
SUBSTITUTE SENATE BILL 6274

State of Washington

58th Legislature

2004 Regular Session

By Senate Committee on Children & Family Services & Corrections
(originally sponsored by Senators Regala, Stevens, Hargrove and Kline)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to competency restoration; amending RCW 10.77.010
2 and 10.77.090; reenacting and amending RCW 71.05.390; adding new
3 sections to chapter 10.77 RCW; creating new sections; providing an
4 effective date; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that recent state and
7 federal case law requires clarification of state statutes with regard
8 to competency evaluations and involuntary medication ordered in the
9 context of competency restoration.

10 The legislature finds that the court in *Born v. Thompson*, 117 Wn.
11 App. 57 (2003) interpreted the term "nonfatal injuries" in a manner
12 that conflicts with the stated intent of the legislature to: "(1)
13 Clarify that it is the nature of a person's current conduct, current
14 mental condition, history, and likelihood of committing future acts
15 that pose a threat to public safety or himself or herself, rather than
16 simple categorization of offenses, that should determine treatment
17 procedures and level; ... and (3) provide additional opportunities for
18 mental health treatment for persons whose conduct threatens himself or
19 herself or threatens public safety and has led to contact with the

1 criminal justice system" as stated in section 1, chapter 297, Laws of
2 1998. Consequently, the legislature intends to clarify that it
3 intended "nonfatal injuries" to be interpreted in a manner consistent
4 with the purposes of the competency restoration statutes.

5 The legislature also finds that the decision in *Sell v. United*
6 *States*, ___U.S. ___ (2003), requires a determination whether a
7 particular criminal offense is "serious" in the context of competency
8 restoration and the state's duty to protect the public. The
9 legislature further finds that, in order to adequately protect the
10 public and in order to provide additional opportunities for mental
11 health treatment for persons whose conduct threatens themselves or
12 threatens public safety and has led to contact with the criminal
13 justice system in the state, the determination of those criminal
14 offenses that are "serious" offenses must be made consistently
15 throughout the state. In order to facilitate this consistency, the
16 legislature intends to determine those offenses that are serious in
17 every case as well as the standards by which other offenses may be
18 determined to be serious. The legislature also intends to clarify that
19 a court may, to the extent permitted by federal law and required by the
20 *Sell* decision, inquire into the civil commitment status of a defendant
21 and may be told, if known.

22 The legislature also finds that in some instances defendants who
23 have been restored to competency subject to a valid court order and
24 returned to a local correctional facility to await trial decompensate
25 to the point of incompetency between the time of their return to
26 incarceration and their trial date. The legislature also finds that
27 repeated mental decompensation is detrimental to the health and welfare
28 of all persons and often causes overall degeneration in the person's
29 mental condition. The legislature further finds that the court's
30 authority to order a defendant held at a state hospital or in an
31 appropriate less restrictive treatment setting to maintain the
32 defendant's competency to stand trial has been brought into question.
33 The legislature therefore finds that this combination of circumstances
34 impairs the state's ability to adequately protect the public because
35 it: (1) Prevents the state from determining the guilt or innocence of
36 defendants in a court of law; (2) results in a situation in which
37 guilty defendants cannot be held accountable for their actions; and (3)
38 may result in a situation in which persons whose competency was

1 restored and lost present a larger risk to public safety. The
2 legislature, therefore, intends to remedy this situation by clarifying
3 that the court has the authority to order felony defendants held at the
4 state hospital or in an appropriate less restrictive treatment setting
5 and establishing standards for a court to make this order.

6 **Sec. 2.** RCW 10.77.010 and 2000 c 94 s 12 are each amended to read
7 as follows:

8 As used in this chapter:

9 (1) "Admission" means acceptance based on medical necessity, of a
10 person as a patient.

11 (2) "Commitment" means the determination by a court that a person
12 should be detained for a period of either evaluation or treatment, or
13 both, in an inpatient or a less-restrictive setting.

14 (3) "Conditional release" means modification of a court-ordered
15 commitment, which may be revoked upon violation of any of its terms.

16 (4) "County designated mental health professional" has the same
17 meaning as provided in RCW 71.05.020.

18 (5) A "criminally insane" person means any person who has been
19 acquitted of a crime charged by reason of insanity, and thereupon found
20 to be a substantial danger to other persons or to present a substantial
21 likelihood of committing criminal acts jeopardizing public safety or
22 security unless kept under further control by the court or other
23 persons or institutions.

24 (6) "Department" means the state department of social and health
25 services.

26 (7) "Detention" or "detain" means the lawful confinement of a
27 person, under the provisions of this chapter, pending evaluation.

28 (8) "Developmental disabilities professional" means a person who
29 has specialized training and three years of experience in directly
30 treating or working with persons with developmental disabilities and is
31 a psychiatrist or psychologist, or a social worker, and such other
32 developmental disabilities professionals as may be defined by rules
33 adopted by the secretary.

34 (9) "Developmental disability" means the condition as defined in
35 RCW 71A.10.020(3).

36 (10) "Discharge" means the termination of hospital medical

1 authority. The commitment may remain in place, be terminated, or be
2 amended by court order.

3 (11) "Furlough" means an authorized leave of absence for a resident
4 of a state institution operated by the department designated for the
5 custody, care, and treatment of the criminally insane, consistent with
6 an order of conditional release from the court under this chapter,
7 without any requirement that the resident be accompanied by, or be in
8 the custody of, any law enforcement or institutional staff, while on
9 such unescorted leave.

10 (12) "Habilitative services" means those services provided by
11 program personnel to assist persons in acquiring and maintaining life
12 skills and in raising their levels of physical, mental, social, and
13 vocational functioning. Habilitative services include education,
14 training for employment, and therapy. The habilitative process shall
15 be undertaken with recognition of the risk to the public safety
16 presented by the individual being assisted as manifested by prior
17 charged criminal conduct.

18 (13) "History of one or more violent acts" means violent acts
19 committed during: (a) The ten-year period of time prior to the filing
20 of criminal charges; plus (b) the amount of time equal to time spent
21 during the ten-year period in a mental health facility or in
22 confinement as a result of a criminal conviction.

23 (14) "Incompetency" means a person lacks the capacity to understand
24 the nature of the proceedings against him or her or to assist in his or
25 her own defense as a result of mental disease or defect.

26 (15) "Indigent" means any person who is financially unable to
27 obtain counsel or other necessary expert or professional services
28 without causing substantial hardship to the person or his or her
29 family.

30 (16) "Individualized service plan" means a plan prepared by a
31 developmental disabilities professional with other professionals as a
32 team, for an individual with developmental disabilities, which shall
33 state:

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

36 (b) The conditions and strategies necessary to achieve the purposes
37 of habilitation;

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

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

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

6 (f) Where relevant in light of past criminal behavior and due
7 consideration for public safety, the criteria for proposed movement to
8 less-restrictive settings, criteria for proposed eventual release, and
9 a projected possible date for release; and

10 (g) The type of residence immediately anticipated for the person
11 and possible future types of residences.

12 (17) "Professional person" means:

13 (a) A psychiatrist licensed as a physician and surgeon in this
14 state who has, in addition, completed three years of graduate training
15 in psychiatry in a program approved by the American medical association
16 or the American osteopathic association and is certified or eligible to
17 be certified by the American board of psychiatry and neurology or the
18 American osteopathic board of neurology and psychiatry;

19 (b) A psychologist licensed as a psychologist pursuant to chapter
20 18.83 RCW; or

21 (c) A social worker with a master's or further advanced degree from
22 an accredited school of social work or a degree deemed equivalent under
23 rules adopted by the secretary.

24 (18) "Release" means legal termination of the court-ordered
25 commitment under the provisions of this chapter.

26 (19) "Secretary" means the secretary of the department of social
27 and health services or his or her designee.

28 (20) "Treatment" means any currently standardized medical or mental
29 health procedure including medication.

30 (21) "Violent act" means behavior that: (a)(i) Resulted in; (ii)
31 if completed as intended would have resulted in; or (iii) was
32 threatened to be carried out by a person who had the intent and
33 opportunity to carry out the threat and would have resulted in,
34 homicide, nonfatal injuries, or substantial damage to property; or (b)
35 recklessly creates an immediate risk of serious physical injury to
36 another person. As used in this subsection, "nonfatal injuries" means
37 physical pain or injury, illness, or an impairment of physical

1 condition. "Nonfatal injuries" shall be construed to be consistent
2 with the definition of "bodily injury," as defined in RCW 9A.04.110.

3 **Sec. 3.** RCW 10.77.090 and 2000 c 74 s 3 are each amended to read
4 as follows:

5 (1)(a) If at any time during the pendency of an action and prior to
6 judgment the court finds, following a report as provided in RCW
7 10.77.060, a defendant is incompetent the court shall order the
8 proceedings against the defendant be stayed except as provided in
9 subsection (7) of this section.

10 (b) If the defendant is charged with a felony and determined to be
11 incompetent, the court shall commit the defendant to the custody of the
12 secretary, who shall place such defendant in an appropriate facility of
13 the department for evaluation and treatment, or the court may
14 alternatively order the defendant to undergo evaluation and treatment
15 at some other facility as determined by the department, or under the
16 guidance and control of a professional person, until he or she has
17 regained the competency necessary to understand the proceedings against
18 him or her and assist in his or her own defense, but in any event, for
19 no longer than a period of ninety days.

20 (c) A defendant found incompetent shall be evaluated at the
21 direction of the secretary and a determination made whether the
22 defendant is developmentally disabled. Such evaluation and
23 determination shall be accomplished as soon as possible following the
24 court's placement of the defendant in the custody of the secretary.
25 When appropriate, and subject to available funds, if the defendant is
26 determined to be developmentally disabled, he or she may be placed in
27 a program specifically reserved for the treatment and training of
28 persons with developmental disabilities where the defendant shall have
29 the right to habilitation according to an individualized service plan
30 specifically developed for the particular needs of the defendant. The
31 program shall be separate from programs serving persons involved in any
32 other treatment or habilitation program. The program shall be
33 appropriately secure under the circumstances and shall be administered
34 by developmental disabilities professionals who shall direct the
35 habilitation efforts. The program shall provide an environment
36 affording security appropriate with the charged criminal behavior and
37 necessary to protect the public safety. The department may limit

1 admissions of such persons to this specialized program in order to
2 ensure that expenditures for services do not exceed amounts
3 appropriated by the legislature and allocated by the department for
4 such services. The department may establish admission priorities in
5 the event that the number of eligible persons exceeds the limits set by
6 the department. A copy of the report shall be sent to the facility.

7 (d)(i) If the defendant is:

8 (A) Charged with a nonfelony crime and has: (I) A history of one
9 or more violent acts, or a pending charge of one or more violent acts;
10 or (II) been previously acquitted by reason of insanity or been
11 previously found incompetent under this chapter or any equivalent
12 federal or out-of-state statute with regard to an alleged offense
13 involving actual, threatened, or attempted physical harm to a person;
14 and

15 (B) Found by the court to be not competent; then

16 (C) The court shall order the secretary to place the defendant:
17 (I) At a secure mental health facility in the custody of the department
18 or an agency designated by the department for mental health treatment
19 and restoration of competency. The placement shall not exceed
20 ~~((fourteen days in addition to any unused time of the))~~ twenty-nine
21 days, reduced, but not below fourteen days, by the number of days the
22 defendant was committed to a hospital or other suitably secure public
23 or private mental health facility for evaluation under RCW 10.77.060.
24 For purpose of computing the number of days by which the twenty-nine
25 days is reduced, the phrase "hospital or other suitably secure public
26 or private mental health facility" in (d)(i)(C)(I) of this subsection
27 does not include a jail or correctional facility or any other
28 outpatient setting within the community. The court shall compute this
29 total period and include its computation in the order. The ~~((fourteen-~~
30 ~~day period plus any unused time of the evaluation under RCW 10.77.060))~~
31 twenty-nine day period, reduced, but not below fourteen days, according
32 to (d)(i)(C)(I) of this subsection shall be considered to include only
33 the time the defendant is actually at the facility and shall be in
34 addition to reasonable time for transport to or from the facility; (II)
35 on conditional release for up to ninety days for mental health
36 treatment and restoration of competency; or (III) any combination of
37 (d)(i)(C)(I) and (II) of this subsection.

1 (ii) At the end of the mental health treatment and restoration
2 period in (d)(i) of this subsection, or at any time a professional
3 person determines competency has been, or is unlikely to be, restored
4 the defendant shall be returned to court for a hearing. If, after
5 notice and hearing, competency has been restored, the stay entered
6 under (a) of this subsection shall be lifted. If competency has not
7 been restored, the proceedings shall be dismissed. If the court
8 concludes that competency has not been restored, but that further
9 treatment within the time limits established by (d)(i) of this
10 subsection is likely to restore competency, the court may order that
11 treatment for purposes of competency restoration be continued. Such
12 treatment may not extend beyond the combination of time provided for in
13 (d)(i)(C)(I) and (II) of this subsection.

14 (iii)(A) If the proceedings are dismissed under (d)(ii) of this
15 subsection and the defendant was on conditional release at the time of
16 dismissal, the court shall order the county designated mental health
17 professional within that county to evaluate the defendant pursuant to
18 chapter 71.05 RCW. The evaluation may be conducted in any location
19 chosen by the professional.

20 (B) If the defendant was in custody and not on conditional release
21 at the time of dismissal, the defendant shall be detained and sent to
22 an evaluation and treatment facility for up to seventy-two hours
23 excluding Saturdays, Sundays, and holidays for evaluation for purposes
24 of filing a petition under chapter 71.05 RCW. The seventy-two hour
25 period shall commence upon the next nonholiday weekday following the
26 court order, and shall run to the end of the last nonholiday weekday
27 within the seventy-two hour period.

28 (iv) If at any time during the proceeding the court finds,
29 following notice and hearing, a defendant is not likely to regain
30 competency, the proceedings shall be dismissed and the defendant shall
31 be evaluated as provided in (d)(iii) of this subsection.

32 (e) If the defendant is charged with a crime that is not a felony
33 and the defendant does not meet the criteria under (d) of this
34 subsection, the court may stay or dismiss proceedings and detain the
35 defendant for sufficient time to allow the county designated mental
36 health professional to evaluate the defendant and consider initial
37 detention proceedings under chapter 71.05 RCW. The court must give

1 notice to all parties at least twenty-four hours before the dismissal
2 of any proceeding under this subsection (1)(e), and provide an
3 opportunity for a hearing on whether to dismiss the proceedings.

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

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

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

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

11 (6) The fact that the defendant is unfit to proceed does not
12 preclude any pretrial proceedings which do not require the personal
13 participation of the defendant.

14 (7) A defendant receiving medication for either physical or mental
15 problems shall not be prohibited from standing trial, if the medication
16 either enables the defendant to understand the proceedings against him
17 or her and to assist in his or her own defense, or does not disable him
18 or her from so understanding and assisting in his or her own defense.

19 (8) At or before the conclusion of any commitment period provided
20 for by this section, the facility providing evaluation and treatment
21 shall provide to the court a written report of examination which meets
22 the requirements of RCW 10.77.060(3).

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

25 (1) For purposes of determining whether a court may authorize
26 involuntary medication for the purpose of competency restoration
27 pursuant to RCW 10.77.090, a pending charge involving any one or more
28 of the following crimes is a serious offense per se in the context of
29 competency restoration:

30 (a) Any violent offense, sex offense, serious traffic offense, and
31 most serious offense, as those terms are defined in RCW 9.94A.030;

32 (b) Any offense, except nonfelony counterfeiting offenses, included
33 in crimes against persons in RCW 9.94A.411;

34 (c) Any offense contained in chapter 9.41 RCW (firearms and
35 dangerous weapons);

36 (d) Any offense listed as domestic violence in RCW 10.99.020;

1 (e) Any offense listed as a harassment offense in chapter 9A.46
2 RCW;

3 (f) Any violation of chapter 69.50 RCW that is a class B felony; or

4 (g) Any city or county ordinance or statute that is equivalent to
5 an offense referenced in this subsection.

6 (2)(a) In a particular case, a court may determine that a pending
7 charge not otherwise defined as serious by state or federal law or by
8 a city or county ordinance is, nevertheless, a serious offense within
9 the context of competency restoration treatment when the conduct in the
10 charged offense falls within the standards established in (b) of this
11 subsection.

12 (b) To determine that the particular case is a serious offense
13 within the context of competency restoration, the court must consider
14 the following factors and determine that one or more of the following
15 factors creates a situation in which the offense is serious:

16 (i) The charge includes an allegation that the defendant actually
17 inflicted bodily or emotional harm on another person or that the
18 defendant created a reasonable apprehension of bodily or emotional harm
19 to another;

20 (ii) The extent of the impact of the alleged offense on the basic
21 human need for security of the citizens within the jurisdiction;

22 (iii) The number and nature of related charges pending against the
23 defendant;

24 (iv) The length of potential confinement if the defendant is
25 convicted; and

26 (v) The number of potential and actual victims or persons impacted
27 by the defendant's alleged acts.

28 (3)(a) Any city or county may, by ordinance, determine that
29 nonfelony offenses not otherwise defined as serious by state or federal
30 law are nonetheless "serious offenses" within the context of competency
31 restoration treatment when the offense falls within the standards
32 established in (b) of this subsection.

33 (b) The city or county must consider the following factors and
34 determine that one or more of the following factors creates a situation
35 in which the offense is serious:

36 (i) The offense includes an element that the defendant actually
37 inflicted bodily or emotional harm on another person or that the

1 defendant created a reasonable apprehension of bodily or emotional harm
2 to another person;

3 (ii) The extent of the impact of the offense on the basic human
4 need for security of the citizens within the jurisdiction;

5 (iii) The length of potential confinement applicable to the
6 offense; and

7 (iv) The number of potential and actual victims or persons impacted
8 by the defendant's alleged acts.

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

11 When the court must make a determination whether to order
12 involuntary medications for the purpose of competency restoration or
13 for maintenance of competency, the court shall inquire, and shall be
14 told, consistent with federal law and to the extent that the prosecutor
15 or defense attorney is aware, whether the defendant is the subject of
16 a pending civil commitment proceeding or has been ordered into
17 involuntary treatment pursuant to a civil commitment proceeding.

18 NEW SECTION. **Sec. 6.** A new section is added to chapter 10.77 RCW
19 to read as follows:

20 (1) When the court has ordered competency restoration for a
21 defendant, the court may, upon agreement of the parties subject to the
22 provisions of subsection (2) of this section, order the defendant held
23 at the state hospital or in an appropriate less restrictive alternative
24 pending trial or during breaks for longer than forty-eight hours that
25 occur during the trial.

26 (2) In order to order a defendant held at the state hospital, the
27 defendant must be charged with a felony offense and the court must find
28 that:

29 (a) Continued treatment is medically appropriate and necessary to
30 maintain the defendant's competency to stand trial;

31 (b) The defendant is likely to decompensate into incompetency if
32 held in a correctional facility; and

33 (c) No setting less restrictive than the one ordered is
34 appropriate.

35 (3) In determining whether a less restrictive setting is

1 appropriate, the court shall consider both whether the setting is
2 medically appropriate and whether it provides an appropriate level of
3 security.

4 (4) Upon the motion of any party, or upon its own motion, the court
5 shall review a defendant's mental health information in camera.

6 (5) Nothing in this section shall be construed as affecting state
7 and federal law regarding bail.

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

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

14 Information and records may be disclosed only:

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

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

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

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

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

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

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

15 /s/ "

16 (6)(a) To the courts as necessary to the administration of this
17 chapter or to a court ordering an evaluation or treatment under chapter
18 10.77 RCW solely for the purpose of preventing the entry of any
19 evaluation or treatment order that is inconsistent with any order
20 entered under this chapter.

21 (b) To a court in which a motion under chapter 10.77 RCW has been
22 made for involuntary medication of a defendant for the purpose of
23 competency restoration.

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

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

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

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

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

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

18 (9) To the prosecuting attorney as necessary to carry out the
19 responsibilities of the office under RCW 71.05.330(2) and
20 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access
21 to records regarding the committed person's treatment and prognosis,
22 medication, behavior problems, and other records relevant to the issue
23 of whether treatment less restrictive than inpatient treatment is in
24 the best interest of the committed person or others. Information shall
25 be disclosed only after giving notice to the committed person and the
26 person's counsel.

27 (10) To appropriate law enforcement agencies and to a person, when
28 the identity of the person is known to the public or private agency,
29 whose health and safety has been threatened, or who is known to have
30 been repeatedly harassed, by the patient. The person may designate a
31 representative to receive the disclosure. The disclosure shall be made
32 by the professional person in charge of the public or private agency or
33 his or her designee and shall include the dates of commitment,
34 admission, discharge, or release, authorized or unauthorized absence
35 from the agency's facility, and only such other information that is
36 pertinent to the threat or harassment. The decision to disclose or not
37 shall not result in civil liability for the agency or its employees so

1 long as the decision was reached in good faith and without gross
2 negligence.

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

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

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

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

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

22 The fact of admission, as well as all records, files, evidence,
23 findings, or orders made, prepared, collected, or maintained pursuant
24 to this chapter shall not be admissible as evidence in any legal
25 proceeding outside this chapter without the written consent of the
26 person who was the subject of the proceeding except in a subsequent
27 criminal prosecution of a person committed pursuant to RCW 71.05.280(3)
28 or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter
29 10.77 RCW due to incompetency to stand trial or in a civil commitment
30 proceeding pursuant to chapter 71.09 RCW. The records and files
31 maintained in any court proceeding pursuant to this chapter shall be
32 confidential and available subsequent to such proceedings only to the
33 person who was the subject of the proceeding or his or her attorney.
34 In addition, the court may order the subsequent release or use of such
35 records or files only upon good cause shown if the court finds that
36 appropriate safeguards for strict confidentiality are and will be
37 maintained.

1 NEW SECTION. **Sec. 8.** The department of social and health services
2 shall study and identify in its budget request to the office of
3 financial management the need, options, and plans to address the
4 increasing need for capacity in the forensic units of the state
5 hospitals.

6 NEW SECTION. **Sec. 9.** If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

10 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
11 preservation of the public peace, health, or safety, or support of the
12 state government and its existing public institutions, and takes effect
13 immediately; except for sections 3 and 6 of this act, which take effect
14 July 1, 2005.

--- END ---