
SUBSTITUTE SENATE BILL 6375

State of Washington

56th Legislature

2000 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Long, Hargrove, Franklin, Stevens, Kohl-Welles, Winsley, Costa and McAuliffe)

Read first time 02/01/2000.

1 AN ACT Relating to clarifying timelines, information sharing, and
2 evidentiary standards in mental health competency procedures; amending
3 RCW 10.77.060, 10.77.065, 10.77.090, 10.77.097, 71.05.235, and
4 71.05.390; and adding a new section to chapter 10.77 RCW.

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

6 **Sec. 1.** RCW 10.77.060 and 1998 c 297 s 34 are each amended to read
7 as follows:

8 (1)(a) Whenever a defendant has pleaded not guilty by reason of
9 insanity, or there is reason to doubt his or her competency, the court
10 on its own motion or on the motion of any party shall either appoint or
11 request the secretary to designate at least two qualified experts or
12 professional persons, one of whom shall be approved by the prosecuting
13 attorney, to examine and report upon the mental condition of the
14 defendant. At least one of the experts or professional persons
15 appointed shall be a developmental disabilities professional if the
16 court is advised by any party that the defendant may be developmentally
17 disabled. For purposes of the examination, the court may order the
18 defendant committed to a hospital or other suitably secure public or
19 private mental health facility for a period of time necessary to

1 complete the examination, but not to exceed fifteen days from the time
2 of admission to the facility.

3 (b) When a defendant is ordered to be committed for inpatient
4 examination under this subsection (1), the court may delay granting
5 bail until the defendant has been evaluated for competency or sanity
6 and appears before the court. Following the evaluation, in determining
7 bail the court shall consider: (i) Recommendations of the expert or
8 professional persons regarding the defendant's competency, sanity, or
9 diminished capacity; (ii) whether the defendant has a recent history of
10 one or more violent acts; (iii) whether the defendant has previously
11 been acquitted by reason of insanity or found incompetent; (iv) whether
12 it is reasonably likely the defendant will fail to appear for a future
13 court hearing; and (v) whether the defendant is a threat to public
14 safety.

15 (2) The court may direct that a qualified expert or professional
16 person retained by or appointed for the defendant be permitted to
17 witness the examination authorized by subsection (1) of this section,
18 and that the defendant shall have access to all information obtained by
19 the court appointed experts or professional persons. The defendant's
20 expert or professional person shall have the right to file his or her
21 own report following the guidelines of subsection (3) of this section.
22 If the defendant is indigent, the court shall upon the request of the
23 defendant assist him or her in obtaining an expert or professional
24 person.

25 (3) The report of the examination shall include the following:

26 (a) A description of the nature of the examination;

27 (b) A diagnosis of the mental condition of the defendant;

28 (c) If the defendant suffers from a mental disease or defect, or is
29 developmentally disabled, an opinion as to competency;

30 (d) If the defendant has indicated his or her intention to rely on
31 the defense of insanity pursuant to RCW 10.77.030, an opinion as to the
32 defendant's sanity at the time of the act;

33 (e) When directed by the court, an opinion as to the capacity of
34 the defendant to have a particular state of mind which is an element of
35 the offense charged;

36 (f) An opinion as to whether the defendant should be evaluated by
37 a county designated mental health professional under chapter 71.05 RCW,
38 and an opinion as to whether the defendant is a substantial danger to
39 other persons, or presents a substantial likelihood of committing

1 criminal acts jeopardizing public safety or security, unless kept under
2 further control by the court or other persons or institutions.

3 (4) The secretary may execute such agreements as appropriate and
4 necessary to implement this section.

5 **Sec. 2.** RCW 10.77.065 and 1998 c 297 s 35 are each amended to read
6 as follows:

7 ~~(1) ((Whenever a defendant is evaluated under this chapter, a copy~~
8 ~~of the order requiring the evaluation shall be transmitted to the~~
9 ~~county designated mental health professional of the county in which the~~
10 ~~defendant was charged.~~

11 ~~(2)(a) When a defendant is evaluated under RCW 10.77.060, the~~
12 ~~professional person shall make a recommendation to the court whether~~
13 ~~the defendant should be examined by a county designated mental health~~
14 ~~professional for purposes of filing a petition under chapter 71.05 RCW~~
15 ~~whenever the court determines, and enters a finding that, the defendant~~
16 ~~is charged with: (i) A felony; or (ii) a nonfelony crime and: (A) Is~~
17 ~~charged with, or has a history of, one or more violent acts; (B) is a~~
18 ~~threat to public safety; (C) has previously been acquitted by reason of~~
19 ~~insanity; or (D) has previously been found incompetent pursuant to this~~
20 ~~chapter.~~

21 ~~(b))~~(a)(i) The facility conducting the evaluation shall provide
22 its report and recommendation to the court in which the criminal
23 proceeding is pending. A copy of the report and recommendation shall
24 be provided to the county designated mental health professional, the
25 prosecuting attorney, the defense attorney, and the professional person
26 at the local correctional facility where the defendant is being held,
27 or if there is no professional person, to the person designated under
28 (a)(ii) of this subsection. Upon request, the facility shall also
29 provide copies of any source documents relevant to the evaluation to
30 the county designated mental health professional. The report and
31 recommendation shall be provided not less than twenty-four hours
32 preceding the transfer of the defendant to the correctional facility in
33 the county in which the criminal proceeding is pending.

34 ~~((e))~~(ii) If there is no professional person at the local
35 correctional facility, the local correctional facility shall designate
36 a professional person as defined in RCW 71.05.020 or, in cooperation
37 with the regional support network, a professional person at the
38 regional support network to receive the report and recommendation.

1 (iii) When a defendant is transferred to the facility conducting
2 the evaluation, or upon commencement of a defendant's evaluation in the
3 local correctional facility, the local correctional facility must
4 notify the evaluator or the facility conducting the evaluation of the
5 name of the professional person, or person designated under (a)(ii) of
6 this subsection to receive the report and recommendation.

7 (b) If the facility concludes, under RCW 10.77.060(3)(f), the
8 person should be kept under further control, an evaluation shall be
9 conducted of such person under chapter 71.05 RCW. The court shall
10 order an evaluation be conducted by the appropriate county designated
11 mental health professional: (i) Prior to release from confinement for
12 such person who is convicted, if sentenced to confinement for twenty-
13 four months or less; (ii) for any person who is acquitted; or (iii) for
14 any person: (A) Whose charges are dismissed pursuant to RCW
15 10.77.090(4); or (B) whose nonfelony charges are dismissed.

16 ~~((+3+))~~ (2) The county designated mental health professional shall
17 provide written notification within twenty-four hours of the results of
18 the determination whether to commence proceedings under chapter 71.05
19 RCW. The notification shall be provided to the persons identified in
20 subsection ~~((+2+)(b+))~~ (1)(a) of this section.

21 ~~((+4+))~~ (3) The prosecuting attorney shall provide a copy of the
22 results of any proceedings commenced by the county designated mental
23 health professional under subsection ~~((+3+))~~ (2) of this section to the
24 facility conducting the evaluation under this chapter.

25 (4) The fact of admission and all information and records compiled,
26 obtained, or maintained in the course of providing services under this
27 chapter may also be disclosed to the courts solely to prevent the entry
28 of any evaluation or treatment order that is inconsistent with any
29 order entered under chapter 71.05 RCW.

30 **Sec. 3.** RCW 10.77.090 and 1998 c 297 s 38 are each amended to read
31 as follows:

32 (1)(a) If at any time during the pendency of an action and prior to
33 judgment the court finds, following a report as provided in RCW
34 10.77.060, a defendant is incompetent the court shall order the
35 proceedings against the defendant be stayed except as provided in
36 subsection (7) of this section.

37 (b) If the defendant is charged with a felony and determined to be
38 incompetent, the court shall commit the defendant to the custody of the

1 secretary, who shall place such defendant in an appropriate facility of
2 the department for evaluation and treatment, or the court may
3 alternatively order the defendant to undergo evaluation and treatment
4 at some other facility as determined by the department, or under the
5 guidance and control of a professional person, until he or she has
6 regained the competency necessary to understand the proceedings against
7 him or her and assist in his or her own defense, but in any event, for
8 no longer than a period of ninety days.

9 (c) A defendant found incompetent shall be evaluated at the
10 direction of the secretary and a determination made whether the
11 defendant is developmentally disabled. Such evaluation and
12 determination shall be accomplished as soon as possible following the
13 court's placement of the defendant in the custody of the secretary.
14 When appropriate, and subject to available funds, if the defendant is
15 determined to be developmentally disabled, he or she may be placed in
16 a program specifically reserved for the treatment and training of
17 persons with developmental disabilities where the defendant shall have
18 the right to habilitation according to an individualized service plan
19 specifically developed for the particular needs of the defendant. The
20 program shall be separate from programs serving persons involved in any
21 other treatment or habilitation program. The program shall be
22 appropriately secure under the circumstances and shall be administered
23 by developmental disabilities professionals who shall direct the
24 habilitation efforts. The program shall provide an environment
25 affording security appropriate with the charged criminal behavior and
26 necessary to protect the public safety. The department may limit
27 admissions of such persons to this specialized program in order to
28 ensure that expenditures for services do not exceed amounts
29 appropriated by the legislature and allocated by the department for
30 such services. The department may establish admission priorities in
31 the event that the number of eligible persons exceeds the limits set by
32 the department. A copy of the report shall be sent to the facility.

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

34 (A) Charged with a nonfelony crime and has: (I) A history of one
35 or more violent acts, or a pending charge of one or more violent acts;
36 or (II) been previously acquitted by reason of insanity or been
37 previously found incompetent under this chapter or any equivalent
38 federal or out-of-state statute with regard to an alleged offense

1 involving actual, threatened, or attempted physical harm to a person;
2 and

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

4 (C) The court shall order the secretary to place the defendant:

5 (I) At a secure mental health facility in the custody of the department
6 or an agency designated by the department for mental health treatment
7 and restoration of competency. The placement shall not exceed fourteen
8 days in addition to any unused time of the evaluation under RCW
9 10.77.060. The court shall compute this total period and include its
10 computation in the order. The fourteen-day period plus any unused time
11 of the evaluation under RCW 10.77.060 shall be considered to include
12 only the time the defendant is actually at the facility and shall be in
13 addition to reasonable time for transport to or from the facility; (II)
14 on conditional release for up to ninety days for mental health
15 treatment and restoration of competency; or (III) any combination of
16 (d)(i)(C)(I) and (II) of this subsection.

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

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

36 (B) If the defendant was in custody and not on conditional release
37 at the time of dismissal, the defendant shall be detained and sent to
38 an evaluation and treatment facility for up to seventy-two hours
39 excluding Saturdays, Sundays, and holidays for evaluation for purposes

1 of filing a petition under chapter 71.05 RCW. The seventy-two hour
2 period shall commence upon the next nonholiday weekday following the
3 court order, and shall run to the end of the last nonholiday weekday
4 within the seventy-two hour period.

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

9 (e) If the defendant is charged with a crime that is not a felony
10 and the defendant does not meet the criteria under (d) of this
11 subsection, the court may stay or dismiss proceedings and detain the
12 defendant for sufficient time to allow the county designated mental
13 health professional to evaluate the defendant and consider initial
14 detention proceedings under chapter 71.05 RCW. The court must give
15 notice to all parties at least twenty-four hours before the dismissal
16 of any proceeding under this subsection (1)(e), and provide an
17 opportunity for a hearing on whether to dismiss the proceedings.

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

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

35 (4) For persons charged with a felony, at the hearing upon the
36 expiration of the second ninety-day period or at the end of the first
37 ninety-day period, in the case of a developmentally disabled defendant,
38 if the jury or court finds that the defendant is incompetent, the
39 charges shall be dismissed without prejudice, and either civil

1 commitment proceedings shall be instituted or the court shall order the
2 release of the defendant: PROVIDED, That the criminal charges shall
3 not be dismissed if the court or jury finds that: (a) The defendant
4 (i) is a substantial danger to other persons; or (ii) presents a
5 substantial likelihood of committing criminal acts jeopardizing public
6 safety or security; and (b) there is a substantial probability that the
7 defendant will regain competency within a reasonable period of time.
8 In the event that the court or jury makes such a finding, the court may
9 extend the period of commitment for an additional six months. At the
10 end of the six-month period, if the defendant remains incompetent, the
11 charges shall be dismissed without prejudice and either civil
12 commitment proceedings shall be instituted or the court shall order
13 release of the defendant.

14 (5) If the defendant is referred to the county designated mental
15 health professional for consideration of initial detention proceedings
16 under chapter 71.05 RCW pursuant to this chapter, the county designated
17 mental health professional shall provide prompt written notification of
18 the results of the determination whether to commence initial detention
19 proceedings under chapter 71.05 RCW, and whether the person was
20 detained. The notification shall be provided to the court in which the
21 criminal action was pending, the prosecutor, the defense attorney in
22 the criminal action, and the facility that evaluated the defendant for
23 competency.

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

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

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

36 **Sec. 4.** RCW 10.77.097 and 1998 c 297 s 47 are each amended to read
37 as follows:

1 A copy of relevant records and reports as defined by the
2 department, in consultation with the department of corrections, made
3 pursuant to this chapter, and including relevant information necessary
4 to meet the requirements of RCW 10.77.065(~~(+2)~~) (1) and 10.77.090,
5 shall accompany the defendant upon transfer to a mental health facility
6 or a correctional institution or facility.

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

9 (1) In determining whether a defendant has committed a violent act
10 the court must:

11 (a) Presume that a past conviction, guilty plea, or finding of not
12 guilty by reason of insanity establishes the elements necessary for the
13 crime charged;

14 (b) Consider that the elements of a crime may not be sufficient in
15 themselves to establish that the defendant committed a violent act; and

16 (c) Presume that the facts underlying the elements, if unrebutted,
17 are sufficient to establish that the defendant committed a violent act.

18 (2) The presumptions in subsection (1) of this section are
19 rebuttable.

20 (3) In determining the facts underlying the elements of any crime
21 under subsection (1) of this section, the court may consider
22 information including, but not limited to, the following material
23 relating to the crime:

24 (a) Affidavits or declarations made under penalty of perjury;

25 (b) Criminal history record information, as defined in chapter
26 10.97 RCW; and

27 (c) Its own or certified copies of another court's records such as
28 criminal complaints, certifications of probable cause to detain,
29 dockets, and orders on judgment and sentencing.

30 **Sec. 6.** RCW 71.05.235 and 1999 c 11 s 1 are each amended to read
31 as follows:

32 (1) If an individual is referred to a county designated mental
33 health professional under RCW 10.77.090(1)(d)(iii)(A), the county
34 designated mental health professional shall examine the individual
35 within forty-eight hours. If the county designated mental health
36 professional determines it is not appropriate to detain the individual
37 or petition for a ninety-day less restrictive alternative under RCW

1 71.05.230(4), that decision shall be immediately presented to the
2 superior court for hearing. The court shall hold a hearing to consider
3 the decision of the county designated mental health professional not
4 later than the next judicial day. At the hearing the superior court
5 shall review the determination of the county designated mental health
6 professional and determine whether an order should be entered requiring
7 the person to be evaluated at an evaluation and treatment facility. No
8 person referred to an evaluation and treatment facility may be held at
9 the facility longer than seventy-two hours.

10 (2) If an individual is placed in an evaluation and treatment
11 facility under RCW 10.77.090(1)(d)(iii)(B), a professional person shall
12 evaluate the individual for purposes of determining whether to file a
13 ninety-day inpatient or outpatient petition under chapter 71.05 RCW.
14 (~~Immediately following completion of the evaluation~~) Before
15 expiration of the seventy-two hour evaluation period authorized under
16 RCW 10.77.090(1)(d)(iii)(B), the professional person shall file a
17 petition or, if the recommendation of the professional person is to
18 release the individual, present his or her recommendation to the
19 superior court of the county in which the criminal charge was
20 dismissed. The superior court shall review the recommendation not
21 later than (~~the next judicial day~~) forty-eight hours, excluding
22 Saturdays, Sundays, and holidays, after the recommendation is
23 presented. If the court rejects the recommendation to unconditionally
24 release the individual, the court may order the individual detained at
25 a designated evaluation and treatment facility for not more than a
26 seventy-two hour evaluation and treatment period and direct the
27 individual to appear at a surety hearing before that court within
28 seventy-two hours, or the court may release the individual but direct
29 the individual to appear at a surety hearing set before that court
30 within eleven days, at which time the prosecutor may file a petition
31 under this chapter for ninety-day inpatient or outpatient treatment.
32 If a petition is filed by the prosecutor, the court may order that the
33 person named in the petition be detained at the evaluation and
34 treatment facility that performed the evaluation under this subsection
35 or order the respondent to be in outpatient treatment. If a petition
36 is filed but the individual fails to appear in court for the surety
37 hearing, the court shall order that a mental health professional or
38 peace officer shall take such person or cause such person to be taken
39 into custody and placed in an evaluation and treatment facility to be

1 brought before the court the next judicial day after detention. Upon
2 the individual's first appearance in court after a petition has been
3 filed, proceedings under RCW 71.05.310 and 71.05.320 shall commence.
4 For an individual subject to this subsection, the prosecutor or
5 professional person may directly file a petition for ninety-day
6 inpatient or outpatient treatment and no petition for initial detention
7 or fourteen-day detention is required before such a petition may be
8 filed.

9 The court shall conduct the hearing on the petition filed under
10 this subsection within five judicial days of the date the petition is
11 filed. The court may continue the hearing upon the written request of
12 the person named in the petition or the person's attorney, for good
13 cause shown, which continuance shall not exceed five additional
14 judicial days. If the person named in the petition requests a jury
15 trial, the trial shall commence within ten judicial days of the date of
16 the filing of the petition. The burden of proof shall be by clear,
17 cogent, and convincing evidence and shall be upon the petitioner. The
18 person shall be present at such proceeding, which shall in all respects
19 accord with the constitutional guarantees of due process of law and the
20 rules of evidence pursuant to RCW 71.05.250.

21 During the proceeding the person named in the petition shall
22 continue to be detained and treated until released by order of the
23 court. If no order has been made within thirty days after the filing
24 of the petition, not including any extensions of time requested by the
25 detained person or his or her attorney, the detained person shall be
26 released.

27 (3) If a county designated mental health professional or the
28 professional person and prosecuting attorney for the county in which
29 the criminal charge was dismissed or attorney general, as appropriate,
30 stipulate that the individual does not present a likelihood of serious
31 harm or is not gravely disabled, the hearing under this section is not
32 required and the individual, if in custody, shall be released.

33 (4) The individual shall have the rights specified in RCW
34 71.05.250.

35 **Sec. 7.** RCW 71.05.390 and 1999 c 12 s 1 are each amended to read
36 as follows:

37 Except as provided in this section, the fact of admission and all
38 information and records compiled, obtained, or maintained in the course

1 of providing services to either voluntary or involuntary recipients of
2 services at public or private agencies shall be confidential.

3 Information and records may be disclosed only:

4 (1) In communications between qualified professional persons to
5 meet the requirements of this chapter, in the provision of services or
6 appropriate referrals, or in the course of guardianship proceedings.
7 The consent of the patient, or his or her guardian, shall be obtained
8 before information or records may be disclosed by a professional person
9 employed by a facility unless provided to a professional person: (a)
10 Employed by the facility; (b) who has medical responsibility for the
11 patient's care; (c) who is a county designated mental health
12 professional; (d) who is providing services under chapter 71.24 RCW;
13 (e) who is employed by a state or local correctional facility where the
14 person is confined; or (f) who is providing evaluation, treatment, or
15 follow-up services under chapter 10.77 RCW.

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

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

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

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

32 "As a condition of conducting evaluation or research concerning
33 persons who have received services from (fill in the facility, agency,
34 or person) I,, agree not to divulge, publish, or
35 otherwise make known to unauthorized persons or the public any
36 information obtained in the course of such evaluation or research
37 regarding persons who have received services such that the person who
38 received such services is identifiable.

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

3 /s/ "

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

9 (7) To law enforcement officers, public health officers, or
10 personnel of the department of corrections or the indeterminate
11 sentence review board for persons who are the subject of the records
12 and who are committed to the custody of the department of corrections
13 or indeterminate sentence review board which information or records are
14 necessary to carry out the responsibilities of their office. Except
15 for dissemination of information released pursuant to RCW 71.05.425 and
16 4.24.550, regarding persons committed under this chapter under RCW
17 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
18 defined in RCW 9.94A.030, the extent of information that may be
19 released is limited as follows:

20 (a) Only the fact, place, and date of involuntary admission, the
21 fact and date of discharge, and the last known address shall be
22 disclosed upon request; and

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

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

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

37 (9) To the prosecuting attorney as necessary to carry out the
38 responsibilities of the office under RCW 71.05.330(2) and

1 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access
2 to records regarding the committed person's treatment and prognosis,
3 medication, behavior problems, and other records relevant to the issue
4 of whether treatment less restrictive than inpatient treatment is in
5 the best interest of the committed person or others. Information shall
6 be disclosed only after giving notice to the committed person and the
7 person's counsel.

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

20 (11) To the persons designated in RCW 71.05.425 for the purposes
21 described in that section.

22 (12) Civil liability and immunity for the release of information
23 about a particular person who is committed to the department under RCW
24 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
25 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

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

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

33 The fact of admission, as well as all records, files, evidence,
34 findings, or orders made, prepared, collected, or maintained pursuant
35 to this chapter shall not be admissible as evidence in any legal
36 proceeding outside this chapter without the written consent of the
37 person who was the subject of the proceeding except in a subsequent
38 criminal prosecution of a person committed pursuant to RCW 71.05.280(3)
39 or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter

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

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

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