
SENATE BILL 5533

State of Washington 60th Legislature 2007 Regular Session

By Senators Pflug, Hargrove, Kline, Swecker, Delvin, Stevens, Holmquist, Parlette and Hewitt

Read first time 01/23/2007. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to procedures for individuals who are mentally ill
2 and engaged in acts constituting criminal behavior; amending RCW
3 71.05.020, 71.05.150, 49.19.010, 71.34.600, 71.24.035, 71.05.160, and
4 71.05.360; reenacting and amending RCW 71.05.390; adding new sections
5 to chapter 10.77 RCW; adding a new section to chapter 71.05 RCW;
6 creating new sections; and repealing RCW 10.77.090.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that RCW 10.77.090
9 contains laws relating to three discrete subjects. Therefore, one
10 purpose of this act is to reorganize some of those laws by creating new
11 sections in the Revised Code of Washington that clarify and identify
12 these discrete subjects.

13 The legislature further finds that there are disproportionate
14 numbers of individuals with mental illness in jail. The needs of
15 individuals with mental illness and the public safety needs of society
16 at large are better served when individuals with mental illness are
17 provided an opportunity to obtain treatment and support.

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

3 If reasonable cause exists to believe that an individual with a
4 mental disorder has committed acts constituting a nonfelony crime that
5 is not a serious offense as identified in RCW 10.77.092, in lieu of
6 charging the prosecutor may refer the individual to a mental health
7 professional for evaluation for initial detention and proceeding under
8 chapter 71.05 RCW or voluntary participation in outpatient treatment.

9 (1) In deciding whether to refer the individual to treatment under
10 this section the prosecutor shall be guided by the length, seriousness,
11 and recency of the criminal history of the individual, the mental
12 health history of the individual, where available, and the
13 circumstances surrounding the commission of the alleged offense.

14 (2) Any voluntary mental health treatment program under this
15 section shall include treatment options selected by the prosecutor in
16 consultation with the department, the local regional support network,
17 and defense counsel.

18 (3) Outpatient treatment providers for voluntary participants who
19 are subject to this section shall submit monthly progress reports to
20 the prosecutor on the individual's progress in treatment. The report
21 shall reference the treatment plan and include at a minimum the
22 following: Dates of attendance, individual's compliance with
23 requirements, treatment activities, medication management, and the
24 individual's relative progress in treatment for ninety days.

25 (4) Any jurisdiction that establishes a mental health treatment
26 alternative pursuant to this section shall establish minimum
27 requirements for the participation of individuals in the program. The
28 mental health treatment alternative may adopt local requirements that
29 are more stringent than the minimum. The minimum requirements are:

30 (a) Psychiatric treatment is clinically indicated by history or
31 upon consultation with a mental health professional as defined in RCW
32 71.05.020;

33 (b) The individual has not previously been convicted of a serious
34 violent offense or sex offense as defined in RCW 9.94A.030; and

35 (c) Without regard to whether proof of any of these elements is
36 required to convict, the individual is not currently charged with or
37 convicted of an offense:

38 (i) That is a sex offense;

1 (ii) That is a serious violent offense;
2 (iii) During which the individual used a firearm; or
3 (iv) During which the individual caused substantial or great bodily
4 harm or death to another person.

5 (5) Individuals shall be provided with an opportunity to consult
6 with counsel prior to entering into a voluntary agreement to
7 participate in a mental health treatment program.

8 (6) The agreements to participate in treatment shall not require
9 individuals to stipulate to any of the alleged facts regarding the
10 criminal activity as a prerequisite to participation in a mental health
11 treatment alternative.

12 (7) If an individual violates the treatment agreement and the
13 mental health treatment alternative is no longer appropriate, the
14 original charges may be filed and the matter may proceed accordingly.

15 (8) The prosecutor is immune from liability for any good-faith
16 conduct under this section.

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

19 GENERAL STAY PROVISIONS. (1)(a) If at any time during the pendency
20 of an action and prior to judgment the court finds, following a report
21 as provided in RCW 10.77.060, a defendant is incompetent, the court
22 shall order the proceedings against the defendant be stayed except as
23 provided in subsection (4) of this section.

24 (b) A defendant found incompetent shall be evaluated at the
25 direction of the secretary and a determination made whether the
26 defendant is an individual with a developmental disability. Such
27 evaluation and determination shall be accomplished as soon as possible
28 following the court's placement of the defendant in the custody of the
29 secretary.

30 (i) When appropriate, and subject to available funds, if the
31 defendant is determined to be an individual with a developmental
32 disability, he or she may be placed in a program specifically reserved
33 for the treatment and training of persons with developmental
34 disabilities where the defendant shall have the right to habilitation
35 according to an individualized service plan specifically developed for
36 the particular needs of the defendant. A copy of the evaluation shall
37 be sent to the program.

1 (A) The program shall be separate from programs serving persons
2 involved in any other treatment or habilitation program.

3 (B) The program shall be appropriately secure under the
4 circumstances and shall be administered by developmental disabilities
5 professionals who shall direct the habilitation efforts.

6 (C) The program shall provide an environment affording security
7 appropriate with the charged criminal behavior and necessary to protect
8 the public safety.

9 (ii) The department may limit admissions of such persons to this
10 specialized program in order to ensure that expenditures for services
11 do not exceed amounts appropriated by the legislature and allocated by
12 the department for such services.

13 (iii) The department may establish admission priorities in the
14 event that the number of eligible persons exceeds the limits set by the
15 department.

16 (c) At the end of the mental health treatment and restoration
17 period, or at any time a professional person determines competency has
18 been, or is unlikely to be, restored, the defendant shall be returned
19 to court for a hearing. If, after notice and hearing, competency has
20 been restored, the stay entered under (a) of this subsection shall be
21 lifted. If competency has not been restored, the proceedings shall be
22 dismissed. If the court concludes that competency has not been
23 restored, but that further treatment within the time limits established
24 by sections 4 and 5 of this act is likely to restore competency, the
25 court may order that treatment for purposes of competency restoration
26 be continued. Such treatment may not extend beyond the combination of
27 time provided for in sections 4 and 5 of this act.

28 (d)(i) If the proceedings are dismissed under (c) of this
29 subsection and the defendant was on conditional release at the time of
30 dismissal, the court shall order the designated mental health
31 professional within that county to evaluate the defendant pursuant to
32 chapter 71.05 RCW. The evaluation may be conducted in any location
33 chosen by the professional.

34 (ii) If the defendant was in custody and not on conditional release
35 at the time of dismissal, the defendant shall be detained and sent to
36 an evaluation and treatment facility for up to seventy-two hours
37 excluding Saturdays, Sundays, and holidays for evaluation for purposes
38 of filing a petition under chapter 71.05 RCW. The seventy-two-hour

1 period shall commence upon the next nonholiday weekday following the
2 court order and shall run to the end of the last nonholiday weekday
3 within the seventy-two-hour period.

4 (e) If at any time during the proceeding the court finds, following
5 notice and hearing, a defendant is not likely to regain competency, the
6 proceedings shall be dismissed and the defendant shall be evaluated as
7 provided in (c) of this subsection.

8 (2) If the defendant is referred to the designated mental health
9 professional for consideration of initial detention proceedings under
10 chapter 71.05 RCW pursuant to this chapter, the designated mental
11 health professional shall provide prompt written notification of the
12 results of the determination whether to commence initial detention
13 proceedings under chapter 71.05 RCW and whether the person was
14 detained. The notification shall be provided to the court in which the
15 criminal action was pending, the prosecutor, the defense attorney in
16 the criminal action, and the facility that evaluated the defendant for
17 competency.

18 (3) The fact that the defendant is unfit to proceed does not
19 preclude any pretrial proceedings which do not require the personal
20 participation of the defendant.

21 (4) A defendant receiving medication for either physical or mental
22 problems shall not be prohibited from standing trial, if the medication
23 either enables the defendant to understand the proceedings against him
24 or her and to assist in his or her own defense, or does not disable him
25 or her from so understanding and assisting in his or her own defense.

26 (5) At or before the conclusion of any commitment period provided
27 for by this section, the facility providing evaluation and treatment
28 shall provide to the court a written report of examination which meets
29 the requirements of RCW 10.77.060(3).

30 NEW SECTION. **Sec. 4.** A new section is added to chapter 10.77 RCW
31 to read as follows:

32 **FELONY PROCEDURE.** (1) If the defendant is charged with a felony
33 and determined to be incompetent, until he or she has regained the
34 competency necessary to understand the proceedings against him or her
35 and assist in his or her own defense, or has been determined unlikely
36 to regain competency pursuant to section 3(1)(c) of this act, the
37 court:

1 (a) Shall commit the defendant to the custody of the secretary who
2 shall place such defendant in an appropriate facility of the department
3 for evaluation and treatment; or

4 (b) May alternatively order the defendant to undergo evaluation and
5 treatment at some other facility as determined by the department, or
6 under the guidance and control of a professional person.

7 (2) On or before expiration of the initial ninety-day period of
8 commitment under subsection (1) of this section the court shall conduct
9 a hearing, at which it shall determine whether or not the defendant is
10 incompetent.

11 (3) If the court finds by a preponderance of the evidence that a
12 defendant charged with a felony is incompetent, the court shall have
13 the option of extending the order of commitment or alternative
14 treatment for an additional ninety-day period, but the court must at
15 the time of extension set a date for a prompt hearing to determine the
16 defendant's competency before the expiration of the second ninety-day
17 period. The defendant, the defendant's attorney, or the prosecutor has
18 the right to demand that the hearing be before a jury. No extension
19 shall be ordered for a second ninety-day period, nor for any subsequent
20 period as provided in subsection (4) of this section, if the
21 defendant's incompetence has been determined by the secretary to be
22 solely the result of a developmental disability which is such that
23 competence is not reasonably likely to be regained during an extension.

24 (4) For persons charged with a felony, at the hearing upon the
25 expiration of the second ninety-day period or at the end of the first
26 ninety-day period, in the case of a defendant with a developmental
27 disability, if the jury or court finds that the defendant is
28 incompetent, the charges shall be dismissed without prejudice, and
29 either civil commitment proceedings shall be instituted or the court
30 shall order the release of the defendant. The criminal charges shall
31 not be dismissed if the court or jury finds that: (a) The defendant
32 (i) is a substantial danger to other persons; or (ii) presents a
33 substantial likelihood of committing criminal acts jeopardizing public
34 safety or security; and (b) there is a substantial probability that the
35 defendant will regain competency within a reasonable period of time.
36 In the event that the court or jury makes such a finding, the court may
37 extend the period of commitment for up to an additional six months.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 10.77 RCW
2 to read as follows:

3 MISDEMEANOR PROCEDURE. (1) If the defendant is:

4 (a) Charged with a nonfelony crime which is a serious offense as
5 identified in RCW 10.77.092 and has:

6 (i) A history of one or more violent acts, or a pending charge of
7 one or more violent acts; or

8 (ii) Been previously acquitted by reason of insanity or been
9 previously found incompetent under this chapter or any equivalent
10 federal or out-of-state statute with regard to an alleged offense
11 involving actual, threatened, or attempted physical harm to a person;
12 and

13 (b) Found by the court to be not competent; then

14 (c) The court shall order the secretary to place the defendant:

15 (i) At a secure mental health facility in the custody of the
16 department or an agency designated by the department for mental health
17 treatment and restoration of competency. The placement shall not
18 exceed fourteen days in addition to any unused time of the evaluation
19 under RCW 10.77.060. The court shall compute this total period and
20 include its computation in the order. The fourteen-day period plus any
21 unused time of the evaluation under RCW 10.77.060 shall be considered
22 to include only the time the defendant is actually at the facility and
23 shall be in addition to reasonable time for transport to or from the
24 facility;

25 (ii) On conditional release for up to ninety days for mental health
26 treatment and restoration of competency; or

27 (iii) Any combination of this subsection.

28 (2) If the defendant is charged with a nonfelony crime that is not
29 a serious offense as defined in RCW 10.77.092:

30 The court may stay or dismiss proceedings and detain the defendant
31 for sufficient time to allow the designated mental health professional
32 to evaluate the defendant and consider initial detention proceedings
33 under chapter 71.05 RCW. The court must give notice to all parties at
34 least twenty-four hours before the dismissal of any proceeding under
35 this subsection, and provide an opportunity for a hearing on whether to
36 dismiss the proceedings.

1 **Sec. 6.** RCW 71.05.020 and 2005 c 504 s 104 are each amended to
2 read as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

5 (1) "Admission" or "admit" means a decision by a physician that a
6 person should be examined or treated as a patient in a hospital;

7 (2) "Antipsychotic medications" means that class of drugs primarily
8 used to treat serious manifestations of mental illness associated with
9 thought disorders, which includes, but is not limited to atypical
10 antipsychotic medications;

11 (3) "Attending staff" means any person on the staff of a public or
12 private agency having responsibility for the care and treatment of a
13 patient;

14 (4) "Commitment" means the determination by a court that a person
15 should be detained for a period of either evaluation or treatment, or
16 both, in an inpatient or a less restrictive setting;

17 (5) "Conditional release" means a revocable modification of a
18 commitment, which may be revoked upon violation of any of its terms;

19 (6) "Crisis stabilization unit" means a short-term facility or
20 portion of a facility licensed by the department of health and
21 certified by the department of social and health services under RCW
22 71.24.035, such as an evaluation and treatment facility, a crisis
23 triage center, or a hospital, which has been designed to assess,
24 diagnose, and treat individuals experiencing an acute crisis without
25 the use of long-term hospitalization;

26 (7) "Custody" means involuntary detention under the provisions of
27 this chapter or chapter 10.77 RCW, uninterrupted by any period of
28 unconditional release from commitment from a facility providing
29 involuntary care and treatment;

30 (~~(7)~~) (8) "Department" means the department of social and health
31 services;

32 (~~(8)~~) (9) "Designated chemical dependency specialist" means a
33 person designated by the county alcoholism and other drug addiction
34 program coordinator designated under RCW 70.96A.310 to perform the
35 commitment duties described in chapters 70.96A and 70.96B RCW;

36 (~~(9)~~) (10) "Designated crisis responder" means a mental health
37 professional appointed by the county or the regional support network to
38 perform the duties specified in this chapter;

1 (~~(10)~~) (11) "Designated mental health professional" means a
2 mental health professional designated by the county or other authority
3 authorized in rule to perform the duties specified in this chapter;

4 (~~(11)~~) (12) "Detention" or "detain" means the lawful confinement
5 of a person, under the provisions of this chapter;

6 (~~(12)~~) (13) "Developmental disabilities professional" means a
7 person who has specialized training and three years of experience in
8 directly treating or working with persons with developmental
9 disabilities and is a psychiatrist, psychologist, or social worker, and
10 such other developmental disabilities professionals as may be defined
11 by rules adopted by the secretary;

12 (~~(13)~~) (14) "Developmental disability" means that condition
13 defined in RCW 71A.10.020(3);

14 (~~(14)~~) (15) "Discharge" means the termination of hospital medical
15 authority. The commitment may remain in place, be terminated, or be
16 amended by court order;

17 (~~(15)~~) (16) "Evaluation and treatment facility" means any
18 facility which can provide directly, or by direct arrangement with
19 other public or private agencies, emergency evaluation and treatment,
20 outpatient care, and timely and appropriate inpatient care to persons
21 suffering from a mental disorder, and which is certified as such by the
22 department. A physically separate and separately operated portion of
23 a state hospital may be designated as an evaluation and treatment
24 facility. A facility which is part of, or operated by, the department
25 or any federal agency will not require certification. No correctional
26 institution or facility, or jail, shall be an evaluation and treatment
27 facility within the meaning of this chapter;

28 (~~(16)~~) (17) "Gravely disabled" means a condition in which a
29 person, as a result of a mental disorder: (a) Is in danger of serious
30 physical harm resulting from a failure to provide for his or her
31 essential human needs of health or safety; or (b) manifests severe
32 deterioration in routine functioning evidenced by repeated and
33 escalating loss of cognitive or volitional control over his or her
34 actions and is not receiving such care as is essential for his or her
35 health or safety;

36 (~~(17)~~) (18) "Habilitative services" means those services provided
37 by program personnel to assist persons in acquiring and maintaining
38 life skills and in raising their levels of physical, mental, social,

1 and vocational functioning. Habilitative services include education,
2 training for employment, and therapy. The habilitative process shall
3 be undertaken with recognition of the risk to the public safety
4 presented by the person being assisted as manifested by prior charged
5 criminal conduct;

6 ~~((+18+))~~ (19) "History of one or more violent acts" refers to the
7 period of time ten years prior to the filing of a petition under this
8 chapter, excluding any time spent, but not any violent acts committed,
9 in a mental health facility or in confinement as a result of a criminal
10 conviction;

11 ~~((+19+))~~ (20) "Individualized service plan" means a plan prepared
12 by a developmental disabilities professional with other professionals
13 as a team, for a person with developmental disabilities, which shall
14 state:

15 (a) The nature of the person's specific problems, prior charged
16 criminal behavior, and habilitation needs;

17 (b) The conditions and strategies necessary to achieve the purposes
18 of habilitation;

19 (c) The intermediate and long-range goals of the habilitation
20 program, with a projected timetable for the attainment;

21 (d) The rationale for using this plan of habilitation to achieve
22 those intermediate and long-range goals;

23 (e) The staff responsible for carrying out the plan;

24 (f) Where relevant in light of past criminal behavior and due
25 consideration for public safety, the criteria for proposed movement to
26 less-restrictive settings, criteria for proposed eventual discharge or
27 release, and a projected possible date for discharge or release; and

28 (g) The type of residence immediately anticipated for the person
29 and possible future types of residences;

30 ~~((+20+))~~ (21) "Judicial commitment" means a commitment by a court
31 pursuant to the provisions of this chapter;

32 ~~((+21+))~~ (22) "Likelihood of serious harm" means:

33 (a) A substantial risk that: (i) Physical harm will be inflicted
34 by a person upon his or her own person, as evidenced by threats or
35 attempts to commit suicide or inflict physical harm on oneself; (ii)
36 physical harm will be inflicted by a person upon another, as evidenced
37 by behavior which has caused such harm or which places another person
38 or persons in reasonable fear of sustaining such harm; or (iii)

1 physical harm will be inflicted by a person upon the property of
2 others, as evidenced by behavior which has caused substantial loss or
3 damage to the property of others; or

4 (b) The person has threatened the physical safety of another and
5 has a history of one or more violent acts;

6 ((+22+)) (23) "Mental disorder" means any organic, mental, or
7 emotional impairment which has substantial adverse effects on a
8 person's cognitive or volitional functions;

9 ((+23+)) (24) "Mental health professional" means a psychiatrist,
10 psychologist, psychiatric nurse, or social worker, and such other
11 mental health professionals as may be defined by rules adopted by the
12 secretary pursuant to the provisions of this chapter;

13 ((+24+)) (25) "Peace officer" means a law enforcement official of
14 a public agency or governmental unit, and includes persons specifically
15 given peace officer powers by any state law, local ordinance, or
16 judicial order of appointment;

17 ((+25+)) (26) "Private agency" means any person, partnership,
18 corporation, or association that is not a public agency, whether or not
19 financed in whole or in part by public funds, which constitutes an
20 evaluation and treatment facility or private institution, or hospital,
21 which is conducted for, or includes a department or ward conducted for,
22 the care and treatment of persons who are mentally ill;

23 ((+26+)) (27) "Professional person" means a mental health
24 professional and shall also mean a physician, registered nurse, and
25 such others as may be defined by rules adopted by the secretary
26 pursuant to the provisions of this chapter;

27 ((+27+)) (28) "Psychiatrist" means a person having a license as a
28 physician and surgeon in this state who has in addition completed three
29 years of graduate training in psychiatry in a program approved by the
30 American medical association or the American osteopathic association
31 and is certified or eligible to be certified by the American board of
32 psychiatry and neurology;

33 ((+28+)) (29) "Psychologist" means a person who has been licensed
34 as a psychologist pursuant to chapter 18.83 RCW;

35 ((+29+)) (30) "Public agency" means any evaluation and treatment
36 facility or institution, or hospital which is conducted for, or
37 includes a department or ward conducted for, the care and treatment of

1 persons (~~who are mentally ill~~) with mental illness, if the agency is
2 operated directly by, federal, state, county, or municipal government,
3 or a combination of such governments;

4 ~~((+30+))~~ (31) "Registration records" include all the records of the
5 department, regional support networks, treatment facilities, and other
6 persons providing services to the department, county departments, or
7 facilities which identify persons who are receiving or who at any time
8 have received services for mental illness;

9 ~~((+31+))~~ (32) "Release" means legal termination of the commitment
10 under the provisions of this chapter;

11 ~~((+32+))~~ (33) "Resource management services" has the meaning given
12 in chapter 71.24 RCW;

13 ~~((+33+))~~ (34) "Secretary" means the secretary of the department of
14 social and health services, or his or her designee;

15 ~~((+34+))~~ (35) "Social worker" means a person with a master's or
16 further advanced degree from an accredited school of social work or a
17 degree deemed equivalent under rules adopted by the secretary;

18 ~~((+35+))~~ (36) "Treatment records" include registration and all
19 other records concerning persons who are receiving or who at any time
20 have received services for mental illness, which are maintained by the
21 department, by regional support networks and their staffs, and by
22 treatment facilities. Treatment records do not include notes or
23 records maintained for personal use by a person providing treatment
24 services for the department, regional support networks, or a treatment
25 facility if the notes or records are not available to others;

26 ~~((+36+))~~ (37) "Violent act" means behavior that resulted in
27 homicide, attempted suicide, nonfatal injuries, or substantial damage
28 to property.

29 **Sec. 7.** RCW 71.05.150 and 1998 c 297 s 8 are each amended to read
30 as follows:

31 NONEMERGENT DETENTION. (1)~~((+a+))~~ When a ~~((county))~~ designated
32 mental health professional receives information alleging that a person,
33 as a result of a mental disorder(~~:(i) Presents a likelihood of~~
34 ~~serious harm; or (ii))~~), is gravely disabled; the ~~((county))~~ designated
35 mental health professional may, after investigation and evaluation of
36 the specific facts alleged and of the reliability and credibility of
37 any person providing information to initiate detention, if satisfied

1 that the allegations are true and that the person will not voluntarily
2 seek appropriate treatment, file a petition for initial detention.
3 Before filing the petition, the ((county)) designated mental health
4 professional must personally interview the person, unless the person
5 refuses an interview, and determine whether the person will voluntarily
6 receive appropriate evaluation and treatment at an evaluation and
7 treatment facility, a crisis triage facility, or in a crisis
8 stabilization unit.

9 ~~((b) Whenever it appears, by petition for initial detention, to~~
10 ~~the satisfaction of a judge of the superior court that a person~~
11 ~~presents, as a result of a mental disorder, a likelihood of serious~~
12 ~~harm, or is gravely disabled, and that the person has refused or failed~~
13 ~~to accept appropriate evaluation and treatment voluntarily, the judge~~
14 ~~may issue an order requiring the person to appear within twenty four~~
15 ~~hours after service of the order at a designated evaluation and~~
16 ~~treatment facility for not more than a seventy two hour evaluation and~~
17 ~~treatment period. The order shall state the address of the evaluation~~
18 ~~and treatment facility to which the person is to report and whether the~~
19 ~~required seventy two hour evaluation and treatment services may be~~
20 ~~delivered on an outpatient or inpatient basis and that if the person~~
21 ~~named in the order fails to appear at the evaluation and treatment~~
22 ~~facility at or before the date and time stated in the order, such~~
23 ~~person may be involuntarily taken into custody for evaluation and~~
24 ~~treatment. The order shall also designate retained counsel or, if~~
25 ~~counsel is appointed from a list provided by the court, the name,~~
26 ~~business address, and telephone number of the attorney appointed to~~
27 ~~represent the person.~~

28 ((c)) (2) Upon filing the petition, if probable cause exists to
29 support the petition, the court shall fix a date for a hearing no less
30 than two and no more than seven days after the date the petition was
31 filed. The order shall also designate retained counsel or, if counsel
32 is appointed from a list provided by the court, the name, business
33 address, and telephone number of the attorney appointed to represent
34 the person.

35 (3) The ((county)) designated mental health professional shall then
36 serve or cause to be served on such person, his or her guardian, and
37 conservator, if any, ((a copy of the order to appear together with))
38 notice of the hearing, including the date fixed by the court, a notice

1 of rights, and a petition for initial detention. After service on such
2 person the ((county)) designated mental health professional shall file
3 the return of service in court and provide copies of all papers in the
4 court file to the evaluation and treatment facility and the designated
5 attorney. The ((county)) designated mental health professional shall
6 notify the court and the prosecuting attorney that a probable cause
7 hearing will be held within seventy-two hours of the date and time of
8 outpatient evaluation or admission to the evaluation and treatment
9 facility. The person shall be permitted to remain in his or her home
10 or other place of his or her choosing prior to the time of evaluation
11 and shall be permitted to be accompanied by one or more of his or her
12 relatives, friends, an attorney, a personal physician, or other
13 professional or religious advisor to the place of evaluation. An
14 attorney accompanying the person to the place of evaluation shall be
15 permitted to be present during the admission evaluation. Any other
16 individual accompanying the person may be present during the admission
17 evaluation. The facility may exclude the individual if his or her
18 presence would present a safety risk, delay the proceedings, or
19 otherwise interfere with the evaluation.

20 ((d)) (4) If the person ordered to appear does appear on or
21 before the date and time specified, the evaluation and treatment
22 facility may admit such person as required by RCW 71.05.170 or may
23 provide treatment on an outpatient basis. If the person ordered to
24 appear fails to appear on or before the date and time specified, the
25 evaluation and treatment facility shall immediately notify the
26 ((county)) designated mental health professional who may notify a peace
27 officer to take such person or cause such person to be taken into
28 custody and placed in an evaluation and treatment facility. Should the
29 ((county)) designated mental health professional notify a peace officer
30 authorizing him or her to take a person into custody under the
31 provisions of this subsection, he or she shall file with the court a
32 copy of such authorization and a notice of detention. At the time such
33 person is taken into custody there shall commence to be served on such
34 person, his or her guardian, and conservator, if any, a copy of the
35 original ((order)) notice of hearing together with a notice of
36 detention, a notice of rights, and a petition for initial detention.

37 ~~((2) When a county designated mental health professional receives~~
38 ~~information alleging that a person, as the result of a mental disorder,~~

1 ~~presents an imminent likelihood of serious harm, or is in imminent~~
2 ~~danger because of being gravely disabled, after investigation and~~
3 ~~evaluation of the specific facts alleged and of the reliability and~~
4 ~~credibility of the person or persons providing the information if any,~~
5 ~~the county designated mental health professional may take such person,~~
6 ~~or cause by oral or written order such person to be taken into~~
7 ~~emergency custody in an evaluation and treatment facility for not more~~
8 ~~than seventy two hours as described in RCW 71.05.180.~~

9 ~~(3) A peace officer may take such person or cause such person to be~~
10 ~~taken into custody and placed in an evaluation and treatment facility~~
11 ~~pursuant to subsection (1)(d) of this section.~~

12 ~~(4) A peace officer may, without prior notice of the proceedings~~
13 ~~provided for in subsection (1) of this section, take or cause such~~
14 ~~person to be taken into custody and immediately delivered to an~~
15 ~~evaluation and treatment facility or the emergency department of a~~
16 ~~local hospital:~~

17 ~~(a) Only pursuant to subsections (1)(d) and (2) of this section; or~~

18 ~~(b) When he or she has reasonable cause to believe that such person~~
19 ~~is suffering from a mental disorder and presents an imminent likelihood~~
20 ~~of serious harm or is in imminent danger because of being gravely~~
21 ~~disabled.~~

22 ~~(5) Persons delivered to evaluation and treatment facilities by~~
23 ~~peace officers pursuant to subsection (4)(b) of this section may be~~
24 ~~held by the facility for a period of up to twelve hours: PROVIDED,~~
25 ~~That they are examined by a mental health professional within three~~
26 ~~hours of their arrival. Within twelve hours of their arrival, the~~
27 ~~county designated mental health professional must file a supplemental~~
28 ~~petition for detention, and commence service on the designated attorney~~
29 ~~for the detained person.))~~

30 NEW SECTION. Sec. 8. A new section is added to chapter 71.05 RCW
31 to read as follows:

32 EMERGENT DETENTION. (1) When a designated mental health
33 professional receives information alleging that a person, as the result
34 of a mental disorder, presents an imminent likelihood of serious harm,
35 a substantial likelihood of serious harm as evidenced by a recent overt
36 act, or is in imminent danger because of being gravely disabled, after
37 investigation and evaluation of the specific facts alleged and of the

1 reliability and credibility of the person or persons providing the
2 information if any, the designated mental health professional may take
3 such person, or cause by oral or written order such person to be taken
4 into emergency custody in an evaluation and treatment facility for not
5 more than seventy-two hours as described in RCW 71.05.180.

6 (2) A peace officer may take or cause such person to be taken into
7 custody and immediately delivered to a crisis stabilization unit, an
8 evaluation and treatment facility, or the emergency department of a
9 local hospital under the following circumstances:

10 (a) Pursuant to subsection (1) of this section and RCW
11 71.05.150(4);

12 (b) When he or she has reasonable cause to believe that such person
13 is suffering from a mental disorder and presents an imminent likelihood
14 of serious harm, a substantial likelihood of serious harm as evidenced
15 by a recent overt act, or is in imminent danger because of being
16 gravely disabled; or

17 (c) When the peace officer has reasonable cause to believe that the
18 individual has committed acts constituting a crime and the individual
19 is known by history or consultation with the regional support network
20 to suffer from a mental disorder.

21 (3) Persons delivered to a crisis stabilization unit, evaluation
22 and treatment facility, or the emergency department of a local hospital
23 by peace officers pursuant to subsection (2) of this section may be
24 held by the facility for a period of up to twelve hours: PROVIDED,
25 That they are examined by a mental health professional within three
26 hours of their arrival. Within twelve hours of their arrival, the
27 designated mental health professional must determine whether the
28 individual meets detention criteria. If the individual is detained,
29 the designated mental health professional shall file a petition for
30 detention or a supplemental petition as appropriate and commence
31 service on the designated attorney for the detained person.

32 NEW SECTION. **Sec. 9.** (1) A joint task force on decreasing the
33 number of individuals with mental illness entering the criminal justice
34 system is created. The joint task force shall consist of the following
35 members:

36 (a) One member from each of the two largest caucuses of the senate,
37 appointed by the president of the senate;

1 (b) One member from each of the two largest caucuses of the house
2 of representatives, appointed by the speaker of the house of
3 representatives;

4 (c) The secretary of the department of social and health services
5 or the secretary's designee;

6 (d) The secretary of the department of corrections or the
7 secretary's designee;

8 (e) An elected sheriff or police chief, selected by the Washington
9 association of sheriffs and police chiefs; and

10 (f) The following twelve members, jointly appointed by the speaker
11 of the house of representatives and the president of the senate:

12 (i) A representative from the community mental health council;

13 (ii) A representative from the Washington state affiliate of the
14 national alliance on mental illness;

15 (iii) A representative from one of the regional support networks in
16 the eastern state hospital catchments;

17 (iv) A representative from one of the regional support networks in
18 the western state hospital catchments;

19 (v) A city or county prosecutor with experience in involuntary
20 civil commitments or criminal cases involving questions of competency;

21 (vi) An assistant attorney general with experience in involuntary
22 civil commitments or criminal cases involving questions of competency;

23 (vii) A public defender with experience in involuntary civil
24 commitments or criminal cases involving questions of competency;

25 (viii) A representative of the Washington association of counties;

26 (ix) A representative of the association of Washington cities;

27 (x) A representative selected from amongst the mental health
28 ombudsmen required by RCW 71.24.350;

29 (xi) A representative of the Washington association of designated
30 mental health professionals; and

31 (xii) A representative of the Washington state jail association.

32 (2) The task force shall choose two cochairs from among its
33 membership.

34 (3) The task force shall review and make recommendations to the
35 legislature and the governor regarding increased access to mental
36 health services for those within the criminal justice system and
37 strategies that will decrease the number of people with mental health
38 illness entering and reentering the criminal justice system.

1 (4) The task force, where feasible, may consult with individuals
2 from the public and private sector.

3 (5) The task force shall use legislative facilities and staff from
4 senate committee services and the house office of program research.

5 (6) The task force shall report its findings and recommendations to
6 the legislature by November 15, 2007.

7 **Sec. 10.** RCW 49.19.010 and 2000 c 94 s 18 are each amended to read
8 as follows:

9 For purposes of this chapter:

10 (1) "Health care setting" means:

11 (a) Hospitals as defined in RCW 70.41.020;

12 (b) Home health, hospice, and home care agencies under chapter
13 70.127 RCW, subject to RCW 49.19.070;

14 (c) Evaluation and treatment facilities as defined in RCW
15 71.05.020(~~(+12)~~); and

16 (d) Community mental health programs as defined in RCW
17 71.24.025(5).

18 (2) "Department" means the department of labor and industries.

19 (3) "Employee" means an employee as defined in RCW 49.17.020.

20 (4) "Violence" or "violent act" means any physical assault or
21 verbal threat of physical assault against an employee of a health care
22 setting.

23 **Sec. 11.** RCW 71.34.600 and 2005 c 371 s 4 are each amended to read
24 as follows:

25 (1) A parent may bring, or authorize the bringing of, his or her
26 minor child to an evaluation and treatment facility or an inpatient
27 facility licensed under chapter 70.41, 71.12, or 72.23 RCW and request
28 that the professional person (~~as defined in RCW 71.05.020(24)~~)
29 examine the minor to determine whether the minor has a mental disorder
30 and is in need of inpatient treatment.

31 (2) The consent of the minor is not required for admission,
32 evaluation, and treatment if the parent brings the minor to the
33 facility.

34 (3) An appropriately trained professional person may evaluate
35 whether the minor has a mental disorder. The evaluation shall be
36 completed within twenty-four hours of the time the minor was brought to

1 the facility, unless the professional person determines that the
2 condition of the minor necessitates additional time for evaluation. In
3 no event shall a minor be held longer than seventy-two hours for
4 evaluation. If, in the judgment of the professional person, it is
5 determined it is a medical necessity for the minor to receive inpatient
6 treatment, the minor may be held for treatment. The facility shall
7 limit treatment to that which the professional person determines is
8 medically necessary to stabilize the minor's condition until the
9 evaluation has been completed. Within twenty-four hours of completion
10 of the evaluation, the professional person shall notify the department
11 if the child is held for treatment and of the date of admission.

12 (4) No provider is obligated to provide treatment to a minor under
13 the provisions of this section except that no provider may refuse to
14 treat a minor under the provisions of this section solely on the basis
15 that the minor has not consented to the treatment. No provider may
16 admit a minor to treatment under this section unless it is medically
17 necessary.

18 (5) No minor receiving inpatient treatment under this section may
19 be discharged from the facility based solely on his or her request.

20 (6) Prior to the review conducted under RCW 71.34.610, the
21 professional person shall notify the minor of his or her right to
22 petition superior court for release from the facility.

23 (7) For the purposes of this section "professional person" means
24 "professional person" as defined in RCW 71.05.020.

25 **Sec. 12.** RCW 71.24.035 and 2006 c 333 s 201 are each amended to
26 read as follows:

27 (1) The department is designated as the state mental health
28 authority.

29 (2) The secretary shall provide for public, client, and licensed
30 service provider participation in developing the state mental health
31 program, developing contracts with regional support networks, and any
32 waiver request to the federal government under medicaid.

33 (3) The secretary shall provide for participation in developing the
34 state mental health program for children and other underserved
35 populations, by including representatives on any committee established
36 to provide oversight to the state mental health program.

1 (4) The secretary shall be designated as the regional support
2 network if the regional support network fails to meet state minimum
3 standards or refuses to exercise responsibilities under RCW 71.24.045.

4 (5) The secretary shall:

5 (a) Develop a biennial state mental health program that
6 incorporates regional biennial needs assessments and regional mental
7 health service plans and state services for (~~mentally ill~~) adults and
8 children with mental illness. The secretary shall also develop a six-
9 year state mental health plan;

10 (b) Assure that any regional or county community mental health
11 program provides access to treatment for the region's residents in the
12 following order of priority: (i) (~~The acutely mentally ill~~) Persons
13 with acute mental illness; (ii) (~~chronically mentally ill~~) adults
14 with chronic mental illness and children who are severely emotionally
15 disturbed (~~children~~); and (iii) (~~the~~) persons who are seriously
16 disturbed. Such programs shall provide:

17 (A) Outpatient services;

18 (B) Emergency care services for twenty-four hours per day;

19 (C) Day treatment for (~~mentally ill~~) persons with mental illness
20 which includes training in basic living and social skills, supported
21 work, vocational rehabilitation, and day activities. Such services may
22 include therapeutic treatment. In the case of a child, day treatment
23 includes age-appropriate basic living and social skills, educational
24 and prevocational services, day activities, and therapeutic treatment;

25 (D) Screening for patients being considered for admission to state
26 mental health facilities to determine the appropriateness of admission;

27 (E) Employment services, which may include supported employment,
28 transitional work, placement in competitive employment, and other work-
29 related services, that result in (~~mentally ill~~) persons with mental
30 illness becoming engaged in meaningful and gainful full or part-time
31 work. Other sources of funding such as the division of vocational
32 rehabilitation may be utilized by the secretary to maximize federal
33 funding and provide for integration of services;

34 (F) Consultation and education services; and

35 (G) Community support services;

36 (c) Develop and adopt rules establishing state minimum standards
37 for the delivery of mental health services pursuant to RCW 71.24.037
38 including, but not limited to:

1 (i) Licensed service providers. These rules shall permit a county-
2 operated mental health program to be licensed as a service provider
3 subject to compliance with applicable statutes and rules. The
4 secretary shall provide for deeming of compliance with state minimum
5 standards for those entities accredited by recognized behavioral health
6 accrediting bodies recognized and having a current agreement with the
7 department;

8 (ii) Regional support networks; and

9 (iii) Inpatient services, evaluation and treatment services and
10 facilities under chapter 71.05 RCW, resource management services, and
11 community support services;

12 (d) Assure that the special needs of persons who are minorities,
13 (~~the~~) elderly, disabled, children, and low-income (~~persons~~) are met
14 within the priorities established in this section;

15 (e) Establish a standard contract or contracts, consistent with
16 state minimum standards and RCW 71.24.320, 71.24.330, and 71.24.3201,
17 which shall be used in contracting with regional support networks. The
18 standard contract shall include a maximum fund balance, which shall be
19 consistent with that required by federal regulations or waiver
20 stipulations;

21 (f) Establish, to the extent possible, a standardized auditing
22 procedure which minimizes paperwork requirements of regional support
23 networks and licensed service providers. The audit procedure shall
24 focus on the outcomes of service and not the processes for
25 accomplishing them;

26 (g) Develop and maintain an information system to be used by the
27 state and regional support networks that includes a tracking method
28 which allows the department and regional support networks to identify
29 mental health clients' participation in any mental health service or
30 public program on an immediate basis. The information system shall not
31 include individual patient's case history files. Confidentiality of
32 client information and records shall be maintained as provided in this
33 chapter and in RCW 71.05.390, 71.05.420, and 71.05.440;

34 (h) License service providers who meet state minimum standards;

35 (i) Certify regional support networks that meet state minimum
36 standards;

37 (j) Periodically monitor the compliance of certified regional
38 support networks and their network of licensed service providers for

1 compliance with the contract between the department, the regional
2 support network, and federal and state rules at reasonable times and in
3 a reasonable manner;

4 (k) Fix fees to be paid by evaluation and treatment centers to the
5 secretary for the required inspections;

6 (l) Monitor and audit regional support networks and licensed
7 service providers as needed to assure compliance with contractual
8 agreements authorized by this chapter;

9 (m) Adopt such rules as are necessary to implement the department's
10 responsibilities under this chapter; (~~and~~)

11 (n) Assure the availability of an appropriate amount, as determined
12 by the legislature in the operating budget by amounts appropriated for
13 this specific purpose, of community-based, geographically distributed
14 residential services; and

15 (o) Certify crisis stabilization units that meet state minimum
16 standards.

17 (6) The secretary shall use available resources only for regional
18 support networks, except to the extent authorized, and in accordance
19 with any priorities or conditions specified, in the biennial
20 appropriations act.

21 (7) Each certified regional support network and licensed service
22 provider shall file with the secretary, on request, such data,
23 statistics, schedules, and information as the secretary reasonably
24 requires. A certified regional support network or licensed service
25 provider which, without good cause, fails to furnish any data,
26 statistics, schedules, or information as requested, or files fraudulent
27 reports thereof, may have its certification or license revoked or
28 suspended.

29 (8) The secretary may suspend, revoke, limit, or restrict a
30 certification or license, or refuse to grant a certification or license
31 for failure to conform to: (a) The law; (b) applicable rules and
32 regulations; (c) applicable standards; or (d) state minimum standards.

33 (9) The superior court may restrain any regional support network or
34 service provider from operating without certification or a license or
35 any other violation of this section. The court may also review,
36 pursuant to procedures contained in chapter 34.05 RCW, any denial,
37 suspension, limitation, restriction, or revocation of certification or

1 license, and grant other relief required to enforce the provisions of
2 this chapter.

3 (10) Upon petition by the secretary, and after hearing held upon
4 reasonable notice to the facility, the superior court may issue a
5 warrant to an officer or employee of the secretary authorizing him or
6 her to enter at reasonable times, and examine the records, books, and
7 accounts of any regional support network or service provider refusing
8 to consent to inspection or examination by the authority.

9 (11) Notwithstanding the existence or pursuit of any other remedy,
10 the secretary may file an action for an injunction or other process
11 against any person or governmental unit to restrain or prevent the
12 establishment, conduct, or operation of a regional support network or
13 service provider without certification or a license under this chapter.

14 (12) The standards for certification of evaluation and treatment
15 facilities shall include standards relating to maintenance of good
16 physical and mental health and other services to be afforded persons
17 pursuant to this chapter and chapters 71.05 and 71.34 RCW, and shall
18 otherwise assure the effectuation of the purposes of these chapters.

19 (13) The standards for certification of crisis stabilization units
20 shall include standards that:

21 (a) Permit location of the units at a jail facility if the unit is
22 physically separate from the general population of the jail;

23 (b) Require administration of the unit by mental health
24 professionals who direct the stabilization and rehabilitation efforts;
25 and

26 (c) Provide an environment affording security appropriate with the
27 alleged criminal behavior and necessary to protect the public safety.

28 (14) The department shall distribute appropriated state and federal
29 funds in accordance with any priorities, terms, or conditions specified
30 in the appropriations act.

31 ((+14)) (15) The secretary shall assume all duties assigned to the
32 nonparticipating regional support networks under chapters 71.05, 71.34,
33 and 71.24 RCW. Such responsibilities shall include those which would
34 have been assigned to the nonparticipating counties in regions where
35 there are not participating regional support networks.

36 The regional support networks, or the secretary's assumption of all
37 responsibilities under chapters 71.05, 71.34, and 71.24 RCW, shall be
38 included in all state and federal plans affecting the state mental

1 health program including at least those required by this chapter, the
2 medicaid program, and P.L. 99-660. Nothing in these plans shall be
3 inconsistent with the intent and requirements of this chapter.

4 ~~((+15+))~~ (16) The secretary shall:

5 (a) Disburse funds for the regional support networks within sixty
6 days of approval of the biennial contract. The department must either
7 approve or reject the biennial contract within sixty days of receipt.

8 (b) Enter into biennial contracts with regional support networks.
9 The contracts shall be consistent with available resources. No
10 contract shall be approved that does not include progress toward
11 meeting the goals of this chapter by taking responsibility for: (i)
12 Short-term commitments; (ii) residential care; and (iii) emergency
13 response systems.

14 (c) Notify regional support networks of their allocation of
15 available resources at least sixty days prior to the start of a new
16 biennial contract period.

17 (d) Deny all or part of the funding allocations to regional support
18 networks based solely upon formal findings of noncompliance with the
19 terms of the regional support network's contract with the department.
20 Regional support networks disputing the decision of the secretary to
21 withhold funding allocations are limited to the remedies provided in
22 the department's contracts with the regional support networks.

23 ~~((+16+))~~ (17) The department, in cooperation with the state
24 congressional delegation, shall actively seek waivers of federal
25 requirements and such modifications of federal regulations as are
26 necessary to allow federal medicaid reimbursement for services provided
27 by free-standing evaluation and treatment facilities certified under
28 chapter 71.05 RCW. The department shall periodically report its
29 efforts to the appropriate committees of the senate and the house of
30 representatives.

31 **Sec. 13.** RCW 71.05.160 and 1998 c 297 s 9 are each amended to read
32 as follows:

33 Any facility receiving a person pursuant to RCW 71.05.150 or
34 section 8 of this act shall require a petition for initial detention
35 stating the circumstances under which the person's condition was made
36 known and stating that such officer or person has evidence, as a result
37 of his or her personal observation or investigation, that the actions

1 of the person for which application is made constitute a likelihood of
2 serious harm, or that he or she is gravely disabled, and stating the
3 specific facts known to him or her as a result of his or her personal
4 observation or investigation, upon which he or she bases the belief
5 that such person should be detained for the purposes and under the
6 authority of this chapter.

7 If a person is involuntarily placed in an evaluation and treatment
8 facility pursuant to RCW 71.05.150 or section 8 of this act, on the
9 next judicial day following the initial detention, the ((county))
10 designated mental health professional shall file with the court and
11 serve the designated attorney of the detained person the petition or
12 supplemental petition for initial detention, proof of service of
13 notice, and a copy of a notice of emergency detention.

14 **Sec. 14.** RCW 71.05.360 and 2005 c 504 s 107 are each amended to
15 read as follows:

16 (1)(a) Every person involuntarily detained or committed under the
17 provisions of this chapter shall be entitled to all the rights set
18 forth in this chapter, which shall be prominently posted in the
19 facility, and shall retain all rights not denied him or her under this
20 chapter except as chapter 9.41 RCW may limit the right of a person to
21 purchase or possess a firearm or to qualify for a concealed pistol
22 license.

23 (b) No person shall be presumed incompetent as a consequence of
24 receiving an evaluation or voluntary or involuntary treatment for a
25 mental disorder, under this chapter or any prior laws of this state
26 dealing with mental illness. Competency shall not be determined or
27 withdrawn except under the provisions of chapter 10.97 or 11.88 RCW.

28 (c) Any person who leaves a public or private agency following
29 evaluation or treatment for mental disorder shall be given a written
30 statement setting forth the substance of this section.

31 (2) Each person involuntarily detained or committed pursuant to
32 this chapter shall have the right to adequate care and individualized
33 treatment.

34 (3) The provisions of this chapter shall not be construed to deny
35 to any person treatment by spiritual means through prayer in accordance
36 with the tenets and practices of a church or religious denomination.

1 (4) Persons receiving evaluation or treatment under this chapter
2 shall be given a reasonable choice of an available physician or other
3 professional person qualified to provide such services.

4 (5) Whenever any person is detained for evaluation and treatment
5 pursuant to this chapter, both the person and, if possible, a
6 responsible member of his or her immediate family, personal
7 representative, guardian, or conservator, if any, shall be advised as
8 soon as possible in writing or orally, by the officer or person taking
9 him or her into custody or by personnel of the evaluation and treatment
10 facility where the person is detained that unless the person is
11 released or voluntarily admits himself or herself for treatment within
12 seventy-two hours of the initial detention:

13 (a) A judicial hearing in a superior court, either by a judge or
14 court commissioner thereof, shall be held not more than seventy-two
15 hours after the initial detention to determine whether there is
16 probable cause to detain the person after the seventy-two hours have
17 expired for up to an additional fourteen days without further automatic
18 hearing for the reason that the person is a person whose mental
19 disorder presents a likelihood of serious harm or that the person is
20 gravely disabled;

21 (b) The person has a right to communicate immediately with an
22 attorney; has a right to have an attorney appointed to represent him or
23 her before and at the probable cause hearing if he or she is indigent;
24 and has the right to be told the name and address of the attorney that
25 the mental health professional has designated pursuant to this chapter;

26 (c) The person has the right to remain silent and that any
27 statement he or she makes may be used against him or her;

28 (d) The person has the right to present evidence and to cross-
29 examine witnesses who testify against him or her at the probable cause
30 hearing; and

31 (e) The person has the right to refuse psychiatric medications,
32 including antipsychotic medication beginning twenty-four hours prior to
33 the probable cause hearing.

34 (6) When proceedings are initiated under (~~RCW 71.05.150 (2), (3),~~
35 ~~or (4)(b))~~ section 8 of this act, no later than twelve hours after
36 such person is admitted to the evaluation and treatment facility the
37 personnel of the evaluation and treatment facility or the designated
38 mental health professional shall serve on such person a copy of the

1 petition for initial detention and the name, business address, and
2 phone number of the designated attorney and shall forthwith commence
3 service of a copy of the petition for initial detention on the
4 designated attorney.

5 (7) The judicial hearing described in subsection (5) of this
6 section is hereby authorized, and shall be held according to the
7 provisions of subsection (5) of this section and rules promulgated by
8 the supreme court.

9 (8) At the probable cause hearing the detained person shall have
10 the following rights in addition to the rights previously specified:

- 11 (a) To present evidence on his or her behalf;
- 12 (b) To cross-examine witnesses who testify against him or her;
- 13 (c) To be proceeded against by the rules of evidence;
- 14 (d) To remain silent;
- 15 (e) To view and copy all petitions and reports in the court file.

16 (9) The physician-patient privilege or the psychologist-client
17 privilege shall be deemed waived in proceedings under this chapter
18 relating to the administration of antipsychotic medications. As to
19 other proceedings under this chapter, the privileges shall be waived
20 when a court of competent jurisdiction in its discretion determines
21 that such waiver is necessary to protect either the detained person or
22 the public.

23 The waiver of a privilege under this section is limited to records
24 or testimony relevant to evaluation of the detained person for purposes
25 of a proceeding under this chapter. Upon motion by the detained person
26 or on its own motion, the court shall examine a record or testimony
27 sought by a petitioner to determine whether it is within the scope of
28 the waiver.

29 The record maker shall not be required to testify in order to
30 introduce medical or psychological records of the detained person so
31 long as the requirements of RCW 5.45.020 are met except that portions
32 of the record which contain opinions as to the detained person's mental
33 state must be deleted from such records unless the person making such
34 conclusions is available for cross-examination.

35 (10) Insofar as danger to the person or others is not created, each
36 person involuntarily detained, treated in a less restrictive
37 alternative course of treatment, or committed for treatment and

1 evaluation pursuant to this chapter shall have, in addition to other
2 rights not specifically withheld by law, the following rights:

3 (a) To wear his or her own clothes and to keep and use his or her
4 own personal possessions, except when deprivation of same is essential
5 to protect the safety of the resident or other persons;

6 (b) To keep and be allowed to spend a reasonable sum of his or her
7 own money for canteen expenses and small purchases;

8 (c) To have access to individual storage space for his or her
9 private use;

10 (d) To have visitors at reasonable times;

11 (e) To have reasonable access to a telephone, both to make and
12 receive confidential calls, consistent with an effective treatment
13 program;

14 (f) To have ready access to letter writing materials, including
15 stamps, and to send and receive uncensored correspondence through the
16 mails;

17 (g) To discuss treatment plans and decisions with professional
18 persons;

19 (h) Not to consent to the administration of antipsychotic
20 medications and not to thereafter be administered antipsychotic
21 medications unless ordered by a court under RCW 71.05.217 or pursuant
22 to an administrative hearing under RCW 71.05.215;

23 (i) Not to consent to the performance of electroconvulsant therapy
24 or surgery, except emergency life-saving surgery, unless ordered by a
25 court under RCW 71.05.217;

26 (j) Not to have psychosurgery performed on him or her under any
27 circumstances;

28 (k) To dispose of property and sign contracts unless such person
29 has been adjudicated an incompetent in a court proceeding directed to
30 that particular issue.

31 (11) Every person involuntarily detained shall immediately be
32 informed of his or her right to a hearing to review the legality of his
33 or her detention and of his or her right to counsel, by the
34 professional person in charge of the facility providing evaluation and
35 treatment, or his or her designee, and, when appropriate, by the court.
36 If the person so elects, the court shall immediately appoint an
37 attorney to assist him or her.

1 (12) A person challenging his or her detention or his or her
2 attorney((τ)) shall have the right to designate and have the court
3 appoint a reasonably available independent physician or licensed mental
4 health professional to examine the person detained, the results of
5 which examination may be used in the proceeding. The person shall, if
6 he or she is financially able, bear the cost of such expert
7 ((~~information—[examination]~~)) examination, otherwise such expert
8 examination shall be at public expense.

9 (13) Nothing contained in this chapter shall prohibit the patient
10 from petitioning by writ of habeas corpus for release.

11 (14) Nothing in this chapter shall prohibit a person committed on
12 or prior to January 1, 1974, from exercising a right available to him
13 or her at or prior to January 1, 1974, for obtaining release from
14 confinement.

15 (15) Nothing in this section permits any person to knowingly
16 violate a no-contact order or a condition of an active judgment and
17 sentence or an active condition of supervision by the department of
18 corrections.

19 **Sec. 15.** RCW 71.05.390 and 2005 c 504 s 109, 2005 c 453 s 5, and
20 2005 c 274 s 346 are each reenacted and amended to read as follows:

21 Except as provided in this section, RCW 71.05.445, 71.05.630,
22 70.96A.150, or pursuant to a valid release under RCW 70.02.030, the
23 fact of admission and all information and records compiled, obtained,
24 or maintained in the course of providing services to either voluntary
25 or involuntary recipients of services at public or private agencies
26 shall be confidential.

27 Information and records may be disclosed only:

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

- 35 (a) Employed by the facility;
36 (b) Who has medical responsibility for the patient's care;
37 (c) Who is a designated mental health professional;

- 1 (d) Who is providing services under chapter 71.24 RCW;
- 2 (e) Who is employed by a state or local correctional facility where
- 3 the person is confined or supervised; or
- 4 (f) Who is providing evaluation, treatment, or follow-up services
- 5 under chapter 10.77 RCW.

6 (2) When the communications regard the special needs of a patient
7 and the necessary circumstances giving rise to such needs and the
8 disclosure is made by a facility providing services to the operator of
9 a facility in which the patient resides or will reside.

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

14 (b) A public or private agency shall release to a person's next of
15 kin, attorney, personal representative, guardian, or conservator, if
16 any:

17 (i) The information that the person is presently a patient in the
18 facility or that the person is seriously physically ill;

19 (ii) A statement evaluating the mental and physical condition of
20 the patient, and a statement of the probable duration of the patient's
21 confinement, if such information is requested by the next of kin,
22 attorney, personal representative, guardian, or conservator; and

23 (iii) Such other information requested by the next of kin or
24 attorney as may be necessary to decide whether or not proceedings
25 should be instituted to appoint a guardian or conservator.

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

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

34 "As a condition of conducting evaluation or research concerning
35 persons who have received services from (fill in the facility, agency,
36 or person) I,, agree not to divulge, publish, or
37 otherwise make known to unauthorized persons or the public any

1 information obtained in the course of such evaluation or research
2 regarding persons who have received services such that the person who
3 received such services is identifiable.

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

6 /s/ "

7 (b) Nothing in this chapter shall be construed to prohibit the
8 compilation and publication of statistical data for use by government
9 or researchers under standards, including standards to assure
10 maintenance of confidentiality, set forth by the secretary.

11 (6)(a) To the courts as necessary to the administration of this
12 chapter or to a court ordering an evaluation or treatment under chapter
13 10.77 RCW solely for the purpose of preventing the entry of any
14 evaluation or treatment order that is inconsistent with any order
15 entered under this chapter.

16 (b) To a court or its designee in which a motion under chapter
17 10.77 RCW has been made for involuntary medication of a defendant for
18 the purpose of competency restoration.

19 (c) Disclosure under this subsection is mandatory for the purpose
20 of the health insurance portability and accountability act.

21 (7)(a) When a mental health professional is requested by a
22 representative of a law enforcement or corrections agency, including a
23 police officer, sheriff, community corrections officer, a municipal
24 attorney, or prosecuting attorney to undertake an investigation under
25 RCW 71.05.150 or section 8 of this act, the mental health professional
26 shall, if requested to do so, advise the representative in writing of
27 the results of the investigation including a statement of reasons for
28 the decision to detain or release the person investigated. Such
29 written report shall be submitted within seventy-two hours of the
30 completion of the investigation or the request from the law enforcement
31 or corrections representative, whichever occurs later.

32 (b) 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 or supervision of the department

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

8 (i) 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;

11 (ii) 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;

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

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

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

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

1 of whether treatment less restrictive than inpatient treatment is in
2 the best interest of the committed person or others. Information shall
3 be disclosed only after giving notice to the committed person and the
4 person's counsel.

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

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

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

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

30 (14) Upon the death of a person, his or her next of kin, personal
31 representative, guardian, or conservator, if any, shall be notified.

32 Next of kin who are of legal age and competent shall be notified
33 under this section in the following order: Spouse, parents, children,
34 brothers and sisters, and other relatives according to the degree of
35 relation. Access to all records and information compiled, obtained, or
36 maintained in the course of providing services to a deceased patient
37 shall be governed by RCW 70.02.140.

1 (15) To the department of health for the purposes of determining
2 compliance with state or federal licensure, certification, or
3 registration rules or laws. However, the information and records
4 obtained under this subsection are exempt from public inspection and
5 copying pursuant to chapter 42.56 RCW.

6 (16) To mark headstones or otherwise memorialize patients interred
7 at state hospital cemeteries. The department of social and health
8 services shall make available the name, date of birth, and date of
9 death of patients buried in state hospital cemeteries fifty years after
10 the death of a patient.

11 (17) To law enforcement officers and to prosecuting attorneys as
12 are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of
13 information that may be released is limited as follows:

14 (a) Only the fact, place, and date of involuntary commitment, an
15 official copy of any order or orders of commitment, and an official
16 copy of any written or oral notice of ineligibility to possess a
17 firearm that was provided to the person pursuant to RCW 9.41.047(1),
18 shall be disclosed upon request;

19 (b) The law enforcement and prosecuting attorneys may only release
20 the information obtained to the person's attorney as required by court
21 rule and to a jury or judge, if a jury is waived, that presides over
22 any trial at which the person is charged with violating RCW
23 9.41.040(2)(a)(ii);

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

26 (18) When a patient would otherwise be subject to the provisions of
27 RCW 71.05.390 and disclosure is necessary for the protection of the
28 patient or others due to his or her unauthorized disappearance from the
29 facility, and his or her whereabouts is unknown, notice of such
30 disappearance, along with relevant information, may be made to
31 relatives, the department of corrections when the person is under the
32 supervision of the department, and governmental law enforcement
33 agencies designated by the physician in charge of the patient or the
34 professional person in charge of the facility, or his or her
35 professional designee.

36 Except as otherwise provided in this chapter, the uniform health
37 care information act, chapter 70.02 RCW, applies to all records and

1 information compiled, obtained, or maintained in the course of
2 providing services.

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

20 NEW SECTION. Sec. 16. RCW 10.77.090 (Stay of proceedings--
21 Commitment--Findings--Evaluation, treatment--Extensions of commitment--
22 Alternative procedures--Procedure in nonfelony charge) and 2000 c 74 s
23 3, 1998 c 297 s 38, 1989 c 420 s 5, 1979 ex.s. c 215 s 3, 1974 ex.s. c
24 198 s 8, & 1973 1st ex.s. c 117 s 9 are each repealed.

25 NEW SECTION. Sec. 17. If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

29 NEW SECTION. Sec. 18. Captions used in this act are not any part
30 of the law.

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