
SENATE BILL 6274

State of Washington

58th Legislature

2004 Regular Session

By Senators Regala, Stevens, Hargrove and Kline

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1 AN ACT Relating to serious offenses in the context of competency
2 restoration; amending RCW 10.77.010 and 10.77.090; reenacting and
3 amending RCW 71.05.390; adding new sections to chapter 10.77 RCW; and
4 creating a new section.

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*, ___Wn.
11 App. ___ (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 **Sec. 2.** RCW 10.77.010 and 2000 c 94 s 12 are each amended to read
23 as follows:

24 As used in this chapter:

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

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

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

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

34 (5) A "criminally insane" person means any person who has been
35 acquitted of a crime charged by reason of insanity, and thereupon found
36 to be a substantial danger to other persons or to present a substantial

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

4 (6) "Department" means the state department of social and health
5 services.

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

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

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

16 (10) "Discharge" means the termination of hospital medical
17 authority. The commitment may remain in place, be terminated, or be
18 amended by court order.

19 (11) "Furlough" means an authorized leave of absence for a resident
20 of a state institution operated by the department designated for the
21 custody, care, and treatment of the criminally insane, consistent with
22 an order of conditional release from the court under this chapter,
23 without any requirement that the resident be accompanied by, or be in
24 the custody of, any law enforcement or institutional staff, while on
25 such unescorted leave.

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

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

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

4 (15) "Indigent" means any person who is financially unable to
5 obtain counsel or other necessary expert or professional services
6 without causing substantial hardship to the person or his or her
7 family.

8 (16) "Individualized service plan" means a plan prepared by a
9 developmental disabilities professional with other professionals as a
10 team, for an individual with developmental disabilities, which shall
11 state:

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

14 (b) The conditions and strategies necessary to achieve the purposes
15 of habilitation;

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

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

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

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

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

27 (17) "Professional person" means:

28 (a) A psychiatrist licensed as a physician and surgeon in this
29 state who has, in addition, completed three years of graduate training
30 in psychiatry in a program approved by the American medical association
31 or the American osteopathic association and is certified or eligible to
32 be certified by the American board of psychiatry and neurology or the
33 American osteopathic board of neurology and psychiatry;

34 (b) A psychologist licensed as a psychologist pursuant to chapter
35 18.83 RCW; or

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

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

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

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

7 (21) "Violent act" means behavior that: (a)(i) Resulted in; (ii)
8 if completed as intended would have resulted in; or (iii) was
9 threatened to be carried out by a person who had the intent and
10 opportunity to carry out the threat and would have resulted in,
11 homicide, nonfatal injuries, or substantial damage to property; or (b)
12 recklessly creates an immediate risk of serious physical injury to
13 another person. As used in this subsection, "nonfatal injuries" means
14 physical pain or injury, illness, or an impairment of physical
15 condition. "Nonfatal injuries" shall be construed to be consistent
16 with the definition of "bodily injury," as defined in RCW 9A.04.110.

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

19 (1)(a) If at any time during the pendency of an action and prior to
20 judgment the court finds, following a report as provided in RCW
21 10.77.060, a defendant is incompetent the court shall order the
22 proceedings against the defendant be stayed except as provided in
23 subsection (7) of this section.

24 (b) If the defendant is charged with a felony and determined to be
25 incompetent, the court shall commit the defendant to the custody of the
26 secretary, who shall place such defendant in an appropriate facility of
27 the department for evaluation and treatment, or the court may
28 alternatively order the defendant to undergo evaluation and treatment
29 at some other facility as determined by the department, or under the
30 guidance and control of a professional person, until he or she has
31 regained the competency necessary to understand the proceedings against
32 him or her and assist in his or her own defense, but in any event, for
33 no longer than a period of ninety days.

34 (c) A defendant found incompetent shall be evaluated at the
35 direction of the secretary and a determination made whether the
36 defendant is developmentally disabled. Such evaluation and
37 determination shall be accomplished as soon as possible following the

1 court's placement of the defendant in the custody of the secretary.
2 When appropriate, and subject to available funds, if the defendant is
3 determined to be developmentally disabled, he or she may be placed in
4 a program specifically reserved for the treatment and training of
5 persons with developmental disabilities where the defendant shall have
6 the right to habilitation according to an individualized service plan
7 specifically developed for the particular needs of the defendant. The
8 program shall be separate from programs serving persons involved in any
9 other treatment or habilitation program. The program shall be
10 appropriately secure under the circumstances and shall be administered
11 by developmental disabilities professionals who shall direct the
12 habilitation efforts. The program shall provide an environment
13 affording security appropriate with the charged criminal behavior and
14 necessary to protect the public safety. The department may limit
15 admissions of such persons to this specialized program in order to
16 ensure that expenditures for services do not exceed amounts
17 appropriated by the legislature and allocated by the department for
18 such services. The department may establish admission priorities in
19 the event that the number of eligible persons exceeds the limits set by
20 the department. A copy of the report shall be sent to the facility.

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

22 (A) Charged with a nonfelony crime and has: (I) A history of one
23 or more violent acts, or a pending charge of one or more violent acts;
24 or (II) been previously acquitted by reason of insanity or been
25 previously found incompetent under this chapter or any equivalent
26 federal or out-of-state statute with regard to an alleged offense
27 involving actual, threatened, or attempted physical harm to a person;
28 and

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

30 (C) The court shall order the secretary to place the defendant:
31 (I) At a secure mental health facility in the custody of the department
32 or an agency designated by the department for mental health treatment
33 and restoration of competency. The placement shall not exceed
34 ~~((fourteen days in addition to any unused time of the))~~ twenty-nine
35 days, reduced, but not below fourteen days, by the number of days the
36 defendant was committed to a hospital or other suitably secure public
37 or private mental health facility for evaluation under RCW 10.77.060.
38 For purpose of computing the number of days by which the twenty-nine

1 days is reduced, the phrase "hospital or other suitably secure public
2 or private mental health facility" in (d)(i)(C)(I) of this subsection
3 does not include a jail or correctional facility or any other
4 outpatient setting within the community. The court shall compute this
5 total period and include its computation in the order. The (~~fourteen-~~
6 ~~day period plus any unused time of the evaluation under RCW 10.77.060~~)
7 twenty-nine day period, reduced, but not below fourteen days, according
8 to (d)(i)(C)(I) of this subsection shall be considered to include only
9 the time the defendant is actually at the facility and shall be in
10 addition to reasonable time for transport to or from the facility; (II)
11 on conditional release for up to ninety days for mental health
12 treatment and restoration of competency; or (III) any combination of
13 (d)(i)(C)(I) and (II) of this subsection.

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

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

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

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

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

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

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

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

34 (4) For persons charged with a felony, at the hearing upon the
35 expiration of the second ninety-day period or at the end of the first
36 ninety-day period, in the case of a developmentally disabled defendant,
37 if the jury or court finds that the defendant is incompetent, the
38 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 NEW SECTION. **Sec. 4.** A new section is added to chapter 10.77 RCW
37 to read as follows:

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

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

8 (b) Any offense included in crimes against persons in RCW
9 9.94A.411;

10 (c) Any offense contained in chapter 9.41 RCW (firearms and
11 dangerous weapons);

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

13 (e) Any offense listed as a harassment offense in chapter 9A.46
14 RCW; or

15 (f) Any violation of chapter 69.50 RCW that is a class B felony.

16 (2)(a) In a particular case, a court may determine that a pending
17 charge not included within the list of per se serious offenses in
18 subsection (1) of this section or defined by ordinance as serious
19 pursuant to subsection (3) of this section is, nevertheless, a serious
20 offense within the context of competency restoration treatment when the
21 conduct in the charged offense falls within the standards established
22 in (b) of this subsection.

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

27 (i) The charge includes an allegation that the defendant actually
28 inflicted bodily or emotional harm on another person or that the
29 defendant created a reasonable apprehension of bodily or emotional harm
30 to another;

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

33 (iii) The number and nature of related charges pending against the
34 defendant;

35 (iv) The length of potential confinement if the defendant is
36 convicted; and

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

1 (3)(a) Any city or county may, by ordinance, determine that
2 nonfelony offenses not included within subsection (1) of this section
3 are nonetheless "serious offenses" within the context of competency
4 restoration treatment when the offense falls within the standards
5 established in (b) of this subsection.

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

9 (i) The offense includes an element that the defendant actually
10 inflicted bodily or emotional harm on another person or that the
11 defendant created a reasonable apprehension of bodily or emotional harm
12 to another person;

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

15 (iii) The length of potential confinement applicable to the
16 offense; and

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

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

21 When the court must make a determination whether to order
22 involuntary medications for the purpose of competency restoration, the
23 court shall inquire, and shall be told, consistent with federal law and
24 to the extent that the prosecutor or defense attorney is aware, whether
25 the defendant is the subject of a pending civil commitment proceeding
26 or has been ordered into involuntary treatment pursuant to a civil
27 commitment proceeding.

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

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

34 Information and records may be disclosed only:

35 (1) In communications between qualified professional persons to
36 meet the requirements of this chapter, in the provision of services or

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

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

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

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

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

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

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

(6)(a) 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.

(b) As permitted and required under federal law, to a court in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(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.

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

2 (9) To the prosecuting attorney as necessary to carry out the
3 responsibilities of the office under RCW 71.05.330(2) and
4 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access
5 to records regarding the committed person's treatment and prognosis,
6 medication, behavior problems, and other records relevant to the issue
7 of whether treatment less restrictive than inpatient treatment is in
8 the best interest of the committed person or others. Information shall
9 be disclosed only after giving notice to the committed person and the
10 person's counsel.

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

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

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

32 (13) Civil liability and immunity for the release of information
33 about a particular person who is committed to the department 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, is governed by RCW 4.24.550.

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

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

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

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

--- END ---