

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE SENATE BILL 6358

Chapter 166, Laws of 2004

(partial veto)

58th Legislature
2004 Regular Session

OFFENDERS UNDER TREATMENT ORDERS

EFFECTIVE DATE: 7/1/04 - Except sections 6, 20 and 22, which become effective 3/26/04.

Passed by the Senate March 9, 2004
YEAS 41 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 4, 2004
YEAS 94 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved March 26, 2004, with the exception of section 1, which is vetoed.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr., Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 6358** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MILTON H. DOUMIT JR.

Secretary

FILED

March 26, 2004 - 4:24 p.m.

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 6358

AS AMENDED BY THE HOUSE

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By Senate Committee on Ways & Means (originally sponsored by
Senators Hargrove and Stevens)

READ FIRST TIME 02/10/04.

1 AN ACT Relating to improved collaboration regarding offenders with
2 treatment orders; amending RCW 71.05.040, 71.05.445, 72.09.585,
3 71.34.225, and 70.02.030; reenacting and amending RCW 71.05.390; adding
4 a new section to chapter 10.77 RCW; adding new sections to chapter
5 9.94A RCW; adding a new section to chapter 9.95 RCW; adding new
6 sections to chapter 71.05 RCW; adding new sections to chapter 70.96A
7 RCW; adding a new section to chapter 70.48 RCW; adding a new section to
8 chapter 72.09 RCW; adding a new section to chapter 4.24 RCW; creating
9 new sections; providing an effective date; and declaring an emergency.

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

11 ***NEW SECTION. Sec. 1. The legislature makes the following**
12 **findings:**

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

16 **(2) Some offenders under supervision in the community are**
17 **concurrently subject to court-ordered mental health or chemical**
18 **dependency treatment;**

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

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

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

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

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

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

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

*Sec. 1 was vetoed. See message at end of chapter.

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

25 Persons who are developmentally disabled, impaired by chronic
26 alcoholism or drug abuse, or suffering from dementia shall not be
27 detained for evaluation and treatment or judicially committed solely by
28 reason of that condition unless such condition causes a person to be
29 gravely disabled or as a result of a mental disorder such condition
30 exists that constitutes a likelihood of serious harm: Provided
31 however, That persons who are developmentally disabled, impaired by
32 chronic alcoholism or drug abuse, or suffering from dementia and who
33 otherwise meet the criteria for detention or judicial commitment are
34 not ineligible for detention or commitment based on this condition
35 alone.

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

3 When a county designated mental health professional or a
4 professional person has determined that a person has a mental disorder,
5 and is otherwise committable, the cause of the person's mental disorder
6 shall not make the person ineligible for commitment under chapter 71.05
7 RCW.

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

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

12 (a) "Information related to mental health services" means 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 by a mental health service provider. This may include
16 documents of legal proceedings under this chapter or chapter 71.34 or
17 10.77 RCW, or somatic health care information.

18 (b) "Mental health service provider" means a public or private
19 agency that provides services to persons with mental disorders as
20 defined under RCW 71.05.020 and receives funding from public sources.
21 This includes evaluation and treatment facilities as defined in RCW
22 71.05.020, community mental health service delivery systems, or
23 community mental health programs as defined in RCW 71.24.025, and
24 facilities conducting competency evaluations and restoration under
25 chapter 10.77 RCW.

26 (2)(a) Information related to mental health services delivered to
27 a person subject to chapter 9.94A or 9.95 RCW shall be released, upon
28 request, by a mental health service provider to department of
29 corrections personnel for whom the information is necessary to carry
30 out the responsibilities of their office. The information must be
31 provided only for the purposes of completing presentence investigations
32 or risk assessment reports, supervision of an incarcerated (~~(person)~~)
33 offender or offender under supervision in the community, planning for
34 and provision of supervision of (~~(a person)~~) an offender, or assessment
35 of (~~(a person's)~~) an offender's risk to the community. The request
36 shall be in writing and shall not require the consent of the subject of
37 the records.

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

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

26 (b) When a person receiving court-ordered treatment or treatment
27 ordered by the department of corrections discloses to his or her mental
28 health service provider that he or she is subject to supervision by the
29 department of corrections, the mental health services provider shall
30 notify the department of corrections that he or she is treating the
31 offender and shall notify the offender that his or her community
32 corrections officer will be notified of the treatment, provided that if
33 the offender has received relief from disclosure pursuant to section
34 11, 12, or 13 of this act and the offender has provided the mental
35 health services provider with a copy of the order granting relief from
36 disclosure pursuant to section 11, 12, or 13 of this act, the mental
37 health services provider is not required to notify the department of
38 corrections that the mental health services provider is treating the

1 offender. The notification may be written or oral and shall not
2 require the consent of the offender. If an oral notification is made,
3 it must be confirmed by a written notification. For purposes of this
4 section, a written notification includes notification by e-mail or
5 facsimile, so long as the notifying mental health service provider is
6 clearly identified.

7 (4) The information to be released to the department of corrections
8 shall include all relevant records and reports, as defined by rule,
9 necessary for the department of corrections to carry out its duties,
10 including those records and reports identified in subsection (2) of
11 this section.

12 ((+4)) (5) The department and the department of corrections, in
13 consultation with regional support networks, mental health service
14 providers as defined in subsection (1) of this section, mental health
15 consumers, and advocates for persons with mental illness, shall adopt
16 rules to implement the provisions of this section related to the type
17 and scope of information to be released. These rules shall:

18 (a) Enhance and facilitate the ability of the department of
19 corrections to carry out its responsibility of planning and ensuring
20 community protection with respect to persons subject to sentencing
21 under chapter 9.94A or 9.95 RCW, including accessing and releasing or
22 disclosing information of persons who received mental health services
23 as a minor; and

24 (b) Establish requirements for the notification of persons under
25 the supervision of the department of corrections regarding the
26 provisions of this section.

27 ((+5)) (6) The information received by the department of
28 corrections under this section shall remain confidential and subject to
29 the limitations on disclosure outlined in chapter 71.05 RCW, except as
30 provided in RCW 72.09.585.

31 ((+6)) (7) No mental health service provider or individual
32 employed by a mental health service provider shall be held responsible
33 for information released to or used by the department of corrections
34 under the provisions of this section or rules adopted under this
35 section except under RCW 71.05.670 and 71.05.440.

36 ((+7)) (8) Whenever federal law or federal regulations restrict
37 the release of information contained in the treatment records of any

1 patient who receives treatment for alcoholism or drug dependency, the
2 release of the information may be restricted as necessary to comply
3 with federal law and regulations.

4 ~~((+8+))~~ (9) This section does not modify the terms and conditions
5 of disclosure of information related to sexually transmitted diseases
6 under chapter 70.24 RCW.

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

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

16 (1) When the department is determining an offender's risk
17 management level, the department shall inquire of the offender and
18 shall be told whether the offender is subject to court-ordered
19 treatment for mental health services or chemical dependency services.
20 The department shall request and the offender shall provide an
21 authorization to release information form that meets applicable state
22 and federal requirements and shall provide the offender with written
23 notice that the department will request the offender's mental health
24 and substance abuse treatment information. An offender's failure to
25 inform the department of court-ordered treatment is a violation of the
26 conditions of supervision if the offender is in the community and an
27 infraction if the offender is in confinement, and the violation or
28 infraction is subject to sanctions.

29 (2) When an offender discloses that he or she is subject to court-
30 ordered mental health services or chemical dependency treatment, the
31 department shall provide the mental health services provider or
32 chemical dependency treatment provider with a written request for
33 information and any necessary authorization to release information
34 forms. The written request shall comply with rules adopted by the
35 department of social and health services or protocols developed jointly
36 by the department and the department of social and health services. A
37 single request shall be valid for the duration of the offender's

1 supervision in the community. Disclosures of information related to
2 mental health services made pursuant to a department request shall not
3 require consent of the offender.

4 (3) The information received by the department under RCW 71.05.445
5 or 71.34.225 may be released to the indeterminate sentence review board
6 as relevant to carry out its responsibility of planning and ensuring
7 community protection with respect to persons under its jurisdiction.
8 Further disclosure by the indeterminate sentence review board is
9 subject to the limitations set forth in subsections (~~(3)~~) (5) and
10 (~~(4)~~) (6) of this section and must be consistent with the written
11 policy of the indeterminate sentence review board. The decision to
12 disclose or not shall not result in civil liability for the
13 indeterminate sentence review board or its employees provided that the
14 decision was reached in good faith and without gross negligence.

15 (~~(2)~~) (4) The information received by the department under RCW
16 71.05.445 or 71.34.225 may be used to meet the statutory duties of the
17 department to provide evidence or report to the court. Disclosure to
18 the public of information provided to the court by the department
19 related to mental health services shall be limited in accordance with
20 RCW 9.94A.500 or this section.

21 (~~(3)~~) (5) The information received by the department under RCW
22 71.05.445 or 71.34.225 may be disclosed by the department to other
23 state and local agencies as relevant to plan for and provide offenders
24 transition, treatment, and supervision services, or as relevant and
25 necessary to protect the public and counteract the danger created by a
26 particular offender, and in a manner consistent with the written policy
27 established by the secretary. The decision to disclose or not shall
28 not result in civil liability for the department or its employees so
29 long as the decision was reached in good faith and without gross
30 negligence. The information received by a state or local agency from
31 the department shall remain confidential and subject to the limitations
32 on disclosure set forth in chapters 70.02, 71.05, and 71.34 RCW and,
33 subject to these limitations, may be released only as relevant and
34 necessary to counteract the danger created by a particular offender.

35 (~~(4)~~) (6) The information received by the department under RCW
36 71.05.445 or 71.34.225 may be disclosed by the department to
37 individuals only with respect to offenders who have been determined by
38 the department to have a high risk of reoffending by a risk assessment,

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

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

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

25 Information and records may be disclosed only:

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

- 32 (a) Employed by the facility;
33 (b) Who has medical responsibility for the patient's care;
34 (c) Who is a county designated mental health professional;
35 (d) Who is providing services under chapter 71.24 RCW;
36 (e) Who is employed by a state or local correctional facility where
37 the person is confined or supervised; or

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

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

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

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

25 (d) Information and records shall be disclosed to the department of
26 corrections pursuant to and in compliance with the provisions of RCW
27 71.05.445 for the purposes of completing presentence investigations or
28 risk assessment reports, supervision of an incarcerated offender or
29 offender under supervision in the community, planning for and provision
30 of supervision of an offender, or assessment of an offender's risk to
31 the community; and

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

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

35 (9) To the prosecuting attorney as necessary to carry out the
36 responsibilities of the office under RCW 71.05.330(2) and
37 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access
38 to records regarding the committed person's treatment and prognosis,

1 medication, behavior problems, and other records relevant to the issue
2 of whether treatment less restrictive than inpatient treatment is in
3 the best interest of the committed person or others. Information shall
4 be disclosed only after giving notice to the committed person and the
5 person's counsel.

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

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

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

28 (13) Civil liability and immunity for the release of information
29 about a particular person who is committed to the department under RCW
30 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
31 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

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

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

1 The fact of admission, as well as all records, files, evidence,
2 findings, or orders made, prepared, collected, or maintained pursuant
3 to this chapter shall not be admissible as evidence in any legal
4 proceeding outside this chapter without the written consent of the
5 person who was the subject of the proceeding except in a subsequent
6 criminal prosecution of a person committed pursuant to RCW 71.05.280(3)
7 or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter
8 10.77 RCW due to incompetency to stand trial or in a civil commitment
9 proceeding pursuant to chapter 71.09 RCW. The records and files
10 maintained in any court proceeding pursuant to this chapter shall be
11 confidential and available subsequent to such proceedings only to the
12 person who was the subject of the proceeding or his or her attorney.
13 In addition, the court may order the subsequent release or use of such
14 records or files only upon good cause shown if the court finds that
15 appropriate safeguards for strict confidentiality are and will be
16 maintained.

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

19 An offender's failure to inform the department of court-ordered
20 treatment upon request by the department is a violation of the
21 conditions of supervision if the offender is in the community and an
22 infraction if the offender is in confinement, and the violation or
23 infraction is subject to sanctions.

24 **Sec. 8.** RCW 71.34.225 and 2002 c 39 s 1 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 71.05 or
33 10.77 RCW, or somatic health care information.

34 (b) "Mental health service provider" means a public or private
35 agency that provides services to persons with mental disorders as
36 defined under RCW 71.34.020 and receives funding from public sources.

1 This includes evaluation and treatment facilities as defined in RCW
2 71.34.020, community mental health service delivery systems, or
3 community mental health programs, as defined in RCW 71.24.025, and
4 facilities conducting competency evaluations and restoration under
5 chapter 10.77 RCW.

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

16 (3) The information to be released to the department of corrections
17 shall include all relevant records and reports, as defined by rule,
18 necessary for the department of corrections to carry out its duties,
19 including those records and reports identified in subsection (2) of
20 this section.

21 (4) 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 (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

1 disclosing information of persons who received mental health services
2 as a minor; and

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

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

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

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

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

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

25 When an offender receiving court-ordered mental health or chemical
26 dependency treatment or treatment ordered by the department of
27 corrections presents for treatment from a mental health or chemical
28 dependency treatment provider, the offender must disclose to the mental
29 health or chemical dependency treatment provider whether he or she is
30 subject to supervision by the department of corrections. If an
31 offender has received relief from disclosure pursuant to section 11,
32 12, or 13 of this act, the offender must provide the mental health or
33 chemical dependency treatment provider with a copy of the order
34 granting the relief.

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

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

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

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

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

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

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

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

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

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

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

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

32 (1) When a designated chemical dependency specialist is notified by
33 a jail that a defendant or offender who was subject to a discharge
34 review under section 18 of this act is to be released to the community,
35 the designated chemical dependency specialist shall evaluate the person

1 within seventy-two hours of release, if the person's treatment
2 information indicates that he or she may need chemical dependency
3 treatment.

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

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

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

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

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

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

36 (2) When an offender is under court-ordered treatment in the
37 community and the supervision of the department of corrections, and the

1 treatment provider becomes aware that the person is in violation of the
2 terms of the court order, the treatment provider shall notify the
3 county designated mental health professional of the violation and
4 request an evaluation for purposes of revocation of the less
5 restrictive alternative.

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

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

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

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

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

36 (2) When a county designated mental health professional or the
37 designated chemical dependency specialist notifies the department that

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

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

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

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

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

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

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

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

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

- 35 (a) Be in writing, dated, and signed by the patient;
- 36 (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, unless the
29 patient is part of a treatment program that requires the continued
30 exchange of information until the end of the period of treatment.

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

1 information available through the council of state governments and the
2 national conference of state legislatures.

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

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

Passed by the Senate March 9, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 26, 2004, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State March 26, 2004.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 1,
Engrossed Second Substitute Senate Bill No. 6358 entitled:

"AN ACT Relating to improved collaboration regarding offenders
with treatment orders;"

This bill requires more comprehensive and effective communication
between correctional authorities and treatment providers regarding
people who are subject to both correctional supervision, based on
criminal charges or convictions, and civil commitment, based on
mental illness or chemical dependency.

Section 1 of this bill contained language that may have given an
inaccurate view of the current environment, knowledge of state and
local agencies, and procedures followed. Taken out of context, this
language could have been misunderstood and used to indicate an
admission of liability when none exists. To avoid these unintended
consequences and the inadvertent misuse of this language, I have
vetoed section 1.

For these reasons, I have vetoed section 1 of Engrossed Second
Substitute Senate Bill No. 6358.

With the exception of section 1, Engrossed Second Substitute Senate
Bill No. 6358 is approved."