
SENATE BILL 6358

State of Washington

58th Legislature

2004 Regular Session

By Senators Hargrove and Stevens

Read first time 01/19/2004. Referred to Committee on Children & Family Services & Corrections.

1 AN ACT Relating to improved communication regarding offenders with
2 treatment orders; amending RCW 71.05.445; reenacting and amending RCW
3 71.05.390; adding a new section to chapter 71.05 RCW; adding a new
4 section to chapter 10.77 RCW; creating new sections; and declaring an
5 emergency.

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

7 NEW SECTION. **Sec. 1.** The legislature makes the following
8 findings:

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

12 (2) Some offenders under supervision in the community are
13 concurrently subject to court ordered mental health or chemical
14 dependency treatment;

15 (3) Some offenders under supervision in the community are subject
16 to department of corrections ordered mental health or substance abuse
17 treatment;

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

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

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

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

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

11 Consequently, the legislature intends to clarify the standards for
12 commitment and improve the coordination between the department of
13 corrections and mental health and chemical dependency treatment
14 providers to enhance public safety by improving compliance with
15 treatment and supervision orders and by providing both treatment
16 providers and the department of corrections with more current, complete
17 information about the offender's status.

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

20 When a county designated mental health professional has determined
21 that a person has a mental disorder, the cause of the person's mental
22 disorder shall not make the person ineligible for commitment under this
23 chapter.

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

26 When a county designated mental health professional or a
27 professional person has determined that a person has a mental disorder,
28 the cause of the person's mental disorder shall not make the person
29 ineligible for commitment under chapter 71.05 RCW.

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

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

34 (a) "Information related to mental health services" means all
35 information and records compiled, obtained, or maintained in the course

1 of providing services to either voluntary or involuntary recipients of
2 services by a mental health service provider. This may include
3 documents of legal proceedings under this chapter or chapter 71.34 or
4 10.77 RCW, or somatic health care information.

5 (b) "Mental health service provider" means a public or private
6 agency that provides services to persons with mental disorders as
7 defined under RCW 71.05.020 and receives funding from public sources.
8 This includes evaluation and treatment facilities as defined in RCW
9 71.05.020, community mental health service delivery systems, or
10 community mental health programs as defined in RCW 71.24.025, and
11 facilities conducting competency evaluations and restoration under
12 chapter 10.77 RCW.

13 (2) Information related to mental health services delivered to a
14 person subject to chapter 9.94A or 9.95 RCW shall be released, upon
15 request, by a mental health service provider to department of
16 corrections personnel for whom the information is necessary to carry
17 out the responsibilities of their office. The information must be
18 provided only for the purpose of completing presentence investigations,
19 supervision of an incarcerated (~~person~~) offender or offender under
20 supervision, planning for and provision of supervision of (~~a person~~)
21 an offender, or assessment of (~~a person's~~) an offender's risk to the
22 community. The request (~~shall be~~) may be oral or in writing and
23 shall not require the consent of the subject of the records. If an
24 oral request is made, it must be confirmed by a written request. For
25 purposes of this section, a written request includes requests made by
26 e-mail or facsimile so long as the requesting person at the department
27 of corrections is clearly identified.

28 (3)(a) When a mental health service provider conducts its initial
29 assessment for a person receiving court ordered treatment, the service
30 provider shall inquire and shall be told whether the person is subject
31 to supervision by the department of corrections.

32 (b) When a person receiving court ordered treatment or treatment
33 ordered by the department of corrections discloses to his or her mental
34 health service provider that he or she is subject to supervision by the
35 department of corrections, the treatment provider shall notify the
36 department that he or she is treating the offender and shall notify the
37 offender that his or her community corrections officer will be notified

1 of the treatment. This disclosure shall not require consent of the
2 offender.

3 (c) When the department of corrections is determining an offender's
4 risk management category for purposes of supervision in the community,
5 the department shall inquire and shall be told whether the offender is
6 subject to court ordered treatment for mental health services or
7 chemical dependency services. An offender's failure to inform the
8 department of corrections of court ordered treatment is a violation of
9 the conditions of supervision if the offender is in the community and
10 an infraction if the offender is in confinement, and is subject to
11 sanctions.

12 (d) When an offender discloses that he or she is subject to court
13 ordered mental health or chemical dependency services, the department
14 shall provide the mental health services provider or chemical
15 dependency treatment provider with a written request for information.
16 A single request shall be valid for the duration of the offender's
17 supervision in the community. Disclosures made pursuant to a
18 department of corrections request shall not require consent of the
19 offender.

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

25 ((+4)) (5) The department and the department of corrections, in
26 consultation with regional support networks, mental health service
27 providers as defined in subsection (1) of this section, mental health
28 consumers, and advocates for persons with mental illness, shall adopt
29 rules to implement the provisions of this section related to the type
30 and scope of information to be released. These rules shall:

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

37 (b) Establish requirements for the notification of persons under

1 the supervision of the department of corrections regarding the
2 provisions of this section.

3 ~~((+5))~~ (6) The information received by the department of
4 corrections under this section shall remain confidential and subject to
5 the limitations on disclosure outlined in chapter 71.05 RCW, except as
6 provided in RCW 72.09.585.

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

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

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

20 **Sec. 5.** RCW 71.05.390 and 2000 c 94 s 9, 2000 c 75 s 6, and 2000
21 c 74 s 7 are each reenacted and amended to read as follows:

22 Except as provided in this section, the fact of admission and 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 at public or private agencies shall be confidential.

26 Information and records may be disclosed only:

27 (1) In communications between qualified professional persons to
28 meet the requirements of this chapter, in the provision of services or
29 appropriate referrals, or in the course of guardianship proceedings.
30 The consent of the patient, or his or her guardian, shall be obtained
31 before information or records may be disclosed by a professional person
32 employed by a facility unless provided to a professional person: (a)
33 Employed by the facility; (b) who has medical responsibility for the
34 patient's care; (c) who is a county designated mental health
35 professional; (d) who is providing services under chapter 71.24 RCW;
36 (e) who is employed by a state or local correctional facility where the

1 person is confined; or (f) who is providing evaluation, treatment, or
2 follow-up services under chapter 10.77 RCW.

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

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

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

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

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

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

28 /s/

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

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

1 and who are committed to the custody of the department of corrections
2 or indeterminate sentence review board which information or records are
3 necessary to carry out the responsibilities of their office. Except
4 for dissemination of information released pursuant to RCW 71.05.445 for
5 the purpose of completing presentence investigations, supervision of an
6 incarcerated offender or offender under supervision, planning for and
7 provision of supervision of an offender, or assessment of an offender's
8 risk to the community, or pursuant to RCW 71.05.425 and 4.24.550,
9 regarding persons committed under this chapter under RCW 71.05.280(3)
10 and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW
11 9.94A.030, the extent of information that may be released is limited as
12 follows:

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

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

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

29 (d) Disclosure under this subsection is mandatory for the purposes
30 of the health insurance portability and accountability act.

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

32 (9) To the prosecuting attorney as necessary to carry out the
33 responsibilities of the office under RCW 71.05.330(2) and
34 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access
35 to records regarding the committed person's treatment and prognosis,
36 medication, behavior problems, and other records relevant to the issue
37 of whether treatment less restrictive than inpatient treatment is in

1 the best interest of the committed person or others. Information shall
2 be disclosed only after giving notice to the committed person and the
3 person's counsel.

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

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

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

25 (13) Civil liability and immunity for the release of information
26 about a particular person who is committed to the department under RCW
27 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
28 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

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

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

36 The fact of admission, as well as all records, files, evidence,
37 findings, or orders made, prepared, collected, or maintained pursuant
38 to this chapter shall not be admissible as evidence in any legal

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

14 NEW SECTION. **Sec. 6.** (1) The department of social and health
15 services and the department of corrections shall develop a training
16 plan for department employees, contractors, and necessary mental health
17 service providers and chemical dependency treatment providers covering
18 the information sharing processes for offenders with treatment orders
19 and terms of supervision in the community.

20 (2) The department of corrections and the department of social and
21 health services, together with the Washington association of
22 prosecuting attorneys shall develop a model for multidisciplinary case
23 management and release planning of offenders classified as having high
24 resource needs in multiple service areas.

25 NEW SECTION. **Sec. 7.** The department of social and health services
26 shall assess the current and needed capacity for crisis response and
27 ongoing treatment for persons in need of treatment for mental disorders
28 and chemical dependency. In addition to considering the demand for
29 persons with either a mental disorder or chemical dependency, the
30 assessment shall consider the demand for services for mentally ill
31 offenders, and persons with co-occurring disorders, mental disorders
32 caused by traumatic brain injury or dementia, and drug induced
33 psychosis. The department shall provide the appropriate committees of
34 the legislature with its assessment by December 1, 2004.

1 NEW SECTION. **Sec. 8.** 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. 9.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and takes effect
8 immediately.

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