

E2SSB 6358 - H COMM AMD

By Committee on Criminal Justice & Corrections

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

1 treatment and supervision orders and by providing both treatment
2 providers and the department of corrections with more current, complete
3 information about the offender's status.

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

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

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

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

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

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

28 (a) "Information related to mental health services" means all
29 information and records compiled, obtained, or maintained in the course
30 of providing services to either voluntary or involuntary recipients of
31 services by a mental health service provider. This may include
32 documents of legal proceedings under this chapter or chapter 71.34 or
33 10.77 RCW, or somatic health care information.

1 (b) "Mental health service provider" means a public or private
2 agency that provides services to persons with mental disorders as
3 defined under RCW 71.05.020 and receives funding from public sources.
4 This includes evaluation and treatment facilities as defined in RCW
5 71.05.020, community mental health service delivery systems, or
6 community mental health programs as defined in RCW 71.24.025, and
7 facilities conducting competency evaluations and restoration under
8 chapter 10.77 RCW.

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

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

1 identified. The request must specify the information being requested.
2 Disclosure of the information requested does not require the consent of
3 the subject of the records unless the offender has received relief from
4 disclosure under section 11, 12, or 13 of this act.

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

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

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

33 ((+4)) (5) The department and the department of corrections, in
34 consultation with regional support networks, mental health service
35 providers as defined in subsection (1) of this section, mental health
36 consumers, and advocates for persons with mental illness, shall adopt

1 rules to implement the provisions of this section related to the type
2 and scope of information to be released. These rules shall:

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

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

12 ~~((+5))~~ (6) The information received by the department of
13 corrections under this section shall remain confidential and subject to
14 the limitations on disclosure outlined in chapter 71.05 RCW, except as
15 provided in RCW 72.09.585.

16 ~~((+6))~~ (7) No mental health service provider or individual
17 employed by a mental health service provider shall be held responsible
18 for information released to or used by the department of corrections
19 under the provisions of this section or rules adopted under this
20 section except under RCW 71.05.670 and 71.05.440.

21 ~~((+7))~~ (8) Whenever federal law or federal regulations restrict
22 the release of information contained in the treatment records of any
23 patient who receives treatment for alcoholism or drug dependency, the
24 release of the information may be restricted as necessary to comply
25 with federal law and regulations.

26 ~~((+8))~~ (9) This section does not modify the terms and conditions
27 of disclosure of information related to sexually transmitted diseases
28 under chapter 70.24 RCW.

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

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

3 (1) When the department is determining an offender's risk
4 management level, the department shall inquire of the offender and
5 shall be told whether the offender is subject to court-ordered
6 treatment for mental health services or chemical dependency services.
7 The department shall request and the offender shall provide an
8 authorization to release information form that meets applicable state
9 and federal requirements and shall provide the offender with written
10 notice that the department will request the offender's mental health
11 and substance abuse treatment information. An offender's failure to
12 inform the department of court-ordered treatment is a violation of the
13 conditions of supervision if the offender is in the community and an
14 infraction if the offender is in confinement, and the violation or
15 infraction is subject to sanctions.

16 (2) When an offender discloses that he or she is subject to court-
17 ordered mental health services or chemical dependency treatment, the
18 department shall provide the mental health services provider or
19 chemical dependency treatment provider with a written request for
20 information and any necessary authorization to release information
21 forms. The written request shall comply with rules adopted by the
22 department of social and health services or protocols developed jointly
23 by the department and the department of social and health services. A
24 single request shall be valid for the duration of the offender's
25 supervision in the community. Disclosures of information related to
26 mental health services made pursuant to a department request shall not
27 require consent of the offender.

28 (3) The information received by the department under RCW 71.05.445
29 or 71.34.225 may be released to the indeterminate sentence review board
30 as relevant to carry out its responsibility of planning and ensuring
31 community protection with respect to persons under its jurisdiction.
32 Further disclosure by the indeterminate sentence review board is
33 subject to the limitations set forth in subsections (~~(+3)~~) (5) and
34 (~~(+4)~~) (6) of this section and must be consistent with the written
35 policy of the indeterminate sentence review board. The decision to
36 disclose or not shall not result in civil liability for the

1 indeterminate sentence review board or its employees provided that the
2 decision was reached in good faith and without gross negligence.

3 ~~((2))~~ (4) The information received by the department under RCW
4 71.05.445 or 71.34.225 may be used to meet the statutory duties of the
5 department to provide evidence or report to the court. Disclosure to
6 the public of information provided to the court by the department
7 related to mental health services shall be limited in accordance with
8 RCW 9.94A.500 or this section.

9 ~~((3))~~ (5) The information received by the department under RCW
10 71.05.445 or 71.34.225 may be disclosed by the department to other
11 state and local agencies as relevant to plan for and provide offenders
12 transition, treatment, and supervision services, or as relevant and
13 necessary to protect the public and counteract the danger created by a
14 particular offender, and in a manner consistent with the written policy
15 established by the secretary. The decision to disclose or not shall
16 not result in civil liability for the department or its employees so
17 long as the decision was reached in good faith and without gross
18 negligence. The information received by a state or local agency from
19 the department shall remain confidential and subject to the limitations
20 on disclosure set forth in chapters 70.02, 71.05, and 71.34 RCW and,
21 subject to these limitations, may be released only as relevant and
22 necessary to counteract the danger created by a particular offender.

23 ~~((4))~~ (6) The information received by the department under RCW
24 71.05.445 or 71.34.225 may be disclosed by the department to
25 individuals only with respect to offenders who have been determined by
26 the department to have a high risk of reoffending by a risk assessment,
27 as defined in RCW 9.94A.030, only as relevant and necessary for those
28 individuals to take reasonable steps for the purpose of self-
29 protection, or as provided in RCW 72.09.370(2). The information may
30 not be disclosed for the purpose of engaging the public in a system of
31 supervision, monitoring, and reporting offender behavior to the
32 department. The department must limit the disclosure of information
33 related to mental health services to the public to descriptions of an
34 offender's behavior, risk he or she may present to the community, and
35 need for mental health treatment, including medications, and shall not
36 disclose or release to the public copies of treatment documents or
37 records, except as otherwise provided by law. All disclosure of

1 information to the public must be done in a manner consistent with the
2 written policy established by the secretary. The decision to disclose
3 or not shall not result in civil liability for the department or its
4 employees so long as the decision was reached in good faith and without
5 gross negligence. Nothing in this subsection prevents any person from
6 reporting to law enforcement or the department behavior that he or she
7 believes creates a public safety risk.

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

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

14 Information and records may be disclosed only:

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

21 (a) Employed by the facility;

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

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

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

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

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

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

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

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

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

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

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

18 /s/ "

19 (6) To the courts as necessary to the administration of this
20 chapter or to a court ordering an evaluation or treatment under chapter
21 10.77 RCW solely for the purpose of preventing the entry of any
22 evaluation or treatment order that is inconsistent with any order
23 entered under this chapter.

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

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

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

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

17 (d) Information and records shall be disclosed to the department of
18 corrections pursuant to and in compliance with the provisions of RCW
19 71.05.445 for the purposes of completing presentence investigations or
20 risk assessment reports, supervision of an incarcerated offender or
21 offender under supervision in the community, planning for and provision
22 of supervision of an offender, or assessment of an offender's risk to
23 the community; and

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

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

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

36 (10) To appropriate law enforcement agencies and to a person, when
37 the identity of the person is known to the public or private agency,

1 whose health and safety has been threatened, or who is known to have
2 been repeatedly harassed, by the patient. The person may designate a
3 representative to receive the disclosure. The disclosure shall be made
4 by the professional person in charge of the public or private agency or
5 his or her designee and shall include the dates of commitment,
6 admission, discharge, or release, authorized or unauthorized absence
7 from the agency's facility, and only such other information that is
8 pertinent to the threat or harassment. The decision to disclose or not
9 shall not result in civil liability for the agency or its employees so
10 long as the decision was reached in good faith and without gross
11 negligence.

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

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

21 (13) Civil liability and immunity for the release of information
22 about a particular person who is committed to the department under RCW
23 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
24 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

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

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

32 The fact of admission, as well as all records, files, evidence,
33 findings, or orders made, prepared, collected, or maintained pursuant
34 to this chapter shall not be admissible as evidence in any legal
35 proceeding outside this chapter without the written consent of the
36 person who was the subject of the proceeding except in a subsequent
37 criminal prosecution of a person committed pursuant to RCW 71.05.280(3)

1 or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter
2 10.77 RCW due to incompetency to stand trial or in a civil commitment
3 proceeding pursuant to chapter 71.09 RCW. The records and files
4 maintained in any court proceeding pursuant to this chapter shall be
5 confidential and available subsequent to such proceedings only to the
6 person who was the subject of the proceeding or his or her attorney.
7 In addition, the court may order the subsequent release or use of such
8 records or files only upon good cause shown if the court finds that
9 appropriate safeguards for strict confidentiality are and will be
10 maintained.

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

13 An offender's failure to inform the department of court-ordered
14 treatment upon request by the department is a violation of the
15 conditions of supervision if the offender is in the community and an
16 infraction if the offender is in confinement, and the violation or
17 infraction is subject to sanctions.

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

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

22 (a) "Information related to mental health services" means all
23 information and records compiled, obtained, or maintained in the course
24 of providing services to either voluntary or involuntary recipients of
25 services by a mental health service provider. This may include
26 documents of legal proceedings under this chapter or chapter 71.05 or
27 10.77 RCW, or somatic health care information.

28 (b) "Mental health service provider" means a public or private
29 agency that provides services to persons with mental disorders as
30 defined under RCW 71.34.020 and receives funding from public sources.
31 This includes evaluation and treatment facilities as defined in RCW
32 71.34.020, community mental health service delivery systems, or
33 community mental health programs, as defined in RCW 71.24.025, and
34 facilities conducting competency evaluations and restoration under
35 chapter 10.77 RCW.

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

11 (3) The information to be released to the department of corrections
12 shall include all relevant records and reports, as defined by rule,
13 necessary for the department of corrections to carry out its duties,
14 including those records and reports identified in subsection (2) of
15 this section.

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

23 (5) The department and the department of corrections, in
24 consultation with regional support networks, mental health service
25 providers as defined in subsection (1) of this section, mental health
26 consumers, and advocates for persons with mental illness, shall adopt
27 rules to implement the provisions of this section related to the type
28 and scope of information to be released. These rules shall:

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

35 (b) Establish requirements for the notification of persons under
36 the supervision of the department of corrections regarding the
37 provisions of this section.

1 ~~((5))~~ (6) The information received by the department of
2 corrections under this section shall remain confidential and subject to
3 the limitations on disclosure outlined in RCW 71.34.200, except as
4 provided in RCW 72.09.585.

5 ~~((6))~~ (7) No mental health service provider or individual
6 employed by a mental health service provider shall be held responsible
7 for information released to or used by the department of corrections
8 under the provisions of this section or rules adopted under this
9 section.

10 ~~((7))~~ (8) Whenever federal law or federal regulations restrict
11 the release of information contained in the treatment records of any
12 patient who receives treatment for alcoholism or drug dependency, the
13 release of the information may be restricted as necessary to comply
14 with federal law and regulations.

15 ~~((8))~~ (9) This section does not modify the terms and conditions
16 of disclosure of information related to sexually transmitted diseases
17 under chapter 70.24 RCW.

18 NEW SECTION. **Sec. 9.** A new section is added to chapter 9.94A RCW
19 to read as follows:

20 When an offender receiving court-ordered mental health or chemical
21 dependency treatment or treatment ordered by the department of
22 corrections presents for treatment from a mental health or chemical
23 dependency treatment provider, the offender must disclose to the mental
24 health or chemical dependency treatment provider whether he or she is
25 subject to supervision by the department of corrections. If an
26 offender has received relief from disclosure pursuant to section 11,
27 12, or 13 of this act, the offender must provide the mental health or
28 chemical dependency treatment provider with a copy of the order
29 granting the relief.

30 NEW SECTION. **Sec. 10.** A new section is added to chapter 9.95 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

1 health or chemical dependency treatment provider whether he or she is
2 subject to supervision by the department of corrections. If an
3 offender has received relief from disclosure pursuant to section 11,
4 12, or 13 of this act, the offender must provide the mental health or
5 chemical dependency treatment provider with a copy of the order
6 granting the relief.

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

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

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

21 When any court orders a person to receive treatment under this
22 chapter, the order shall include a statement that if the person is, or
23 becomes, subject to supervision by the department of corrections, the
24 person must notify the treatment provider and the person's mental
25 health treatment information must be shared with the department of
26 corrections for the duration of the offender's incarceration and
27 supervision, under RCW 71.05.445. Upon a petition by a person who does
28 not have a history of one or more violent acts, the court may, for good
29 cause, find that public safety would not be enhanced by the sharing of
30 this person's information.

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

33 When any court orders a person to receive treatment under this
34 chapter, the order shall include a statement that if the person is, or

1 becomes, subject to supervision by the department of corrections, the
2 person must notify the treatment provider and the person's chemical
3 dependency treatment information must be shared with the department of
4 corrections for the duration of the offender's incarceration and
5 supervision. Upon a petition by a person who does not have a history
6 of one or more violent acts, as defined in RCW 71.05.020, the court
7 may, for good cause, find that public safety would not be enhanced by
8 the sharing of this person's information.

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

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

21 (2) When a person having charge of a jail, or that person's
22 designee, releases an offender or defendant who was the subject of a
23 discharge review under section 18 of this act, the person having charge
24 of a jail, or that person's designee, shall notify the state hospital
25 from which the offender or defendant was released.

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

28 (1) When a designated chemical dependency specialist is notified by
29 a jail that a defendant or offender who was subject to a discharge
30 review under section 18 of this act is to be released to the community,
31 the designated chemical dependency specialist shall evaluate the person
32 within seventy-two hours of release, if the person's treatment
33 information indicates that he or she may need chemical dependency
34 treatment.

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 designated chemical dependency specialist of the violation and request
6 an evaluation for purposes of revocation of the conditional release.

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

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

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

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

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

33 (2) When an offender is under court-ordered treatment in the
34 community and the supervision of the department of corrections, and the
35 treatment provider becomes aware that the person is in violation of the
36 terms of the court order, the treatment provider shall notify the

1 county designated mental health professional of the violation and
2 request an evaluation for purposes of revocation of the less
3 restrictive alternative.

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

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

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

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

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

34 (2) When a county designated mental health professional or the
35 designated chemical dependency specialist notifies the department that
36 an offender in a state correctional facility is the subject of a

1 petition for involuntary treatment under chapter 71.05 or 70.96A RCW,
2 the department shall provide documentation of its risk assessment or
3 other concerns to the petitioner and the court if the department
4 classified the offender as a high risk or high needs offender.

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (e) Identify the patient.

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

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

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

25 (7) Where the patient is under the supervision of the department of
26 corrections, an authorization signed pursuant to this section for
27 health care information related to mental health or drug or alcohol
28 treatment expires at the end of the term of supervision.

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

35 (2) The department of corrections and the department of social and
36 health services, in consultation with prosecuting attorneys, the

1 Washington association of sheriffs and police chiefs, regional support
2 networks, county designated chemical dependency specialists, and other
3 experts that the departments deem appropriate, shall develop a model
4 for multidisciplinary case management and release planning of offenders
5 classified as having high resource needs in multiple service areas.

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

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

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

31 Legislative staff shall review and analyze the use of mental health
32 resources in other state programs for providing community based and
33 hospital based care for persons with mental illness, including
34 information available through the council of state governments and the
35 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 Criminal Justice & Corrections

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: Corrects terminology, removes duplicative language,
clarifies DOC responsibility in offender's civil commitment petitions,
clarifies scope of initial report, and provides liability limitation
for good faith compliance with collaboration provisions of the act.

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