13)~~) (14) To law enforcement officers and to prosecuting
2 attorneys as are necessary to enforce RCW 9.41.040(2)(a)(iv). The
3 extent of 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 must be disclosed upon request;

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

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

17 (~~(14)~~) (15) This section may not be construed to prohibit the
18 compilation and publication of statistical data for use by government
19 or researchers under standards, including standards to assure
20 maintenance of confidentiality, set forth by the director of the
21 health care authority or the secretary of the department of social
22 and health services, where applicable. The fact of admission and all
23 information obtained pursuant to chapter 71.34 RCW are not admissible
24 as evidence in any legal proceeding outside chapter 71.34 RCW, except
25 guardianship or dependency, without the written consent of the minor
26 or the minor's parent;

27 (~~(15)~~) (16) For the purpose of a correctional facility
28 participating in the postinstitutional medical assistance system
29 supporting the expedited medical determinations and medical
30 suspensions as provided in RCW 74.09.555 and 74.09.295;

31 (~~(16)~~) (17) Pursuant to a lawful order of a court.

32 **Sec. 8.** RCW 71.24.035 and 2020 c 256 s 202 are each amended to
33 read as follows:

34 (1) The authority is designated as the state behavioral health
35 authority which includes recognition as the single state authority
36 for substance use disorders and state mental health authority.

37 (2) The director shall provide for public, client, tribal, and
38 licensed or certified behavioral health agency participation in
39 developing the state behavioral health program, developing related

1 contracts, and any waiver request to the federal government under
2 medicaid.

3 (3) The director shall provide for participation in developing
4 the state behavioral health program for children and other
5 underserved populations, by including representatives on any
6 committee established to provide oversight to the state behavioral
7 health program.

8 (4) The authority shall be designated as the behavioral health
9 administrative services organization for a regional service area if a
10 behavioral health administrative services organization fails to meet
11 the authority's contracting requirements or refuses to exercise the
12 responsibilities under its contract or state law, until such time as
13 a new behavioral health administrative services organization is
14 designated.

15 (5) The director shall:

16 (a) Assure that any behavioral health administrative services
17 organization, managed care organization, or community behavioral
18 health program provides medically necessary services to medicaid
19 recipients consistent with the state's medicaid state plan or federal
20 waiver authorities, and nonmedicaid services consistent with
21 priorities established by the authority;

22 (b) Develop contracts in a manner to ensure an adequate network
23 of inpatient services, evaluation and treatment services, and
24 facilities under chapter 71.05 RCW to ensure access to treatment,
25 resource management services, and community support services;

26 (c) Make contracts necessary or incidental to the performance of
27 its duties and the execution of its powers, including managed care
28 contracts for behavioral health services, contracts entered into
29 under RCW 74.09.522, and contracts with public and private agencies,
30 organizations, and individuals to pay them for behavioral health
31 services;

32 (d) Define administrative costs and ensure that the behavioral
33 health administrative services organization does not exceed an
34 administrative cost of ten percent of available funds;

35 (e) Establish, to the extent possible, a standardized auditing
36 procedure which is designed to assure compliance with contractual
37 agreements authorized by this chapter and minimizes paperwork
38 requirements. The audit procedure shall focus on the outcomes of
39 service as provided in RCW 71.24.435, 70.320.020, and 71.36.025;

1 (f) Develop and maintain an information system to be used by the
2 state and behavioral health administrative services organizations and
3 managed care organizations that includes a tracking method which
4 allows the authority to identify behavioral health clients'
5 participation in any behavioral health service or public program on
6 an immediate basis. The information system shall not include
7 individual patient's case history files. Confidentiality of client
8 information and records shall be maintained as provided in this
9 chapter and chapter 70.02 RCW;

10 (g) Monitor and audit behavioral health administrative services
11 organizations as needed to assure compliance with contractual
12 agreements authorized by this chapter;

13 (h) Monitor and audit access to behavioral health services for
14 individuals eligible for medicaid who are not enrolled in a managed
15 care organization;

16 (i) Adopt such rules as are necessary to implement the
17 authority's responsibilities under this chapter;

18 (j) Administer or supervise the administration of the provisions
19 relating to persons with substance use disorders and intoxicated
20 persons of any state plan submitted for federal funding pursuant to
21 federal health, welfare, or treatment legislation;

22 (k) Require the behavioral health administrative services
23 organizations and the managed care organizations to develop
24 agreements with tribal, city, and county jails and the department of
25 corrections to accept referrals for enrollment on behalf of a
26 confined person, prior to the person's release;

27 (l) Require behavioral health administrative services
28 organizations and managed care organizations, as applicable, to
29 provide services as identified in RCW 71.05.585 and section 4 of this
30 act to individuals committed for involuntary (~~commitment~~) treatment
31 under less restrictive alternative court orders when:

32 (i) The individual is enrolled in the medicaid program; or

33 (ii) The individual is not enrolled in medicaid, does not have
34 other insurance which can pay for the services, and the behavioral
35 health administrative services organization has adequate available
36 resources to provide the services; and

37 (m) Coordinate with the centers for medicare and medicaid
38 services to provide that behavioral health aide services are eligible
39 for federal funding of up to one hundred percent.

1 (6) The director shall use available resources only for
2 behavioral health administrative services organizations and managed
3 care organizations, except:

4 (a) To the extent authorized, and in accordance with any
5 priorities or conditions specified, in the biennial appropriations
6 act; or

7 (b) To incentivize improved performance with respect to the
8 client outcomes established in RCW 71.24.435, 70.320.020, and
9 71.36.025, integration of behavioral health and medical services at
10 the clinical level, and improved care coordination for individuals
11 with complex care needs.

12 (7) Each behavioral health administrative services organization,
13 managed care organization, and licensed or certified behavioral
14 health agency shall file with the secretary of the department of
15 health or the director, on request, such data, statistics, schedules,
16 and information as the secretary of the department of health or the
17 director reasonably requires. A behavioral health administrative
18 services organization, managed care organization, or licensed or
19 certified behavioral health agency which, without good cause, fails
20 to furnish any data, statistics, schedules, or information as
21 requested, or files fraudulent reports thereof, may be subject to the
22 contractual remedies in RCW 74.09.871 or may have its service
23 provider certification or license revoked or suspended.

24 (8) The superior court may restrain any behavioral health
25 administrative services organization, managed care organization, or
26 service provider from operating without a contract, certification, or
27 a license or any other violation of this section. The court may also
28 review, pursuant to procedures contained in chapter 34.05 RCW, any
29 denial, suspension, limitation, restriction, or revocation of
30 certification or license, and grant other relief required to enforce
31 the provisions of this chapter.

32 (9) Upon petition by the secretary of the department of health or
33 the director, and after hearing held upon reasonable notice to the
34 facility, the superior court may issue a warrant to an officer or
35 employee of the secretary of the department of health or the director
36 authorizing him or her to enter at reasonable times, and examine the
37 records, books, and accounts of any behavioral health administrative
38 services organization, managed care organization, or service provider
39 refusing to consent to inspection or examination by the authority.

1 (10) Notwithstanding the existence or pursuit of any other
2 remedy, the secretary of the department of health or the director may
3 file an action for an injunction or other process against any person
4 or governmental unit to restrain or prevent the establishment,
5 conduct, or operation of a behavioral health administrative services
6 organization, managed care organization, or service provider without
7 a contract, certification, or a license under this chapter.

8 (11) The authority shall distribute appropriated state and
9 federal funds in accordance with any priorities, terms, or conditions
10 specified in the appropriations act.

11 (12) The authority, in cooperation with the state congressional
12 delegation, shall actively seek waivers of federal requirements and
13 such modifications of federal regulations as are necessary to allow
14 federal medicaid reimbursement for services provided by freestanding
15 evaluation and treatment facilities licensed under chapter 71.12 RCW
16 or certified under chapter 71.05 RCW. The authority shall
17 periodically share the results of its efforts with the appropriate
18 committees of the senate and the house of representatives.

19 (13) The authority may:

20 (a) Plan, establish, and maintain substance use disorder
21 prevention and substance use disorder treatment programs as necessary
22 or desirable;

23 (b) Coordinate its activities and cooperate with behavioral
24 programs in this and other states, and make contracts and other joint
25 or cooperative arrangements with state, tribal, local, or private
26 agencies in this and other states for behavioral health services and
27 for the common advancement of substance use disorder programs;

28 (c) Solicit and accept for use any gift of money or property made
29 by will or otherwise, and any grant of money, services, or property
30 from the federal government, the state, or any political subdivision
31 thereof or any private source, and do all things necessary to
32 cooperate with the federal government or any of its agencies in
33 making an application for any grant;

34 (d) Keep records and engage in research and the gathering of
35 relevant statistics; and

36 (e) Acquire, hold, or dispose of real property or any interest
37 therein, and construct, lease, or otherwise provide substance use
38 disorder treatment programs.

1 NEW SECTION. **Sec. 9.** The provisions of this act apply to
2 persons who are committed for inpatient treatment under chapter 10.77
3 or 71.05 RCW as of the effective date of this section.

4 NEW SECTION. **Sec. 10.** Section 2 of this act expires July 1,
5 2026.

6 NEW SECTION. **Sec. 11.** Section 3 of this act takes effect July
7 1, 2026.

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