

E2SSB 6358 - H COMM AMD
By Committee on Appropriations

ADOPTED 03/04/2004

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

3 "NEW SECTION. **Sec. 1.** The legislature makes the following
4 findings:

5 (1) In some cases, there is confusion over whether the cause of a
6 person's mental disorder can make that person ineligible for
7 involuntary treatment;

8 (2) Some offenders under supervision in the community are
9 concurrently subject to court-ordered mental health or chemical
10 dependency treatment;

11 (3) Some offenders under supervision in the community are subject
12 to department of corrections-ordered mental health or substance abuse
13 treatment;

14 (4) The department of corrections frequently does not know that an
15 offender is subject to court-ordered treatment;

16 (5) Treatment providers frequently do not know that a client is
17 subject to department of corrections supervision;

18 (6) There is confusion about the extent to which information about
19 an offender subject to both treatment orders and supervision by the
20 department of corrections may be shared;

21 (7) When information is not shared, the lack of information creates
22 gaps in enforcement both of the court order and the offender's
23 conditions of supervision; and

24 (8) When there are gaps in enforcement, there is an increased risk
25 to public safety.

26 Consequently, the legislature intends to clarify the standards for
27 commitment and improve the coordination between the department of
28 corrections and mental health and chemical dependency treatment
29 providers to enhance public safety by improving compliance with
30 treatment and supervision orders and by providing both treatment

1 providers and the department of corrections with more current, complete
2 information about the offender's status.

3 **Sec. 2.** RCW 71.05.040 and 1997 c 112 s 4 are each amended to read
4 as follows:

5 Persons who are developmentally disabled, impaired by chronic
6 alcoholism or drug abuse, or suffering from dementia shall not be
7 detained for evaluation and treatment or judicially committed solely by
8 reason of that condition unless such condition causes a person to be
9 gravely disabled or as a result of a mental disorder such condition
10 exists that constitutes a likelihood of serious harm: Provided
11 however, That persons who are developmentally disabled, impaired by
12 chronic alcoholism or drug abuse, or suffering from dementia and who
13 otherwise meet the criteria for detention or judicial commitment are
14 not ineligible for detention or commitment based on this condition
15 alone.

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

18 When a county designated mental health professional or a
19 professional person has determined that a person has a mental disorder,
20 and is otherwise committable, the cause of the person's mental disorder
21 shall not make the person ineligible for commitment under chapter 71.05
22 RCW.

23 **Sec. 4.** RCW 71.05.445 and 2002 c 39 s 2 are each amended to read
24 as follows:

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

27 (a) "Information related to mental health services" means all
28 information and records compiled, obtained, or maintained in the course
29 of providing services to either voluntary or involuntary recipients of
30 services by a mental health service provider. This may include
31 documents of legal proceedings under this chapter or chapter 71.34 or
32 10.77 RCW, or somatic health care information.

33 (b) "Mental health service provider" means a public or private
34 agency that provides services to persons with mental disorders as
35 defined under RCW 71.05.020 and receives funding from public sources.
36 This includes evaluation and treatment facilities as defined in RCW

1 71.05.020, community mental health service delivery systems, or
2 community mental health programs as defined in RCW 71.24.025, and
3 facilities conducting competency evaluations and restoration under
4 chapter 10.77 RCW.

5 (2)(a) Information related to mental health services delivered to
6 a person subject to chapter 9.94A or 9.95 RCW shall be released, upon
7 request, by a mental health service provider to department of
8 corrections personnel for whom the information is necessary to carry
9 out the responsibilities of their office. The information must be
10 provided only for the purposes of completing presentence investigations
11 or risk assessment reports, supervision of an incarcerated (~~(person)~~)
12 offender or offender under supervision in the community, planning for
13 and provision of supervision of (~~(a person)~~) an offender, or assessment
14 of (~~(a person's)~~) an offender's risk to the community. The request
15 shall be in writing and shall not require the consent of the subject of
16 the records.

17 (b) If an offender subject to chapter 9.94A or 9.95 RCW has failed
18 to report for department of corrections supervision or in the event of
19 an emergent situation that poses a significant risk to the public or
20 the offender, information related to mental health services delivered
21 to the offender and, if known, information regarding where the offender
22 is likely to be found shall be released by the mental health services
23 provider to the department of corrections upon request. The initial
24 request may be written or oral. All oral requests must be subsequently
25 confirmed in writing. Information released in response to an oral
26 request is limited to a statement as to whether the offender is or is
27 not being treated by the mental health services provider and the
28 address or information about the location or whereabouts of the
29 offender. Information released in response to a written request may
30 include information identified by rule as provided in subsections (4)
31 and (5) of this section. For purposes of this subsection a written
32 request includes requests made by e-mail or facsimile so long as the
33 requesting person at the department of corrections is clearly
34 identified. The request must specify the information being requested.
35 Disclosure of the information requested does not require the consent of
36 the subject of the records unless the offender has received relief from
37 disclosure under section 11, 12, or 13 of this act.

38 (3)(a) When a mental health service provider conducts its initial

1 assessment for a person receiving court-ordered treatment, the service
2 provider shall inquire and shall be told by the offender whether he or
3 she is subject to supervision by the department of corrections.

4 (b) When a person receiving court-ordered treatment or treatment
5 ordered by the department of corrections discloses to his or her mental
6 health service provider that he or she is subject to supervision by the
7 department of corrections, the mental health services provider shall
8 notify the department of corrections that he or she is treating the
9 offender and shall notify the offender that his or her community
10 corrections officer will be notified of the treatment, provided that if
11 the offender has received relief from disclosure pursuant to section
12 11, 12, or 13 of this act and the offender has provided the mental
13 health services provider with a copy of the order granting relief from
14 disclosure pursuant to section 11, 12, or 13 of this act, the mental
15 health services provider is not required to notify the department of
16 corrections that the mental health services provider is treating the
17 offender. The notification may be written or oral and shall not
18 require the consent of the offender. If an oral notification is made,
19 it must be confirmed by a written notification. For purposes of this
20 section, a written notification includes notification by e-mail or
21 facsimile, so long as the notifying mental health service provider is
22 clearly identified.

23 (4) The information to be released to the department of corrections
24 shall include all relevant records and reports, as defined by rule,
25 necessary for the department of corrections to carry out its duties,
26 including those records and reports identified in subsection (2) of
27 this section.

28 ~~((+4))~~ (5) The department and the department of corrections, in
29 consultation with regional support networks, mental health service
30 providers as defined in subsection (1) of this section, mental health
31 consumers, and advocates for persons with mental illness, shall adopt
32 rules to implement the provisions of this section related to the type
33 and scope of information to be released. These rules shall:

34 (a) Enhance and facilitate the ability of the department of
35 corrections to carry out its responsibility of planning and ensuring
36 community protection with respect to persons subject to sentencing
37 under chapter 9.94A or 9.95 RCW, including accessing and releasing or
38 disclosing information of persons who received mental health services
39 as a minor; and

1 (b) Establish requirements for the notification of persons under
2 the supervision of the department of corrections regarding the
3 provisions of this section.

4 ~~((+5))~~ (6) The information received by the department of
5 corrections under this section shall remain confidential and subject to
6 the limitations on disclosure outlined in chapter 71.05 RCW, except as
7 provided in RCW 72.09.585.

8 ~~((+6))~~ (7) No mental health service provider or individual
9 employed by a mental health service provider shall be held responsible
10 for information released to or used by the department of corrections
11 under the provisions of this section or rules adopted under this
12 section except under RCW 71.05.670 and 71.05.440.

13 ~~((+7))~~ (8) Whenever federal law or federal regulations restrict
14 the release of information contained in the treatment records of any
15 patient who receives treatment for alcoholism or drug dependency, the
16 release of the information may be restricted as necessary to comply
17 with federal law and regulations.

18 ~~((+8))~~ (9) This section does not modify the terms and conditions
19 of disclosure of information related to sexually transmitted diseases
20 under chapter 70.24 RCW.

21 (10) The department shall, subject to available resources,
22 electronically, or by the most cost-effective means available, provide
23 the department of corrections with the names, last dates of services,
24 and addresses of specific regional support networks and mental health
25 service providers that delivered mental health services to a person
26 subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between
27 the departments.

28 **Sec. 5.** RCW 72.09.585 and 2000 c 75 s 4 are each amended to read
29 as follows:

30 (1) When the department is determining an offender's risk
31 management level, the department shall inquire of the offender and
32 shall be told whether the offender is subject to court-ordered
33 treatment for mental health services or chemical dependency services.
34 The department shall request and the offender shall provide an
35 authorization to release information form that meets applicable state
36 and federal requirements and shall provide the offender with written
37 notice that the department will request the offender's mental health
38 and substance abuse treatment information. An offender's failure to

1 inform the department of court-ordered treatment is a violation of the
2 conditions of supervision if the offender is in the community and an
3 infraction if the offender is in confinement, and the violation or
4 infraction is subject to sanctions.

5 (2) When an offender discloses that he or she is subject to court-
6 ordered mental health services or chemical dependency treatment, the
7 department shall provide the mental health services provider or
8 chemical dependency treatment provider with a written request for
9 information and any necessary authorization to release information
10 forms. The written request shall comply with rules adopted by the
11 department of social and health services or protocols developed jointly
12 by the department and the department of social and health services. A
13 single request shall be valid for the duration of the offender's
14 supervision in the community. Disclosures of information related to
15 mental health services made pursuant to a department request shall not
16 require consent of the offender.

17 (3) The information received by the department under RCW 71.05.445
18 or 71.34.225 may be released to the indeterminate sentence review board
19 as relevant to carry out its responsibility of planning and ensuring
20 community protection with respect to persons under its jurisdiction.
21 Further disclosure by the indeterminate sentence review board is
22 subject to the limitations set forth in subsections ~~((+3))~~ (5) and
23 ~~((+4))~~ (6) of this section and must be consistent with the written
24 policy of the indeterminate sentence review board. The decision to
25 disclose or not shall not result in civil liability for the
26 indeterminate sentence review board or its employees provided that the
27 decision was reached in good faith and without gross negligence.

28 ~~((+2))~~ (4) The information received by the department under RCW
29 71.05.445 or 71.34.225 may be used to meet the statutory duties of the
30 department to provide evidence or report to the court. Disclosure to
31 the public of information provided to the court by the department
32 related to mental health services shall be limited in accordance with
33 RCW 9.94A.500 or this section.

34 ~~((+3))~~ (5) The information received by the department under RCW
35 71.05.445 or 71.34.225 may be disclosed by the department to other
36 state and local agencies as relevant to plan for and provide offenders
37 transition, treatment, and supervision services, or as relevant and
38 necessary to protect the public and counteract the danger created by a
39 particular offender, and in a manner consistent with the written policy

1 established by the secretary. The decision to disclose or not shall
2 not result in civil liability for the department or its employees so
3 long as the decision was reached in good faith and without gross
4 negligence. The information received by a state or local agency from
5 the department shall remain confidential and subject to the limitations
6 on disclosure set forth in chapters 70.02, 71.05, and 71.34 RCW and,
7 subject to these limitations, may be released only as relevant and
8 necessary to counteract the danger created by a particular offender.

9 ~~((4))~~ (6) The information received by the department under RCW
10 71.05.445 or 71.34.225 may be disclosed by the department to
11 individuals only with respect to offenders who have been determined by
12 the department to have a high risk of reoffending by a risk assessment,
13 as defined in RCW 9.94A.030, only as relevant and necessary for those
14 individuals to take reasonable steps for the purpose of self-
15 protection, or as provided in RCW 72.09.370(2). The information may
16 not be disclosed for the purpose of engaging the public in a system of
17 supervision, monitoring, and reporting offender behavior to the
18 department. The department must limit the disclosure of information
19 related to mental health services to the public to descriptions of an
20 offender's behavior, risk he or she may present to the community, and
21 need for mental health treatment, including medications, and shall not
22 disclose or release to the public copies of treatment documents or
23 records, except as otherwise provided by law. All disclosure of
24 information to the public must be done in a manner consistent with the
25 written policy established by the secretary. The decision to disclose
26 or not shall not result in civil liability for the department or its
27 employees so long as the decision was reached in good faith and without
28 gross negligence. Nothing in this subsection prevents any person from
29 reporting to law enforcement or the department behavior that he or she
30 believes creates a public safety risk.

31 **Sec. 6.** RCW 71.05.390 and 2000 c 94 s 9, 2000 c 75 s 6, and 2000
32 c 74 s 7 are each reenacted and amended to read as follows:

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

37 Information and records may be disclosed only:

1 (1) In communications between qualified professional persons to
2 meet the requirements of this chapter, in the provision of services or
3 appropriate referrals, or in the course of guardianship proceedings.
4 The consent of the patient, or his or her guardian, shall be obtained
5 before information or records may be disclosed by a professional person
6 employed by a facility unless provided to a professional person:

7 (a) Employed by the facility;

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

9 (c) Who is a county designated mental health professional;

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

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

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

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

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

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

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

31 "As a condition of conducting evaluation or research concerning
32 persons who have received services from (fill in the facility, agency,
33 or person) I,, agree not to divulge, publish, or
34 otherwise make known to unauthorized persons or the public any
35 information obtained in the course of such evaluation or research
36 regarding persons who have received services such that the person who
37 received such services is identifiable.

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

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

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

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

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

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

(d) Information and records shall be disclosed to the department of corrections pursuant to and in compliance with the provisions of RCW 71.05.445 for the purposes of completing presentence investigations or risk assessment reports, supervision of an incarcerated offender or

1 offender under supervision in the community, planning for and provision
2 of supervision of an offender, or assessment of an offender's risk to
3 the community; and

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

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

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

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

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

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

38 (13) Civil liability and immunity for the release of information

1 about a particular person who is committed to the department under RCW
2 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
3 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

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

6 (15) To the department of health for the purposes of determining
7 compliance with state or federal licensure, certification, or
8 registration rules or laws. However, the information and records
9 obtained under this subsection are exempt from public inspection and
10 copying pursuant to chapter 42.17 RCW.

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

27 NEW SECTION. **Sec. 7.** A new section is added to chapter 9.94A RCW
28 to read as follows:

29 An offender's failure to inform the department of court-ordered
30 treatment upon request by the department is a violation of the
31 conditions of supervision if the offender is in the community and an
32 infraction if the offender is in confinement, and the violation or
33 infraction is subject to sanctions.

34 **Sec. 8.** RCW 71.34.225 and 2002 c 39 s 1 are each amended to read
35 as follows:

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

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

7 (b) "Mental health service provider" means a public or private
8 agency that provides services to persons with mental disorders as
9 defined under RCW 71.34.020 and receives funding from public sources.
10 This includes evaluation and treatment facilities as defined in RCW
11 71.34.020, community mental health service delivery systems, or
12 community mental health programs, as defined in RCW 71.24.025, and
13 facilities conducting competency evaluations and restoration under
14 chapter 10.77 RCW.

15 (2) Information related to mental health services delivered to a
16 person subject to chapter 9.94A or 9.95 RCW shall be released, upon
17 request, by a mental health service provider to department of
18 corrections personnel for whom the information is necessary to carry
19 out the responsibilities of their office. The information must be
20 provided only for the purpose of completing presentence investigations,
21 supervision of an incarcerated person, planning for and provision of
22 supervision of a person, or assessment of a person's risk to the
23 community. The request shall be in writing and shall not require the
24 consent of the subject of the records.

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

30 (4) The department shall, subject to available resources,
31 electronically, or by the most cost-effective means available, provide
32 the department of corrections with the names, last dates of services,
33 and addresses of specific regional support networks and mental health
34 service providers that delivered mental health services to a person
35 subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between
36 the departments.

37 (5) The department and the department of corrections, in
38 consultation with regional support networks, mental health service
39 providers as defined in subsection (1) of this section, mental health

1 consumers, and advocates for persons with mental illness, shall adopt
2 rules to implement the provisions of this section related to the type
3 and scope of information to be released. These rules shall:

4 (a) Enhance and facilitate the ability of the department of
5 corrections to carry out its responsibility of planning and ensuring
6 community protection with respect to persons subject to sentencing
7 under chapter 9.94A or 9.95 RCW, including accessing and releasing or
8 disclosing information of persons who received mental health services
9 as a minor; and

10 (b) Establish requirements for the notification of persons under
11 the supervision of the department of corrections regarding the
12 provisions of this section.

13 ~~((+5))~~ (6) The information received by the department of
14 corrections under this section shall remain confidential and subject to
15 the limitations on disclosure outlined in RCW 71.34.200, except as
16 provided in RCW 72.09.585.

17 ~~((+6))~~ (7) No mental health service provider or individual
18 employed by a mental health service provider shall be held responsible
19 for information released to or used by the department of corrections
20 under the provisions of this section or rules adopted under this
21 section.

22 ~~((+7))~~ (8) Whenever federal law or federal regulations restrict
23 the release of information contained in the treatment records of any
24 patient who receives treatment for alcoholism or drug dependency, the
25 release of the information may be restricted as necessary to comply
26 with federal law and regulations.

27 ~~((+8))~~ (9) This section does not modify the terms and conditions
28 of disclosure of information related to sexually transmitted diseases
29 under chapter 70.24 RCW.

30 NEW SECTION. Sec. 9. A new section is added to chapter 9.94A RCW
31 to read as follows:

32 When an offender receiving court-ordered mental health or chemical
33 dependency treatment or treatment ordered by the department of
34 corrections presents for treatment from a mental health or chemical
35 dependency treatment provider, the offender must disclose to the mental
36 health or chemical dependency treatment provider whether he or she is
37 subject to supervision by the department of corrections. If an
38 offender has received relief from disclosure pursuant to section 11,

1 12, or 13 of this act, the offender must provide the mental health or
2 chemical dependency treatment provider with a copy of the order
3 granting the relief.

4 NEW SECTION. **Sec. 10.** A new section is added to chapter 9.95 RCW
5 to read as follows:

6 When an offender receiving court-ordered mental health or chemical
7 dependency treatment or treatment ordered by the department of
8 corrections presents for treatment from a mental health or chemical
9 dependency treatment provider, the offender must disclose to the mental
10 health or chemical dependency treatment provider whether he or she is
11 subject to supervision by the department of corrections. If an
12 offender has received relief from disclosure pursuant to section 11,
13 12, or 13 of this act, the offender must provide the mental health or
14 chemical dependency treatment provider with a copy of the order
15 granting the relief.

16 NEW SECTION. **Sec. 11.** A new section is added to chapter 9.94A RCW
17 to read as follows:

18 When any person is convicted in a superior court, the judgment and
19 sentence shall include a statement that if the offender is or becomes
20 subject to court-ordered mental health or chemical dependency
21 treatment, the offender must notify the department and the offender's
22 treatment information must be shared with the department of corrections
23 for the duration of the offender's incarceration and supervision. Upon
24 a petition by an offender who does not have a history of one or more
25 violent acts, as defined in RCW 71.05.020, the court may, for good
26 cause, find that public safety is not enhanced by the sharing of this
27 offender's information.

28 NEW SECTION. **Sec. 12.** A new section is added to chapter 71.05 RCW
29 to read as follows:

30 When any court orders a person to receive treatment under this
31 chapter, the order shall include a statement that if the person is, or
32 becomes, subject to supervision by the department of corrections, the
33 person must notify the treatment provider and the person's mental
34 health treatment information must be shared with the department of
35 corrections for the duration of the offender's incarceration and
36 supervision, under RCW 71.05.445. Upon a petition by a person who does

1 not have a history of one or more violent acts, the court may, for good
2 cause, find that public safety would not be enhanced by the sharing of
3 this person's information.

4 NEW SECTION. **Sec. 13.** A new section is added to chapter 70.96A
5 RCW to read as follows:

6 When any court orders a person to receive treatment under this
7 chapter, the order shall include a statement that if the person is, or
8 becomes, subject to supervision by the department of corrections, the
9 person must notify the treatment provider and the person's chemical
10 dependency treatment information must be shared with the department of
11 corrections for the duration of the offender's incarceration and
12 supervision. Upon a petition by a person who does not have a history
13 of one or more violent acts, as defined in RCW 71.05.020, the court
14 may, for good cause, find that public safety would not be enhanced by
15 the sharing of this person's information.

16 NEW SECTION. **Sec. 14.** A new section is added to chapter 70.48 RCW
17 to read as follows:

18 (1) A person having charge of a jail, or that person's designee,
19 shall notify the county designated mental health professional or the
20 designated chemical dependency specialist seventy-two hours prior to
21 the release to the community of an offender or defendant who was
22 subject to a discharge review under section 18 of this act. If the
23 person having charge of the jail does not receive seventy-two hours
24 notice of the release, the notification to the county designated mental
25 health professional or the designated chemical dependency specialist
26 shall be made as soon as reasonably possible, but not later than the
27 actual release to the community of the defendant or offender.

28 (2) When a person having charge of a jail, or that person's
29 designee, releases an offender or defendant who was the subject of a
30 discharge review under section 18 of this act, the person having charge
31 of a jail, or that person's designee, shall notify the state hospital
32 from which the offender or defendant was released.

33 NEW SECTION. **Sec. 15.** A new section is added to chapter 70.96A
34 RCW to read as follows:

35 (1) When a designated chemical dependency specialist is notified by
36 a jail that a defendant or offender who was subject to a discharge

1 review under section 18 of this act is to be released to the community,
2 the designated chemical dependency specialist shall evaluate the person
3 within seventy-two hours of release, if the person's treatment
4 information indicates that he or she may need chemical dependency
5 treatment.

6 (2) When an offender is under court-ordered treatment in the
7 community and the supervision of the department of corrections, and the
8 treatment provider becomes aware that the person is in violation of the
9 terms of the court order, the treatment provider shall notify the
10 designated chemical dependency specialist of the violation and request
11 an evaluation for purposes of revocation of the conditional release.

12 (3) When a designated chemical dependency specialist becomes aware
13 that an offender who is under court-ordered treatment in the community
14 and the supervision of the department of corrections is in violation of
15 a treatment order or a condition of supervision that relates to public
16 safety, or the designated chemical dependency specialist detains a
17 person under this chapter, the designated chemical dependency
18 specialist shall notify the person's treatment provider and the
19 department of corrections.

20 (4) When an offender who is confined in a state correctional
21 facility or is under supervision of the department of corrections in
22 the community is subject to a petition for involuntary treatment under
23 this chapter, the petitioner shall notify the department of corrections
24 and the department of corrections shall provide documentation of its
25 risk assessment or other concerns to the petitioner and the court if
26 the department of corrections classified the offender as a high risk or
27 high needs offender.

28 (5) Nothing in this section creates a duty on any treatment
29 provider or designated chemical dependency specialist to provide
30 offender supervision.

31 NEW SECTION. **Sec. 16.** A new section is added to chapter 71.05 RCW
32 to read as follows:

33 (1) When a county designated mental health professional is notified
34 by a jail that a defendant or offender who was subject to a discharge
35 review under section 18 of this act is to be released to the community,
36 the county designated mental health professional shall evaluate the
37 person within seventy-two hours of release.

1 (2) When an offender is under court-ordered treatment in the
2 community and the supervision of the department of corrections, and the
3 treatment provider becomes aware that the person is in violation of the
4 terms of the court order, the treatment provider shall notify the
5 county designated mental health professional of the violation and
6 request an evaluation for purposes of revocation of the less
7 restrictive alternative.

8 (3) When a county designated mental health professional becomes
9 aware that an offender who is under court-ordered treatment in the
10 community and the supervision of the department of corrections is in
11 violation of a treatment order or a condition of supervision, or the
12 county designated mental health professional detains a person under
13 this chapter, the county designated mental health professional shall
14 notify the person's treatment provider and the department of
15 corrections.

16 (4) When an offender who is confined in a state correctional
17 facility or is under supervision of the department of corrections in
18 the community is subject to a petition for involuntary treatment under
19 this chapter, the petitioner shall notify the department of corrections
20 and the department of corrections shall provide documentation of its
21 risk assessment or other concerns to the petitioner and the court if
22 the department of corrections classified the offender as a high risk or
23 high needs offender.

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

27 NEW SECTION. **Sec. 17.** A new section is added to chapter 72.09 RCW
28 to read as follows:

29 (1) When an offender is under court-ordered mental health or
30 chemical dependency treatment in the community and the supervision of
31 the department of corrections, and the community corrections officer
32 becomes aware that the person is in violation of the terms of the
33 court's treatment order, the community corrections officer shall notify
34 the county designated mental health professional or the designated
35 chemical dependency specialist, as appropriate, of the violation and
36 request an evaluation for purposes of revocation of the less
37 restrictive alternative or conditional release.

1 (2) When a county designated mental health professional or the
2 designated chemical dependency specialist notifies the department that
3 an offender in a state correctional facility is the subject of a
4 petition for involuntary treatment under chapter 71.05 or 70.96A RCW,
5 the department shall provide documentation of its risk assessment or
6 other concerns to the petitioner and the court if the department
7 classified the offender as a high risk or high needs offender.

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

10 (1) When a state hospital admits a person for evaluation or
11 treatment under this chapter who has a history of one or more violent
12 acts and:

13 (a) Has been transferred from a correctional facility; or

14 (b) Is or has been under the authority of the department of
15 corrections or the indeterminate sentence review board,
16 the state hospital shall consult with the appropriate corrections and
17 chemical dependency personnel and the appropriate forensic staff at the
18 state hospital to conduct a discharge review to determine whether the
19 person presents a likelihood of serious harm and whether the person is
20 appropriate for release to a less restrictive alternative.

21 (2) When a state hospital returns a person who was reviewed under
22 subsection (1) of this section to a correctional facility, the hospital
23 shall notify the correctional facility that the person was subject to
24 a discharge review pursuant to this section.

25 **Sec. 19.** RCW 70.02.030 and 1994 sp.s. c 9 s 741 are each amended
26 to read as follows:

27 (1) A patient may authorize a health care provider to disclose the
28 patient's health care information. A health care provider shall honor
29 an authorization and, if requested, provide a copy of the recorded
30 health care information unless the health care provider denies the
31 patient access to health care information under RCW 70.02.090.

32 (2) A health care provider may charge a reasonable fee for
33 providing the health care information and is not required to honor an
34 authorization until the fee is paid.

35 (3) To be valid, a disclosure authorization to a health care
36 provider shall:

37 (a) Be in writing, dated, and signed by the patient;

1 (b) Identify the nature of the information to be disclosed;

2 (c) Identify the name, address, and institutional affiliation of
3 the person to whom the information is to be disclosed;

4 (d) Except for third-party payors, identify the provider who is to
5 make the disclosure; and

6 (e) Identify the patient.

7 (4) Except as provided by this chapter, the signing of an
8 authorization by a patient is not a waiver of any rights a patient has
9 under other statutes, the rules of evidence, or common law.

10 (5) A health care provider shall retain each authorization or
11 revocation in conjunction with any health care information from which
12 disclosures are made. This requirement shall not apply to disclosures
13 to third-party payors.

14 (6) Except for authorizations given pursuant to an agreement with
15 a treatment or monitoring program or disciplinary authority under
16 chapter 18.71 or 18.130 RCW, when the patient is under the supervision
17 of the department of corrections, or to provide information to third-
18 party payors, an authorization may not permit the release of health
19 care information relating to future health care that the patient
20 receives more than ninety days after the authorization was signed.
21 Patients shall be advised of the period of validity of their
22 authorization on the disclosure authorization form. If the
23 authorization does not contain an expiration date and the patient is
24 not under the supervision of the department of corrections, it expires
25 ninety days after it is signed.

26 (7) Where the patient is under the supervision of the department of
27 corrections, an authorization signed pursuant to this section for
28 health care information related to mental health or drug or alcohol
29 treatment expires at the end of the term of supervision, unless the
30 patient is part of a treatment program that requires the continued
31 exchange of information until the end of the period of treatment.

32 NEW SECTION. Sec. 20. (1) The department of social and health
33 services and the department of corrections shall develop a training
34 plan for department employees, contractors, and necessary mental health
35 service providers and chemical dependency treatment providers covering
36 the information sharing processes for offenders with treatment orders
37 and terms of supervision in the community.

1 (2) The department of corrections and the department of social and
2 health services, in consultation with prosecuting attorneys, the
3 Washington association of sheriffs and police chiefs, regional support
4 networks, county designated chemical dependency specialists, and other
5 experts that the departments deem appropriate, shall develop a model
6 for multidisciplinary case management and release planning of offenders
7 classified as having high resource needs in multiple service areas.

8 NEW SECTION. **Sec. 21.** A new section is added to chapter 4.24 RCW
9 to read as follows:

10 Information shared and actions taken without gross negligence and
11 in good faith compliance with RCW 71.05.445, 72.09.585, or sections 15
12 through 17 of this act are not a basis for any private civil cause of
13 action.

14 NEW SECTION. **Sec. 22.** The department of social and health
15 services, in consultation with the appropriate committees of the
16 legislature, shall assess the current and needed residential capacity
17 for crisis response and ongoing treatment services for persons in need
18 of treatment for mental disorders and chemical dependency. In addition
19 to considering the demand for persons with either a mental disorder or
20 chemical dependency, the assessment shall consider the demand for
21 services for mentally ill offenders, and persons with co-occurring
22 disorders, mental disorders caused by traumatic brain injury or
23 dementia, and drug induced psychosis. An initial report assessing the
24 types, number, and location of needed mental health crisis response and
25 emergency treatment beds, both in community hospital-based and in other
26 settings, shall be submitted to appropriate committees of the
27 legislature by November 1, 2004. A final report assessing the types,
28 number, and location of beds needed for mental health and chemical
29 dependency emergency, transitional, and ongoing treatment shall be
30 submitted to appropriate committees of the legislature by December 1,
31 2005. Both reports shall set forth the projected costs and benefits of
32 alternative strategies and timelines for addressing identified needs.

33 Legislative staff shall review and analyze the use of mental health
34 resources in other state programs for providing community based and
35 hospital based care for persons with mental illness, including
36 information available through the council of state governments and the
37 national conference of state legislatures.

1 NEW SECTION. **Sec. 23.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 24.** This act takes effect July 1, 2004, except
6 for sections 6, 20, and 22 of this act, which are necessary for the
7 immediate preservation of the public peace, health, or safety, or
8 support of the state government and its existing public institutions,
9 and take effect immediately."

E2SSB 6358 - H COMM AMD
By Committee on Appropriations

ADOPTED 03/04/2004

10 On page 1, line 2 of the title, after "orders;" strike the
11 remainder of the title and insert "amending RCW 71.05.040, 71.05.445,
12 72.09.585, 71.34.225, and 70.02.030; reenacting and amending RCW
13 71.05.390; adding a new section to chapter 10.77 RCW; adding new
14 sections to chapter 9.94A RCW; adding a new section to chapter 9.95
15 RCW; adding new sections to chapter 71.05 RCW; adding new sections to
16 chapter 70.96A RCW; adding a new section to chapter 70.48 RCW; adding
17 a new section to chapter 72.09 RCW; adding a new section to chapter
18 4.24 RCW; creating new sections; providing an effective date; and
19 declaring an emergency."

EFFECT: Makes technical and clarifying amendments by correcting terminology, removing duplicative language, and clarifying the DOC's responsibility in offender's civil commitment petitions.

Also adds a good faith immunity provision that states that actions (the sharing of records) taken without gross negligence and in good faith are not a basis for any private civil cause of action.

The original bill required mental health providers and chemical dependency providers to report to the DOC when they became aware that an offender was violating his/her community supervision or treatment order. Provisions are added that state that those provisions in the

act do not create a duty for the treatment providers to provide offender supervision.

Clarifies that the DSHS study must include a report on the total number of mental health and chemical dependency beds which are available around the state.

Extends the information sharing requirements of this bill from the end of the period of supervision to the end of the period of mental health or drug or alcohol treatment.

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