

HB 2387 - S COMM AMD

By Committee on Children & Family Services & Corrections

ADOPTED 03/03/2004

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that social stigmas  
4 surrounding mental illness have prevented patients buried in the state  
5 hospital cemeteries from being properly memorialized. From 1887 to  
6 1953, the state buried many of the patients who died while in residence  
7 at the three state hospitals on hospital grounds. In order to honor  
8 these patients, the legislature intends that the state be allowed to  
9 release records necessary to appropriately mark their resting place.

10 **Sec. 2.** RCW 71.05.390 and 2000 c 94 s 9, 2000 c 75 s 6, and 2000  
11 c 74 s 7 are each reenacted and amended to read as follows:

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

16 Information and records may be disclosed only:

17 (1) In communications between qualified professional persons to  
18 meet the requirements of this chapter, in the provision of services or  
19 appropriate referrals, or in the course of guardianship proceedings.  
20 The consent of the patient, or his or her guardian, shall be obtained  
21 before information or records may be disclosed by a professional person  
22 employed by a facility unless provided to a professional person: (a)  
23 Employed by the facility; (b) who has medical responsibility for the  
24 patient's care; (c) who is a county designated mental health  
25 professional; (d) who is providing services under chapter 71.24 RCW;  
26 (e) who is employed by a state or local correctional facility where the  
27 person is confined; or (f) who is providing evaluation, treatment, or  
28 follow-up services under chapter 10.77 RCW.

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

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

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

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

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

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

26 /s/ ..... "

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

32 (7) To law enforcement officers, public health officers, or  
33 personnel of the department of corrections or the indeterminate  
34 sentence review board for persons who are the subject of the records  
35 and who are committed to the custody of the department of corrections

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 The fact of admission, as well as all records, files, evidence,  
35 findings, or orders made, prepared, collected, or maintained pursuant  
36 to this chapter shall not be admissible as evidence in any legal  
37 proceeding outside this chapter without the written consent of the

1 person who was the subject of the proceeding except in a subsequent  
2 criminal prosecution of a person committed pursuant to RCW 71.05.280(3)  
3 or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter  
4 10.77 RCW due to incompetency to stand trial or in a civil commitment  
5 proceeding pursuant to chapter 71.09 RCW. The records and files  
6 maintained in any court proceeding pursuant to this chapter shall be  
7 confidential and available subsequent to such proceedings only to the  
8 person who was the subject of the proceeding or his or her attorney.  
9 In addition, the court may order the subsequent release or use of such  
10 records or files only upon good cause shown if the court finds that  
11 appropriate safeguards for strict confidentiality are and will be  
12 maintained."

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13 On page 1, line 2 of the title, after "cemeteries;" strike the  
14 remainder of the title and insert "reenacting and amending RCW  
15 71.05.390; and creating a new section."

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