

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 6375**

56th Legislature  
2000 Regular Session

Passed by the Senate February 11, 2000  
YEAS 42 NAYS 0

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**President of the Senate**

Passed by the House March 2, 2000  
YEAS 97 NAYS 0

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**Speaker of the  
House of Representatives**

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**Speaker of the  
House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6375** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 6375**

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Passed Legislature - 2000 Regular Session

**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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