

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2387

58th Legislature
2004 Regular Session

Passed by the House March 9, 2004
Yeas 93 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 3, 2004
Yeas 45 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2387** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 2387

AS AMENDED BY THE SENATE

Passed Legislature - 2004 Regular Session

State of Washington **58th Legislature** **2004 Regular Session**

By Representatives Carrell, Talcott, Bush, Lantz, Cox, Pearson, McMahan, Kristiansen, Mielke, Boldt, Morrell, Orcutt and Ahern

Read first time 01/13/2004. Referred to Committee on Health Care.

1 AN ACT Relating to the release of patient records for the purpose
2 of restoring state mental health hospital cemeteries; reenacting and
3 amending RCW 71.05.390; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that social stigmas
6 surrounding mental illness have prevented patients buried in the state
7 hospital cemeteries from being properly memorialized. From 1887 to
8 1953, the state buried many of the patients who died while in residence
9 at the three state hospitals on hospital grounds. In order to honor
10 these patients, the legislature intends that the state be allowed to
11 release records necessary to appropriately mark their resting place.

12 **Sec. 2.** RCW 71.05.390 and 2000 c 94 s 9, 2000 c 75 s 6, and 2000
13 c 74 s 7 are each reenacted and amended to read as follows:

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

18 Information and records may be disclosed only:

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

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

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

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

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

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

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

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

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

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

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

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

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the 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 commitment,
15 admission, discharge, or release, authorized or unauthorized absence
16 from the agency's facility, and only such other information that is
17 pertinent to the threat or harassment. The decision to disclose or not
18 shall not result in civil liability for the agency or its employees so
19 long as the decision was reached in good faith and without gross
20 negligence.

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

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

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

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

35 (15) To the department of health for the purposes of determining
36 compliance with state or federal licensure, certification, or
37 registration rules or laws. However, the information and records

1 obtained under this subsection are exempt from public inspection and
2 copying pursuant to chapter 42.17 RCW.

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

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

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