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**SUBSTITUTE SENATE BILL 5763**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Stevens, Regala, Brandland, Thibaudeau, Carrell, Brown, Keiser, Fairley, McAuliffe, Rasmussen, Kline, Kohl-Welles and Franklin)

READ FIRST TIME 02/28/05.

1       AN ACT Relating to the omnibus treatment of mental and substance  
2 abuse disorders act of 2005; amending RCW 71.05.020, 71.24.025,  
3 10.77.010, 71.05.360, 71.05.215, 71.05.370, 71.05.420, 71.05.620,  
4 71.05.630, 71.05.640, 71.05.660, 71.05.550, 2.28.170, 74.09.010,  
5 71.05.157, 5.60.060, 18.83.110, 18.225.105, 71.05.235, 71.05.310,  
6 71.05.425, 71.05.445, 71.05.640, 71.05.680, and 71.05.690; reenacting  
7 and amending RCW 71.05.390 and 71.24.035; adding new sections to  
8 chapter 71.05 RCW; adding new sections to chapter 70.96A RCW; adding  
9 new sections to chapter 2.28 RCW; adding a new section to chapter 26.12  
10 RCW; adding new sections to chapter 74.09 RCW; adding new sections to  
11 chapter 71.02 RCW; adding a new section to chapter 13.34 RCW; adding a  
12 new section to chapter 71A.12 RCW; adding a new section to chapter  
13 82.14 RCW; adding new chapters to Title 70 RCW; creating new sections;  
14 recodifying RCW 71.05.370 and 71.05.035; repealing RCW 71.05.060,  
15 71.05.070, 71.05.090, 71.05.200, 71.05.250, 71.05.450, 71.05.460,  
16 71.05.470, 71.05.480, 71.05.490, 71.05.155, 71.05.395, 71.05.400,  
17 71.05.410, 71.05.430, 71.05.610, 71.05.650, and 71.05.670; prescribing  
18 penalties; making an appropriation; providing effective dates;  
19 providing an expiration date; and declaring an emergency.

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

2 **PART I**

3 **GENERAL PROVISIONS**

4 NEW SECTION. **Sec. 101.** The legislature finds that persons with  
5 mental disorders, chemical dependency disorders, or co-occurring mental  
6 and substance abuse disorders are disproportionately more likely to be  
7 confined in a correctional institution, become homeless, become  
8 involved with child protective services or involved in a dependency  
9 proceeding, or lose those state and federal benefits to which they may  
10 be entitled as a result of their disorders. The legislature finds that  
11 prior state policy of addressing mental health and chemical dependency  
12 in isolation from each other has not been cost-effective and has often  
13 resulted in longer-term, more costly treatment that may be less  
14 effective over time. The legislature finds that a substantial number  
15 of persons have co-occurring mental and substance abuse disorders and  
16 that identification and integrated treatment of co-occurring disorders  
17 is critical to successful outcomes and recovery. Consequently, the  
18 legislature intends to:

19 (1) Establish a process for determining which persons with mental  
20 disorders and substance abuse disorders have co-occurring disorders;

21 (2) Reduce the gap between available chemical dependency treatment  
22 and the documented need for treatment;

23 (3) Improve treatment outcomes by shifting treatment, where  
24 possible to evidence-based, research-based, and consensus-based  
25 treatment practices and by removing barriers to the use of those  
26 practices;

27 (4) Expand the authority for and use of therapeutic courts  
28 including drug courts, mental health courts, and family therapeutic  
29 courts;

30 (5) Improve access to treatment for persons who are not enrolled in  
31 medicaid by improving and creating consistency in the application  
32 processes, and by ending the practice of early termination of  
33 eligibility of confined persons;

34 (6) Improve access to inpatient treatment by creating expanded  
35 services facilities for persons needing intensive treatment in a secure

1 setting who do not need inpatient care, but are unable to access  
2 treatment under current licensing restrictions in other settings;

3 (7) Establish secure detoxification centers for persons  
4 involuntarily detained as gravely disabled or presenting a likelihood  
5 of serious harm due to chemical dependency and authorize combined  
6 crisis responders for both mental disorders and chemical dependency  
7 disorders on a pilot basis and study the outcomes;

8 (8) Following the receipt of outcomes from the pilot programs in  
9 subsection (7) of this section, implement a single, comprehensive,  
10 involuntary treatment act with a unified set of standards, rights,  
11 obligations, and procedures for adults and children with mental  
12 disorders, chemical dependency disorders, and co-occurring disorders;

13 (9) Slow or stop the loss of inpatient and intensive residential  
14 beds and children's long-term inpatient placements and refine the  
15 balance of state hospital and community inpatient and residential beds;

16 (10) Improve cross-system collaboration including collaboration  
17 with first responders and hospital emergency rooms, schools, primary  
18 care, developmental disabilities, law enforcement and corrections, and  
19 federally funded and licensed programs including, but not limited to,  
20 federally qualified health centers; and

21 (11) Amend existing state law to address organizational and  
22 structural barriers to effective use of state funds for treating  
23 persons with mental and substance abuse disorders, minimize internal  
24 inconsistencies, clarify policy and requirements, and maximize the  
25 opportunity for effective and cost-effective outcomes.

26 NEW SECTION. **Sec. 102.** (1) The department of social and health  
27 services shall explore and report to the appropriate committees of the  
28 legislature by December 1, 2005, on the feasibility, costs, benefits,  
29 and time frame to access federal medicaid funds for mental health and  
30 substance abuse treatment under the following provisions:

31 (a) The optional clinic provisions;

32 (b) Children's mental health treatment or co-occurring disorders  
33 treatment under the early periodic screening, diagnosis, and treatment  
34 provisions;

35 (c) Targeted case management, including a plan for coordination of  
36 various case management opportunities under medicaid.

1 (2) The department shall provide the appropriate committees of the  
2 legislature with a clear and concise explanation of the reasons for  
3 reducing state hospital capacity and the differences in costs and  
4 benefits of treatment in state and community hospital treatment.

5 (3) The department may not reduce the capacity of either state  
6 hospital until at least an equal number of skilled nursing,  
7 residential, expanded services facility, or supported housing  
8 placements are available in the community to the persons displaced by  
9 the capacity reduction. The department shall retain sufficient  
10 capacity at the state hospital to address the cyclical need for  
11 hospitalization for persons moved to the community under a bed  
12 reduction program. For purposes of this section, "sufficient" means  
13 not less than one hospital bed for every ten beds created in the  
14 community unless the department can demonstrate conclusively to the  
15 legislature that a lesser ratio is sufficient.

#### 16 **Mental Health Treatment**

17 NEW SECTION. **Sec. 103.** A new section is added to chapter 71.05  
18 RCW to read as follows:

19 (1) Not later than January 1, 2007, all persons providing treatment  
20 under this chapter shall also implement the integrated comprehensive  
21 screening and assessment process for chemical dependency and mental  
22 disorders adopted pursuant to section 701 of this act and shall  
23 document the numbers of clients with co-occurring mental and substance  
24 abuse disorders based on a quadrant system of low and high needs.

25 (2) Treatment providers and regional support networks who fail to  
26 implement the integrated comprehensive screening and assessment process  
27 for chemical dependency and mental disorders by July 1, 2007, shall be  
28 subject to contractual penalties established under section 701 of this  
29 act.

30 **Sec. 104.** RCW 71.05.020 and 2000 c 94 s 1 are each amended to read  
31 as follows:

32 The definitions in this section apply throughout this chapter  
33 unless the context clearly requires otherwise.

34 (1) "Admission" or "admit" means a decision by a physician that a  
35 person should be examined or treated as a patient in a hospital;

1 (2) "Antipsychotic medications" means that class of drugs primarily  
2 used to treat serious manifestations of mental illness associated with  
3 thought disorders, which includes, but is not limited to atypical  
4 antipsychotic medications;

5 (3) "Attending staff" means any person on the staff of a public or  
6 private agency having responsibility for the care and treatment of a  
7 patient;

8 (4) "Commitment" means the determination by a court that a person  
9 should be detained for a period of either evaluation or treatment, or  
10 both, in an inpatient or a less restrictive setting;

11 (5) "Conditional release" means a revocable modification of a  
12 commitment, which may be revoked upon violation of any of its terms;

13 (6) "County designated mental health professional" means a mental  
14 health professional appointed by the county or the regional support  
15 network to perform the duties specified in this chapter;

16 (7) "Custody" means involuntary detention under the provisions of  
17 this chapter or chapter 10.77 RCW, uninterrupted by any period of  
18 unconditional release from commitment from a facility providing  
19 involuntary care and treatment;

20 (8) "Department" means the department of social and health  
21 services;

22 (9) "Designated chemical dependency specialist" means a person  
23 designated by the county alcoholism and other drug addiction program  
24 coordinator designated under RCW 70.96A.310 to perform the commitment  
25 duties described in chapter 70.96A RCW and sections 202 through 216 of  
26 this act or chapter 70.-- RCW (sections 302 through 374 of this act);

27 (10) "Designated crisis responder" means a mental health  
28 professional appointed by the county or the regional support network to  
29 perform the duties specified in this chapter or under chapter 70.-- RCW  
30 (sections 302 through 374 of this act);

31 (11) "Detention" or "detain" means the lawful confinement of a  
32 person, under the provisions of this chapter;

33 ~~((+10+))~~ (12) "Developmental disabilities professional" means a  
34 person who has specialized training and three years of experience in  
35 directly treating or working with persons with developmental  
36 disabilities and is a psychiatrist, psychologist, or social worker, and  
37 such other developmental disabilities professionals as may be defined  
38 by rules adopted by the secretary;

1           (~~(11)~~) (13) "Developmental disability" means that condition  
2 defined in RCW 71A.10.020(3);

3           (~~(12)~~) (14) "Discharge" means the termination of hospital medical  
4 authority. The commitment may remain in place, be terminated, or be  
5 amended by court order;

6           (~~(13)~~) (15) "Evaluation and treatment facility" means any  
7 facility which can provide directly, or by direct arrangement with  
8 other public or private agencies, emergency evaluation and treatment,  
9 outpatient care, and timely and appropriate inpatient care to persons  
10 suffering from a mental disorder, and which is certified as such by the  
11 department. A physically separate and separately operated portion of  
12 a state hospital may be designated as an evaluation and treatment  
13 facility. A facility which is part of, or operated by, the department  
14 or any federal agency will not require certification. No correctional  
15 institution or facility, or jail, shall be an evaluation and treatment  
16 facility within the meaning of this chapter;

17           (~~(14)~~) (16) "Gravely disabled" means a condition in which a  
18 person, as a result of a mental disorder: (a) Is in danger of serious  
19 physical harm resulting from a failure to provide for his or her  
20 essential human needs of health or safety; or (b) manifests severe  
21 deterioration in routine functioning evidenced by repeated and  
22 escalating loss of cognitive or volitional control over his or her  
23 actions and is not receiving such care as is essential for his or her  
24 health or safety;

25           (~~(15)~~) (17) "Habilitative services" means those services provided  
26 by program personnel to assist persons in acquiring and maintaining  
27 life skills and in raising their levels of physical, mental, social,  
28 and vocational functioning. Habilitative services include education,  
29 training for employment, and therapy. The habilitative process shall  
30 be undertaken with recognition of the risk to the public safety  
31 presented by the (~~(individual)~~) person being assisted as manifested by  
32 prior charged criminal conduct;

33           (~~(16)~~) (18) "History of one or more violent acts" refers to the  
34 period of time ten years prior to the filing of a petition under this  
35 chapter, excluding any time spent, but not any violent acts committed,  
36 in a mental health facility or in confinement as a result of a criminal  
37 conviction;

1       (~~(17)~~) (19) "Individualized service plan" means a plan prepared  
2 by a developmental disabilities professional with other professionals  
3 as a team, for (~~(an individual)~~) a person with developmental  
4 disabilities, which shall state:

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

7       (b) The conditions and strategies necessary to achieve the purposes  
8 of habilitation;

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

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

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

14       (f) Where relevant in light of past criminal behavior and due  
15 consideration for public safety, the criteria for proposed movement to  
16 less-restrictive settings, criteria for proposed eventual discharge or  
17 release, and a projected possible date for discharge or release; and

18       (g) The type of residence immediately anticipated for the person  
19 and possible future types of residences;

20       (~~(18)~~) (20) "Judicial commitment" means a commitment by a court  
21 pursuant to the provisions of this chapter;

22       (~~(19)~~) (21) "Likelihood of serious harm" means:

23       (a) A substantial risk that: (i) Physical harm will be inflicted  
24 by (~~(an individual)~~) a person upon his or her own person, as evidenced  
25 by threats or attempts to commit suicide or inflict physical harm on  
26 oneself; (ii) physical harm will be inflicted by (~~(an individual)~~) a  
27 person upon another, as evidenced by behavior which has caused such  
28 harm or which places another person or persons in reasonable fear of  
29 sustaining such harm; or (iii) physical harm will be inflicted by (~~(an~~  
30 ~~individual)~~) a person upon the property of others, as evidenced by  
31 behavior which has caused substantial loss or damage to the property of  
32 others; or

33       (b) The (~~(individual)~~) person has threatened the physical safety of  
34 another and has a history of one or more violent acts;

35       (~~(20)~~) (22) "Mental disorder" means any organic, mental, or  
36 emotional impairment which has substantial adverse effects on (~~(an~~  
37 ~~individual's)~~) a person's cognitive or volitional functions;

1        ~~((+21+))~~ (23) "Mental health professional" means a psychiatrist,  
2        psychologist, psychiatric nurse, or social worker, and such other  
3        mental health professionals as may be defined by rules adopted by the  
4        secretary pursuant to the provisions of this chapter;

5        ~~((+22+))~~ (24) "Peace officer" means a law enforcement official of  
6        a public agency or governmental unit, and includes persons specifically  
7        given peace officer powers by any state law, local ordinance, or  
8        judicial order of appointment;

9        ~~((+23+))~~ (25) "Private agency" means any person, partnership,  
10        corporation, or association that is not a public agency, whether or not  
11        financed in whole or in part by public funds, which constitutes an  
12        evaluation and treatment facility or private institution, hospital, or  
13        sanitarium, which is conducted for, or includes a department or ward  
14        conducted for, the care and treatment of persons who are mentally ill;

15        ~~((+24+))~~ (26) "Professional person" means a mental health  
16        professional and shall also mean a physician, registered nurse, and  
17        such others as may be defined by rules adopted by the secretary  
18        pursuant to the provisions of this chapter;

19        ~~((+25+))~~ (27) "Psychiatrist" means a person having a license as a  
20        physician and surgeon in this state who has in addition completed three  
21        years of graduate training in psychiatry in a program approved by the  
22        American medical association or the American osteopathic association  
23        and is certified or eligible to be certified by the American board of  
24        psychiatry and neurology;

25        ~~((+26+))~~ (28) "Psychologist" means a person who has been licensed  
26        as a psychologist pursuant to chapter 18.83 RCW;

27        ~~((+27+))~~ (29) "Public agency" means any evaluation and treatment  
28        facility or institution, hospital, or sanitarium which is conducted  
29        for, or includes a department or ward conducted for, the care and  
30        treatment of persons who are mentally ill~~((+27+))~~, if the agency is  
31        operated directly by, federal, state, county, or municipal government,  
32        or a combination of such governments;

33        ~~((+28+))~~ (30) "Registration records" include all the records of the  
34        department, regional support networks, treatment facilities, and other  
35        persons providing services to the department, county departments, or  
36        facilities which identify persons who are receiving or who at any time  
37        have received services for mental illness.



1        (31) "Release" means legal termination of the commitment under the  
2 provisions of this chapter;

3        ~~((29))~~ (32) "Resource management services" has the meaning given  
4 in chapter 71.24 RCW;

5        ~~((30))~~ (33) "Secretary" means the secretary of the department of  
6 social and health services, or his or her designee;

7        ~~((31))~~ (34) "Social worker" means a person with a master's or  
8 further advanced degree from an accredited school of social work or a  
9 degree deemed equivalent under rules adopted by the secretary;

10        ~~((32))~~ (35) "Treatment records" include registration and all  
11 other records concerning persons who are receiving or who at any time  
12 have received services for mental illness, which are maintained by the  
13 department, by regional support networks and their staffs, and by  
14 treatment facilities. Treatment records do not include notes or  
15 records maintained for personal use by a person providing treatment  
16 services for the department, regional support networks, or a treatment  
17 facility if the notes or records are not available to others.

18        (36) "Violent act" means behavior that resulted in homicide,  
19 attempted suicide, nonfatal injuries, or substantial damage to  
20 property.

21        **Sec. 105.** RCW 71.24.025 and 2001 c 323 s 8 are each amended to  
22 read as follows:

23        Unless the context clearly requires otherwise, the definitions in  
24 this section apply throughout this chapter.

25        (1) "Acutely mentally ill" means a condition which is limited to a  
26 short-term severe crisis episode of:

27        (a) A mental disorder as defined in RCW 71.05.020 or, in the case  
28 of a child, as defined in RCW 71.34.020;

29        (b) Being gravely disabled as defined in RCW 71.05.020 or, in the  
30 case of a child, a gravely disabled minor as defined in RCW 71.34.020;  
31 or

32        (c) Presenting a likelihood of serious harm as defined in RCW  
33 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

34        (2) "Available resources" means funds appropriated for the purpose  
35 of providing community mental health programs under RCW 71.24.045,  
36 federal funds, except those provided according to Title XIX of the  
37 Social Security Act, and state funds appropriated under this chapter or

1 chapter 71.05 RCW by the legislature during any biennium for the  
2 purpose of providing residential services, resource management  
3 services, community support services, and other mental health services.  
4 This does not include funds appropriated for the purpose of operating  
5 and administering the state psychiatric hospitals, except as negotiated  
6 according to RCW 71.24.300(1)(e).

7 (3) "Child" means a person under the age of eighteen years.

8 (4) "Chronically mentally ill adult" means an adult who has a  
9 mental disorder and meets at least one of the following criteria:

10 (a) Has undergone two or more episodes of hospital care for a  
11 mental disorder within the preceding two years; or

12 (b) Has experienced a continuous psychiatric hospitalization or  
13 residential treatment exceeding six months' duration within the  
14 preceding year; or

15 (c) Has been unable to engage in any substantial gainful activity  
16 by reason of any mental disorder which has lasted for a continuous  
17 period of not less than twelve months. "Substantial gainful activity"  
18 shall be defined by the department by rule consistent with Public Law  
19 92-603, as amended.

20 (5) "Community mental health program" means all mental health  
21 services, activities, or programs using available resources.

22 (6) "Community mental health service delivery system" means public  
23 or private agencies that provide services specifically to persons with  
24 mental disorders as defined under RCW 71.05.020 and receive funding  
25 from public sources.

26 (7) "Community support services" means services authorized,  
27 planned, and coordinated through resource management services  
28 including, at a minimum, assessment, diagnosis, emergency crisis  
29 intervention available twenty-four hours, seven days a week,  
30 prescreening determinations for mentally ill persons being considered  
31 for placement in nursing homes as required by federal law, screening  
32 for patients being considered for admission to residential services,  
33 diagnosis and treatment for acutely mentally ill and severely  
34 emotionally disturbed children discovered under screening through the  
35 federal Title XIX early and periodic screening, diagnosis, and  
36 treatment program, investigation, legal, and other nonresidential  
37 services under chapter 71.05 RCW, case management services, psychiatric

1 treatment including medication supervision, counseling, psychotherapy,  
2 assuring transfer of relevant patient information between service  
3 providers, and other services determined by regional support networks.

4 (8) "County authority" means the board of county commissioners,  
5 county council, or county executive having authority to establish a  
6 community mental health program, or two or more of the county  
7 authorities specified in this subsection which have entered into an  
8 agreement to provide a community mental health program.

9 (9) "Department" means the department of social and health  
10 services.

11 (10) "Licensed service provider" means an entity licensed according  
12 to this chapter or chapter 71.05 RCW or an entity deemed to meet state  
13 minimum standards as a result of accreditation by a recognized  
14 behavioral health accrediting body recognized and having a current  
15 agreement with the department, that meets state minimum standards or  
16 (~~individuals~~) persons licensed under chapter 18.57, 18.71, 18.83, or  
17 18.79 RCW, as it applies to registered nurses and advanced registered  
18 nurse practitioners.

19 (11) "Mental health services" means all services provided by  
20 regional support networks and other services provided by the state for  
21 the mentally ill.

22 (12) "Mentally ill persons" and "the mentally ill" mean persons and  
23 conditions defined in subsections (1), (4), (~~(17), and~~) (18), and  
24 (19) of this section.

25 (13) "Regional support network" means a county authority or group  
26 of county authorities recognized by the secretary that enter into joint  
27 operating agreements to contract with the secretary pursuant to this  
28 chapter.

29 (14) "Registration records" include all the records of the  
30 department, regional support networks, treatment facilities, and other  
31 persons providing services to the department, county departments, or  
32 facilities which identify persons who are receiving or who at any time  
33 have received services for mental illness.

34 (15) "Residential services" means a complete range of residences  
35 and supports authorized by resource management services and which may  
36 involve a facility, a distinct part thereof, or services which support  
37 community living, for acutely mentally ill persons, chronically  
38 mentally ill adults, severely emotionally disturbed children, or

1 seriously disturbed adults determined by the regional support network  
2 to be at risk of becoming acutely or chronically mentally ill. The  
3 services shall include at least evaluation and treatment services as  
4 defined in chapter 71.05 RCW, acute crisis respite care, long-term  
5 adaptive and rehabilitative care, and supervised and supported living  
6 services, and shall also include any residential services developed to  
7 service mentally ill persons in nursing homes. Residential services  
8 for children in out-of-home placements related to their mental disorder  
9 shall not include the costs of food and shelter, except for children's  
10 long-term residential facilities existing prior to January 1, 1991.

11 ~~((+15+))~~ (16) "Resource management services" mean the planning,  
12 coordination, and authorization of residential services and community  
13 support services administered pursuant to an individual service plan  
14 for: (a) Acutely mentally ill adults and children; (b) chronically  
15 mentally ill adults; (c) severely emotionally disturbed children; or  
16 (d) seriously disturbed adults determined solely by a regional support  
17 network to be at risk of becoming acutely or chronically mentally ill.  
18 Such planning, coordination, and authorization shall include mental  
19 health screening for children eligible under the federal Title XIX  
20 early and periodic screening, diagnosis, and treatment program.  
21 Resource management services include seven day a week, twenty-four hour  
22 a day availability of information regarding mentally ill adults' and  
23 children's enrollment in services and their individual service plan to  
24 county-designated mental health professionals, evaluation and treatment  
25 facilities, and others as determined by the regional support network.

26 ~~((+16+))~~ (17) "Secretary" means the secretary of social and health  
27 services.

28 ~~((+17+))~~ (18) "Seriously disturbed person" means a person who:

29 (a) Is gravely disabled or presents a likelihood of serious harm to  
30 himself or herself or others, or to the property of others, as a result  
31 of a mental disorder as defined in chapter 71.05 RCW;

32 (b) Has been on conditional release status, or under a less  
33 restrictive alternative order, at some time during the preceding two  
34 years from an evaluation and treatment facility or a state mental  
35 health hospital;

36 (c) Has a mental disorder which causes major impairment in several  
37 areas of daily living;

38 (d) Exhibits suicidal preoccupation or attempts; or

1 (e) Is a child diagnosed by a mental health professional, as  
2 defined in chapter 71.34 RCW, as experiencing a mental disorder which  
3 is clearly interfering with the child's functioning in family or school  
4 or with peers or is clearly interfering with the child's personality  
5 development and learning.

6 (~~(18)~~) (19) "Severely emotionally disturbed child" means a child  
7 who has been determined by the regional support network to be  
8 experiencing a mental disorder as defined in chapter 71.34 RCW,  
9 including those mental disorders that result in a behavioral or conduct  
10 disorder, that is clearly interfering with the child's functioning in  
11 family or school or with peers and who meets at least one of the  
12 following criteria:

13 (a) Has undergone inpatient treatment or placement outside of the  
14 home related to a mental disorder within the last two years;

15 (b) Has undergone involuntary treatment under chapter 71.34 RCW  
16 within the last two years;

17 (c) Is currently served by at least one of the following child-  
18 serving systems: Juvenile justice, child-protection/welfare, special  
19 education, or developmental disabilities;

20 (d) Is at risk of escalating maladjustment due to:

21 (i) Chronic family dysfunction involving a mentally ill or  
22 inadequate caretaker;

23 (ii) Changes in custodial adult;

24 (iii) Going to, residing in, or returning from any placement  
25 outside of the home, for example, psychiatric hospital, short-term  
26 inpatient, residential treatment, group or foster home, or a  
27 correctional facility;

28 (iv) Subject to repeated physical abuse or neglect;

29 (v) Drug or alcohol abuse; or

30 (vi) Homelessness.

31 (~~(19)~~) (20) "State minimum standards" means minimum requirements  
32 established by rules adopted by the secretary and necessary to  
33 implement this chapter for: (a) Delivery of mental health services;  
34 (b) licensed service providers for the provision of mental health  
35 services; (c) residential services; and (d) community support services  
36 and resource management services.

37 (~~(20)~~) (21) "Treatment records" include registration and all  
38 other records concerning persons who are receiving or who at any time

1 have received services for mental illness, which are maintained by the  
2 department, by regional support networks and their staffs, and by  
3 treatment facilities. Treatment records do not include notes or  
4 records maintained for personal use by a person providing treatment  
5 services for the department, regional support networks, or a treatment  
6 facility if the notes or records are not available to others.

7 (22) "Tribal authority," for the purposes of this section and RCW  
8 71.24.300 only, means: The federally recognized Indian tribes and the  
9 major Indian organizations recognized by the secretary insofar as these  
10 organizations do not have a financial relationship with any regional  
11 support network that would present a conflict of interest.

12 **Sec. 106.** RCW 10.77.010 and 2004 c 157 s 2 are each amended to  
13 read as follows:

14 As used in this chapter:

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

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

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

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

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

30 (6) "Department" means the state department of social and health  
31 services.

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

34 (8) "Developmental disabilities professional" means a person who  
35 has specialized training and three years of experience in directly  
36 treating or working with persons with developmental disabilities and is

1 a psychiatrist or psychologist, or a social worker, and such other  
2 developmental disabilities professionals as may be defined by rules  
3 adopted by the secretary.

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

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

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

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

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

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

32 (15) "Indigent" means any person who is financially unable to  
33 obtain counsel or other necessary expert or professional services  
34 without causing substantial hardship to the person or his or her  
35 family.

36 (16) "Individualized service plan" means a plan prepared by a  
37 developmental disabilities professional with other professionals as a

1 team, for an individual with developmental disabilities, which shall  
2 state:

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

5 (b) The conditions and strategies necessary to achieve the purposes  
6 of habilitation;

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

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

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

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

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

18 (17) "Professional person" means:

19 (a) A psychiatrist licensed as a physician and surgeon in this  
20 state who has, in addition, completed three years of graduate training  
21 in psychiatry in a program approved by the American medical association  
22 or the American osteopathic association and is certified or eligible to  
23 be certified by the American board of psychiatry and neurology or the  
24 American osteopathic board of neurology and psychiatry;

25 (b) A psychologist licensed as a psychologist pursuant to chapter  
26 18.83 RCW; or

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

30 (18) "Registration records" include all the records of the  
31 department, regional support networks, treatment facilities, and other  
32 persons providing services to the department, county departments, or  
33 facilities which identify persons who are receiving or who at any time  
34 have received services for mental illness.

35 (19) "Release" means legal termination of the court-ordered  
36 commitment under the provisions of this chapter.

37 ((+19)) (20) "Secretary" means the secretary of the department of  
38 social and health services or his or her designee.



1           (~~(20)~~) (21) "Treatment" means any currently standardized medical  
2 or mental health procedure including medication.

3           (~~(21)~~) (22) "Treatment records" include registration and all  
4 other records concerning persons who are receiving or who at any time  
5 have received services for mental illness, which are maintained by the  
6 department, by regional support networks and their staffs, and by  
7 treatment facilities. Treatment records do not include notes or  
8 records maintained for personal use by a person providing treatment  
9 services for the department, regional support networks, or a treatment  
10 facility if the notes or records are not available to others.

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

21           **Sec. 107.** RCW 71.05.360 and 1997 c 112 s 30 are each amended to  
22 read as follows:

23           (1)(a) Every person involuntarily detained or committed under the  
24 provisions of this chapter shall be entitled to all the rights set  
25 forth in this chapter, which shall be prominently posted in the  
26 facility, and shall retain all rights not denied him or her under this  
27 chapter except as chapter 9.41 RCW may limit the right of a person to  
28 purchase or possess a firearm or to qualify for a concealed pistol  
29 license.

30           (b) No person shall be presumed incompetent as a consequence of  
31 receiving an evaluation or voluntary or involuntary treatment for a  
32 mental disorder, under this chapter or any prior laws of this state  
33 dealing with mental illness. Competency shall not be determined or  
34 withdrawn except under the provisions of chapter 10.97 or 11.88 RCW.

35           (c) Any person who leaves a public or private agency following  
36 evaluation or treatment for mental disorder shall be given a written  
37 statement setting forth the substance of this section.

1           (2) Each person involuntarily detained or committed pursuant to  
2 this chapter shall have the right to adequate care and individualized  
3 treatment.

4           (3) The provisions of this chapter shall not be construed to deny  
5 to any person treatment by spiritual means through prayer in accordance  
6 with the tenets and practices of a church or religious denomination.

7           (4) Persons receiving evaluation or treatment under this chapter  
8 shall be given a reasonable choice of an available physician or other  
9 professional person qualified to provide such services.

10          (5) Whenever any person is detained for evaluation and treatment  
11 pursuant to this chapter, both the person and, if possible, a  
12 responsible member of his or her immediate family, personal  
13 representative, guardian, or conservator, if any, shall be advised as  
14 soon as possible in writing or orally, by the officer or person taking  
15 him or her into custody or by personnel of the evaluation and treatment  
16 facility where the person is detained that unless the person is  
17 released or voluntarily admits himself or herself for treatment within  
18 seventy-two hours of the initial detention:

19          (a) A judicial hearing in a superior court, either by a judge or  
20 court commissioner thereof, shall be held not more than seventy-two  
21 hours after the initial detention to determine whether there is  
22 probable cause to detain the person after the seventy-two hours have  
23 expired for up to an additional fourteen days without further automatic  
24 hearing for the reason that the person is a person whose mental  
25 disorder presents a likelihood of serious harm or that the person is  
26 gravely disabled;

27          (b) The person has a right to communicate immediately with an  
28 attorney; has a right to have an attorney appointed to represent him or  
29 her before and at the probable cause hearing if he or she is indigent;  
30 and has the right to be told the name and address of the attorney that  
31 the mental health professional has designated pursuant to this chapter;

32          (c) The person has the right to remain silent and that any  
33 statement he or she makes may be used against him or her;

34          (d) The person has the right to present evidence and to cross-  
35 examine witnesses who testify against him or her at the probable cause  
36 hearing; and

37          (e) The person has the right to refuse psychiatric medications,

1 including antipsychotic medication beginning twenty-four hours prior to  
2 the probable cause hearing.

3 (6) When proceedings are initiated under RCW 71.05.150 (2), (3), or  
4 (4)(b), no later than twelve hours after such person is admitted to the  
5 evaluation and treatment facility the personnel of the evaluation and  
6 treatment facility or the county designated mental health professional  
7 shall serve on such person a copy of the petition for initial detention  
8 and the name, business address, and phone number of the designated  
9 attorney and shall forthwith commence service of a copy of the petition  
10 for initial detention on the designated attorney.

11 (7) The judicial hearing described in subsection (5) of this  
12 section is hereby authorized, and shall be held according to the  
13 provisions of subsection (5) of this section and rules promulgated by  
14 the supreme court.

15 (8) At the probable cause hearing the detained person shall have  
16 the following rights in addition to the rights previously specified:

17 (a) To present evidence on his or her behalf;

18 (b) To cross-examine witnesses who testify against him or her;

19 (c) To be proceeded against by the rules of evidence;

20 (d) To remain silent;

21 (e) To view and copy all petitions and reports in the court file.

22 (9) The physician-patient privilege or the psychologist-client  
23 privilege shall be deemed waived in proceedings under this chapter  
24 relating to the administration of antipsychotic medications. As to  
25 other proceedings under this chapter, the privileges shall be waived  
26 when a court of competent jurisdiction in its discretion determines  
27 that such waiver is necessary to protect either the detained person or  
28 the public.

29 The waiver of a privilege under this section is limited to records  
30 or testimony relevant to evaluation of the detained person for purposes  
31 of a proceeding under this chapter. Upon motion by the detained person  
32 or on its own motion, the court shall examine a record or testimony  
33 sought by a petitioner to determine whether it is within the scope of  
34 the waiver.

35 The record maker shall not be required to testify in order to  
36 introduce medical or psychological records of the detained person so  
37 long as the requirements of RCW 5.45.020 are met except that portions

1 of the record which contain opinions as to the detained person's mental  
2 state must be deleted from such records unless the person making such  
3 conclusions is available for cross-examination.

4 (10) Insofar as danger to the person or others is not created, each  
5 person involuntarily detained, treated in a less restrictive  
6 alternative course of treatment, or committed for treatment and  
7 evaluation pursuant to this chapter shall have, in addition to other  
8 rights not specifically withheld by law, the following rights:

9 (a) To wear his or her own clothes and to keep and use his or her  
10 own personal possessions, except when deprivation of same is essential  
11 to protect the safety of the resident or other persons;

12 (b) To keep and be allowed to spend a reasonable sum of his or her  
13 own money for canteen expenses and small purchases;

14 (c) To have access to individual storage space for his or her  
15 private use;

16 (d) To have visitors at reasonable times;

17 (e) To have reasonable access to a telephone, both to make and  
18 receive confidential calls, consistent with an effective treatment  
19 program;

20 (f) To have ready access to letter writing materials, including  
21 stamps, and to send and receive uncensored correspondence through the  
22 mails;

23 (g) To discuss treatment plans and decisions with professional  
24 persons;

25 (h) Not to consent to the administration of antipsychotic  
26 medications and not to thereafter be administered antipsychotic  
27 medications unless ordered by a court under RCW 71.05.370 (as  
28 recodified by this act) or pursuant to an administrative hearing under  
29 RCW 71.05.215;

30 (i) Not to consent to the performance of electroconvulsant therapy  
31 or surgery, except emergency life-saving surgery, unless ordered by a  
32 court under RCW 71.05.370 (as recodified by this act);

33 (j) Not to have psychosurgery performed on him or her under any  
34 circumstances;

35 (k) To dispose of property and sign contracts unless such person  
36 has been adjudicated an incompetent in a court proceeding directed to  
37 that particular issue.

1       (11) Every person involuntarily detained shall immediately be  
2 informed of his or her right to a hearing to review the legality of his  
3 or her detention and of his or her right to counsel, by the  
4 professional person in charge of the facility providing evaluation and  
5 treatment, or his or her designee, and, when appropriate, by the court.  
6 If the person so elects, the court shall immediately appoint an  
7 attorney to assist him or her.

8       (12) A person challenging his or her detention or his or her  
9 attorney, shall have the right to designate and have the court appoint  
10 a reasonably available independent physician or licensed mental health  
11 professional to examine the person detained, the results of which  
12 examination may be used in the proceeding. The person shall, if he or  
13 she is financially able, bear the cost of such expert information,  
14 otherwise such expert examination shall be at public expense.

15       (13) Nothing contained in this chapter shall prohibit the patient  
16 from petitioning by writ of habeas corpus for release.

17       (14) Nothing in this chapter shall prohibit a person committed on  
18 or prior to January 1, 1974, from exercising a right available to him  
19 or her at or prior to January 1, 1974, for obtaining release from  
20 confinement.

21       (15) Nothing in this section permits any person to knowingly  
22 violate a no-contact order or a condition of an active judgment and  
23 sentence or an active condition of supervision by the department of  
24 corrections.

25       **Sec. 108.** RCW 71.05.215 and 1997 c 112 s 16 are each amended to  
26 read as follows:

27       (1) A person (~~found to be~~) who is gravely disabled or presents a  
28 likelihood of serious harm as a result of a mental or chemical  
29 dependency disorder or co-occurring mental and chemical dependency  
30 disorders has a right to refuse antipsychotic medication unless it is  
31 determined that the failure to medicate may result in a likelihood of  
32 serious harm or substantial deterioration or substantially prolong the  
33 length of involuntary commitment and there is no less intrusive course  
34 of treatment than medication in the best interest of that person.

35       (2) (~~The department shall adopt rules to carry out the purposes of~~  
36 ~~this chapter. These rules shall include:~~

1       ~~(a) An attempt to obtain the informed consent of the person prior~~  
2 ~~to administration of antipsychotic medication.~~

3       ~~(b) For short term treatment up to thirty days, the right to refuse~~  
4 ~~antipsychotic medications unless there is an additional concurring~~  
5 ~~medical opinion approving medication.~~

6       ~~(c) For continued treatment beyond thirty days through the hearing~~  
7 ~~on any petition filed under RCW 71.05.370(7), the right to periodic~~  
8 ~~review of the decision to medicate by the medical director or designee.~~

9       ~~(d) Administration of antipsychotic medication in an emergency and~~  
10 ~~review of this decision within twenty four hours. An emergency exists~~  
11 ~~if the person presents an imminent likelihood of serious harm, and~~  
12 ~~medically acceptable alternatives to administration of antipsychotic~~  
13 ~~medications are not available or are unlikely to be successful; and in~~  
14 ~~the opinion of the physician, the person's condition constitutes an~~  
15 ~~emergency requiring the treatment be instituted prior to obtaining a~~  
16 ~~second medical opinion.~~

17       ~~(e) Documentation in the medical record of the physician's attempt~~  
18 ~~to obtain informed consent and the reasons why antipsychotic medication~~  
19 ~~is being administered over the person's objection or lack of consent.)~~  
20 The physician must attempt to obtain the informed consent of an  
21 involuntary committed person prior to administration of antipsychotic  
22 medication and document the attempt to obtain consent in the person's  
23 medical record with the reasons that antipsychotic medication is  
24 necessary.

25       (3) When a person is detained pursuant to RCW 71.05.150 (1)(d),  
26 (2), or (4), the person may refuse antipsychotic medications unless  
27 there is an additional concurring medical opinion that the medications  
28 are necessary for the imminent prevention of harm to the detained  
29 person or another person. Medications administered under this  
30 subsection may not continue beyond the probable cause hearing held  
31 pursuant to RCW 71.05.240 and the petitioner shall notify the court of  
32 administration of involuntary medications under this subsection and  
33 provide the court with an opinion regarding whether continued  
34 involuntary administration of antipsychotic medication is medically  
35 necessary.

36       (4) Except as provided in subsection (3) of this section or in RCW  
37 71.05.370 (as recodified by this act), if an involuntary committed  
38 person refuses antipsychotic medications, the medications may not be

1 administered unless the person has first had a hearing by a panel  
2 composed of a physician and two other persons. The two persons shall  
3 be selected from among the following: A physician, advanced registered  
4 nurse practitioner, psychologist, psychiatric nurse, physician's  
5 assistant, and the medical director of the facility. Recognizing that  
6 some facilities will not have three staff members of the required  
7 expertise who are not directly involved in the person's treatment, the  
8 panel shall be composed to the greatest extent possible of treatment  
9 providers who are not directly involved in the person's treatment at  
10 the time of the hearing.

11 (5) If a majority of the panel, including a psychiatrist if one is  
12 on the panel or another physician in the absence of a psychiatrist,  
13 determines that there is clear, cogent, and convincing evidence  
14 demonstrating that treatment with antipsychotic medications is  
15 medically appropriate, that failure to medicate may result in a  
16 likelihood of serious harm or substantial deterioration or  
17 substantially prolong the length of involuntary commitment, and that  
18 there is no less intrusive course of treatment than medication in the  
19 best interest of that person, the person may be medicated, subject to  
20 the provisions of subsections (6) through (8) of this section.

21 (6) Medication ordered pursuant to a decision of the panel may only  
22 be continued beyond seven days on an involuntary basis if the panel  
23 conducts a second hearing on the written record and a majority of the  
24 panel determines that there continues to be clear, cogent, and  
25 convincing evidence demonstrating that treatment with antipsychotic  
26 medications continues to be medically appropriate, that failure to  
27 medicate may result in a likelihood of serious harm or substantial  
28 deterioration or substantially prolong the length of involuntary  
29 commitment, and that there is no less intrusive course of treatment  
30 than medication in the best interest of that person.

31 (a) Following the second hearing, involuntary medication with  
32 antipsychotic medication may be continued if the treating psychiatrist  
33 certifies, not less than every fourteen days, that the medication  
34 continues to be medically appropriate and failure to medicate may  
35 result in a likelihood of serious harm or substantial deterioration or  
36 substantially prolong the length of involuntary commitment, and that  
37 there is no less intrusive course of treatment than medication in the  
38 best interest of that person.

1 (b) No administrative order for involuntary medication may be  
2 continued beyond one hundred eighty days, or the next commitment  
3 proceeding in the superior court, whichever comes first.

4 (7) The committed person may appeal the panel's decision to the  
5 medical director within twenty-four hours and the medical director must  
6 decide the appeal within twenty-four hours of receipt.

7 (8) The committed person may seek judicial review of the medical  
8 director's decision at the next commitment proceeding or by means of an  
9 extraordinary writ.

10 (9) Minutes of the hearing shall be kept and a copy shall be  
11 provided to the committed person.

12 (10) With regard to the involuntary medication hearing, the  
13 committed person has the right:

14 (a) To notice at least twenty-four hours in advance of the hearing  
15 that includes the intent to convene the hearing, the tentative  
16 diagnosis and the factual basis for the diagnosis, and why the staff  
17 believes that medication is necessary;

18 (b) Not to be medicated between the delivery of the notice and the  
19 hearing;

20 (c) To attend the hearing;

21 (d) To present evidence, including witnesses, and to cross-examine  
22 witnesses, including staff;

23 (e) To the assistance of a lay assistant, who is not involved in  
24 the case and who understands psychiatric issues;

25 (f) To receive a copy of the minutes of the hearing; and

26 (g) To appeal the panel's decision to the medical director.

27 (11) Antipsychotic medications may be administered in an emergency  
28 without the consent of the person pursuant to the provisions of RCW  
29 71.05.370(3)(b) (as recodified by this act).

30 **Sec. 109.** RCW 71.05.370 and 1997 c 112 s 31 are each amended to  
31 read as follows:

32 ~~((Insofar as danger to the individual or others is not created,~~  
33 ~~each person involuntarily detained, treated in a less restrictive~~  
34 ~~alternative course of treatment, or committed for treatment and~~  
35 ~~evaluation pursuant to this chapter shall have, in addition to other~~  
36 ~~rights not specifically withheld by law, the following rights, a list~~



1 of which shall be prominently posted in all facilities, institutions,  
2 and hospitals providing such services:

3 (1) To wear his or her own clothes and to keep and use his or her  
4 own personal possessions, except when deprivation of same is essential  
5 to protect the safety of the resident or other persons;

6 (2) To keep and be allowed to spend a reasonable sum of his or her  
7 own money for canteen expenses and small purchases;

8 (3) To have access to individual storage space for his or her  
9 private use;

10 (4) To have visitors at reasonable times;

11 (5) To have reasonable access to a telephone, both to make and  
12 receive confidential calls;

13 (6) To have ready access to letter writing materials, including  
14 stamps, and to send and receive uncensored correspondence through the  
15 mails;

16 (7) Not to consent to the administration of antipsychotic  
17 medications beyond the hearing conducted pursuant to RCW 71.05.320(2)  
18 or the performance of electroconvulsant therapy or surgery, except  
19 emergency life saving surgery, unless ordered by a court of competent

20 jurisdiction)) (1) A court of competent jurisdiction may order that a  
21 person involuntarily detained, or committed for inpatient treatment and  
22 evaluation or to treatment in a less restrictive alternative pursuant  
23 to this chapter be administered antipsychotic medications or the  
24 performance of electroconvulsant therapy or surgery pursuant to the  
25 following standards and procedures:

26 (a) The administration of antipsychotic medication or  
27 electroconvulsant therapy shall not be ordered by the court unless the  
28 petitioning party proves by clear, cogent, and convincing evidence that  
29 ((there exists a compelling state interest that justifies overriding  
30 the patient's lack of consent to the administration of antipsychotic  
31 medications or electroconvulsant therapy, that the proposed treatment  
32 is necessary and effective, and that medically acceptable alternative  
33 forms of treatment are not available, have not been successful, or are  
34 not likely to be effective)) treatment with antipsychotic medications  
35 is medically appropriate, that failure to medicate may result in a  
36 likelihood of serious harm or substantial deterioration or  
37 substantially prolong the length of involuntary commitment, and that

1 there is no less intrusive course of treatment than medication or  
2 electroconvulsive therapy in the best interest of the person.

3 (b) The court shall make specific findings of fact concerning: (i)  
4 The existence of ~~((one or more compelling state interests))~~ the  
5 likelihood of serious harm or substantial deterioration or  
6 substantially prolonging the length of involuntary commitment; (ii) the  
7 necessity and effectiveness of the treatment; ~~((and))~~ (iii) the  
8 person's desires regarding the proposed treatment; and (iv) the best  
9 interests of the person.

10 (c) If the ~~((patient))~~ person is unable to make a rational and  
11 informed decision about consenting to or refusing the proposed  
12 ~~((treatment))~~ electroconvulsive therapy, the court shall make a  
13 substituted judgment for the patient as if he or she were competent to  
14 make such a determination.

15 ~~((e))~~ (d) The person shall be present at any hearing on a request  
16 to administer antipsychotic medication or electroconvulsant therapy  
17 filed pursuant to this ~~((subsection))~~ section. The person has the  
18 right:

- 19 (i) To be represented by an attorney;
- 20 (ii) To present evidence;
- 21 (iii) To cross-examine witnesses;
- 22 (iv) To have the rules of evidence enforced;
- 23 (v) To remain silent;
- 24 (vi) To view and copy all petitions and reports in the court file;

25 and

26 (vii) To be given reasonable notice and an opportunity to prepare  
27 for the hearing.

28 (e) The court may appoint a psychiatrist, psychologist within their  
29 scope of practice, or physician to examine and testify on behalf of  
30 such person. The court shall appoint a psychiatrist, psychologist  
31 within their scope of practice, or physician designated by such person  
32 or the person's counsel to testify on behalf of the person in cases  
33 where an order for electroconvulsant therapy is sought.

34 ~~((d))~~ (f) An order for the administration of antipsychotic  
35 medications entered following a hearing conducted pursuant to this  
36 section shall be effective for the period of the current involuntary  
37 treatment order, and any interim period during which the person is

1 awaiting trial or hearing on a new petition for involuntary treatment  
2 or involuntary medication.

3 ~~((+e))~~ (2) Any person detained pursuant to RCW 71.05.320(2), who  
4 subsequently refuses antipsychotic medication, shall be entitled to the  
5 procedures set forth in ~~((RCW 71.05.370(7)))~~ subsection (1) of this  
6 section.

7 ~~((+f))~~ (3) Antipsychotic medication may be administered to a  
8 nonconsenting person detained or committed pursuant to this chapter  
9 without a court order:

10 (a) Pursuant to RCW 71.05.215~~((+2))~~; or

11 (b) Under the following circumstances:

12 (i) A person presents an imminent likelihood of serious harm;

13 (ii) Medically acceptable alternatives to administration of  
14 antipsychotic medications are not available, have not been successful,  
15 or are not likely to be effective; and

16 (iii) In the opinion of the physician with responsibility for  
17 treatment of the person, or his or her designee, the person's condition  
18 constitutes an emergency requiring the treatment be instituted before  
19 a judicial hearing as authorized pursuant to this section can be held.

20 If antipsychotic medications are administered over a person's lack  
21 of consent pursuant to (b) of this subsection, a petition for an order  
22 authorizing the administration of antipsychotic medications shall be  
23 filed on the next judicial day. The hearing shall be held within two  
24 judicial days. If deemed necessary by the physician with  
25 responsibility for the treatment of the person, administration of  
26 antipsychotic medications may continue until the hearing is held;

27 ~~((+8) To dispose of property and sign contracts unless such person  
28 has been adjudicated an incompetent in a court proceeding directed to  
29 that particular issue;~~

30 ~~(9) Not to have)~~ (4) No court has the authority to order  
31 psychosurgery performed on ~~((him or her))~~ any person involuntarily  
32 detained, treated in a less restrictive alternative course of  
33 treatment, or committed for treatment and evaluation pursuant to this  
34 chapter under any circumstances.

35 NEW SECTION. Sec. 110. RCW 71.05.370 is recodified as a new  
36 section in chapter 71.05 RCW to be codified in proximity to RCW  
37 71.05.215.

1       **Sec. 111.** RCW 71.05.390 and 2004 c 166 s 6, 2004 c 157 s 5, and  
2 2004 c 33 s 2 are each reenacted and amended to read as follows:

3       Except as provided in this section, RCW 71.05.445, 71.05.630,  
4 70.96A.150, or pursuant to a valid release under RCW 70.02.030, the  
5 fact of admission and all information and records compiled, obtained,  
6 or maintained in the course of providing services to either voluntary  
7 or involuntary recipients of services at public or private agencies  
8 shall be confidential.

9       Information and records may be disclosed only:

10       (1) In communications between qualified professional persons to  
11 meet the requirements of this chapter, in the provision of services or  
12 appropriate referrals, or in the course of guardianship proceedings.  
13 The consent of the ~~((patient))~~ person, or his or her personal  
14 representative or guardian, shall be obtained before information or  
15 records may be disclosed by a professional person employed by a  
16 facility unless provided to a professional person:

17       (a) Employed by the facility;

18       (b) Who has medical responsibility for the patient's care;

19       (c) Who is a county designated mental health professional;

20       (d) Who is providing services under chapter 71.24 RCW;

21       (e) Who is employed by a state or local correctional facility where  
22 the person is confined or supervised; or

23       (f) Who is providing evaluation, treatment, or follow-up services  
24 under chapter 10.77 RCW.

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

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

34       (b) A public or private agency shall release to a person's next of  
35 kin, attorney, personal representative, guardian, or conservator, if  
36 any:

37       (i) The information that the person is presently a patient in the  
38 facility or that the person is seriously physically ill;

1 (ii) A statement evaluating the mental and physical condition of  
2 the patient, and a statement of the probable duration of the patient's  
3 confinement, if such information is requested by the next of kin,  
4 attorney, personal representative, guardian, or conservator; and

5 (iii) Such other information requested by the next of kin or  
6 attorney as may be necessary to decide whether or not proceedings  
7 should be instituted to appoint a guardian or conservator.

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

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

16 "As a condition of conducting evaluation or research concerning  
17 persons who have received services from (fill in the facility, agency,  
18 or person) I, . . . . ., agree not to divulge, publish, or  
19 otherwise make known to unauthorized persons or the public any  
20 information obtained in the course of such evaluation or research  
21 regarding persons who have received services such that the person who  
22 received such services is identifiable.

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

25 /s/ .....

26 (b) Nothing in this chapter shall be construed to prohibit the  
27 compilation and publication of statistical data for use by government  
28 or researchers under standards, including standards to assure  
29 maintenance of confidentiality, set forth by the secretary.

30 (6)(a) To the courts as necessary to the administration of this  
31 chapter or to a court ordering an evaluation or treatment under chapter  
32 10.77 RCW solely for the purpose of preventing the entry of any  
33 evaluation or treatment order that is inconsistent with any order  
34 entered under this chapter.

1 (b) To a court or its designee in which a motion under chapter  
2 10.77 RCW has been made for involuntary medication of a defendant for  
3 the purpose of competency restoration.

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

6 (7)(a) When a mental health professional is requested by a  
7 representative of a law enforcement or corrections agency, including a  
8 police officer, sheriff, community corrections officer, a municipal  
9 attorney, or prosecuting attorney to undertake an investigation under  
10 RCW 71.05.150, the mental health professional shall, if requested to do  
11 so, advise the representative in writing of the results of the  
12 investigation including a statement of reasons for the decision to  
13 detain or release the person investigated. Such written report shall  
14 be submitted within seventy-two hours of the completion of the  
15 investigation or the request from the law enforcement or corrections  
16 representative, whichever occurs later.

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

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

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

35 ~~((c))~~ (iii) Additional information shall be disclosed only after  
36 giving notice to said person and his or her counsel and upon a showing  
37 of clear, cogent, and convincing evidence that such information is  
38 necessary and that appropriate safeguards for strict confidentiality

1 are and will be maintained. However, in the event the said person has  
2 escaped from custody, said notice prior to disclosure is not necessary  
3 and that the facility from which the person escaped shall include an  
4 evaluation as to whether the person is of danger to persons or property  
5 and has a propensity toward violence;

6 ~~((d))~~ (iv) Information and records shall be disclosed to the  
7 department of corrections pursuant to and in compliance with the  
8 provisions of RCW 71.05.445 for the purposes of completing presentence  
9 investigations or risk assessment reports, supervision of an  
10 incarcerated offender or offender under supervision in the community,  
11 planning for and provision of supervision of an offender, or assessment  
12 of an offender's risk to the community; and

13 ~~((e))~~ (v) Disclosure under this subsection is mandatory for the  
14 purposes of the health insurance portability and accountability act.

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

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

25 (10) To appropriate law enforcement agencies and to a person, when  
26 the identity of the person is known to the public or private agency,  
27 whose health and safety has been threatened, or who is known to have  
28 been repeatedly harassed, by the patient. The person may designate a  
29 representative to receive the disclosure. The disclosure shall be made  
30 by the professional person in charge of the public or private agency or  
31 his or her designee and shall include the dates of commitment,  
32 admission, discharge, or release, authorized or unauthorized absence  
33 from the agency's facility, and only such other information that is  
34 pertinent to the threat or harassment. The decision to disclose or not  
35 shall not result in civil liability for the agency or its employees so  
36 long as the decision was reached in good faith and without gross  
37 negligence.

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

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

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

13 ~~((To a patient's next of kin, guardian, or conservator, if  
14 any, in the event of death, as provided in RCW 71.05.400.))~~ Upon the  
15 death of a person, his or her next of kin, personal representative,  
16 guardian, or conservator, if any, shall be notified.

17 Next of kin who are of legal age and competent shall be notified  
18 under this section in the following order: Spouse, parents, children,  
19 brothers and sisters, and other relatives according to the degree of  
20 relation. Access to all records and information compiled, obtained, or  
21 maintained in the course of providing services to a deceased patient  
22 shall be governed by RCW 70.02.140.

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

28 (16) To mark headstones or otherwise memorialize patients interred  
29 at state hospital cemeteries. The department of social and health  
30 services shall make available the name, date of birth, and date of  
31 death of patients buried in state hospital cemeteries fifty years after  
32 the death of a patient.

33 (17) When a patient would otherwise be subject to the provisions of  
34 RCW 71.05.390 and disclosure is necessary for the protection of the  
35 patient or others due to his or her unauthorized disappearance from the  
36 facility, and his or her whereabouts is unknown, notice of such  
37 disappearance, along with relevant information, may be made to  
38 relatives, the department of corrections when the person is under the



1 supervision of the department, and governmental law enforcement  
2 agencies designated by the physician in charge of the patient or the  
3 professional person in charge of the facility, or his or her  
4 professional designee.

5 Except as otherwise provided in this chapter, the uniform health  
6 care information act, chapter 70.02 RCW, applies to all records and  
7 information compiled, obtained, or maintained in the course of  
8 providing services.

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

26 **Sec. 112.** RCW 71.05.420 and 1990 c 3 s 113 are each amended to  
27 read as follows:

28 Except as provided in RCW 71.05.425, when any disclosure of  
29 information or records is made as authorized by RCW 71.05.390 (~~(through~~  
30 ~~71.05.410)~~), the physician in charge of the patient or the professional  
31 person in charge of the facility shall promptly cause to be entered  
32 into the patient's medical record the date and circumstances under  
33 which said disclosure was made, the names and relationships to the  
34 patient, if any, of the persons or agencies to whom such disclosure was  
35 made, and the information disclosed.

1       **Sec. 113.** RCW 71.05.620 and 1989 c 205 s 12 are each amended to  
2 read as follows:

3       ~~((1) Informed consent for disclosure of information from court or~~  
4 ~~treatment records to an individual, agency, or organization must be in~~  
5 ~~writing and must contain the following information:~~

6       ~~(a) The name of the individual, agency, or organization to which~~  
7 ~~the disclosure is to be made;~~

8       ~~(b) The name of the individual whose treatment record is being~~  
9 ~~disclosed;~~

10       ~~(c) The purpose or need for the disclosure;~~

11       ~~(d) The specific type of information to be disclosed;~~

12       ~~(e) The time period during which the consent is effective;~~

13       ~~(f) The date on which the consent is signed; and~~

14       ~~(g) The signature of the individual or person legally authorized to~~  
15 ~~give consent for the individual.~~

16       ~~(2))~~ The files and records of court proceedings under this chapter  
17 and chapters ((71.05)) 70.96A, 71.34, 70.-- (sections 202 through 216  
18 of this act), and 70.-- (sections 302 through 374 of this act) RCW  
19 shall be closed but shall be accessible to any ~~((individual))~~ person  
20 who is the subject of a petition and to the ~~((individual's))~~ person's  
21 attorney, guardian ad litem, resource management services, or service  
22 providers authorized to receive such information by resource management  
23 services.

24       **Sec. 114.** RCW 71.05.630 and 2000 c 75 s 5 are each amended to read  
25 as follows:

26       (1) Except as otherwise provided by law, all treatment records  
27 shall remain confidential~~((Treatment records))~~ and may be released  
28 only to the persons designated in this section, or to other persons  
29 designated in an informed written consent of the patient.

30       (2) Treatment records of ~~((an individual))~~ a person may be released  
31 without informed written consent in the following circumstances:

32       (a) To ~~((an individual))~~ a person, organization, or agency as  
33 necessary for management or financial audits, or program monitoring and  
34 evaluation. Information obtained under this subsection shall remain  
35 confidential and may not be used in a manner that discloses the name or  
36 other identifying information about the ~~((individual))~~ person whose  
37 records are being released.

1 (b) To the department, the director of regional support networks,  
2 or a qualified staff member designated by the director only when  
3 necessary to be used for billing or collection purposes. The  
4 information shall remain confidential.

5 (c) For purposes of research as permitted in chapter 42.48 RCW.

6 (d) Pursuant to lawful order of a court.

7 (e) To qualified staff members of the department, to the director  
8 of regional support networks, to resource management services  
9 responsible for serving a patient, or to service providers designated  
10 by resource management services as necessary to determine the progress  
11 and adequacy of treatment and to determine whether the person should be  
12 transferred to a less restrictive or more appropriate treatment  
13 modality or facility. The information shall remain confidential.

14 (f) Within the treatment facility where the patient is receiving  
15 treatment, confidential information may be disclosed to (~~((individuals))~~)  
16 persons employed, serving in bona fide training programs, or  
17 participating in supervised volunteer programs, at the facility when it  
18 is necessary to perform their duties.

19 (g) Within the department as necessary to coordinate treatment for  
20 mental illness, developmental disabilities, alcoholism, or drug abuse  
21 of (~~((individuals))~~) persons who are under the supervision of the  
22 department.

23 (h) To a licensed physician who has determined that the life or  
24 health of the (~~((individual))~~) person is in danger and that treatment  
25 without the information contained in the treatment records could be  
26 injurious to the patient's health. Disclosure shall be limited to the  
27 portions of the records necessary to meet the medical emergency.

28 (i) To a facility that is to receive (~~((an individual))~~) a person who  
29 is involuntarily committed under chapter 71.05 RCW, or upon transfer of  
30 the (~~((individual))~~) person from one treatment facility to another. The  
31 release of records under this subsection shall be limited to the  
32 treatment records required by law, a record or summary of all somatic  
33 treatments, and a discharge summary. The discharge summary may include  
34 a statement of the patient's problem, the treatment goals, the type of  
35 treatment which has been provided, and recommendation for future  
36 treatment, but may not include the patient's complete treatment record.

37 (j) Notwithstanding the provisions of RCW 71.05.390(7), to a  
38 correctional facility or a corrections officer who is responsible for

1 the supervision of (~~(an individual)~~) a person who is receiving  
2 inpatient or outpatient evaluation or treatment. Except as provided in  
3 RCW 71.05.445 and 71.34.225, release of records under this section is  
4 limited to:

5 (i) An evaluation report provided pursuant to a written supervision  
6 plan.

7 (ii) The discharge summary, including a record or summary of all  
8 somatic treatments, at the termination of any treatment provided as  
9 part of the supervision plan.

10 (iii) When (~~(an individual)~~) a person is returned from a treatment  
11 facility to a correctional facility, the information provided under  
12 (j)(iv) of this subsection.

13 (iv) Any information necessary to establish or implement changes in  
14 the (~~(individual's)~~) person's treatment plan or the level or kind of  
15 supervision as determined by resource management services. In cases  
16 involving a person transferred back to a correctional facility,  
17 disclosure shall be made to clinical staff only.

18 (k) To the (~~(individual's)~~) person's counsel or guardian ad litem,  
19 without modification, at any time in order to prepare for involuntary  
20 commitment or recommitment proceedings, reexaminations, appeals, or  
21 other actions relating to detention, admission, commitment, or  
22 patient's rights under chapter 71.05 RCW.

23 (l) To staff members of the protection and advocacy agency or to  
24 staff members of a private, nonprofit corporation for the purpose of  
25 protecting and advocating the rights of persons with mental (~~(illness)~~)  
26 disorders or developmental disabilities. Resource management services  
27 may limit the release of information to the name, birthdate, and county  
28 of residence of the patient, information regarding whether the patient  
29 was voluntarily admitted, or involuntarily committed, the date and  
30 place of admission, placement, or commitment, the name and address of  
31 a guardian of the patient, and the date and place of the guardian's  
32 appointment. Any staff member who wishes to obtain additional  
33 information shall notify the patient's resource management services in  
34 writing of the request and of the resource management services' right  
35 to object. The staff member shall send the notice by mail to the  
36 guardian's address. If the guardian does not object in writing within  
37 fifteen days after the notice is mailed, the staff member may obtain

1 the additional information. If the guardian objects in writing within  
2 fifteen days after the notice is mailed, the staff member may not  
3 obtain the additional information.

4 (3) Whenever federal law or federal regulations restrict the  
5 release of information contained in the treatment records of any  
6 patient who receives treatment for (~~alcoholism or drug~~) chemical  
7 dependency, the department may restrict the release of the information  
8 as necessary to comply with federal law and regulations.

9 **Sec. 115.** RCW 71.05.640 and 2000 c 94 s 11 are each amended to  
10 read as follows:

11 (1) Procedures shall be established by resource management services  
12 to provide reasonable and timely access to individual treatment  
13 records. However, access may not be denied at any time to records of  
14 all medications and somatic treatments received by the (~~individual~~)  
15 person.

16 (2) Following discharge, the (~~individual~~) person shall have a  
17 right to a complete record of all medications and somatic treatments  
18 prescribed during evaluation, admission, or commitment and to a copy of  
19 the discharge summary prepared at the time of his or her discharge. A  
20 reasonable and uniform charge for reproduction may be assessed.

21 (3) Treatment records may be modified prior to inspection to  
22 protect the confidentiality of other patients or the names of any other  
23 persons referred to in the record who gave information on the condition  
24 that his or her identity remain confidential. Entire documents may not  
25 be withheld to protect such confidentiality.

26 (4) At the time of discharge all (~~individuals~~) persons shall be  
27 informed by resource management services of their rights as provided in  
28 RCW (~~71.05.610~~) 71.05.390 and 71.05.620 through 71.05.690.

29 **Sec. 116.** RCW 71.05.660 and 1989 c 205 s 16 are each amended to  
30 read as follows:

31 Nothing in this chapter (~~205, Laws of 1989~~) or chapter 70.96A,  
32 71.05, 71.34, 70.-- (sections 202 through 216 of this act), or 70.--  
33 (sections 302 through 374 of this act) RCW shall be construed to  
34 interfere with communications between physicians or psychologists and  
35 patients and attorneys and clients.

1           NEW SECTION.   **Sec. 117.**  A new section is added to chapter 71.05  
2 RCW to read as follows:

3           A petition for commitment under this chapter may be joined with a  
4 petition for commitment under chapter 70.96A RCW.

5                                   **PART II**  
6                                   **PILOT PROGRAMS**

7           NEW SECTION.   **Sec. 201.**  Sections 202 through 216 of this act  
8 constitute a new chapter in Title 70 RCW.

9           NEW SECTION.   **Sec. 202.**  The definitions in this section apply  
10 throughout this chapter unless the context clearly requires otherwise.

11           (1) "Admission" or "admit" means a decision by a physician that a  
12 person should be examined or treated as a patient in a hospital, an  
13 evaluation and treatment facility, or other inpatient facility, or a  
14 decision by a professional person in charge or his or her designee that  
15 a person should be detained as a patient for evaluation and treatment  
16 in a secure detoxification facility or other certified chemical  
17 dependency provider.

18           (2) "Antipsychotic medications" means that class of drugs primarily  
19 used to treat serious manifestations of mental illness associated with  
20 thought disorders, which includes but is not limited to atypical  
21 antipsychotic medications.

22           (3) "Approved treatment program" means a discrete program of  
23 chemical dependency treatment provided by a treatment program certified  
24 by the department as meeting standards adopted under chapter 70.96A  
25 RCW.

26           (4) "Attending staff" means any person on the staff of a public or  
27 private agency having responsibility for the care and treatment of a  
28 patient.

29           (5) "Chemical dependency" means:

30           (a) Alcoholism;

31           (b) Drug addiction; or

32           (c) Dependence on alcohol and one or more other psychoactive  
33 chemicals, as the context requires.

34           (6) "Chemical dependency professional" means a person certified as

1 a chemical dependency professional by the department of health under  
2 chapter 18.205 RCW.

3 (7) "Commitment" means the determination by a court that a person  
4 should be detained for a period of either evaluation or treatment, or  
5 both, in an inpatient or a less restrictive setting.

6 (8) "Conditional release" means a revocable modification of a  
7 commitment that may be revoked upon violation of any of its terms.

8 (9) "County-designated crisis responder" means a person designated  
9 by the county or regional support network to perform the duties  
10 specified in this chapter.

11 (10) "County-designated mental health professional" means a mental  
12 health professional appointed by the county or the regional support  
13 network to perform the duties in chapter 71.05 RCW.

14 (11) "Custody" means involuntary detention under either chapter  
15 71.05 or 70.96A RCW or this chapter, uninterrupted by any period of  
16 unconditional release from commitment from a facility providing  
17 involuntary care and treatment.

18 (12) "Department" means the department of social and health  
19 services.

20 (13) "Designated chemical dependency specialist" or "specialist"  
21 means a person designated by the county alcoholism and other drug  
22 addiction program coordinator designated under RCW 70.96A.310 to  
23 perform the commitment duties described in RCW 70.96A.140 and this  
24 chapter, and qualified to do so by meeting standards adopted by the  
25 department.

26 (14) "Detention" or "detain" means the lawful confinement of a  
27 person under this chapter, or chapter 70.96A or 71.05 RCW.

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

34 (16) "Developmental disability" means that condition defined in RCW  
35 71A.10.020.

36 (17) "Discharge" means the termination of facility authority. The  
37 commitment may remain in place, be terminated, or be amended by court  
38 order.

1 (18) "Evaluation and treatment facility" means any facility that  
2 can provide directly, or by direct arrangement with other public or  
3 private agencies, emergency evaluation and treatment, outpatient care,  
4 and timely and appropriate inpatient care to persons suffering from a  
5 mental disorder, and that is certified as such by the department. A  
6 physically separate and separately operated portion of a state hospital  
7 may be designated as an evaluation and treatment facility. A facility  
8 that is part of, or operated by, the department or any federal agency  
9 does not require certification. No correctional institution or  
10 facility, or jail, may be an evaluation and treatment facility within  
11 the meaning of this chapter.

12 (19) "Facility" means either an evaluation and treatment facility  
13 or a secure detoxification facility.

14 (20) "Gravely disabled" means a condition in which a person, as a  
15 result of a mental disorder, or as a result of the use of alcohol or  
16 other psychoactive chemicals:

17 (a) Is in danger of serious physical harm resulting from a failure  
18 to provide for his or her essential human needs of health or safety; or

19 (b) Manifests severe deterioration in routine functioning evidenced  
20 by repeated and escalating loss of cognitive or volitional control over  
21 his or her actions and is not receiving such care as is essential for  
22 his or her health or safety.

23 (21) "History of one or more violent acts" refers to the period of  
24 time ten years before the filing of a petition under this chapter, or  
25 chapter 70.96A or 71.05 RCW, excluding any time spent, but not any  
26 violent acts committed, in a mental health facility or a long-term  
27 alcoholism or drug treatment facility, or in confinement as a result of  
28 a criminal conviction.

29 (22) "Intoxicated person" means a person whose mental or physical  
30 functioning is substantially impaired as a result of the use of alcohol  
31 or other psychoactive chemicals.

32 (23) "Judicial commitment" means a commitment by a court under this  
33 chapter.

34 (24) "Licensed physician" means a person licensed to practice  
35 medicine or osteopathic medicine and surgery in the state of  
36 Washington.

37 (25) "Likelihood of serious harm" means:

38 (a) A substantial risk that:



1 (i) Physical harm will be inflicted by a person upon his or her own  
2 person, as evidenced by threats or attempts to commit suicide or  
3 inflict physical harm on oneself;

4 (ii) Physical harm will be inflicted by a person upon another, as  
5 evidenced by behavior that has caused such harm or that places another  
6 person or persons in reasonable fear of sustaining such harm; or

7 (iii) Physical harm will be inflicted by a person upon the property  
8 of others, as evidenced by behavior that has caused substantial loss or  
9 damage to the property of others; or

10 (b) The person has threatened the physical safety of another and  
11 has a history of one or more violent acts.

12 (26) "Mental disorder" means any organic, mental, or emotional  
13 impairment that has substantial adverse effects on a person's cognitive  
14 or volitional functions.

15 (27) "Mental health professional" means a psychiatrist,  
16 psychologist, psychiatric nurse, or social worker, and such other  
17 mental health professionals as may be defined by rules adopted by the  
18 secretary under the authority of chapter 71.05 RCW.

19 (28) "Peace officer" means a law enforcement official of a public  
20 agency or governmental unit, and includes persons specifically given  
21 peace officer powers by any state law, local ordinance, or judicial  
22 order of appointment.

23 (29) "Person in charge" means a physician or chemical dependency  
24 counselor as defined in rule by the department, who is empowered by a  
25 certified treatment program with authority to make assessment,  
26 admission, continuing care, and discharge decisions on behalf of the  
27 certified program.

28 (30) "Private agency" means any person, partnership, corporation,  
29 or association that is not a public agency, whether or not financed in  
30 whole or in part by public funds, that constitutes an evaluation and  
31 treatment facility or private institution, hospital, or sanitarium, or  
32 approved treatment program, that is conducted for, or includes a  
33 department or ward conducted for, the care and treatment of persons who  
34 are mentally ill and/or chemically dependent.

35 (31) "Professional person" means a mental health professional or  
36 chemical dependency professional and shall also mean a physician,  
37 registered nurse, and such others as may be defined by rules adopted by  
38 the secretary pursuant to the provisions of this chapter.

1 (32) "Psychiatric nurse" means a registered nurse who has a  
2 bachelor's degree from an accredited college or university, and who  
3 has, in addition, at least two years' experience in the direct  
4 treatment of mentally ill or emotionally disturbed persons under the  
5 supervision of a mental health professional. "Psychiatric nurse" also  
6 means any other registered nurse who has three years of such  
7 experience.

8 (33) "Psychiatrist" means a person having a license as a physician  
9 and surgeon in this state who has in addition completed three years of  
10 graduate training in psychiatry in a program approved by the American  
11 medical association or the American osteopathic association and is  
12 certified or eligible to be certified by the American board of  
13 psychiatry and neurology.

14 (34) "Psychologist" means a person who has been licensed as a  
15 psychologist under chapter 18.83 RCW.

16 (35) "Public agency" means any evaluation and treatment facility or  
17 institution, hospital, or sanitarium, or approved treatment program  
18 that is conducted for, or includes a department or ward conducted for,  
19 the care and treatment of persons who are mentally ill and/or  
20 chemically dependent, if the agency is operated directly by federal,  
21 state, county, or municipal government, or a combination of such  
22 governments.

23 (36) "Registration records" means all the records of the  
24 department, regional support networks, treatment facilities, and other  
25 persons providing services to the department, county departments, or  
26 facilities which identify persons who are receiving or who at any time  
27 have received services for mental illness.

28 (37) "Release" means legal termination of the commitment under  
29 chapter 70.96A or 71.05 RCW or this chapter.

30 (38) "Secretary" means the secretary of the department or the  
31 secretary's designee.

32 (39) "Secure detoxification facility" means a facility operated by  
33 either a public or private agency or by the program of an agency that  
34 serves the purpose of providing evaluation and assessment, and acute  
35 and/or subacute detoxification services for intoxicated persons and  
36 includes security measures sufficient to protect the patients, staff,  
37 and community.

1 (40) "Social worker" means a person with a master's or further  
2 advanced degree from an accredited school of social work or a degree  
3 deemed equivalent under rules adopted by the secretary.

4 (41) "Treatment records" means registration records and all other  
5 records concerning persons who are receiving or who at any time have  
6 received services for mental illness, which are maintained by the  
7 department, by regional support networks and their staffs, and by  
8 treatment facilities. Treatment records do not include notes or  
9 records maintained for personal use by a person providing treatment  
10 services for the department, regional support networks, or a treatment  
11 facility if the notes or records are not available to others.

12 (42) "Violent act" means behavior that resulted in homicide,  
13 attempted suicide, nonfatal injuries, or substantial damage to  
14 property.

15 NEW SECTION. **Sec. 203.** (1) The secretary, in consultation with  
16 the Washington state association of counties, shall select and contract  
17 with regional support networks or counties to provide two integrated  
18 crisis response and involuntary treatment pilot programs for adults and  
19 shall allocate resources for both integrated services and secure  
20 detoxification services in the pilot areas. In selecting the two  
21 regional support networks or counties, the secretary shall endeavor to  
22 site one in an urban and one in a rural regional support network or  
23 county.

24 (2) The regional support networks or counties shall implement the  
25 pilot programs by providing integrated crisis response and involuntary  
26 treatment to persons with a chemical dependency, a mental disorder, or  
27 both, consistent with this chapter. The pilot programs shall:

28 (a) Combine the crisis responder functions of a county-designated  
29 mental health professional under chapter 71.05 RCW and a county-  
30 designated chemical dependency specialist under chapter 70.96A RCW by  
31 establishing a new county-designated crisis responder who is authorized  
32 to conduct investigations and detain persons up to seventy-two hours to  
33 the proper facility;

34 (b) Provide training to the crisis responders as required by the  
35 department;

36 (c) Provide sufficient staff and resources to ensure availability

1 of an adequate number of crisis responders twenty-four hours a day,  
2 seven days a week;

3 (d) Provide the administrative and court-related staff, resources,  
4 and processes necessary to facilitate the legal requirements of the  
5 initial detention and the commitment hearings for persons with a  
6 chemical dependency;

7 (e) Participate in the evaluation and report to assess the outcomes  
8 of the pilot programs including providing data and information as  
9 requested;

10 (f) Provide the other services necessary to the implementation of  
11 the pilot programs, consistent with this chapter as determined by the  
12 secretary in contract; and

13 (g) Collaborate with the department of corrections where persons  
14 detained or committed are also subject to supervision by the department  
15 of corrections.

16 (3) The pilot programs established by this section shall begin  
17 providing services by March 1, 2006.

18 NEW SECTION. **Sec. 204.** To qualify as a county-designated crisis  
19 responder, a person must have received chemical dependency training as  
20 determined by the department and be a:

21 (1) Psychiatrist, psychologist, psychiatric nurse, or social  
22 worker;

23 (2) Person with a master's degree or further advanced degree in  
24 counseling or one of the social sciences from an accredited college or  
25 university and who have, in addition, at least two years of experience  
26 in direct treatment of persons with mental illness or emotional  
27 disturbance, such experience gained under the direction of a mental  
28 health professional;

29 (3) Person who meets the waiver criteria of RCW 71.24.260, which  
30 waiver was granted before 1986;

31 (4) Person who had an approved waiver to perform the duties of a  
32 mental health professional that was requested by the regional support  
33 network and granted by the department before July 1, 2001; or

34 (5) Person who has been granted a time-limited exception of the  
35 minimum requirements of a mental health professional by the department  
36 consistent with rules adopted by the secretary.

1        NEW SECTION.    **Sec. 205.** In addition to the provisions of this  
2 chapter, a designated crisis responder has all the powers and duties of  
3 a county-designated mental health professional as well as the powers  
4 and duties of a designated chemical dependency specialist under RCW  
5 70.96A.120.

6        NEW SECTION.    **Sec. 206.** (1)(a) When a county-designated crisis  
7 responder receives information alleging that a person, as a result of  
8 a mental disorder, chemical dependency disorder, or both, presents a  
9 likelihood of serious harm or is gravely disabled, the  
10 county-designated crisis responder may, after investigation and  
11 evaluation of the specific facts alleged and of the reliability and  
12 credibility of any person providing information to initiate detention,  
13 if satisfied that the allegations are true and that the person will not  
14 voluntarily seek appropriate treatment, file a petition for initial  
15 detention. Before filing the petition, the county-designated crisis  
16 responder must personally interview the person, unless the person  
17 refuses an interview, and determine whether the person will voluntarily  
18 receive appropriate evaluation and treatment at either an evaluation  
19 and treatment facility, a detoxification facility, or other certified  
20 chemical dependency provider.

21        (b)(i)(A) Whenever it appears, by petition for initial detention,  
22 to the satisfaction of a judge of the superior court that a person  
23 presents as a result of a mental disorder, a likelihood of serious  
24 harm, or is gravely disabled, and that the person has refused or failed  
25 to accept appropriate evaluation and treatment voluntarily, the judge  
26 may issue an order requiring the person to appear within twenty-four  
27 hours after service of the order at a designated evaluation and  
28 treatment facility for not more than a seventy-two hour evaluation and  
29 treatment period; or

30        (B) Whenever it appears, by petition for initial detention, to the  
31 satisfaction of a judge of the superior court, district court, or other  
32 court permitted by court rule, that a person presents as a result of a  
33 chemical dependency, a likelihood of serious harm, or is gravely  
34 disabled, and that the person has refused or failed to accept  
35 appropriate evaluation and treatment voluntarily, the judge may issue  
36 an order requiring the person to appear within twenty-four hours after

1 service of the order at a secure detoxification facility or other  
2 certified chemical dependency provider for not more than a seventy-two  
3 hour evaluation and treatment period.

4 (ii) The order issued under this subsection (1)(b) shall state the  
5 address of the evaluation and treatment facility, secure detoxification  
6 facility, or other certified chemical dependency provider to which the  
7 person is to report; whether the required seventy-two hour evaluation  
8 and treatment services may be delivered on an outpatient or inpatient  
9 basis; and that if the person named in the order fails to appear at the  
10 evaluation and treatment facility, secure detoxification facility, or  
11 other certified chemical dependency provider at or before the date and  
12 time stated in the order, the person may be involuntarily taken into  
13 custody for evaluation and treatment. The order shall also designate  
14 retained counsel or, if counsel is appointed from a list provided by  
15 the court, the name, business address, and telephone number of the  
16 attorney appointed to represent the person.

17 (c) The county-designated crisis responder shall then serve or  
18 cause to be served on such person, his or her guardian, and  
19 conservator, if any, a copy of the order to appear, together with a  
20 notice of rights and a petition for initial detention. After service  
21 on the person, the county-designated crisis responder shall file the  
22 return of service in court and provide copies of all papers in the  
23 court file to the evaluation and treatment facility or secure  
24 detoxification facility and the designated attorney. The  
25 county-designated crisis responder shall notify the court and the  
26 prosecuting attorney that a probable cause hearing will be held within  
27 seventy-two hours of the date and time of outpatient evaluation or  
28 admission to the evaluation and treatment facility, secure  
29 detoxification facility, or other certified chemical dependency  
30 provider. The person shall be permitted to remain in his or her home  
31 or other place of his or her choosing before the time of evaluation and  
32 shall be permitted to be accompanied by one or more of his or her  
33 relatives, friends, an attorney, a personal physician, or other  
34 professional or religious advisor to the place of evaluation. An  
35 attorney accompanying the person to the place of evaluation shall be  
36 permitted to be present during the admission evaluation. Any other  
37 person accompanying the person may be present during the admission

1 evaluation. The facility may exclude the person if his or her presence  
2 would present a safety risk, delay the proceedings, or otherwise  
3 interfere with the evaluation.

4 (d) If the person ordered to appear does appear on or before the  
5 date and time specified, the evaluation and treatment facility, secure  
6 detoxification facility, or other certified chemical dependency  
7 provider may admit the person as required by subsection (3) of this  
8 section or may provide treatment on an outpatient basis. If the person  
9 ordered to appear fails to appear on or before the date and time  
10 specified, the evaluation and treatment facility, secure detoxification  
11 facility, or other certified chemical dependency provider shall  
12 immediately notify the county-designated crisis responder who may  
13 notify a peace officer to take the person or cause the person to be  
14 taken into custody and placed in an evaluation and treatment facility,  
15 a secure detoxification facility, or other certified chemical  
16 dependency provider. Should the county-designated crisis responder  
17 notify a peace officer authorizing the officer to take a person into  
18 custody under this subsection, the county-designated crisis responder  
19 shall file with the court a copy of the authorization and a notice of  
20 detention. At the time the person is taken into custody there shall  
21 commence to be served on the person, his or her guardian, and  
22 conservator, if any, a copy of the original order together with a  
23 notice of detention, a notice of rights, and a petition for initial  
24 detention.

25 (2) If a county-designated crisis responder receives information  
26 alleging that a person, as the result of:

27 (a) A mental disorder, presents an imminent likelihood of serious  
28 harm, or is in imminent danger because of being gravely disabled, after  
29 investigation and evaluation of the specific facts alleged and of the  
30 reliability and credibility of the person or persons providing the  
31 information if any, the county-designated crisis responder may take the  
32 person, or cause by oral or written order the person to be taken into  
33 emergency custody in an evaluation and treatment facility for not more  
34 than seventy-two hours as described in this chapter; or

35 (b) Chemical dependency, presents an imminent likelihood of serious  
36 harm, or is in imminent danger because of being gravely disabled, after  
37 investigation and evaluation of the specific facts alleged and of the  
38 reliability and credibility of the person or persons providing the

1 information if any, the county-designated crisis responder may take the  
2 person, or cause by oral or written order the person to be taken into  
3 emergency custody in a secure detoxification facility for not more than  
4 seventy-two hours as described in this chapter.

5 (3) If the county-designated crisis responder petitions for  
6 detention of a person whose actions constitute a likelihood of serious  
7 harm, or who is gravely disabled, the evaluation and treatment  
8 facility, the secure detoxification facility, or other certified  
9 chemical dependency provider providing seventy-two hour evaluation and  
10 treatment must immediately accept on a provisional basis the petition  
11 and the person. The evaluation and treatment facility, the secure  
12 detoxification facility, or other certified chemical dependency  
13 provider shall then evaluate the person's condition and admit, detain,  
14 transfer, or discharge such person in accordance with this chapter.  
15 The facility shall notify in writing the court and the  
16 county-designated crisis responder of the date and time of the initial  
17 detention of each person involuntarily detained so that a probable  
18 cause hearing will be held no later than seventy-two hours after  
19 detention.

20 (4) A peace officer may, without prior notice of the proceedings  
21 provided for in subsection (1) of this section, take or cause the  
22 person to be taken into custody and immediately delivered to an  
23 evaluation and treatment facility, secure detoxification facility,  
24 other certified chemical dependency treatment provider only pursuant to  
25 subsections (1)(d) and (2) of this section.

26 (5) Nothing in this chapter limits the power of a peace officer to  
27 take a person into custody and immediately deliver the person to the  
28 emergency department of a local hospital or to a detoxification  
29 facility.

30 NEW SECTION. **Sec. 207.** (1) A person or public or private entity  
31 employing a person is not civilly or criminally liable for performing  
32 duties under this chapter if the duties were performed in good faith  
33 and without gross negligence.

34 (2) This section does not relieve a person from giving the required  
35 notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the duty to warn  
36 or to take reasonable precautions to provide protection from violent  
37 behavior where the patient has communicated an actual threat of



1 physical violence against a reasonably identifiable victim or victims.  
2 The duty to warn or to take reasonable precautions to provide  
3 protection from violent behavior is discharged if reasonable efforts  
4 are made to communicate the threat to the victim or victims and to law  
5 enforcement personnel.

6 NEW SECTION. **Sec. 208.** If the evaluation and treatment facility,  
7 secure detoxification facility, or other certified chemical dependency  
8 provider admits the person, it may detain the person for evaluation and  
9 treatment for a period not to exceed seventy-two hours from the time of  
10 acceptance. The computation of the seventy-two hour period excludes  
11 Saturdays, Sundays, and holidays.

12 NEW SECTION. **Sec. 209.** Whenever any person is detained for  
13 evaluation and treatment for a mental disorder under section 206 of  
14 this act, chapter 71.05 RCW applies.

15 NEW SECTION. **Sec. 210.** (1) A person detained for seventy-two hour  
16 evaluation and treatment under section 206 of this act or RCW  
17 70.96A.120 may be detained for not more than fourteen additional days  
18 of involuntary chemical dependency treatment if there are beds  
19 available at the secure detoxification facility and the following  
20 conditions are met:

21 (a) The professional person in charge of the agency or facility or  
22 the person's designee providing evaluation and treatment services in a  
23 secure detoxification facility has assessed the person's condition and  
24 finds that the condition is caused by chemical dependency and either  
25 results in a likelihood of serious harm or in the detained person being  
26 gravely disabled, and the professional person or his or her designee is  
27 prepared to testify those conditions are met;

28 (b) The person has been advised of the need for voluntary treatment  
29 and the professional person in charge of the agency or facility or his  
30 or her designee has evidence that he or she has not in good faith  
31 volunteered for treatment; and

32 (c) The professional person in charge of the agency or facility or  
33 the person's designee has filed a petition for fourteen-day involuntary  
34 detention with the superior court, district court, or other court

1 permitted by court rule. The petition must be signed by the chemical  
2 dependency professional who has examined the person.

3 (2) The petition under subsection (1)(c) of this section shall be  
4 accompanied by a certificate of a licensed physician who has examined  
5 the person, unless the person whose commitment is sought has refused to  
6 submit to a medical examination, in which case the fact of refusal  
7 shall be alleged in the petition. The certificate shall set forth the  
8 licensed physician's findings in support of the allegations of the  
9 petition. A physician employed by the petitioning program or the  
10 department is eligible to be the certifying physician.

11 (3) The petition shall state facts that support the finding that  
12 the person, as a result of chemical dependency, presents a likelihood  
13 of serious harm or is gravely disabled, and that there are no less  
14 restrictive alternatives to detention in the best interest of the  
15 person or others. The petition shall state specifically that less  
16 restrictive alternative treatment was considered and specify why  
17 treatment less restrictive than detention is not appropriate.

18 (4) A copy of the petition shall be served on the detained person,  
19 his or her attorney, and his or her guardian or conservator, if any,  
20 before the probable cause hearing.

21 (5)(a) The court shall inform the person whose commitment is sought  
22 of his or her right to contest the petition, be represented by counsel  
23 at every stage of any proceedings relating to his or her commitment,  
24 and have counsel appointed by the court or provided by the court, if he  
25 or she wants the assistance of counsel and is unable to obtain counsel.  
26 If the court believes that the person needs the assistance of counsel,  
27 the court shall require, by appointment if necessary, counsel for him  
28 or her regardless of his or her wishes. The person shall, if he or she  
29 is financially able, bear the costs of such legal service; otherwise  
30 such legal service shall be at public expense. The person whose  
31 commitment is sought shall be informed of his or her right to be  
32 examined by a licensed physician of his or her choice. If the person  
33 is unable to obtain a licensed physician and requests examination by a  
34 physician, the court shall appoint a reasonably available licensed  
35 physician designated by the person.

36 (b) At the conclusion of the probable cause hearing, if the court  
37 finds by a preponderance of the evidence that the person, as the result  
38 of chemical dependency, presents a likelihood of serious harm or is

1 gravely disabled and, after considering less restrictive alternatives  
2 to involuntary detention and treatment, finds that no such alternatives  
3 are in the best interest of such person or others, the court shall  
4 order that the person be detained for involuntary chemical dependency  
5 treatment not to exceed fourteen days in a secure detoxification  
6 facility.

7 NEW SECTION. **Sec. 211.** If a person is detained for additional  
8 treatment beyond fourteen days under section 210 of this act, the  
9 professional staff of the agency or facility may petition for  
10 additional treatment under RCW 70.96A.140.

11 NEW SECTION. **Sec. 212.** The prosecuting attorney of the county in  
12 which an action under this chapter is taken must represent the  
13 petitioner in judicial proceedings under this chapter for the  
14 involuntary chemical dependency treatment of a person, including any  
15 judicial proceeding where the person sought to be treated for chemical  
16 dependency challenges the action.

17 NEW SECTION. **Sec. 213.** (1) Every person involuntarily detained or  
18 committed under this chapter as a result of a mental disorder is  
19 entitled to all the rights set forth in this chapter and in chapter  
20 71.05 RCW, and retains all rights not denied him or her under this  
21 chapter or chapter 71.05 RCW.

22 (2) Every person involuntarily detained or committed under this  
23 chapter as a result of a chemical dependency is entitled to all the  
24 rights set forth in this chapter and chapter 70.96A RCW, and retains  
25 all rights not denied him or her under this chapter or chapter 70.96A  
26 RCW.

27 NEW SECTION. **Sec. 214.** (1) When a county designated crisis  
28 responder is notified by a jail that a defendant or offender who was  
29 subject to a discharge review under RCW 71.05.232 is to be released to  
30 the community, the county designated crisis responder shall evaluate  
31 the person within seventy-two hours of release.

32 (2) When an offender is under court-ordered treatment in the  
33 community and the supervision of the department of corrections, and the  
34 treatment provider becomes aware that the person is in violation of the

1 terms of the court order, the treatment provider shall notify the  
2 county designated crisis responder of the violation and request an  
3 evaluation for purposes of revocation of the less restrictive  
4 alternative.

5 (3) When a county designated crisis responder becomes aware that an  
6 offender who is under court-ordered treatment in the community and the  
7 supervision of the department of corrections is in violation of a  
8 treatment order or a condition of supervision that relates to public  
9 safety, or the county designated crisis responder detains a person  
10 under this chapter, the county designated crisis responder shall notify  
11 the person's treatment provider and the department of corrections.

12 (4) When an offender who is confined in a state correctional  
13 facility or is under supervision of the department of corrections in  
14 the community is subject to a petition for involuntary treatment under  
15 this chapter, the petitioner shall notify the department of corrections  
16 and the department of corrections shall provide documentation of its  
17 risk assessment or other concerns to the petitioner and the court if  
18 the department of corrections classified the offender as a high risk or  
19 high needs offender.

20 (5) Nothing in this section creates a duty on any treatment  
21 provider or county designated crisis responder to provide offender  
22 supervision.

23 NEW SECTION. **Sec. 215.** The secretary may adopt rules to implement  
24 this chapter.

25 NEW SECTION. **Sec. 216.** The provisions of RCW 71.05.550 apply to  
26 this chapter.

27 NEW SECTION. **Sec. 217.** (1) The Washington state institute for  
28 public policy shall evaluate the pilot programs and make a preliminary  
29 report to appropriate committees of the legislature by December 1,  
30 2007, and a final report by September 30, 2008.

31 (2) The evaluation of the pilot programs shall include:

32 (a) Whether the county designated crisis responder pilot program:

33 (i) Has increased efficiency of evaluation and treatment of persons  
34 involuntarily detained for seventy-two hours;

35 (ii) Is cost-effective;

1 (iii) Results in better outcomes for persons involuntarily  
2 detained;

3 (iv) Increased the effectiveness of the crisis response system in  
4 the pilot catchment areas;

5 (b) The effectiveness of providing a single chapter in the Revised  
6 Code of Washington to address initial detention of persons with mental  
7 disorders or chemical dependency, in crisis response situations and the  
8 likelihood of effectiveness of providing a single, comprehensive  
9 involuntary treatment act.

10 (3) The reports shall consider the impact of the pilot programs on  
11 the existing mental health system and on the persons served by the  
12 system.

13 **Sec. 218.** RCW 71.05.550 and 1973 1st ex.s. c 142 s 60 are each  
14 amended to read as follows:

15 The department of social and health services, in planning and  
16 providing funding to counties pursuant to chapter 71.24 RCW, shall  
17 recognize the financial necessities imposed upon counties by  
18 implementation of this chapter and chapter 70.-- RCW (sections 202  
19 through 216 of this act), and shall consider needs, if any, for  
20 additional community mental health services and facilities and  
21 reduction in commitments to state hospitals for the mentally ill  
22 accomplished by individual counties, in planning and providing such  
23 funding. The state shall provide financial assistance to the counties  
24 to enable the counties to meet all increased costs, if any, to the  
25 counties resulting from their administration of the provisions of  
26 chapter 142, Laws of 1973 1st ex. sess.

27 NEW SECTION. **Sec. 219.** Sections 202 through 216 of this act  
28 expire March 1, 2008.

29 NEW SECTION. **Sec. 220.** A new section is added to chapter 70.96A  
30 RCW to read as follows:

31 (1) The secretary shall select and contract with regional support  
32 networks or counties to provide intensive case management for  
33 chemically dependent persons with histories of high utilization of  
34 crisis services at two sites, one urban and one rural.

1 (2) The contracted sites shall implement the pilot programs by  
2 providing intensive case management to persons with a primary chemical  
3 dependency diagnosis or dual primary chemical dependency and mental  
4 health diagnoses, through the employment of chemical dependency case  
5 managers. The chemical dependency case managers shall:

6 (a) Be trained in and use the integrated, comprehensive screening  
7 and assessment process adopted under section 701 of this act;

8 (b) Reduce the use of crisis medical, chemical dependency and  
9 mental health services, including but not limited to, emergency room  
10 admissions, hospitalizations, detoxification programs, inpatient  
11 psychiatric admissions, involuntary treatment petitions, emergency  
12 medical services, and ambulance services;

13 (c) Reduce the use of emergency first responder services including  
14 police, fire, emergency medical, and ambulance services;

15 (d) Reduce the number of criminal justice interventions including  
16 arrests, violations of conditions of supervision, bookings, jail days,  
17 prison sanction day for violations, court appearances, and prosecutor  
18 and defense costs;

19 (e) Where appropriate and available, work with therapeutic courts  
20 including drug courts and mental health courts to maximize the outcomes  
21 for the individual and reduce the likelihood of reoffense;

22 (f) Coordinate with local offices of the economic services  
23 administration to assist the person in accessing and remaining enrolled  
24 in those programs to which the person may be entitled;

25 (g) Where appropriate and available, coordinate with primary care  
26 and other programs operated through the federal government including  
27 federally qualified health centers, Indian health programs, and  
28 veterans' health programs for which the person is eligible to reduce  
29 duplication of services and conflicts in case approach;

30 (h) Where appropriate, advocate for the client's needs to assist  
31 the person in achieving and maintaining stability and progress toward  
32 recovery;

33 (i) Document the numbers of persons with co-occurring mental and  
34 substance abuse disorders and the point of determination of the co-  
35 occurring disorder by quadrant of intensity of need; and

36 (j) Where a program participant is under supervision by the  
37 department of corrections, collaborate with the department of

1 corrections to maximize treatment outcomes and reduce the likelihood of  
2 reoffense.

3 (3) The pilot programs established by this section shall begin  
4 providing services by March 1, 2006.

5 NEW SECTION. **Sec. 221.** A new section is added to chapter 71.05  
6 RCW to read as follows:

7 The department shall, in cooperation with the Washington state  
8 institute for public policy, develop a pilot program to evaluate the  
9 effectiveness of clubhouse psychiatric rehabilitation programs. A  
10 clubhouse program means a program in which consumers of mental health  
11 services are involved in the design, development, and operation of the  
12 program and where a primary goal of the program is the employment of  
13 the members of the program. Wherever possible, the pilot project shall  
14 provide support and evaluation of established clubhouse model programs  
15 in diverse geographic regions of the state. Clubhouse programs shall  
16 be evaluated on at least the following criteria:

17 (1) Number of members in independent, supported, or transitional  
18 employment, the stability of that employment, and the income to members  
19 as a result of employment;

20 (2) Reductions in hospitalizations of members, and in the length of  
21 stay in inpatient facilities when hospitalization is necessary;

22 (3) Reductions in crisis interventions, including arrests,  
23 incarcerations, sobering or detoxification, evaluations for involuntary  
24 treatment, and emergency room admissions; and

25 (4) Increases in independence and stability of member's housing.

26 The Washington state institute for public policy shall report to  
27 the appropriate committees of the legislature by December 1, 2007.

28 **PART III**  
29 **OMNIBUS INVOLUNTARY TREATMENT ACT**

30 NEW SECTION. **Sec. 301.** (1) Sections 302 through 374 of this act  
31 constitute a new chapter in Title 70 RCW.

32 (2) Sections 302 through 374 of this act take effect July 1, 2009.

33 NEW SECTION. **Sec. 302.** The legislature finds that mental  
34 disorders and the abuse of alcohol and other drugs have become a

1 serious threat to the health of the citizens of the state of Washington  
2 and that the use of psychoactive chemicals is a prime factor in the  
3 current AIDS epidemic. The legislature also finds that some persons  
4 with mental disorders and substance abuse disorders have little or no  
5 insight into their condition and are unable or unwilling to seek  
6 treatment voluntarily. The legislature further finds that it is not  
7 always evident at the time of commitment that a person has co-occurring  
8 mental and substance abuse disorders but that treatment of the  
9 disabilities in isolation can lead to inappropriate or conflicting  
10 treatment plans that can substantially reduce the opportunity for the  
11 person to recover from his or her disorders. Therefore, a unified  
12 involuntary treatment act is necessary.

13 The provisions of this chapter are intended by the legislature:

14 (1) To establish a single involuntary treatment act with a uniform  
15 set of standards and procedures for persons with mental and substance  
16 abuse disorders;

17 (2) To adequately assess whether a person presents a likelihood of  
18 serious harm or a grave disability due to his or her disorder,  
19 including an assessment of any prior history or pattern of repeated  
20 hospitalizations or law enforcement interventions due to decompensation  
21 in his or her mental or substance abuse disorder. The consideration of  
22 prior mental history is particularly relevant in determining whether  
23 the person would receive, if released, such care as is essential for  
24 his or her health or safety;

25 (3) To prevent inappropriate, indefinite commitment of mentally  
26 disordered and chemically dependent persons and to eliminate legal  
27 disabilities that arise from such commitment where possible;

28 (4) To provide prompt evaluation and timely and appropriate  
29 treatment of persons with serious mental and substance abuse disorders;

30 (5) To safeguard individual rights;

31 (6) To provide continuity of care for persons with serious mental  
32 and substance abuse disorders, so that the procedures and services  
33 authorized in this chapter are integrated with those in chapter 71.24  
34 RCW to the maximum extent possible to provide a continuum of care  
35 founded on evidence-based practices that support recovery, promote  
36 independent living, encourage persons to participate in education and  
37 employment to the maximum extent that they are able, reduce criminal



1 involvement, and reduce family violence and cycles of child abuse and  
2 neglect leading to long-term use of the child welfare system;

3 (7) To encourage the integrated use of all existing agencies,  
4 professional personnel, and public funds to prevent duplication of  
5 services and unnecessary expenditures;

6 (8) To encourage, whenever appropriate, that services be provided  
7 within the community;

8 (9) To promote the use of less restrictive alternatives to  
9 inpatient commitments for persons with disorders that can be controlled  
10 or stabilized in a less restrictive alternative. Within the guidelines  
11 stated in *In Re LaBelle* 107 Wn.2d 196 (1986), the legislature intends  
12 to encourage appropriate interventions at a point when there is the  
13 best opportunity to restore the person to or maintain satisfactory  
14 functioning; and

15 (10) To protect the public safety.

## 16 **Definitions**

17 NEW SECTION. **Sec. 303.** The definitions in this section apply  
18 throughout this chapter unless the context clearly requires otherwise.

19 (1) "Admission" or "admit" means a decision by a physician that a  
20 person should be examined or treated as a patient in a hospital, an  
21 evaluation and treatment facility, or other inpatient facility, or a  
22 decision by a professional person in charge or his or her designee that  
23 a person should be detained as a patient for evaluation and treatment  
24 in a secure detoxification facility or other certified chemical  
25 dependency provider.

26 (2) "Alcoholic" means a person who suffers from the disease of  
27 alcoholism.

28 (3) "Alcoholism" means a disease, characterized by a dependency on  
29 alcoholic beverages, loss of control over the amount and circumstances  
30 of use, symptoms of tolerance, physiological or psychological  
31 withdrawal, or both, if use is reduced or discontinued, and impairment  
32 of health or disruption of social or economic functioning.

33 (4) "Antipsychotic medications" means that class of drugs primarily  
34 used to treat serious manifestations of mental illness associated with  
35 thought disorders, which includes but is not limited to atypical  
36 antipsychotic medications.

1 (5) "Approved treatment program" means a discrete program of  
2 chemical dependency treatment provided by a treatment program certified  
3 by the department as meeting standards adopted under chapter 70.96A  
4 RCW.

5 (6) "Attending staff" means any person on the staff of a public or  
6 private agency having responsibility for the care and treatment of a  
7 patient.

8 (7) "Certified facility" means a facility certified by the  
9 department for detention or commitment under this chapter and includes,  
10 but is not limited to, an evaluation and treatment center, a  
11 psychiatric hospital, a secure detoxification facility, and an expanded  
12 services facility that has been certified for detention or commitment.

13 (8) "Chemical dependency" means:

14 (a) Alcoholism;

15 (b) Drug addiction; or

16 (c) Dependence on alcohol and one or more other psychoactive  
17 chemicals, as the context requires.

18 (9) "Chemical dependency professional" means a person certified as  
19 a chemical dependency professional by the department of health under  
20 chapter 18.205 RCW.

21 (10) "Chemical dependency program" means expenditures and  
22 activities of the department designed and conducted to prevent or treat  
23 alcoholism and other drug addiction, including reasonable  
24 administration and overhead.

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

28 (12) "Conditional release" means a modification of a commitment  
29 that may be revoked upon violation of any of its terms.

30 (13) "Custody" means involuntary detention under either chapter  
31 71.05 or 70.96A RCW or this chapter, uninterrupted by any period of  
32 unconditional release from commitment from a facility providing  
33 involuntary care and treatment.

34 (14) "Department" means the department of social and health  
35 services.

36 (15) "Designated chemical dependency specialist" means a person  
37 designated by the county alcoholism and other drug addiction program

1 coordinator designated under RCW 70.96A.310 to perform the commitment  
2 duties described in this chapter and chapter 70.96A RCW.

3 (16) "Designated crisis responder" means a person designated by the  
4 county or regional support network to perform the duties specified in  
5 this chapter.

6 (17) "Designated mental health professional" means a mental health  
7 professional appointed by the county or the regional support network to  
8 perform the duties in chapter 71.05 RCW.

9 (18) "Designated responder" means a designated crisis responder, if  
10 there is one, otherwise a designated mental health professional or a  
11 designated chemical dependency specialist, as appropriate.

12 (19) "Detention" or "detain" means the lawful confinement of a  
13 person under this chapter, or chapter 70.96A or 71.05 RCW.

14 (20) "Developmental disabilities professional" means a person who  
15 has specialized training and three years of experience in directly  
16 treating or working with individuals with developmental disabilities  
17 and is a psychiatrist, psychologist, or social worker, and such other  
18 developmental disabilities professionals as may be defined by rules  
19 adopted by the secretary.

20 (21) "Developmental disability" means that condition defined in RCW  
21 71A.10.020.

22 (22) "Director" means the person administering the division of  
23 alcohol and substance abuse or the mental health division within the  
24 department.

25 (23) "Discharge" means the termination of facility authority. The  
26 commitment may remain in place, be terminated, or be amended by court  
27 order.

28 (24) "Drug addict" means a person who suffers from the disease of  
29 drug addiction.

30 (25) "Drug addiction" means a disease characterized by a dependency  
31 on psychoactive chemicals, loss of control over the amount and  
32 circumstances of use, symptoms of tolerance, physiological or  
33 psychological withdrawal, or both, if use is reduced or discontinued,  
34 and impairment of health or disruption of social or economic  
35 functioning.

36 (26) "Evaluation and treatment facility" means any facility that  
37 can provide directly, or by direct arrangement with other public or  
38 private agencies, emergency evaluation and treatment, outpatient care,

1 and timely and appropriate inpatient care to persons suffering from a  
2 mental disorder, and that is certified as such by the department. A  
3 physically separate and separately operated portion of a state hospital  
4 may be designated as an evaluation and treatment facility. A facility  
5 that is part of, or operated by, the department or any federal agency  
6 does not require certification. No correctional institution or  
7 facility, or jail, may be an evaluation and treatment facility within  
8 the meaning of this chapter.

9 (27) "Facility" means either an evaluation and treatment facility  
10 or a secure detoxification facility.

11 (28) "Gravely disabled" means a condition in which a person, as a  
12 result of a mental disorder, as a result of the use of alcohol or other  
13 psychoactive chemicals, or both:

14 (a) Is in danger of serious physical harm resulting from a failure  
15 to provide for his or her essential human needs of health or safety; or

16 (b) Manifests severe deterioration in routine functioning evidenced  
17 by repeated and escalating loss of cognitive or volitional control over  
18 his or her actions and is not receiving such care as is essential for  
19 his or her health or safety.

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

28 (30) "History of one or more violent acts" refers to the period of  
29 time ten years before the filing of a petition under this chapter, or  
30 chapter 70.96A or 71.05 RCW, excluding any time spent, but not any  
31 violent acts committed, in a mental health facility or a long-term  
32 alcoholism or drug treatment facility, or in confinement as a result of  
33 a criminal conviction.

34 (31) "Incapacitated by alcohol or other psychoactive chemicals"  
35 means that a person, as a result of the use of alcohol or other  
36 psychoactive chemicals, is gravely disabled or presents a likelihood of  
37 serious harm to himself or herself, to any other person, or to  
38 property.

1 (32) "Incompetent person" means a person who has been adjudged  
2 incompetent by the superior court.

3 (33) "Individualized service plan" means a plan prepared by a  
4 developmental disabilities professional with other professionals as a  
5 team, for an individual with developmental disabilities, which shall  
6 state:

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

9 (b) The conditions and strategies necessary to achieve the purposes  
10 of habilitation;

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

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

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

16 (f) Where relevant in light of past criminal behavior and due  
17 consideration for public safety, the criteria for proposed movement to  
18 less restrictive settings, criteria for proposed eventual discharge or  
19 release, and a projected possible date for discharge or release; and

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

22 (34) "Intoxicated person" means a person whose mental or physical  
23 functioning is substantially impaired as a result of the use of alcohol  
24 or other psychoactive chemicals.

25 (35) "Judicial commitment" means a commitment by a court under this  
26 chapter.

27 (36) "Licensed physician" means a person licensed to practice  
28 medicine or osteopathic medicine and surgery in the state of  
29 Washington.

30 (37) "Likelihood of serious harm" means:

31 (a) A substantial risk that:

32 (i) Physical harm will be inflicted by a person upon his or her own  
33 person, as evidenced by threats or attempts to commit suicide or  
34 inflict physical harm on oneself;

35 (ii) Physical harm will be inflicted by a person upon another, as  
36 evidenced by behavior that has caused such harm or that places another  
37 person or persons in reasonable fear of sustaining such harm; or

1 (iii) Physical harm will be inflicted by a person upon the property  
2 of others, as evidenced by behavior that has caused substantial loss or  
3 damage to the property of others; or

4 (b) The person has threatened the physical safety of another and  
5 has a history of one or more violent acts.

6 (38) "Medical necessity" for inpatient care of a minor means a  
7 requested certified inpatient service that is reasonably calculated to:

8 (a) Diagnose, arrest, or alleviate a chemical dependency; or (b)  
9 prevent the worsening of chemical dependency conditions that endanger  
10 life or cause suffering and pain, or result in illness or infirmity or  
11 threaten to cause or aggravate a handicap, or cause physical deformity  
12 or malfunction, and there is no adequate less restrictive alternative  
13 available.

14 (39) "Mental disorder" means any organic, mental, or emotional  
15 impairment that has substantial adverse effects on a person's cognitive  
16 or volitional functions.

17 (40) "Mental health professional" means a psychiatrist,  
18 psychologist, psychiatric nurse, or social worker, and such other  
19 mental health professionals as may be defined by rules adopted by the  
20 secretary under the authority of chapter 71.05 RCW.

21 (41) "Minor" means a person less than eighteen years of age.

22 (42) "Parent" means the parent or parents who have the legal right  
23 to custody of the child. Parent includes custodian or guardian.

24 (43) "Peace officer" means a law enforcement official of a public  
25 agency or governmental unit, and includes persons specifically given  
26 peace officer powers by any state law, local ordinance, or judicial  
27 order of appointment.

28 (44) "Person" means an individual, including a minor.

29 (45) "Person in charge" means a physician or chemical dependency  
30 counselor as defined in rule by the department, who is empowered by a  
31 certified treatment program with authority to make assessment,  
32 admission, continuing care, and discharge decisions on behalf of the  
33 certified program.

34 (46) "Private agency" means any person, partnership, corporation,  
35 or association that is not a public agency, whether or not financed in  
36 whole or in part by public funds, that constitutes an evaluation and  
37 treatment facility or private institution, hospital, or sanitarium, or

1 approved treatment program, that is conducted for, or includes a  
2 department or ward conducted for, the care and treatment of persons who  
3 are mentally ill and/or chemically dependent.

4 (47) "Professional person" means a mental health professional or a  
5 chemical dependency professional and shall also mean a physician,  
6 registered nurse, and such others as may be defined in rules adopted by  
7 the secretary.

8 (48) "Psychiatric nurse" means a registered nurse who has a  
9 bachelor's degree from an accredited college or university, and who  
10 has, in addition, at least two years of experience in the direct  
11 treatment of mentally ill or emotionally disturbed persons under the  
12 supervision of a mental health professional, or any other registered  
13 nurse who has at least three years of such experience.

14 (49) "Psychiatrist" means a person having a license as a physician  
15 and surgeon in this state who has in addition completed three years of  
16 graduate training in psychiatry in a program approved by the American  
17 medical association or the American osteopathic association and is  
18 certified or eligible to be certified by the American board of  
19 psychiatry and neurology.

20 (50) "Psychologist" means a person who has been licensed as a  
21 psychologist under chapter 18.83 RCW.

22 (51) "Public agency" means any evaluation and treatment facility or  
23 institution, hospital, or sanitarium, or approved treatment program  
24 that is conducted for, or includes a department or ward conducted for,  
25 the care and treatment of persons who are mentally ill and/or  
26 chemically dependent, if the agency is operated directly by federal,  
27 state, county, or municipal government, or a combination of such  
28 governments.

29 (52) "Registration records" include all the records of the  
30 department, regional support networks, treatment facilities, and other  
31 persons providing services to the department, county departments, or  
32 facilities which identify persons who are receiving or who at any time  
33 have received services for mental illness.

34 (53) "Release" means legal termination of the commitment under  
35 chapter 70.96A or 71.05 RCW or this chapter.

36 (54) "Resource management services" has the meaning given in  
37 chapter 71.24 RCW.

1 (55) "Secretary" means the secretary of the department or the  
2 secretary's designee.

3 (56) "Secure detoxification facility" means a facility operated by  
4 either a public or private agency or by the program of an agency that  
5 serves the purpose of providing evaluation and assessment, and acute  
6 and/or subacute detoxification services for intoxicated persons and  
7 includes security measures sufficient to protect the patients, staff,  
8 and community.

9 (57) "Social worker" means a person with a master's or further  
10 advanced degree from an accredited school of social work or a degree  
11 deemed equivalent under rules adopted by the secretary.

12 (58) "Treatment" means the broad range of emergency,  
13 detoxification, residential, inpatient and outpatient services and  
14 care, including diagnostic evaluation, mental health or chemical  
15 dependency education and counseling, medical, psychiatric,  
16 psychological, and social service care, vocational rehabilitation and  
17 career counseling, which may be extended to persons with mental and  
18 substance abuse disorders, and their families.

19 (59) "Treatment program" means an organization, institution, or  
20 corporation, public or private, engaged in the care, treatment, or  
21 rehabilitation of alcoholics or other drug addicts.

22 (60) "Treatment records" include registration and all other records  
23 concerning persons who are receiving or who at any time have received  
24 services for mental illness, which are maintained by the department, by  
25 regional support networks and their staffs, and by treatment  
26 facilities. Treatment records do not include notes or records  
27 maintained for personal use by a person providing treatment services  
28 for the department, regional support networks, or a treatment facility  
29 if the notes or records are not available to others.

30 (61) "Violent act" means behavior that resulted in homicide,  
31 attempted suicide, nonfatal injuries, or substantial damage to  
32 property.

### 33 **General Provisions**

34 NEW SECTION. **Sec. 304.** Persons suffering from a mental disorder,  
35 chemical dependency disorder, or both may not be involuntarily  
36 committed for treatment of such disorder except pursuant to provisions



1 of this chapter, or chapter 10.77 or 71.09 RCW, transfer pursuant to  
2 RCW 72.68.031 through 72.68.037, or pursuant to court ordered  
3 evaluation and treatment not to exceed ninety days pending a criminal  
4 trial or sentencing.

5 NEW SECTION. **Sec. 305.** Persons who are developmentally disabled,  
6 impaired by chronic alcoholism or drug abuse, or suffering from  
7 dementia and who otherwise meet the criteria for detention or judicial  
8 commitment are not ineligible for detention or commitment based on this  
9 condition alone.

10 NEW SECTION. **Sec. 306.** Pursuant to the interlocal cooperation  
11 act, chapter 39.34 RCW, the department may enter into agreements to  
12 accomplish the purposes of this chapter.

13 NEW SECTION. **Sec. 307.** All facilities, plans, or programs  
14 receiving financial assistance under RCW 70.96A.040 are subject to the  
15 provisions of RCW 70.96A.045 and 70.96A.047.

16 NEW SECTION. **Sec. 308.** To qualify as a designated crisis  
17 responder, a person must have received chemical dependency training as  
18 determined by the department and be a:

19 (1) Psychiatrist, psychologist, psychiatric nurse, or social  
20 worker;

21 (2) Person with a master's degree or further advanced degree in  
22 counseling or one of the social sciences from an accredited college or  
23 university and, who have in addition, at least two years of experience  
24 in direct treatment of persons with mental illness or emotional  
25 disturbance, such experience gained under the direction of a mental  
26 health professional;

27 (3) Person who meets the waiver criteria of RCW 71.24.260, which  
28 waiver was granted before 1986;

29 (4) Person who had an approved waiver to perform the duties of a  
30 mental health professional that was requested by the regional support  
31 network and granted by the department before July 1, 2001; or

32 (5) Person who has been granted a time-limited exception of the  
33 minimum requirements of a mental health professional by the department  
34 consistent with rules adopted by the secretary.

1 NEW SECTION. **Sec. 309.** The prosecuting attorney of the county in  
2 which an action under this chapter is taken must represent the  
3 petitioner in judicial proceedings under this chapter for the  
4 involuntary chemical dependency treatment of a person, including any  
5 judicial proceeding where the person sought to be treated for chemical  
6 dependency challenges the action.

### 7 **Department Responsibilities**

8 NEW SECTION. **Sec. 310.** The department shall have the  
9 responsibility to determine whether all rights of persons recognized  
10 and guaranteed by the provisions of this chapter and the Constitutions  
11 of the state of Washington and the United States are, in fact,  
12 protected and effectively secured. To this end, the department shall  
13 assign appropriate staff who shall from time to time as may be  
14 necessary have authority to examine records, inspect facilities, attend  
15 proceedings, and do whatever is necessary to monitor, evaluate, and  
16 assure adherence to such rights. Such persons shall also recommend  
17 such additional safeguards or procedures as may be appropriate to  
18 secure individual rights set forth in this chapter and as guaranteed by  
19 the state and federal Constitutions.

20 NEW SECTION. **Sec. 311.** The department shall adopt such rules as  
21 may be necessary to effectuate the intent and purposes of this chapter,  
22 which shall include but not be limited to evaluation of the quality of  
23 the program and facilities operating pursuant to this chapter,  
24 evaluation of the effectiveness and cost effectiveness of such programs  
25 and facilities, and procedures and standards for certification and  
26 other action relevant to facilities.

27 NEW SECTION. **Sec. 312.** The provisions of chapter 420, Laws of  
28 1989 shall apply equally to persons in the custody of the department on  
29 May 13, 1989, who were found by a court to be not guilty by reason of  
30 insanity or incompetent to stand trial, or who have been found to have  
31 committed acts constituting a felony pursuant to RCW 71.05.280(3) and  
32 present a substantial likelihood of repeating similar acts, and the  
33 secretary shall cause such persons to be evaluated to ascertain if such

1 persons are developmentally disabled for placement in a program  
2 specifically reserved for the treatment and training of persons with  
3 developmental disabilities.

4 NEW SECTION. **Sec. 313.** By December 1, 2006, the department shall  
5 provide the appropriate committees of the legislature with a report  
6 identifying the types of facilities that will be certified for  
7 detention or commitment under this chapter including the locations and  
8 capacity of existing facilities and facilities under development, by  
9 type of facility, in a manner that indicates the geographic  
10 distribution of the available capacity.

11 NEW SECTION. **Sec. 314.** The department shall ensure that the  
12 provisions of this chapter are applied by the counties in a consistent  
13 and uniform manner. The department shall also ensure that, to the  
14 extent possible within available funds, the designated responders are  
15 specifically trained in adolescent chemical dependency and mental  
16 health issues, commitment laws, and the criteria for commitment.

17 **Initial Detention**

18 NEW SECTION. **Sec. 315.** (1)(a) When a designated responder  
19 receives information alleging that a person, as a result of a mental  
20 disorder, chemical dependency disorder, or both:

- 21 (i) Presents a likelihood of serious harm; or
- 22 (ii) Is gravely disabled;

23 the designated responder may, after investigation and evaluation of the  
24 specific facts alleged and of the reliability and credibility of any  
25 person providing information to initiate detention, if satisfied that  
26 the allegations are true and that the person will not voluntarily seek  
27 appropriate treatment, file a petition for initial detention. Before  
28 filing the petition, the designated responder must personally interview  
29 the person, unless the person refuses an interview, and determine  
30 whether the person will voluntarily receive appropriate evaluation and  
31 treatment at a certified facility.

32 (b)(i) Whenever it appears, by petition for initial detention, to  
33 the satisfaction of a judge of the superior court that a person  
34 presents, as a result of a mental disorder, chemical dependency

1 disorder, or both, a likelihood of serious harm, or is gravely  
2 disabled, and that the person has refused or failed to accept  
3 appropriate evaluation and treatment voluntarily, the judge may issue  
4 an order requiring the person to appear within twenty-four hours after  
5 service of the order at a certified facility for not more than a  
6 seventy-two hour evaluation and treatment period.

7 (ii) The order shall state the address of the certified facility to  
8 which the person is to report and whether the required seventy-two hour  
9 evaluation and treatment services may be delivered on an outpatient or  
10 inpatient basis and that if the person named in the order fails to  
11 appear at the certified facility at or before the date and time stated  
12 in the order, such person may be involuntarily taken into custody for  
13 evaluation and treatment. The order shall also designate retained  
14 counsel or, if counsel is appointed from a list provided by the court,  
15 the name, business address, and telephone number of the attorney  
16 appointed to represent the person.

17 (c) The designated responder shall then serve or cause to be served  
18 on such person, and his or her personal representative, guardian, or  
19 conservator, if any, a copy of the order to appear together with a  
20 notice of rights and a petition for initial detention. After service  
21 on the person, the designated responder shall file the return of  
22 service in court and provide copies of all papers in the court file to  
23 the certified facility and the designated attorney. The designated  
24 responder shall notify the court and the prosecuting attorney that a  
25 probable cause hearing will be held within seventy-two hours of the  
26 date and time of outpatient evaluation or admission to the certified  
27 facility. The person shall be permitted to remain in his or her home  
28 or other place of his or her choosing prior to the time of evaluation  
29 and shall be permitted to be accompanied by one or more of his or her  
30 relatives, friends, an attorney, a personal physician, or other  
31 professional or religious advisor to the place of evaluation. An  
32 attorney accompanying the person to the place of evaluation shall be  
33 permitted to be present during the admission evaluation. Any other  
34 person accompanying the person may be present during the admission  
35 evaluation. The facility may exclude the person if his or her presence  
36 would present a safety risk, delay the proceedings, or otherwise  
37 interfere with the evaluation.

1 (d) If the person ordered to appear does appear on or before the  
2 date and time specified, the evaluation and treatment facility may  
3 admit such person as required by section 317 of this act or may provide  
4 treatment on an outpatient basis. If the person ordered to appear  
5 fails to appear on or before the date and time specified, the  
6 evaluation and treatment facility shall immediately notify the  
7 designated responder who may notify a peace officer to take such person  
8 or cause such person to be taken into custody and placed in a certified  
9 facility. Should the designated responder notify a peace officer  
10 authorizing him or her to take a person into custody under the  
11 provisions of this subsection, he or she shall file with the court a  
12 copy of such authorization and a notice of detention. At the time such  
13 person is taken into custody there shall commence to be served on the  
14 person, and his or her personal representative, guardian, or  
15 conservator, if any, a copy of the original order together with a  
16 notice of detention, a notice of rights, and a petition for initial  
17 detention.

18 (2) When a designated responder receives information alleging that  
19 a person, as the result of a mental disorder, chemical dependency  
20 disorder, or both, presents an imminent likelihood of serious harm, or  
21 is in imminent danger because of being gravely disabled, after  
22 investigation and evaluation of the specific facts alleged and of the  
23 reliability and credibility of the person or persons providing the  
24 information if any, the designated responder may take the person or  
25 cause, by oral or written order the person to be taken into emergency  
26 custody in a certified facility for not more than seventy-two hours as  
27 described in section 318 of this act.

28 (3) A peace officer may take the person or cause the person to be  
29 taken into custody and placed in a certified facility pursuant to  
30 subsection (1)(d) of this section.

31 (4) A peace officer may, without prior notice of the proceedings  
32 provided for in subsection (1) of this section, take or cause such  
33 person to be taken into custody and immediately delivered to a  
34 certified facility or the emergency department of a local hospital:

35 (a) Only pursuant to subsections (1)(d) and (2) of this section; or

36 (b) When he or she has reasonable cause to believe that such person  
37 is suffering from a mental disorder, chemical dependency disorder, or

1 both and presents an imminent likelihood of serious harm or is in  
2 imminent danger because of being gravely disabled.

3 (5) Persons delivered to certified facilities by peace officers  
4 pursuant to subsection (4)(b) of this section may be held by the  
5 facility for a period of up to twelve hours: PROVIDED, That they are  
6 examined by a mental health professional or chemical dependency  
7 professional within three hours of their arrival. Within twelve hours  
8 of their arrival, the designated responder must file a supplemental  
9 petition for detention, and commence service on the designated attorney  
10 for the detained person.

11 NEW SECTION. **Sec. 316.** Any facility receiving a person pursuant  
12 to section 315 of this act shall require a petition for initial  
13 detention stating the circumstances under which the person's condition  
14 was made known and stating that such officer or person has evidence, as  
15 a result of his or her personal observation or investigation, that the  
16 actions of the person for which application is made constitute a  
17 likelihood of serious harm, or that he or she is gravely disabled, and  
18 stating the specific facts known to him or her as a result of his or  
19 her personal observation or investigation, upon which he or she bases  
20 the belief that such person should be detained for the purposes and  
21 under the authority of this chapter.

22 If a person is involuntarily placed in a certified facility  
23 pursuant to section 315 of this act, on the next judicial day following  
24 the initial detention, the designated responder shall file with the  
25 court and serve the designated attorney of the detained person the  
26 petition or supplemental petition for initial detention, proof of  
27 service of notice, and a copy of a notice of emergency detention.

28 NEW SECTION. **Sec. 317.** Whenever the designated responder  
29 petitions for detention of a person whose actions constitute a  
30 likelihood of serious harm, or who is gravely disabled, the facility  
31 providing seventy-two hour evaluation and treatment must immediately  
32 accept on a provisional basis the petition and the person. The  
33 facility shall then evaluate the person's condition and admit, detain,  
34 transfer, or discharge such person in accordance with section 337 of  
35 this act. The facility shall notify in writing the court and the

1 designated responder of the date and time of the initial detention of  
2 each person involuntarily detained in order that a probable cause  
3 hearing shall be held no later than seventy-two hours after detention.

4 The duty of a state hospital to accept persons for evaluation and  
5 treatment under this section shall be limited by chapter 71.24 RCW.

6 NEW SECTION. **Sec. 318.** If the certified facility admits the  
7 person, it may detain him or her for evaluation and treatment for a  
8 period not to exceed seventy-two hours from the time of acceptance as  
9 set forth in section 317 of this act. The computation of such seventy-  
10 two hour period shall exclude Saturdays, Sundays and holidays.

11 NEW SECTION. **Sec. 319.** If the person is not approved for  
12 admission by a facility providing seventy-two hour evaluation and  
13 treatment, and the person has not been arrested, the facility shall  
14 furnish transportation, if not otherwise available, for the person to  
15 his or her place of residence or other appropriate place. If the  
16 person has been arrested, the certified facility shall detain the  
17 person for not more than eight hours at the request of the peace  
18 officer in order to enable a peace officer to return to the facility  
19 and take the person back into custody.

20 NEW SECTION. **Sec. 320.** When a designated responder detains a  
21 person to a certified facility under this chapter, he or she shall make  
22 every effort to detain the person to the certified facility that is  
23 most appropriate to the person's condition.

24 NEW SECTION. **Sec. 321.** The legislature intends that, when  
25 evaluating a person who is identified under RCW 72.09.370(7), the  
26 professional person at the evaluation and treatment facility shall,  
27 when appropriate after consideration of the person's mental condition  
28 and relevant public safety concerns, file a petition for a ninety-day  
29 less restrictive alternative in lieu of a petition for a fourteen-day  
30 commitment.

31 NEW SECTION. **Sec. 322.** (1) When a designated responder is  
32 notified by a jail that a defendant or offender who was subject to a

1 discharge review under section 339 of this act is to be released to the  
2 community, the designated responder shall evaluate the person within  
3 seventy-two hours of release.

4 (2) When an offender is under court-ordered treatment in the  
5 community and the supervision of the department of corrections, and the  
6 treatment provider becomes aware that the person is in violation of the  
7 terms of the court order, the treatment provider shall notify the  
8 designated responder and the department of corrections of the violation  
9 and request an evaluation for purposes of revocation of the less  
10 restrictive alternative.

11 (3) When a designated responder becomes aware that an offender who  
12 is under court-ordered treatment in the community and the supervision  
13 of the department of corrections is in violation of a treatment order  
14 or a condition of supervision that relates to public safety, or the  
15 designated responder detains a person under this chapter, the  
16 designated responder shall notify the person's treatment provider and  
17 the department of corrections.

18 (4) When an offender who is confined in a state correctional  
19 facility or is under supervision of the department of corrections in  
20 the community is subject to a petition for involuntary treatment under  
21 this chapter, the petitioner shall notify the department of corrections  
22 and the department of corrections shall provide documentation of its  
23 risk assessment or other concerns to the petitioner and the court if  
24 the department of corrections classified the offender as a high risk or  
25 high needs offender.

26 (5) Nothing in this section creates a duty on any treatment  
27 provider or designated responder to provide offender supervision.

28 NEW SECTION. **Sec. 323.** (1) If a person is referred to a  
29 designated responder under RCW 10.77.090(1)(d)(iii)(A), the designated  
30 responder shall examine the person within forty-eight hours. If the  
31 designated responder determines it is not appropriate to detain the  
32 person or petition for a ninety-day less restrictive alternative under  
33 section 324(4) of this act, that decision shall be immediately  
34 presented to the superior court for hearing. The court shall hold a  
35 hearing to consider the decision of the designated responder not later  
36 than the next judicial day. At the hearing the superior court shall  
37 review the determination of the designated responder and determine



1 whether an order should be entered requiring the person to be evaluated  
2 at a certified facility. No person referred to a certified facility  
3 may be held at the facility longer than seventy-two hours.

4 (2) If a person is placed in an evaluation and treatment facility  
5 under RCW 10.77.090(1)(d)(iii)(B), a professional person shall evaluate  
6 the person for purposes of determining whether to file a ninety-day  
7 inpatient or outpatient petition under this chapter. Before expiration  
8 of the seventy-two hour evaluation period authorized under RCW  
9 10.77.090(1)(d)(iii)(B), the professional person shall file a petition  
10 or, if the recommendation of the professional person is to release the  
11 person, present his or her recommendation to the superior court of the  
12 county in which the criminal charge was dismissed. The superior court  
13 shall review the recommendation not later than forty-eight hours,  
14 excluding Saturdays, Sundays, and holidays, after the recommendation is  
15 presented. If the court rejects the recommendation to unconditionally  
16 release the person, the court may order the person detained at a  
17 certified facility for not more than a seventy-two hour evaluation and  
18 treatment period and direct the person to appear at a surety hearing  
19 before that court within seventy-two hours, or the court may release  
20 the person but direct the person to appear at a surety hearing set  
21 before that court within eleven days, at which time the prosecutor may  
22 file a petition under this chapter for ninety-day inpatient or  
23 outpatient treatment. If a petition is filed by the prosecutor, the  
24 court may order that the person named in the petition be detained at  
25 the certified facility that performed the evaluation under this  
26 subsection or order the respondent to be in outpatient treatment. If  
27 a petition is filed but the person fails to appear in court for the  
28 surety hearing, the court shall order that a mental health  
29 professional, a chemical dependency professional, or peace officer  
30 shall take such person or cause such person to be taken into custody  
31 and placed in a certified facility to be brought before the court the  
32 next judicial day after detention. Upon the person's first appearance  
33 in court after a petition has been filed, proceedings under sections  
34 330 and 331 of this act shall commence. For a person subject to this  
35 subsection, the prosecutor or professional person may directly file a  
36 petition for ninety-day inpatient or outpatient treatment and no  
37 petition for initial detention or fourteen-day detention is required  
38 before such a petition may be filed.

1 The court shall conduct the hearing on the petition filed under  
2 this subsection within five judicial days of the date the petition is  
3 filed. The court may continue the hearing upon the written request of  
4 the person named in the petition or the person's attorney, for good  
5 cause shown. Such a continuance shall not exceed five additional  
6 judicial days. If the person named in the petition requests a jury  
7 trial, the trial shall commence within ten judicial days of the date of  
8 the filing of the petition. The burden of proof shall be by clear,  
9 cogent, and convincing evidence and shall be upon the petitioner. The  
10 person shall be present at such proceeding, which shall in all respects  
11 accord with the constitutional guarantees of due process of law and the  
12 rules of evidence pursuant to section 359 (8) and (9) of this act.

13 During the proceeding the person named in the petition shall  
14 continue to be detained and treated until released by order of the  
15 court. If no order has been made within thirty days after the filing  
16 of the petition, not including any extensions of time requested by the  
17 detained person or his or her attorney, the detained person shall be  
18 released.

19 (3) If a designated responder or the professional person and  
20 prosecuting attorney for the county in which the criminal charge was  
21 dismissed or attorney general, as appropriate, stipulate that the  
22 person does not present a likelihood of serious harm or is not gravely  
23 disabled, the hearing under this section is not required and the  
24 person, if in custody, shall be released.

25 (4) The person shall have the rights specified in section 359 (8)  
26 and (9) of this act.

27 **Detention and Commitment (14 Day)**

28 NEW SECTION. **Sec. 324.** A person detained for seventy-two hour  
29 evaluation and treatment may be detained for not more than fourteen  
30 additional days of involuntary intensive treatment or ninety additional  
31 days of a less restrictive alternative to involuntary intensive  
32 treatment if the following conditions are met:

33 (1) The professional staff of the agency or facility providing  
34 evaluation services has analyzed the person's condition and finds that  
35 the condition is caused by mental disorder, chemical dependency

1 disorder, or both, and either results in a likelihood of serious harm,  
2 or results in the detained person being gravely disabled and are  
3 prepared to testify those conditions are met; and

4 (2) The person has been advised of the need for voluntary treatment  
5 and the professional staff of the facility has evidence that he or she  
6 has not in good faith volunteered; and

7 (3) The facility providing intensive treatment is certified to  
8 provide such treatment by the department; and

9 (4) The professional staff of the agency or facility or the  
10 designated responder has filed a petition for fourteen day involuntary  
11 detention or a ninety day less restrictive alternative with the court.  
12 The petition must be signed either by two physicians or by one  
13 physician and a mental health professional or chemical dependency  
14 professional, as appropriate, who have examined the person. If  
15 involuntary detention is sought the petition shall state facts that  
16 support the finding that the person, as a result of mental disorder,  
17 chemical dependency disorder, or both, presents a likelihood of serious  
18 harm, or is gravely disabled and that there are no less restrictive  
19 alternatives to detention in the best interest of the person or others.  
20 The petition shall state specifically that less restrictive alternative  
21 treatment was considered and specify why treatment less restrictive  
22 than detention is not appropriate. If an involuntary less restrictive  
23 alternative is sought, the petition shall state facts that support the  
24 finding that the person, as a result of mental disorder, chemical  
25 dependency disorder, or both, presents a likelihood of serious harm, or  
26 is gravely disabled and shall set forth the less restrictive  
27 alternative proposed by the facility; and

28 (5) A copy of the petition has been served on the detained person,  
29 his or her attorney and his or her personal representative, guardian,  
30 or conservator, if any, if the person is a minor, his or her parent,  
31 and if the person is under the supervision of the department of  
32 corrections, the department of corrections prior to the probable cause  
33 hearing; and

34 (6) The court at the time the petition was filed and before the  
35 probable cause hearing has appointed counsel to represent such person  
36 if no other counsel has appeared; and

37 (7) The court has ordered a fourteen day involuntary intensive

1 treatment or a ninety day less restrictive alternative treatment after  
2 a probable cause hearing has been held pursuant to section 325 of this  
3 act; and

4 (8) At the conclusion of the initial commitment period, the  
5 professional staff of the agency or facility or the designated  
6 responder may petition for an additional period of either ninety days  
7 of less restrictive alternative treatment or ninety days of involuntary  
8 intensive treatment as provided in section 328 of this act; and

9 (9) If the hospital or facility designated to provide outpatient  
10 treatment is other than the facility providing involuntary treatment,  
11 the outpatient facility so designated has agreed to assume such  
12 responsibility.

13 NEW SECTION. **Sec. 325.** If a petition is filed for fourteen day  
14 involuntary treatment or ninety days of less restrictive alternative  
15 treatment, the court shall hold a probable cause hearing within  
16 seventy-two hours of the initial detention of such person as determined  
17 in section 318 of this act. If requested by the detained person or his  
18 or her attorney, the hearing may be postponed for a period not to  
19 exceed forty-eight hours. The hearing may also be continued subject to  
20 the conditions set forth in section 337 of this act or subject to the  
21 petitioner's showing of good cause for a period not to exceed twenty-  
22 four hours.

23 At the conclusion of the probable cause hearing, if the court finds  
24 by a preponderance of the evidence that the person, as the result of a  
25 mental disorder, chemical dependency disorder, or both, presents a  
26 likelihood of serious harm, or is gravely disabled, and, after  
27 considering less restrictive alternatives to involuntary detention and  
28 treatment, finds that no such alternatives are in the best interests of  
29 such person or others, the court shall order that such person be  
30 detained for involuntary treatment not to exceed fourteen days in a  
31 facility certified to provide treatment by the department. If the  
32 court finds that the person, as the result of a mental disorder,  
33 chemical dependency disorder, or both, presents a likelihood of serious  
34 harm, or is gravely disabled, but that treatment in a less restrictive  
35 setting than detention is in the best interest of such person or  
36 others, the court shall order an appropriate less restrictive course of  
37 treatment for not to exceed ninety days.

1 The court shall specifically state to the person and give the  
2 person notice in writing that if involuntary treatment beyond the  
3 fourteen day period or beyond the ninety days of less restrictive  
4 treatment is to be sought, the person will have the right to a full  
5 hearing or jury trial as required by section 330 of this act. The  
6 court shall also provide written notice that, where required under  
7 chapter 9.41 RCW, the person is barred from the possession of firearms.

8 NEW SECTION. **Sec. 326.** (1) Involuntary intensive treatment  
9 ordered at the time of the probable cause hearing shall be for no more  
10 than fourteen days, and shall terminate sooner when, in the opinion of  
11 the professional person in charge of the facility or his or her  
12 professional designee, (a) the person no longer constitutes a  
13 likelihood of serious harm, or (b) no longer is gravely disabled, or  
14 (c) is prepared to accept voluntary treatment upon referral, or (d) is  
15 to remain in the facility providing intensive treatment on a voluntary  
16 basis.

17 (2) A person who has been detained for fourteen days of intensive  
18 treatment shall be released at the end of the fourteen days unless one  
19 of the following applies: (a) Such person agrees to receive further  
20 treatment on a voluntary basis; or (b) such person is a patient to whom  
21 section 327 of this act is applicable.

22 **Detention and Commitment (90/180 Day)**

23 NEW SECTION. **Sec. 327.** At the expiration of the fourteen-day  
24 period of intensive treatment, a person may be confined for further  
25 treatment pursuant to section 331 of this act if:

26 (1) Such person after having been taken into custody for evaluation  
27 and treatment has threatened, attempted, or inflicted: (a) Physical  
28 harm upon the person of another or himself or herself, or substantial  
29 damage upon the property of another, and (b) as a result of mental  
30 disorder, chemical dependency disorder, or both presents a likelihood  
31 of serious harm; or

32 (2) Such person was taken into custody as a result of conduct in  
33 which he or she attempted or inflicted physical harm upon the person of  
34 another or himself or herself, or substantial damage upon the property

1 of others, and continues to present, as a result of mental disorder,  
2 chemical dependency disorder, or both, a likelihood of serious harm; or

3 (3) Such person has been determined to be incompetent and criminal  
4 charges have been dismissed pursuant to RCW 10.77.090 (4), and has  
5 committed acts constituting a felony, and as a result of a mental  
6 disorder or co-occurring mental and chemical dependency disorders,  
7 presents a substantial likelihood of repeating similar acts. In any  
8 proceeding pursuant to this subsection it shall not be necessary to  
9 show intent, willfulness, or state of mind as an element of the crime;  
10 or

11 (4) Such person is gravely disabled.

12 NEW SECTION. **Sec. 328.** (1) At any time during a person's fourteen  
13 day intensive treatment period, the professional person in charge of a  
14 treatment facility or his or her professional designee or the  
15 designated responder may petition the superior court for an order  
16 requiring such person to undergo an additional period of treatment.  
17 Such petition must be based on one or more of the grounds set forth in  
18 section 327 of this act.

19 (2) The petition shall summarize the facts which support the need  
20 for further confinement and shall be supported by affidavits signed by  
21 two examining physicians, or by one examining physician and examining  
22 mental health professional or chemical dependency specialist, as  
23 appropriate. The affidavits shall describe in detail the behavior of  
24 the detained person which supports the petition and shall explain what,  
25 if any, less restrictive treatments which are alternatives to detention  
26 are available to such person, and shall state the willingness of the  
27 affiant to testify to such facts in subsequent judicial proceedings  
28 under this chapter.

29 (3) If a person has been determined to be incompetent pursuant to  
30 RCW 10.77.090(4), then the professional person in charge of the  
31 treatment facility or his or her professional designee or the  
32 designated responder may directly file a petition for one hundred  
33 eighty day treatment under section 327(3) of this act. No petition for  
34 initial detention or fourteen day detention is required before such a  
35 petition may be filed.

1        NEW SECTION.    **Sec. 329.**    The petition for ninety day treatment  
2 shall be filed with the clerk of the superior court at least three days  
3 before expiration of the fourteen-day period of intensive treatment.  
4 At the time of filing such petition, the clerk shall set a time for the  
5 person to come before the court on the next judicial day after the day  
6 of filing unless such appearance is waived by the person's attorney,  
7 and the clerk shall notify the designated responder. The designated  
8 responder shall immediately notify the person detained, his or her  
9 attorney, if any, his or her personal representative, guardian, or  
10 conservator, if any, where the person is a minor, his or her guardian,  
11 the department of corrections where the person is under its  
12 supervision, and the prosecuting attorney, and provide a copy of the  
13 petition to such persons as soon as possible.

14        At the time set for appearance the detained person shall be brought  
15 before the court, unless such appearance has been waived and the court  
16 shall advise him or her of his or her right to be represented by an  
17 attorney and of his or her right to a jury trial. If the detained  
18 person is not represented by an attorney, or is indigent or is  
19 unwilling to retain an attorney, the court shall immediately appoint an  
20 attorney to represent him or her. The court shall, if requested,  
21 appoint a reasonably available licensed physician, psychologist, or  
22 psychiatrist, designated by the detained person to examine and testify  
23 on behalf of the detained person.

24        The court may, if requested, also appoint a professional person as  
25 defined in section 303 of this act to seek less restrictive alternative  
26 courses of treatment and to testify on behalf of the detained person.  
27 In the case of a developmentally disabled person who has been  
28 determined to be incompetent pursuant to RCW 10.77.090(4), then the  
29 appointed professional person under this section shall be a  
30 developmental disabilities professional.

31        The court shall also set a date for a full hearing on the petition  
32 as provided in section 330 of this act.

33        NEW SECTION.    **Sec. 330.**    The court shall conduct a hearing on the  
34 petition for ninety day treatment within five judicial days of the  
35 first court appearance after the probable cause hearing. The court may  
36 continue the hearing upon the written request of the person named in  
37 the petition or the person's attorney, for good cause shown, which

1 continuance shall not exceed five additional judicial days. If the  
2 person named in the petition requests a jury trial, the trial shall  
3 commence within ten judicial days of the first court appearance after  
4 the probable cause hearing. The burden of proof shall be by clear,  
5 cogent, and convincing evidence and shall be upon the petitioner. The  
6 person shall be present at such proceeding, which shall in all respects  
7 accord with the constitutional guarantees of due process of law and the  
8 rules of evidence pursuant to section 359 (8) and (9) of this act.

9 During the proceeding, the person named in the petition shall  
10 continue to be treated until released by order of the superior court.  
11 If no order has been made within thirty days after the filing of the  
12 petition, not including extensions of time requested by the detained  
13 person or his or her attorney, the detained person shall be released.

14 NEW SECTION. **Sec. 331.** (1)(a) If the court or jury finds that  
15 grounds set forth in section 327 of this act have been proven and that  
16 the best interests of the person or others will not be served by a less  
17 restrictive treatment which is an alternative to detention, the court  
18 shall remand him or her to the custody of the department or to a  
19 facility certified by the department to provide treatment to persons  
20 committed under this chapter for a further period of intensive  
21 treatment not to exceed ninety days from the date of judgment:  
22 PROVIDED, That if the grounds set forth in RCW 71.05.280(3) are the  
23 basis of commitment, then the period of treatment may be up to but not  
24 exceed one hundred eighty days from the date of judgment in a facility  
25 certified by the department to provide treatment to persons committed  
26 under this chapter.

27 (b) If the committed person is developmentally disabled and has  
28 been determined incompetent pursuant to RCW 10.77.090(4), and the best  
29 interests of the person or others will not be served by a less-  
30 restrictive treatment which is an alternative to detention, the court  
31 shall remand him or her to the custody of the department or to a  
32 facility certified by the department to provide treatment to persons  
33 committed under this chapter. When appropriate and subject to  
34 available funds, treatment and training of such persons must be  
35 provided in a program specifically reserved for the treatment and  
36 training of developmentally disabled persons. A person so committed  
37 shall receive habilitation services pursuant to an individualized



1 service plan specifically developed to treat the behavior which was the  
2 subject of the criminal proceedings. The treatment program shall be  
3 administered by developmental disabilities professionals and others  
4 trained specifically in the needs of developmentally disabled persons.

5 (c) If the committed person meets the admission requirements under  
6 section 505 of this act, the court may remand the person to an enhanced  
7 services facility.

8 (d) The department may limit admissions to these specialized  
9 programs in order to ensure that expenditures for services do not  
10 exceed amounts appropriated by the legislature and allocated by the  
11 department for such services. The department may establish admission  
12 priorities in the event that the number of eligible persons exceeds the  
13 limits set by the department. An order for treatment less restrictive  
14 than involuntary detention may include conditions, and if such  
15 conditions are not adhered to, the designated mental health  
16 professional, designated chemical dependency specialist, or  
17 developmental disabilities professional may order the person  
18 apprehended under the terms and conditions of section 336 of this act.

19 If the court or jury finds that grounds set forth in section 327 of  
20 this act have been proven, but finds that treatment less restrictive  
21 than detention will be in the best interest of the person or others,  
22 then the court shall remand him or her to the custody of the department  
23 or to a facility certified by the department to provide treatment to  
24 persons committed under this chapter or to a less restrictive  
25 alternative for a further period of less restrictive treatment not to  
26 exceed ninety days from the date of judgment: PROVIDED, That if the  
27 grounds set forth in section 327(3) of this act are the basis of  
28 commitment, then the period of treatment may be up to but not exceed  
29 one hundred eighty days from the date of judgment.

30 (2) The person shall be released from involuntary treatment at the  
31 expiration of the period of commitment imposed under subsection (1) of  
32 this section unless the superintendent or professional person in charge  
33 of the facility in which he or she is confined, or in the event of a  
34 less restrictive alternative, the designated mental health professional  
35 or developmental disabilities professional, files a new petition for  
36 involuntary treatment on the grounds that the committed person;

37 (a) During the current period of court ordered treatment: (i) Has  
38 threatened, attempted, or inflicted physical harm upon the person of

1 another, or substantial damage upon the property of another, and (ii)  
2 as a result of a mental disorder, chemical dependency disorder, or  
3 both, or as the result of a developmental disability, presents a  
4 likelihood of serious harm; or

5 (b) Was taken into custody as a result of conduct in which he or  
6 she attempted or inflicted serious physical harm upon the person of  
7 another, and continues to present, as a result of mental disorder,  
8 chemical dependency disorder, or both, or as the result of a  
9 developmental disability, a likelihood of serious harm; or

10 (c) Is in custody pursuant to RCW 71.05.280(3) and as a result of  
11 mental disorder, chemical dependency disorder, or both, or as the  
12 result of a developmental disability, presents a substantial likelihood  
13 of repeating similar acts considering the charged criminal behavior,  
14 life history, progress in treatment, and the public safety; or

15 (d) Continues to be gravely disabled.

16 If the conduct required to be proven in (b) and (c) of this  
17 subsection was found by a judge or jury in a prior trial under this  
18 chapter, it shall not be necessary to reprove that element. Such new  
19 petition for involuntary treatment shall be filed and heard in the  
20 superior court of the county of the facility which is filing the new  
21 petition for involuntary treatment unless good cause is shown for a  
22 change of venue. The cost of the proceedings shall be borne by the  
23 state.

24 The hearing shall be held as provided in RCW 71.05.310, and if the  
25 court or jury finds that the grounds for additional confinement as set  
26 forth in this subsection are present, the court may order the committed  
27 person returned for an additional period of treatment not to exceed one  
28 hundred eighty days from the date of judgment. At the end of the one  
29 hundred eighty day period of commitment, the committed person shall be  
30 released unless a petition for another one hundred eighty day period of  
31 continued treatment is filed and heard in the same manner as provided  
32 in this subsection. Successive one hundred eighty day commitments are  
33 permissible on the same grounds and pursuant to the same procedures as  
34 the original one hundred eighty day commitment.

35 (3) No person committed as provided in this section may be detained  
36 unless a valid order of commitment is in effect. No order of  
37 commitment can exceed one hundred eighty days in length.

1        NEW SECTION.    **Sec. 332.** (1) If a minor is committed for one  
2 hundred eighty-day inpatient treatment and is to be placed in a state-  
3 supported program, the secretary shall accept immediately and place the  
4 minor in a state-funded long-term evaluation and treatment facility.

5        (2) The secretary's placement authority shall be exercised through  
6 a designated placement committee appointed by the secretary and  
7 composed of children's mental health specialists, including at least  
8 one child psychiatrist who represents the state-funded, long-term,  
9 evaluation and treatment facility for minors. The responsibility of  
10 the placement committee will be to:

11        (a) Make the long-term placement of the minor in the most  
12 appropriate, available state-funded evaluation and treatment facility,  
13 having carefully considered factors including the treatment needs of  
14 the minor, the most appropriate facility able to respond to the minor's  
15 identified treatment needs, the geographic proximity of the facility to  
16 the minor's family, the immediate availability of bed space, and the  
17 probable impact of the placement on other residents of the facility;

18        (b) Approve or deny requests from treatment facilities for transfer  
19 of a minor to another facility;

20        (c) Receive and monitor reports required under this section;

21        (d) Receive and monitor reports of all discharges.

22        (3) The secretary may authorize transfer of minors among treatment  
23 facilities if the transfer is in the best interests of the minor or due  
24 to treatment priorities.

25        (4) The responsible state-funded evaluation and treatment facility  
26 shall submit a report to the department's designated placement  
27 committee within ninety days of admission and no less than every one  
28 hundred eighty days thereafter, setting forth such facts as the  
29 department requires, including the minor's individual treatment plan  
30 and progress, recommendations for future treatment, and possible less  
31 restrictive treatment.

32                    **Detention and Commitment (CDMHP/CDCDS Responsibility)**

33        NEW SECTION.    **Sec. 333.** Whenever a designated responder or  
34 professional person is conducting an evaluation under this chapter,  
35 consideration shall include all reasonably available information and  
36 records regarding:

1 (1) Prior recommendations for evaluation of the need for civil  
2 commitments when the recommendation is made pursuant to an evaluation  
3 conducted under chapter 10.77 RCW;

4 (2) History of one or more violent acts;

5 (3) Prior determinations of incompetency or insanity under chapter  
6 10.77 RCW; and

7 (4) Prior commitments under this chapter or chapter 70.96A, 71.05,  
8 or 71.34 RCW.

9 In addition, when conducting an evaluation for offenders identified  
10 under RCW 72.09.370, the designated responder or professional person  
11 shall consider an offender's history of judicially required or  
12 administratively ordered antipsychotic medication while in confinement.

13 NEW SECTION. **Sec. 334.** The department shall develop statewide  
14 protocols to be utilized by professional persons, and designated  
15 responders in administration of this chapter and chapter 10.77 RCW.  
16 The protocols shall be updated at least every three years. The  
17 protocols shall provide uniform development and application of criteria  
18 in evaluation and commitment recommendations, of persons who have, or  
19 are alleged to have, a mental disorder, chemical dependency disorder,  
20 or both, and are subject to this chapter.

21 The initial protocols shall be developed not later than September  
22 1, 2008. The department shall develop and update the protocols in  
23 consultation with representatives of designated responders, local  
24 government, law enforcement, county and city prosecutors, public  
25 defenders, the department of corrections, and groups concerned with  
26 mental and chemical dependency disorders. The protocols shall be  
27 submitted to the governor and legislature upon adoption by the  
28 department.

#### 29 **Modifications and Reviews**

30 NEW SECTION. **Sec. 335.** In any proceeding under this chapter to  
31 modify a commitment order of a person committed to inpatient treatment  
32 under grounds set forth in section 327(3) or 331(2)(c) of this act in  
33 which the requested relief includes treatment less restrictive than  
34 detention, the prosecuting attorney shall be entitled to intervene.  
35 The party initiating the motion to modify the commitment order shall

1 serve the prosecuting attorney of the county in which the criminal  
2 charges against the committed person were dismissed with written notice  
3 and copies of the initiating papers.

4 NEW SECTION. **Sec. 336.** (1)(a) When, in the opinion of the  
5 superintendent or the professional person in charge of the hospital or  
6 facility providing involuntary treatment, the committed person can be  
7 appropriately served by outpatient treatment prior to or at the  
8 expiration of the period of commitment, then such outpatient care may  
9 be required as a term of conditional release for a period which, when  
10 added to the inpatient treatment period, shall not exceed the period of  
11 commitment. If the hospital or facility designated to provide  
12 outpatient treatment is other than the facility providing involuntary  
13 treatment, the outpatient facility so designated must agree in writing  
14 to assume such responsibility. A copy of the terms of conditional  
15 release shall be given to the person, and if the person is a minor, the  
16 person's parent, the designated responder in the county in which the  
17 patient is to receive outpatient treatment, the department of  
18 corrections if the person is under supervision by the department of  
19 corrections, and the court of original commitment.

20 (b) Before a person committed under grounds set forth in RCW  
21 71.05.280(3) or 71.05.320(2)(c) is conditionally released under (a) of  
22 this subsection, the superintendent or professional person in charge of  
23 the hospital or facility providing involuntary treatment shall in  
24 writing notify the prosecuting attorney of the county in which the  
25 criminal charges against the committed person were dismissed, of the  
26 decision to conditionally release the person. Notice and a copy of the  
27 terms of conditional release shall be provided at least thirty days  
28 before the person is released from inpatient care. Within twenty days  
29 after receiving notice, the prosecuting attorney may petition the court  
30 in the county that issued the commitment order to hold a hearing to  
31 determine whether the person may be conditionally released and the  
32 terms of the conditional release. The prosecuting attorney shall  
33 provide a copy of the petition to the superintendent or professional  
34 person in charge of the hospital or facility providing involuntary  
35 treatment, the committed person and, if the person is a minor, his or  
36 her parent, the attorney, if any, and personal representative,  
37 guardian, or conservator of the committed person, the department of

1 corrections if the person is under its supervision, and the court of  
2 original commitment. If the county in which the committed person is to  
3 receive outpatient treatment is the same county in which the criminal  
4 charges against the committed person were dismissed, then the court  
5 shall, upon the motion of the prosecuting attorney, transfer the  
6 proceeding to the court in that county. The court shall conduct a  
7 hearing on the petition within ten days of the filing of the petition.  
8 The committed person shall have the same rights with respect to notice,  
9 hearing, and counsel as for an involuntary treatment proceeding, except  
10 as set forth in this subsection and except that there shall be no right  
11 to jury trial. The issue to be determined at the hearing is whether or  
12 not the person may be conditionally released without substantial danger  
13 to other persons, or substantial likelihood of committing criminal acts  
14 jeopardizing public safety or security. If the court disapproves of  
15 the conditional release, it may do so only on the basis of substantial  
16 evidence. Pursuant to the determination of the court upon the hearing,  
17 the conditional release of the person shall be approved by the court on  
18 the same or modified conditions or the person shall be returned for  
19 involuntary treatment on an inpatient basis subject to release at the  
20 end of the period for which he or she was committed, or otherwise in  
21 accordance with the provisions of this chapter.

22 (2) The hospital or facility designated to provide outpatient care  
23 or the secretary may modify the conditions for continued release when  
24 such modification is in the best interest of the person. Notification  
25 of such changes shall be sent to all persons receiving a copy of the  
26 original conditions.

27 (3)(a) If the hospital or facility designated to provide outpatient  
28 care, the designated responder, or the secretary determines that:

29 (i) A conditionally released person is failing to adhere to the  
30 terms and conditions of his or her release;

31 (ii) Substantial deterioration in a conditionally released person's  
32 functioning has occurred;

33 (iii) There is evidence of substantial decompensation with a  
34 reasonable probability that the decompensation can be reversed by  
35 further inpatient treatment; or

36 (iv) The person poses a likelihood of serious harm.

37 Upon notification by the hospital or facility designated to provide  
38 outpatient care, or on his or her own motion, the designated responder

1 or the secretary may order that the conditionally released person be  
2 apprehended and taken into custody and temporarily detained in a  
3 certified facility in or near the county in which he or she is  
4 receiving outpatient treatment.

5 (b) The hospital or facility designated to provide outpatient  
6 treatment shall notify the secretary or designated responder when a  
7 conditionally released person fails to adhere to terms and conditions  
8 of his or her conditional release or experiences substantial  
9 deterioration in his or her condition and, as a result, presents an  
10 increased likelihood of serious harm. The designated responder or  
11 secretary shall order the person apprehended and temporarily detained  
12 in a certified facility in or near the county in which he or she is  
13 receiving outpatient treatment. When the person is under the  
14 supervision of the department of corrections the designated responder  
15 shall also notify the department of corrections.

16 (c) A person detained under this subsection (3) shall be held until  
17 such time, not exceeding five days, as a hearing can be scheduled to  
18 determine whether or not the person should be returned to the hospital  
19 or facility from which he or she had been conditionally released. The  
20 designated responder or the secretary may modify or rescind such order  
21 at any time prior to commencement of the court hearing.

22 (d) The court that originally ordered commitment shall be notified  
23 within two judicial days of a person's detention under the provisions  
24 of this section, and the designated responder or the secretary shall  
25 file his or her petition and order of apprehension and detention with  
26 the court and serve them upon the person detained, and if the person is  
27 a minor, his or her parent, his or her attorney, personal  
28 representative, guardian, or conservator, if any, and the department of  
29 corrections, where the person is under its supervision, shall receive  
30 a copy of such papers as soon as possible. Such person shall have the  
31 same rights with respect to notice, hearing, and counsel as for an  
32 involuntary treatment proceeding, except as specifically set forth in  
33 this section and except that there shall be no right to jury trial.  
34 The issues to be determined shall be: (i) Whether the conditionally  
35 released person did or did not adhere to the terms and conditions of  
36 his or her conditional release; (ii) that substantial deterioration in  
37 the person's functioning has occurred; (iii) there is evidence of  
38 substantial decompensation with a reasonable probability that the

1 decompensation can be reversed by further inpatient treatment; or (iv)  
2 there is a likelihood of serious harm; and, if any of the conditions  
3 listed in this subsection (3)(d) have occurred, whether the terms of  
4 conditional release should be modified or the person should be returned  
5 to the facility.

6 (e) Pursuant to the determination of the court upon such hearing,  
7 the conditionally released person shall either continue to be  
8 conditionally released on the same or modified conditions or shall be  
9 returned for involuntary treatment on an inpatient basis subject to  
10 release at the end of the period for which he or she was committed for  
11 involuntary treatment, or otherwise in accordance with the provisions  
12 of this chapter. Such hearing may be waived by the person, his or her  
13 counsel, his or her personal representative, guardian, or conservator,  
14 if any, and, where the person is a minor, his or her parent, but shall  
15 not be waivable unless all such persons agree to waive, and upon such  
16 waiver the person may be returned for involuntary treatment or  
17 continued on conditional release on the same or modified conditions.

18 (4) The proceedings set forth in subsection (3) of this section may  
19 be initiated by the designated responder or the secretary on the same  
20 basis set forth therein without requiring or ordering the apprehension  
21 and detention of the conditionally released person, in which case the  
22 court hearing shall take place in not less than five days from the date  
23 of service of the petition upon the conditionally released person.

24 Upon expiration of the period of commitment, or when the person is  
25 released from outpatient care, notice in writing to the court which  
26 committed the person for treatment shall be provided.

27 (5) The grounds and procedures for revocation of less restrictive  
28 alternative treatment shall be the same as those set forth in this  
29 section for conditional releases.

30 (6) In the event of a revocation of a conditional release, the  
31 subsequent treatment period may be for no longer than the actual period  
32 authorized in the original court order.

### 33 **Treatment Provider Responsibilities**

34 NEW SECTION. **Sec. 337.** Each person involuntarily detained and  
35 accepted or admitted at a certified facility shall, within twenty-four  
36 hours of his or her admission or acceptance at the facility, be



1 examined and evaluated by a licensed physician who may be assisted by  
2 a physician assistant according to chapter 18.71A RCW or an advanced  
3 registered nurse practitioner according to chapter 18.79 RCW and a  
4 mental health professional or chemical dependency professional, as  
5 appropriate, and shall receive such treatment and care as his or her  
6 condition requires including treatment on an outpatient basis for the  
7 period that he or she is detained, except that, beginning twenty-four  
8 hours prior to a trial or hearing pursuant to section 325, 330, 331,  
9 336, 360, or 361 of this act, the person may refuse psychiatric  
10 medications, but may not refuse: (1) Any other medication previously  
11 prescribed by a person licensed under Title 18 RCW; or (2) emergency  
12 lifesaving treatment, and the person shall be informed at an  
13 appropriate time of his or her right of such refusal. The person shall  
14 be detained up to seventy-two hours if, in the opinion of the  
15 professional person in charge of the facility, or his or her  
16 professional designee, the person presents a likelihood of serious harm  
17 or is gravely disabled. A person who has been detained for seventy-two  
18 hours shall, no later than the end of such period, be released unless  
19 referred for further care on a voluntary basis or detained pursuant to  
20 court order for further treatment as provided in this chapter.

21 If, after examination and evaluation, the licensed physician and  
22 mental health professional determine that the initial needs of the  
23 person would be better served by placement in an alternate facility,  
24 then the person shall be referred to that facility.

25 A certified facility admitting or accepting any person pursuant to  
26 this chapter whose physical condition reveals the need for  
27 hospitalization shall assure that such person is transferred to an  
28 appropriate hospital for evaluation or admission for treatment. Notice  
29 of such fact shall be given to the court, the designated attorney, and  
30 the designated responder and where the person is a minor, his or her  
31 parent, and the court shall order such continuance in proceedings under  
32 this chapter as may be necessary, but in no event may this continuance  
33 be more than fourteen days.

34 NEW SECTION. **Sec. 338.** At the time a person is involuntarily  
35 admitted to a certified facility, the professional person in charge or  
36 his or her designee shall take reasonable precautions to inventory and  
37 safeguard the personal property of the person detained. A copy of the

1 inventory, signed by the staff member making it, shall be given to the  
2 person detained and where the person is a minor, his or her parent. It  
3 shall, in addition, be open to inspection to the person's attorney,  
4 guardian, or conservator, if any, and any responsible relative, subject  
5 to limitations, if any, specifically imposed by the detained person.  
6 For purposes of this section, "responsible relative" includes the  
7 spouse, parent, adult child, or adult brother or sister of the person.  
8 The facility shall not disclose the contents of the inventory to any  
9 other person without the consent of the person or order of the court.

10 NEW SECTION. **Sec. 339.** (1) When a state hospital admits a person  
11 for evaluation or treatment under this chapter, the state hospital  
12 shall consult with the appropriate corrections and chemical dependency  
13 personnel and the appropriate forensic staff at the state hospital to  
14 conduct a discharge review to determine whether the person presents a  
15 likelihood of serious harm and whether the person is appropriate for  
16 release to a less restrictive alternative, if the person has a history  
17 of one or more violent acts and:

- 18 (a) Has been transferred from a correctional facility; or  
19 (b) Is or has been under the authority of the department of  
20 corrections or the indeterminate sentence review board.

21 (2) When a state hospital returns a person who was reviewed under  
22 subsection (1) of this section to a correctional facility, the hospital  
23 shall notify the correctional facility that the person was subject to  
24 a discharge review pursuant to this section.

25 NEW SECTION. **Sec. 340.** Nothing in this chapter shall prohibit the  
26 professional person in charge of a treatment facility, or his or her  
27 professional designee, from permitting a person detained for intensive  
28 treatment to leave the facility for prescribed periods during the term  
29 of the person's detention, under such conditions as may be appropriate.

30 NEW SECTION. **Sec. 341.** No indigent patient shall be conditionally  
31 released or discharged from involuntary treatment without suitable  
32 clothing, and the superintendent of a state hospital shall furnish the  
33 same, together with such sum of money as he or she deems necessary for  
34 the immediate welfare of the patient. Such sum of money shall be the  
35 same as the amount required by RCW 72.02.100 to be provided to persons

1 in need being released from correctional institutions. As funds are  
2 available, the secretary may provide payment to indigent persons  
3 conditionally released pursuant to this chapter consistent with the  
4 optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules  
5 and regulations to do so.

6 NEW SECTION. **Sec. 342.** A certified facility shall provide for  
7 adequate and appropriate treatment of a person committed to its  
8 custody. A person committed under this section may be transferred from  
9 one certified facility to another if transfer is medically advisable.

10 NEW SECTION. **Sec. 343.** (1) Before a person committed under  
11 grounds set forth in section 327(3) of this act is released because a  
12 new petition for involuntary treatment has not been filed under section  
13 331(2) of this act, the superintendent, professional person, or  
14 designated responder responsible for the decision whether to file a new  
15 petition shall in writing notify the prosecuting attorney of the county  
16 in which the criminal charges against the committed person were  
17 dismissed, of the decision not to file a new petition for involuntary  
18 treatment. Notice shall be provided at least forty-five days before  
19 the period of commitment expires.

20 (2)(a) Before a person committed under grounds set forth in section  
21 327(3) of this act is permitted temporarily to leave a treatment  
22 facility pursuant to section 340 of this act for any period of time  
23 without constant accompaniment by facility staff, the superintendent,  
24 professional person in charge of a treatment facility, or his or her  
25 professional designee shall in writing notify the prosecuting attorney  
26 of any county of the person's destination and the prosecuting attorney  
27 of the county in which the criminal charges against the committed  
28 person were dismissed. The notice shall be provided at least forty-  
29 five days before the anticipated leave and shall describe the  
30 conditions under which the leave is to occur.

31 (b) The provisions of section 344(2) of this act apply to proposed  
32 leaves, and either or both prosecuting attorneys receiving notice under  
33 this subsection may petition the court under section 344(2) of this  
34 act.

35 (3) Nothing in this section shall be construed to authorize  
36 detention of a person unless a valid order of commitment is in effect.

1 (4) The existence of the notice requirements in this section will  
2 not require any extension of the leave date in the event the leave plan  
3 changes after notification.

4 (5) The notice requirements contained in this section shall not  
5 apply to emergency medical transfers.

6 (6) The notice provisions of this section are in addition to those  
7 provided in section 345 of this act.

8 NEW SECTION. **Sec. 344.** (1) Nothing in this chapter shall prohibit  
9 the superintendent or professional person in charge of the hospital or  
10 facility in which the person is being involuntarily treated from  
11 releasing him or her prior to the expiration of the commitment period  
12 when, in the opinion of the superintendent or professional person in  
13 charge, the person being involuntarily treated no longer presents a  
14 likelihood of serious harm.

15 Whenever the superintendent or professional person in charge of a  
16 hospital or facility providing involuntary treatment pursuant to this  
17 chapter releases a person prior to the expiration of the period of  
18 commitment, the superintendent or professional person in charge shall  
19 in writing notify the court which committed the person for treatment.

20 (2) Before a person committed under grounds set forth in section  
21 327(3) or 331(2)(c) of this act is released under this section, the  
22 superintendent or professional person in charge shall in writing notify  
23 the prosecuting attorney of the county in which the criminal charges  
24 against the committed person were dismissed, of the release date.  
25 Notice shall be provided at least thirty days before the release date.  
26 Within twenty days after receiving notice, the prosecuting attorney may  
27 petition the court in the county in which the person is being  
28 involuntarily treated for a hearing to determine whether the person is  
29 to be released. The prosecuting attorney shall provide a copy of the  
30 petition to the superintendent or professional person in charge of the  
31 hospital or facility providing involuntary treatment, the committed  
32 person and his or her attorney, personal representative, guardian, or  
33 conservator, if any, the department of corrections if the person is  
34 under its supervision, and where the person is a minor, his or her  
35 parent. The court shall conduct a hearing on the petition within ten  
36 days of filing the petition. The committed person shall have the same  
37 rights with respect to notice, hearing, and counsel as for an

1 involuntary treatment proceeding, except as set forth in this  
2 subsection and except that there shall be no right to jury trial. The  
3 issue to be determined at the hearing is whether or not the person may  
4 be released without substantial danger to other persons, or substantial  
5 likelihood of committing criminal acts jeopardizing public safety or  
6 security. If the court disapproves of the release, it may do so only  
7 on the basis of substantial evidence. Pursuant to the determination of  
8 the court upon the hearing, the committed person shall be released or  
9 shall be returned for involuntary treatment subject to release at the  
10 end of the period for which he or she was committed, or otherwise in  
11 accordance with the provisions of this chapter.

12 NEW SECTION. **Sec. 345.** (1)(a) Except as provided in subsection  
13 (2) of this section, at the earliest possible date, and in no event  
14 later than thirty days before conditional release, final release,  
15 authorized leave under section 343(2) of this act, or transfer to a  
16 facility other than a state mental hospital, the superintendent shall  
17 send written notice of conditional release, release, authorized leave,  
18 or transfer of a person committed under section 327(3) or 331(2)(c) of  
19 this act following dismissal of a sex, violent, or felony harassment  
20 offense pursuant to RCW 10.77.090(4) to the following:

21 (i) The chief of police of the city, if any, in which the person  
22 will reside;

23 (ii) The sheriff of the county in which the person will reside; and

24 (iii) The department of corrections, if the person is under its  
25 supervision.

26 (b) The same notice as required by (a) of this subsection shall be  
27 sent to the following, if such notice has been requested in writing  
28 about a specific person committed under section 327(3) or 331(2)(c) of  
29 this act following dismissal of a sex, violent, or felony harassment  
30 offense pursuant to RCW 10.77.090(4):

31 (i) The victim of the sex, violent, or felony harassment offense  
32 that was dismissed pursuant to RCW 10.77.090(4) preceding commitment  
33 under section 327(3) or 331(2)(c) of this act or the victim's next of  
34 kin if the crime was a homicide;

35 (ii) Any witnesses who testified against the person in any court  
36 proceedings; and

37 (iii) Any person specified in writing by the prosecuting attorney.

1 Information regarding victims, next of kin, or witnesses requesting the  
2 notice, information regarding any other person specified in writing by  
3 the prosecuting attorney to receive the notice, and the notice are  
4 confidential and shall not be available to the person committed under  
5 this chapter.

6 (c) The thirty-day notice requirements contained in this subsection  
7 shall not apply to emergency medical transfers.

8 (d) The existence of the notice requirements in this subsection  
9 will not require any extension of the release date in the event the  
10 release plan changes after notification.

11 (2) If a person committed under section 327(3) or 331(2)(c) of this  
12 act following dismissal of a sex, violent, or felony harassment offense  
13 pursuant to RCW 10.77.090(4) escapes, the superintendent shall  
14 immediately notify, by the most reasonable and expedient means  
15 available, the chief of police of the city, the sheriff of the county  
16 in which the person resided immediately before the person's arrest, and  
17 the department of corrections if the person is subject to its  
18 supervision. If previously requested, the superintendent shall also  
19 notify the witnesses and the victim of the sex, violent, or felony  
20 harassment offense that was dismissed pursuant to RCW 10.77.090(4)  
21 preceding commitment under section 327(3) or 331(2)(c) of this act or  
22 the victim's next of kin if the crime was a homicide. In addition, the  
23 secretary shall also notify appropriate parties pursuant to section  
24 363(18) of this act. If the person is recaptured, the superintendent  
25 shall send notice to the persons designated in this subsection as soon  
26 as possible but in no event later than two working days after the  
27 department learns of such recapture.

28 (3) If the victim, the victim's next of kin, or any witness is  
29 under the age of sixteen, the notice required by this section shall be  
30 sent to the parent or legal guardian of the child.

31 (4) The superintendent shall send the notices required by this  
32 chapter to the last address provided to the department by the  
33 requesting party. The requesting party shall furnish the department  
34 with a current address.

35 (5) For purposes of this section the following terms have the  
36 following meanings:

37 (a) "Violent offense" means a violent offense under RCW 9.94A.030;

38 (b) "Sex offense" means a sex offense under RCW 9.94A.030;

1 (c) "Next of kin" means a person's spouse, parents, siblings, and  
2 children;

3 (d) "Felony harassment offense" means a crime of harassment as  
4 defined in RCW 9A.46.060 that is a felony.

5 NEW SECTION. **Sec. 346.** In addition to any other information  
6 required to be released under this chapter, the department is  
7 authorized, pursuant to RCW 4.24.550, to release relevant information  
8 that is necessary to protect the public, concerning a specific person  
9 committed under section 327(3) or 331(2)(c) of this act following  
10 dismissal of a sex offense as defined in RCW 9.94A.030.

11 **Attorneys and Courts**

12 NEW SECTION. **Sec. 347.** Attorneys appointed for persons pursuant  
13 to this chapter shall be compensated for their services as follows:  
14 (1) The person for whom an attorney is appointed shall, if he or she is  
15 financially able pursuant to standards as to financial capability and  
16 indigency set by the superior court of the county in which the  
17 proceeding is held, bear the costs of such legal services; (2) if such  
18 person is indigent pursuant to such standards, the costs of such  
19 services shall be borne by the county in which the proceeding is held,  
20 subject however to the responsibility for costs provided in section  
21 331(2) of this act.

22 NEW SECTION. **Sec. 348.** In any judicial proceeding for involuntary  
23 commitment or detention, or in any proceeding challenging such  
24 commitment or detention, the prosecuting attorney for the county in  
25 which the proceeding was initiated shall represent the persons or  
26 agencies petitioning for commitment or detention and shall defend all  
27 challenges to such commitment or detention: PROVIDED, That the  
28 attorney general shall represent and provide legal services and advice  
29 to state hospitals with regard to all provisions of and proceedings  
30 under this chapter except in proceedings initiated by hospitals seeking  
31 fourteen day detention.

32 NEW SECTION. **Sec. 349.** When any court orders a person to receive  
33 treatment under this chapter, the order shall include a statement that

1 if the person is, or becomes, subject to supervision by the department  
2 of corrections, the person must notify the treatment provider and the  
3 person's mental health and chemical dependency treatment information  
4 must be shared with the department of corrections for the duration of  
5 the offender's incarceration and supervision, under RCW 71.05.445.  
6 Upon a petition by a person who does not have a history of one or more  
7 violent acts, the court may, for good cause, find that public safety  
8 would not be enhanced by the sharing of this person's information.

9 NEW SECTION. **Sec. 350.** In each county the superior court may  
10 appoint the following persons to assist the superior court in disposing  
11 of its business: PROVIDED, That such positions may not be created  
12 without prior consent of the county legislative authority:

13 (1) One or more attorneys to act as involuntary treatment  
14 commissioners; and

15 (2) Such investigators, stenographers, and clerks as the court  
16 shall find necessary to carry on the work of the involuntary treatment  
17 commissioners.

18 The appointments provided for in this section shall be made by a  
19 majority vote of the judges of the superior court of the county and may  
20 be in addition to all other appointments of commissioners and other  
21 judicial attaches otherwise authorized by law. Involuntary treatment  
22 commissioners and investigators shall serve at the pleasure of the  
23 judges appointing them and shall receive such compensation as the  
24 county legislative authority shall determine. The appointments may be  
25 full or part-time positions. A person appointed as an involuntary  
26 treatment commissioner may also be appointed to any other commissioner  
27 position authorized by law.

28 NEW SECTION. **Sec. 351.** The judges of the superior court of the  
29 county by majority vote may authorize involuntary treatment  
30 commissioners, appointed pursuant to RCW 71.05.135, to perform any or  
31 all of the following duties:

32 (1) Receive all applications, petitions, and proceedings filed in  
33 the superior court for the purpose of disposing of them pursuant to  
34 this chapter;

35 (2) Investigate the facts upon which to base warrants, subpoenas,



1 orders to directions in actions, or proceedings filed pursuant to this  
2 chapter;

3 (3) For the purpose of this chapter, exercise all powers and  
4 perform all the duties of a court commissioner appointed pursuant to  
5 RCW 2.24.010;

6 (4) Hold hearings in proceedings under this chapter and make  
7 written reports of all proceedings under this chapter which shall  
8 become a part of the record of superior court;

9 (5) Provide such supervision in connection with the exercise of its  
10 jurisdiction as may be ordered by the presiding judge; and

11 (6) Cause the orders and findings to be entered in the same manner  
12 as orders and findings are entered in cases in the superior court.

13 NEW SECTION. **Sec. 352.** A record of all applications, petitions,  
14 and proceedings under this chapter shall be maintained by the county  
15 clerk in which the application, petition, or proceeding was initiated.

16 NEW SECTION. **Sec. 353.** In any judicial proceeding in which a  
17 professional person has made a recommendation regarding whether a  
18 person should be committed for treatment under this chapter, and the  
19 court does not follow the recommendation, the court shall enter  
20 findings that state with particularity its reasoning, including a  
21 finding whether the state met its burden of proof in showing whether  
22 the person presents a likelihood of serious harm or grave disability.

23 NEW SECTION. **Sec. 354.** In making a determination of whether there  
24 is a likelihood of serious harm in a hearing conducted under section  
25 325 or 331 of this act, the court shall give great weight to any  
26 evidence before the court regarding whether the person has: (1) A  
27 recent history of one or more violent acts; or (2) a recent history of  
28 one or more commitments under this chapter or its equivalent provisions  
29 under the laws of another state which were based on a likelihood of  
30 serious harm. The existence of prior violent acts or commitments under  
31 this chapter or its equivalent shall not be the sole basis for  
32 determining whether a person presents a likelihood of serious harm.

33 For the purposes of this section "recent" refers to the period of  
34 time not exceeding three years prior to the current hearing.

1        NEW SECTION.    **Sec. 355.** In determining whether an inpatient or  
2 less restrictive alternative commitment under the process provided in  
3 section 327 or 331 of this act is appropriate, great weight shall be  
4 given to evidence of a prior history or pattern of decompensation and  
5 discontinuation of treatment resulting in:        (1) Repeated  
6 hospitalizations; or (2) repeated peace officer interventions resulting  
7 in juvenile offenses, criminal charges, diversion programs, or jail  
8 admissions. Such evidence may be used to provide a factual basis for  
9 concluding that the person would not receive, if released, such care as  
10 is essential for his or her health or safety.

11        NEW SECTION.    **Sec. 356.** The supreme court of the state of  
12 Washington shall adopt such rules as it shall deem necessary with  
13 respect to the court procedures and proceedings provided for by this  
14 chapter.

15        NEW SECTION.    **Sec. 357.** (1) When making a decision under this  
16 chapter whether to require a less restrictive alternative treatment,  
17 the court shall consider whether it is appropriate to include or  
18 exclude time spent in confinement when determining whether the person  
19 has committed a recent overt act.

20        (2) When determining whether an offender is a danger to himself or  
21 herself or others under this chapter, a court shall give great weight  
22 to any evidence submitted to the court regarding an offender's recent  
23 history of judicially required or administratively ordered involuntary  
24 antipsychotic medication while in confinement.

25        NEW SECTION.    **Sec. 358.** The venue for proceedings under this  
26 section is the county in which person to be committed resides or is  
27 present.

28                                    **Individual Rights and Medications**

29        NEW SECTION.    **Sec. 359.** (1)(a) Every person involuntarily detained  
30 or committed under the provisions of this chapter shall be entitled to  
31 all the rights set forth in this chapter, which shall be prominently  
32 posted in the facility, and shall retain all rights not denied him or

1 her under this chapter except as chapter 9.41 RCW may limit the right  
2 of a person to purchase or possess a firearm or to qualify for a  
3 concealed pistol license.

4 (b) No person shall be presumed incompetent as a consequence of  
5 receiving an evaluation or voluntary or involuntary treatment for a  
6 mental disorder, chemical dependency disorder, or both, under this  
7 chapter, chapter 70.96A, 71.05, or 71.34 RCW, or any prior laws of this  
8 state dealing with mental illness. Competency shall not be determined  
9 or withdrawn except under the provisions of chapter 10.97 or 11.88 RCW.

10 (c) Any person who leaves a public or private agency following  
11 evaluation or treatment for a mental disorder, chemical dependency  
12 disorder, or both, shall be given a written statement setting forth the  
13 substance of this section.

14 (2) Each person involuntarily detained or committed pursuant to  
15 this chapter shall have the right to adequate care and individualized  
16 treatment.

17 (3) The provisions of this chapter shall not be construed to deny  
18 to any person treatment by spiritual means through prayer in accordance  
19 with the tenets and practices of a church or religious denomination.

20 (4) Persons receiving evaluation or treatment under this chapter  
21 shall be given a reasonable choice of an available physician or other  
22 professional person qualified to provide such services.

23 (5) Whenever any person is detained for evaluation and treatment  
24 pursuant to this chapter, both the person and, if the person is a  
25 minor, his or her parent, or if possible, a responsible member of his  
26 or her immediate family, his or her personal representative, guardian,  
27 or conservator, if any, shall be advised as soon as possible in writing  
28 or orally, by the officer or person taking him or her into custody or  
29 by personnel of the certified facility where the person is detained  
30 that unless the person is released or voluntarily admits himself or  
31 herself for treatment within seventy-two hours of the initial  
32 detention:

33 (a) That a judicial hearing in a superior court, either by a judge  
34 or court commissioner thereof, shall be held not more than seventy-two  
35 hours after the initial detention to determine whether there is  
36 probable cause to detain the person after the seventy-two hours have  
37 expired for up to an additional fourteen days without further automatic

1 hearing for the reason that the person is a person whose mental  
2 disorder, chemical dependency disorder, or both, presents a likelihood  
3 of serious harm or that the person is gravely disabled;

4 (b) That the person has a right to communicate immediately with an  
5 attorney; has a right to have an attorney appointed to represent him or  
6 her before and at the probable cause hearing if he or she is indigent;  
7 and has the right to be told the name and address of the attorney that  
8 the mental health professional or chemical dependency professional, as  
9 appropriate, has designated pursuant to this chapter;

10 (c) That the person has the right to remain silent and that any  
11 statement he or she makes may be used against him or her;

12 (d) That the person has the right to present evidence and to cross-  
13 examine witnesses who testify against him or her at the probable cause  
14 hearing; and

15 (e) That the person has the right to refuse psychiatric  
16 medications, including antipsychotic medication beginning twenty-four  
17 hours prior to the probable cause hearing.

18 (6) When proceedings are initiated under section 315 (2), (3), or  
19 (4)(b) of this act, no later than twelve hours after such person is  
20 admitted to the certified facility the personnel of the certified  
21 facility or the designated responder shall serve on such person and if  
22 the person is a minor, the person's parent, a copy of the petition for  
23 initial detention and the name, business address, and phone number of  
24 the designated attorney and shall forthwith commence service of a copy  
25 of the petition for initial detention on the designated attorney.

26 (7) The judicial hearing described in subsection (5) of this  
27 section is hereby authorized, and shall be held according to the  
28 provisions of subsection (5) of this section and rules promulgated by  
29 the supreme court.

30 (8) At the probable cause hearing the detained person shall have  
31 the following rights in addition to the rights previously specified:

32 (a) To present evidence on his or her behalf;

33 (b) To cross-examine witnesses who testify against him or her;

34 (c) To be proceeded against by the rules of evidence;

35 (d) To remain silent;

36 (e) To view and copy all petitions and reports in the court file.

37 (9) The physician-patient privilege or the psychologist-client  
38 privilege shall be deemed waived in proceedings under this chapter

1 relating to the administration of antipsychotic medications. As to  
2 other proceedings under this chapter, the privileges shall be waived  
3 when a court of competent jurisdiction in its discretion determines  
4 that such waiver is necessary to protect either the detained person or  
5 the public.

6 The waiver of a privilege under this section is limited to records  
7 or testimony relevant to evaluation of the detained person for purposes  
8 of a proceeding under this chapter. Upon motion by the detained person  
9 or on its own motion, the court shall examine a record or testimony  
10 sought by a petitioner to determine whether it is within the scope of  
11 the waiver.

12 The record maker shall not be required to testify in order to  
13 introduce medical or psychological records of the detained person so  
14 long as the requirements of RCW 5.45.020 are met except that portions  
15 of the record which contains opinions as to the detained person's  
16 mental state must be deleted from such records unless the person making  
17 such conclusions is available for cross-examination.

18 (10) Insofar as danger to the person or others is not created, each  
19 person involuntarily detained, treated in a less restrictive  
20 alternative course of treatment, or committed for treatment and  
21 evaluation pursuant to this chapter shall have, in addition to other  
22 rights not specifically withheld by law, the following rights:

23 (a) To wear his or her own clothes and to keep and use his or her  
24 own personal possessions, except when deprivation of same is essential  
25 to protect the safety of the resident or other persons;

26 (b) To keep and be allowed to spend a reasonable sum of his or her  
27 own money for canteen expenses and small purchases;

28 (c) To have access to individual storage space for his or her  
29 private use;

30 (d) To have visitors at reasonable times;

31 (e) To have reasonable access to a telephone, both to make and  
32 receive confidential calls, consistent with an effective treatment  
33 program;

34 (f) To have ready access to letter writing materials, including  
35 stamps, and to send and receive uncensored correspondence through the  
36 mails;

37 (g) To discuss treatment plans and decisions with professional  
38 persons;

1 (h) Not to consent to the administration of antipsychotic  
2 medications beyond the hearing conducted pursuant to section 331 of  
3 this act, or the performance of electroconvulsant therapy or surgery,  
4 except emergency life-saving surgery, unless ordered by a court under  
5 section 361 of this act;

6 (i) Not to have psychosurgery performed on him or her under any  
7 circumstances;

8 (j) To dispose of property and sign contracts unless such person  
9 has been adjudicated an incompetent in a court proceeding directed to  
10 that particular issue.

11 (11) Every person involuntarily detained shall immediately be  
12 informed, and if the person is a minor, his or her parent shall be  
13 informed, of his or her right to a hearing to review the legality of  
14 his or her detention and of his or her right to counsel, by the  
15 professional person in charge of the facility providing evaluation and  
16 treatment, or his or her designee, and, when appropriate, by the court.  
17 If the person so elects, the court shall immediately appoint an  
18 attorney to assist him or her.

19 (12) A person challenging his or her detention or his or her  
20 attorney shall have the right to designate and have the court appoint  
21 a reasonably available independent physician or licensed mental health  
22 professional to examine the person detained, the results of which  
23 examination may be used in the proceeding. The person shall, if he or  
24 she is financially able, bear the cost of such expert information,  
25 otherwise such expert examination shall be at public expense.

26 (13) Nothing contained in this chapter shall prohibit the patient  
27 from petitioning by writ of habeas corpus for release.

28 (14) Nothing in this chapter shall prohibit a person committed on  
29 or prior to January 1, 1974, from exercising a right available to him  
30 or her at or prior to January 1, 1974, for obtaining release from  
31 confinement.

32 (15) The court shall inform the person whose commitment or  
33 recommitment is sought and, if the person is a minor, his or her  
34 parent, of his or her right to contest the application, be represented  
35 by counsel at every stage of any proceedings relating to his or her  
36 commitment and recommitment, and have counsel appointed by the court or  
37 provided by the court, if he or she wants the assistance of counsel and  
38 is unable to obtain counsel. If the court believes that the person

1 needs the assistance of counsel, the court shall require, by  
2 appointment if necessary, counsel for him or her regardless of his or  
3 her wishes. The person shall, if he or she is financially able, bear  
4 the costs of such legal service; otherwise such legal service shall be  
5 at public expense. The person whose commitment or recommitment is  
6 sought shall be informed of his or her right to be examined by a  
7 licensed physician of his or her choice. If the person is unable to  
8 obtain a licensed physician and requests examination by a physician,  
9 the court shall employ a licensed physician.

10 NEW SECTION. **Sec. 360.** (1) A person who is gravely disabled or  
11 presents a likelihood of serious harm as a result of a mental or  
12 chemical dependency disorder or co-occurring mental and chemical  
13 dependency disorders has a right to refuse antipsychotic medication  
14 unless it is determined that the failure to medicate may result in a  
15 likelihood of serious harm or substantial deterioration or  
16 substantially prolong the length of involuntary commitment and there is  
17 no less intrusive course of treatment than medication in the best  
18 interest of that person.

19 (2) The physician must attempt to obtain the informed consent of an  
20 involuntary committed person prior to administration of antipsychotic  
21 medication and document the attempt to obtain consent in the person's  
22 medical record with the reasons that antipsychotic medication is  
23 necessary.

24 (3) When a person is detained pursuant to section 315(1)(d), (2),  
25 or (4) of this act, the person may refuse antipsychotic medications  
26 unless there is an additional concurring medical opinion that the  
27 medications are necessary for the imminent prevention of harm to the  
28 detained person or another person. Medications administered under this  
29 subsection may not continue beyond the probable cause hearing held  
30 pursuant to section 325 of this act and the petitioner shall notify the  
31 court of administration of involuntary medications under this  
32 subsection and provide the court with an opinion regarding whether  
33 continued involuntary administration of antipsychotic medication is  
34 medically necessary.

35 (4) Except as provided in subsection (3) of this section or in  
36 section 361 of this act, if an involuntary committed person refuses  
37 antipsychotic medications, the medications may not be administered

1 unless the person has first had a hearing by a panel composed of a  
2 physician and two other persons. The two persons shall be selected  
3 from among the following: A physician, advanced registered nurse  
4 practitioner, psychologist, psychiatric nurse, physician's assistant,  
5 and the medical director of the facility. Recognizing that some  
6 facilities will not have three staff members of the required expertise  
7 who are not directly involved in the person's treatment, the panel  
8 shall be composed to the greatest extent possible of treatment  
9 providers who are not directly involved in the person's treatment at  
10 the time of the hearing.

11 (5) If a majority of the panel, including a psychiatrist if one is  
12 on the panel or another physician in the absence of a psychiatrist,  
13 determines that there is clear, cogent, and convincing evidence  
14 demonstrating that treatment with antipsychotic medications is  
15 medically appropriate, that failure to medicate may result in a  
16 likelihood of serious harm or substantial deterioration or  
17 substantially prolong the length of involuntary commitment, and that  
18 there is no less intrusive course of treatment than medication in the  
19 best interest of that person, the person may be medicated, subject to  
20 the provisions of subsections (6) through (8) of this section.

21 (6) Medication ordered pursuant to a decision of the panel may only  
22 be continued beyond seven days on an involuntary basis if the panel  
23 conducts a second hearing on the written record and a majority of the  
24 panel determines that there continues to be clear, cogent, and  
25 convincing evidence demonstrating that treatment with antipsychotic  
26 medications continues to be medically appropriate, that failure to  
27 medicate may result in a likelihood of serious harm or substantial  
28 deterioration or substantially prolong the length of involuntary  
29 commitment, and that there is no less intrusive course of treatment  
30 than medication in the best interest of that person.

31 (a) Following the second hearing, involuntary medication with  
32 antipsychotic medication may be continued if the treating psychiatrist  
33 certifies, not less than every fourteen days, that the medication  
34 continues to be medically appropriate and failure to medicate may  
35 result in a likelihood of serious harm or substantial deterioration or  
36 substantially prolong the length of involuntary commitment, and that  
37 there is no less intrusive course of treatment than medication in the  
38 best interest of that person.



1 (b) No administrative order for involuntary medication may be  
2 continued beyond one hundred eighty days, or the next commitment  
3 proceeding in the superior court, whichever comes first.

4 (7) The committed person may appeal the panel's decision to the  
5 medical director within twenty-four hours and the medical director must  
6 decide the appeal within twenty-four hours of receipt.

7 (8) The committed person may seek judicial review of the medical  
8 director's decision at the next commitment proceeding or by means of an  
9 extraordinary writ.

10 (9) Minutes of the hearing shall be kept and a copy shall be  
11 provided to the committed person.

12 (10) With regard to the involuntary medication hearing, the  
13 committed person has the right:

14 (a) To notice at least twenty-four hours in advance of the hearing  
15 that includes the intent to convene the hearing, the tentative  
16 diagnosis and the factual basis for the diagnosis, and why the staff  
17 believes that medication is necessary;

18 (b) Not to be medicated between the delivery of the notice and the  
19 hearing;

20 (c) To attend the hearing;

21 (d) To present evidence, including witnesses, and to cross-examine  
22 witnesses, including staff;

23 (e) To the assistance of a lay assistant, who is not involved in  
24 the case and who understands psychiatric issues;

25 (f) To receive a copy of the minutes of the hearing; and

26 (g) To appeal the panel's decision to the medical director.

27 (11) Antipsychotic medications may be administered in an emergency  
28 without the consent of the person pursuant to section 361 of this act.

29 NEW SECTION. **Sec. 361.** (1) A court of competent jurisdiction may  
30 order that a person involuntarily detained, or committed for inpatient  
31 treatment and evaluation or to treatment in a less restrictive  
32 alternative pursuant to this chapter be administered antipsychotic  
33 medications or the performance of electroconvulsant therapy or surgery  
34 pursuant to the following standards and procedures:

35 (a) The administration of antipsychotic medication or  
36 electroconvulsant therapy shall not be ordered by the court unless the  
37 petitioning party proves by clear, cogent, and convincing evidence that

1 treatment with antipsychotic medications is medically appropriate, that  
2 failure to medicate may result in a likelihood of serious harm or  
3 substantial deterioration or substantially prolong the length of  
4 involuntary commitment, and that there is no less intrusive course of  
5 treatment than medication or electroconvulsive therapy in the best  
6 interest of the person.

7 (b) The court shall make specific findings of fact concerning: (i)  
8 The existence of the likelihood of serious harm or substantial  
9 deterioration or substantially prolonging the length of involuntary  
10 commitment; (ii) the necessity and effectiveness of the treatment;  
11 (iii) the person's desires regarding the proposed treatment; and (iv)  
12 the best interests of the person.

13 (c) If the person is unable to make a rational and informed  
14 decision about consenting to or refusing the proposed electroconvulsive  
15 therapy, the court shall make a substituted judgment for the patient as  
16 if he or she were competent to make such a determination.

17 (d) The person shall be present at any hearing on a request to  
18 administer antipsychotic medication or electroconvulsant therapy filed  
19 pursuant to this section. The person has the right:

- 20 (i) To be represented by an attorney;
- 21 (ii) To present evidence;
- 22 (iii) To cross-examine witnesses;
- 23 (iv) To have the rules of evidence enforced;
- 24 (v) To remain silent;
- 25 (vi) To view and copy all petitions and reports in the court file;

26 and

27 (vii) To be given reasonable notice and an opportunity to prepare  
28 for the hearing.

29 (e) The court may appoint a psychiatrist, psychologist within their  
30 scope of practice, or physician to examine and testify on behalf of  
31 such person. The court shall appoint a psychiatrist, psychologist  
32 within their scope of practice, or physician designated by such person  
33 or the person's counsel to testify on behalf of the person in cases  
34 where an order for electroconvulsant therapy is sought.

35 (f) An order for the administration of antipsychotic medications  
36 entered following a hearing conducted pursuant to this section shall be  
37 effective for the period of the current involuntary treatment order,

1 and any interim period during which the person is awaiting trial or  
2 hearing on a new petition for involuntary treatment or involuntary  
3 medication.

4 (2) Any person detained pursuant to RCW 71.05.320(2), who  
5 subsequently refuses antipsychotic medication, shall be entitled to the  
6 procedures set forth in subsection (1) of this section.

7 (3) Antipsychotic medication may be administered to a nonconsenting  
8 person detained or committed pursuant to this chapter without a court  
9 order:

10 (a) Pursuant to section 360 of this act; or

11 (b) Under the following circumstances:

12 (i) A person presents an imminent likelihood of serious harm;

13 (ii) Medically acceptable alternatives to administration of  
14 antipsychotic medications are not available, have not been successful,  
15 or are not likely to be effective; and

16 (iii) In the opinion of the physician with responsibility for  
17 treatment of the person, or his or her designee, the person's condition  
18 constitutes an emergency requiring the treatment be instituted before  
19 a judicial hearing as authorized pursuant to this section can be held.

20 If antipsychotic medications are administered over a person's lack  
21 of consent pursuant to (b) of this subsection, a petition for an order  
22 authorizing the administration of antipsychotic medications shall be  
23 filed on the next judicial day. The hearing shall be held within two  
24 judicial days. If deemed necessary by the physician with  
25 responsibility for the treatment of the person, administration of  
26 antipsychotic medications may continue until the hearing is held.

27 (4) No court has the authority to order psychosurgery performed on  
28 any person involuntarily detained, treated in a less restrictive  
29 alternative course of treatment, or committed for treatment and  
30 evaluation pursuant to this chapter under any circumstances.

31 **Financial Responsibility**

32 NEW SECTION. **Sec. 362.** (1)(a) In addition to the responsibility  
33 provided for by RCW 43.20B.330, any person, or his or her estate, or  
34 his or her spouse, or the parents of a minor person who is  
35 involuntarily detained pursuant to this chapter for the purpose of

1 treatment and evaluation outside of a facility maintained and operated  
2 by the department shall be responsible for the cost of such care and  
3 treatment.

4 (b) In the event that a person is unable to pay for such treatment  
5 or in the event payment would result in a substantial hardship upon the  
6 person or his or her family, then the county of residence of such  
7 person shall be responsible for such costs. If it is not possible to  
8 determine the county of residence of the person, the cost shall be  
9 borne by the county where the person was originally detained.

10 (c) The department shall, pursuant to chapter 34.05 RCW, adopt  
11 standards as to:

12 (i) Inability to pay in whole or in part;

13 (ii) A definition of substantial hardship; and

14 (iii) Appropriate payment schedules. Such standards shall be  
15 applicable to all county mental health administrative boards.

16 (d) Financial responsibility with respect to department services  
17 and facilities shall continue to be as provided in RCW 43.20B.320  
18 through 43.20B.360 and 43.20B.370.

19 (2) If the person has not paid or is unable to pay for treatment or  
20 payment would result in a substantial hardship on the person or his or  
21 her family, the program is entitled to any payment:

22 (a) Received by the person or to which he or she may be entitled  
23 because of the services rendered; and

24 (b) From any public or private source available to the program  
25 because of the treatment provided to the person.

26 (3) The department shall not refuse admission for diagnosis,  
27 evaluation, guidance, or treatment to any applicant because it is  
28 determined that the applicant is financially unable to contribute fully  
29 or in part to the cost of any services.

30 (4)(a) The department may limit admissions of such applicants or  
31 modify its programs in order to ensure that expenditures for services  
32 or programs do not exceed amounts appropriated by the legislature and  
33 are allocated by the department for such services or programs. The  
34 department may establish admission priorities in the event that the  
35 number of eligible applicants exceeds the limits set by the department.

36 (b) The department is authorized to allocate appropriated funds in  
37 the manner that it determines best meets the purposes of this chapter.  
38 Nothing in this chapter shall be construed to entitle any person to

1 services authorized in this chapter, or to require the department or  
2 its contractors to reallocate funds in order to ensure that services  
3 are available to any eligible person upon demand.

4 **Confidentiality**

5 NEW SECTION. **Sec. 363.** Except as provided in this section, RCW  
6 71.05.445, 71.05.630, 70.96A.150, or pursuant to a valid release under  
7 RCW 70.02.030, the fact of admission and all information and records  
8 compiled, obtained, or maintained in the course of providing services  
9 to either voluntary or involuntary recipients of services at public or  
10 private agencies shall be confidential.

11 Information and records may be disclosed only:

12 (1) In communications between qualified professional persons to  
13 meet the requirements of this chapter, in the provision of services or  
14 appropriate referrals, or in the course of guardianship proceedings.  
15 The consent of the person, or his or her guardian, or if the person is  
16 a minor, his or her parent, shall be obtained before information or  
17 records may be disclosed by a professional person employed by a  
18 facility unless provided to a professional person:

- 19 (a) Employed by the facility;
- 20 (b) Who has medical responsibility for the patient's care;
- 21 (c) Who is a designated responder;
- 22 (d) Who is providing services under chapter 71.24 RCW;
- 23 (e) Who is employed by a state or local correctional facility where  
24 the person is confined or supervised; or
- 25 (f) Who is providing evaluation, treatment, or follow-up services  
26 under chapter 10.77 RCW.

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

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

35 (b) A public or private agency shall release to a patient's next of

1 kin, attorney, personal representative, guardian, or conservator, if  
2 any:

3 (i) The information that the person is presently a patient in the  
4 facility or that the person is seriously physically ill;

5 (ii) A statement evaluating the mental and physical condition of  
6 the patient, and a statement of the probable duration of the patient's  
7 confinement, if such information is requested by the next of kin,  
8 attorney, personal representative, guardian, or conservator; and such  
9 other information requested by the next of kin or attorney as may be  
10 necessary to decide whether or not proceedings should be instituted to  
11 appoint a guardian or conservator.

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

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

20 "As a condition of conducting evaluation or research concerning  
21 persons who have received services from (fill in the facility, agency,  
22 or person) I, . . . . ., agree not to divulge, publish, or  
23 otherwise make known to unauthorized persons or the public any  
24 information obtained in the course of such evaluation or research  
25 regarding persons who have received services such that the person who  
26 received such services is identifiable.

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

29 /s/ ....."

30 (b) Nothing in this chapter shall be construed to prohibit the  
31 compilation and publication of statistical data for use by government  
32 or researchers under standards, including standards to assure  
33 maintenance of confidentiality, set forth by the secretary of the  
34 department of social and health services.

35 (6)(a) To the courts as necessary to the administration of this  
36 chapter or to a court ordering an evaluation or treatment under chapter

1 10.77 RCW solely for the purpose of preventing the entry of any  
2 evaluation or treatment order that is inconsistent with any order  
3 entered under this chapter.

4 (b) To a court or its designee in which a motion under chapter  
5 10.77 RCW has been made for involuntary medication of a defendant for  
6 the purpose of competency restoration.

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

9 (7)(a) When a designated responder is requested by a representative  
10 of a law enforcement agency, including a police officer, sheriff, a  
11 municipal attorney, or prosecuting attorney to undertake an  
12 investigation under section 315 of this act, the designated responder  
13 shall, if requested to do so, advise the representative in writing of  
14 the results of the investigation including a statement of reasons for  
15 the decision to detain or release the person investigated. Such  
16 written report shall be submitted within seventy-two hours of the  
17 completion of the investigation or the request from the law enforcement  
18 representative, whichever occurs later.

19 (b) To law enforcement officers, public health officers, or  
20 personnel of the department of corrections or the indeterminate  
21 sentence review board for persons who are the subject of the records  
22 and who are committed to the custody or supervision of the department  
23 of corrections or indeterminate sentence review board which information  
24 or records are necessary to carry out the responsibilities of their  
25 office. Except for dissemination of information released pursuant to  
26 section 345 of this act and RCW 4.24.550, regarding persons committed  
27 under this chapter under sections 327(3) and 331(2)(c) of this act  
28 after dismissal of a sex offense as defined in RCW 9.94A.030, the  
29 extent of information that may be released is limited as follows:

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

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

37 (iii) Additional information shall be disclosed only after giving  
38 notice to said person and his or her counsel and upon a showing of

1 clear, cogent, and convincing evidence that such information is  
2 necessary and that appropriate safeguards for strict confidentiality  
3 are and will be maintained. However, in the event the said person has  
4 escaped from custody, said notice prior to disclosure is not necessary  
5 and the facility from which the person escaped shall include an  
6 evaluation as to whether the person is of danger to persons or property  
7 and has a propensity toward violence;

8 (iv) Information and records shall be disclosed to the department  
9 of corrections pursuant to and in compliance with the provisions of RCW  
10 71.05.445 for the purposes of completing presentence investigations or  
11 risk assessment reports, supervision of an incarcerated offender or  
12 offender under supervision in the community, planning for and provision  
13 of supervision of an offender, or assessment of an offender's risk to  
14 the community; and

15 (v) Disclosure under this subsection is mandatory for the purposes  
16 of the health insurance portability and accountability act.

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

18 (9) To the prosecuting attorney as necessary to carry out the  
19 responsibilities of the office under sections 335, 336(1)(b), and  
20 344(2) of this act. The prosecutor shall be provided access to records  
21 regarding the committed person's treatment and prognosis, medication,  
22 behavior problems, and other records relevant to the issue of whether  
23 treatment less restrictive than inpatient treatment is in the best  
24 interest of the committed person or others. Information shall be  
25 disclosed only after giving notice to the committed person and the  
26 person's counsel.

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



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

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

9 (12) To the persons designated in section 345 of this act for the  
10 purposes described in that section.

11 (13) Civil liability and immunity for the release of information  
12 about a particular person who is committed to the department under  
13 sections 327(3) and 331(2)(c) of this act after dismissal of a sex  
14 offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

15 (14) Upon the death of a patient, his or her parent if the patient  
16 is a minor, his or her next of kin, personal representative, guardian,  
17 or conservator, if any, shall be notified.

18 Next of kin who are of legal age and competent shall be notified  
19 under this section in the following order: Spouse, parents, children,  
20 brothers and sisters, and other relatives according to the degree of  
21 relation. Access to all records and information compiled, obtained, or  
22 maintained in the course of providing services to a deceased patient  
23 shall be governed by RCW 70.02.140.

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

29 (16) To mark headstones or otherwise memorialize patients interred  
30 at state hospital cemeteries. The department of social and health  
31 services shall make available the name, date of birth, and date of  
32 death of patients buried in state hospital cemeteries fifty years after  
33 the death of a patient.

34 (17) Except as otherwise provided in this chapter, the uniform  
35 health care information act, chapter 70.02 RCW, applies to all records  
36 and information compiled, obtained, or maintained in the course of  
37 providing services.

1 (18) When a person would otherwise be subject to the provisions of  
2 this section and disclosure is necessary for the protection of the  
3 person or others due to his or her unauthorized disappearance from the  
4 facility, and his or her whereabouts is unknown, notice of such  
5 disappearance, along with relevant information, may be made to  
6 relatives and governmental law enforcement agencies designated by the  
7 physician in charge of the person or the professional person in charge  
8 of the facility, or his or her professional designee.

9 (19) The fact of admission, as well as all records, files,  
10 evidence, findings, or orders made, prepared, collected, or maintained  
11 pursuant to this chapter shall not be admissible as evidence in any  
12 legal proceeding outside this chapter without the written consent of  
13 the person who was the subject of the proceeding except in a subsequent  
14 criminal prosecution of a person committed pursuant to sections 327(3)  
15 and 331(2)(c) of this act on charges that were dismissed pursuant to  
16 chapter 10.77 RCW due to incompetency to stand trial or in a civil  
17 commitment proceeding pursuant to chapter 71.09 RCW. The records and  
18 files maintained in any court proceeding pursuant to this chapter shall  
19 be confidential and available subsequent to such proceedings only to  
20 the person who was the subject of the proceeding or his or her  
21 attorney. In addition, the court may order the subsequent release or  
22 use of such records or files only upon good cause shown if the court  
23 finds that appropriate safeguards for strict confidentiality are and  
24 will be maintained.

25 NEW SECTION. **Sec. 364.** Except as provided in section 345 of this  
26 act, when any disclosure of information or records is made as  
27 authorized by sections 363 through 368 of this act, or pursuant to RCW  
28 71.05.390 or 70.96A.150, the physician in charge of the patient or the  
29 professional person in charge of the facility shall promptly cause to  
30 be entered into the patient's medical record the date and circumstances  
31 under which said disclosure was made, the names and relationships to  
32 the patient, if any, of the persons or agencies to whom such disclosure  
33 was made, and the information disclosed.

34 NEW SECTION. **Sec. 365.** The files and records of court proceedings  
35 under this chapter, chapters 71.05, 70.96A, 71.34, and 70.-- (sections  
36 202 through 216 of this act) RCW shall be closed but shall be

1 accessible to any person who is the subject of a petition and to the  
2 person's attorney, guardian ad litem, resource management services, or  
3 service providers authorized to receive such information by resource  
4 management services.

5 NEW SECTION. **Sec. 366.** (1) Except as otherwise provided by law,  
6 all treatment records shall remain confidential and may be released  
7 only to the persons designated in this section, or to other persons  
8 designated in an informed written consent of the patient.

9 (2) Treatment records of a person may be released without informed  
10 written consent in the following circumstances:

11 (a) To a person, organization, or agency as necessary for  
12 management or financial audits, or program monitoring and evaluation.  
13 Information obtained under this subsection shall remain confidential  
14 and may not be used in a manner that discloses the name or other  
15 identifying information about the person whose records are being  
16 released.

17 (b) To the department, the director of regional support networks,  
18 or a qualified staff member designated by the director only when  
19 necessary to be used for billing or collection purposes. The  
20 information shall remain confidential.

21 (c) For purposes of research as permitted in chapter 42.48 RCW.

22 (d) Pursuant to lawful order of a court.

23 (e) To qualified staff members of the department, to the director  
24 of regional support networks, to resource management services  
25 responsible for serving a patient, or to service providers designated  
26 by resource management services as necessary to determine the progress  
27 and adequacy of treatment and to determine whether the person should be  
28 transferred to a less restrictive or more appropriate treatment  
29 modality or facility. The information shall remain confidential.

30 (f) Within the treatment facility where the patient is receiving  
31 treatment, confidential information may be disclosed to persons  
32 employed, serving in bona fide training programs, or participating in  
33 supervised volunteer programs, at the facility when it is necessary to  
34 perform their duties.

35 (g) Within the department as necessary to coordinate treatment for  
36 mental illness, developmental disabilities, alcoholism, or drug abuse  
37 of persons who are under the supervision of the department.

1 (h) To a licensed physician who has determined that the life or  
2 health of the person is in danger and that treatment without the  
3 information contained in the treatment records could be injurious to  
4 the patient's health. Disclosure shall be limited to the portions of  
5 the records necessary to meet the medical emergency.

6 (i) To a facility that is to receive a person who is involuntarily  
7 committed under this chapter or upon transfer of the person from one  
8 treatment facility to another. The release of records under this  
9 subsection shall be limited to the treatment records required by law,  
10 a record or summary of all somatic treatments, and a discharge summary.  
11 The discharge summary may include a statement of the patient's problem,  
12 the treatment goals, the type of treatment which has been provided, and  
13 recommendation for future treatment, but may not include the patient's  
14 complete treatment record.

15 (j) Notwithstanding the provisions of section 363(7) of this act,  
16 to a correctional facility or a corrections officer who is responsible  
17 for the supervision of a person who is receiving inpatient or  
18 outpatient evaluation or treatment. Except as provided in RCW  
19 71.05.445 and 71.34.225, release of records under this section is  
20 limited to:

21 (i) An evaluation report provided pursuant to a written supervision  
22 plan.

23 (ii) The discharge summary, including a record or summary of all  
24 somatic treatments, at the termination of any treatment provided as  
25 part of the supervision plan.

26 (iii) When a person is returned from a treatment facility to a  
27 correctional facility, the information provided under (j)(iv) of this  
28 subsection.

29 (iv) Any information necessary to establish or implement changes in  
30 the person's treatment plan or the level or kind of supervision as  
31 determined by resource management services. In cases involving a  
32 person transferred back to a correctional facility, disclosure shall be  
33 made to clinical staff only.

34 (k) To the person's counsel or guardian ad litem, without  
35 modification, at any time in order to prepare for involuntary  
36 commitment or recommitment proceedings, reexaminations, appeals, or  
37 other actions relating to detention, admission, commitment, or  
38 patient's rights under chapter 71.05 RCW.

1 (1) To staff members of the protection and advocacy agency or to  
2 staff members of a private, nonprofit corporation for the purpose of  
3 protecting and advocating the rights of persons with mental or chemical  
4 dependency disorders, or both, or developmental disabilities. Resource  
5 management services may limit the release of information to the name,  
6 birthdate, and county of residence of the patient, information  
7 regarding whether the patient was voluntarily admitted, or  
8 involuntarily committed, the date and place of admission, placement, or  
9 commitment, the name and address of a guardian of the patient, and the  
10 date and place of the guardian's appointment. Any staff member who  
11 wishes to obtain additional information shall notify the patient's  
12 resource management services in writing of the request and of the  
13 resource management services' right to object. The staff member shall  
14 send the notice by mail to the guardian's address. If the guardian  
15 does not object in writing within fifteen days after the notice is  
16 mailed, the staff member may obtain the additional information. If the  
17 guardian objects in writing within fifteen days after the notice is  
18 mailed, the staff member may not obtain the additional information.

19 (3) Whenever federal law or federal regulations restrict the  
20 release of information contained in the treatment records of any  
21 patient who receives treatment for chemical dependency, the department  
22 may restrict the release of the information as necessary to comply with  
23 federal law and regulations.

24 NEW SECTION. **Sec. 367.** (1) Procedures shall be established by  
25 resource management services to provide reasonable and timely access to  
26 individual treatment records. However, access may not be denied at any  
27 time to records of all medications and somatic treatments received by  
28 the person.

29 (2) Following discharge, the person shall have a right to a  
30 complete record of all medications and somatic treatments prescribed  
31 during evaluation, admission, or commitment and to a copy of the  
32 discharge summary prepared at the time of his or her discharge. A  
33 reasonable and uniform charge for reproduction may be assessed.

34 (3) Treatment records may be modified prior to inspection to  
35 protect the confidentiality of other patients or the names of any other  
36 persons referred to in the record who gave information on the condition

1 that his or her identity remain confidential. Entire documents may not  
2 be withheld to protect such confidentiality.

3 (4) At the time of discharge all persons shall be informed by  
4 resource management services of their rights as provided in sections  
5 363 through 368 of this act.

6 NEW SECTION. **Sec. 368.** Nothing in this chapter, chapter 70.96A,  
7 71.05, 71.34, or 70.-- (sections 202 through 216 of this act) RCW shall  
8 be construed to interfere with communications between physicians or  
9 psychologists and patients and attorneys and clients.

10 **Liability**

11 NEW SECTION. **Sec. 369.** (1) Neither the state nor any officer of  
12 a public or private agency; superintendent, professional person in  
13 charge or his or her professional designee, or attending staff of any  
14 such agency; public official performing functions necessary to the  
15 administration of this chapter; peace officer; designated responder; a  
16 unit of local government; or certified facility shall be civilly or  
17 criminally liable for performing duties pursuant to this chapter with  
18 regard to the decision of whether to admit, discharge, release,  
19 administer antipsychotic medications, or detain a person for evaluation  
20 and treatment: PROVIDED, That such duties were performed in good faith  
21 and without gross negligence.

22 (2) This section does not relieve a person from giving the required  
23 notices under this chapter or chapter 70.96A, 71.05, 71.34, or 70.--  
24 (sections 202 through 216 of this act), or the duty to warn or to take  
25 reasonable precautions to provide protection from violent behavior  
26 where the patient has communicated an actual threat of physical  
27 violence against a reasonably identifiable victim or victims. The duty  
28 to warn or to take reasonable precautions to provide protection from  
29 violent behavior is discharged if reasonable efforts are made to  
30 communicate the threat to the victim or victims and to law enforcement  
31 personnel.

32 NEW SECTION. **Sec. 370.** Except as provided in RCW 4.24.550, any  
33 person may bring an action against a person who has willfully released

1 confidential information or records concerning him or her in violation  
2 of the provisions of this chapter, for the greater of the following  
3 amounts:

- 4 (1) One thousand dollars; or
- 5 (2) Three times the amount of actual damages sustained, if any. It  
6 shall not be a prerequisite to recovery under this section that the  
7 plaintiff shall have suffered or be threatened with special, as  
8 contrasted with general, damages.

9 Any person may bring an action to enjoin the release of  
10 confidential information or records concerning him or her or his or her  
11 ward, in violation of the provisions of this chapter, and may in the  
12 same action seek damages as provided in this section.

13 The court may award to the plaintiff, should he or she prevail in  
14 an action authorized by this section, reasonable attorney fees in  
15 addition to those otherwise provided by law.

16 NEW SECTION. **Sec. 371.** Any person making or filing an application  
17 alleging that a person should be involuntarily detained, certified,  
18 committed, treated, or evaluated pursuant to this chapter shall not be  
19 rendered civilly or criminally liable where the making and filing of  
20 such application was in good faith.

21 NEW SECTION. **Sec. 372.** Any person who knowingly, willfully, or  
22 through gross negligence violates the provisions of this chapter by  
23 detaining a person for more than the allowable number of days shall be  
24 liable to the person detained in civil damages. It shall not be a  
25 prerequisite to an action under this section that the plaintiff shall  
26 have suffered or be threatened with special, as contrasted with general  
27 damages.

28 NEW SECTION. **Sec. 373.** Any person who requests or obtains  
29 confidential information pursuant to sections 363 through 368 of this  
30 act under false pretenses shall be guilty of a gross misdemeanor.

31 NEW SECTION. **Sec. 374.** The provisions of RCW 71.05.025,  
32 71.05.530, and 71.05.550 apply to this chapter.

PART IV  
TREATMENT GAP

1  
2  
3       NEW SECTION.   **Sec. 401.**   A new section is added to chapter 70.96A  
4 RCW to read as follows:

5       (1) The division of alcohol and substance abuse shall increase its  
6 capacity to serve adults who meet chemical dependency treatment  
7 criteria and who are enrolled in medicaid as follows:

8       (a) In fiscal year 2006, the division of alcohol and substance  
9 abuse shall serve forty percent of the calculated need; and

10       (b) In fiscal year 2007, the division of alcohol and substance  
11 abuse shall serve sixty percent of the calculated need.

12       (2) The division of alcohol and substance abuse shall increase its  
13 capacity to serve minors who have passed their twelfth birthday and who  
14 are not yet eighteen, who are under two hundred percent of the federal  
15 poverty level as follows:

16       (a) In fiscal year 2006, the division of alcohol and substance  
17 abuse shall serve forty percent of the calculated need; and

18       (b) In fiscal year 2007, the division of alcohol and substance  
19 abuse shall serve sixty percent of the calculated need.

20       (3) For purposes of this section, "calculated need" means the  
21 percentage of the population under two hundred percent of the federal  
22 poverty level in need of chemical dependency services as determined in  
23 the 2003 Washington state needs assessment study.

24       NEW SECTION.   **Sec. 402.**   A new section is added to chapter 70.96A  
25 RCW to read as follows:

26       (1) Not later than January 1, 2007, all persons providing treatment  
27 under this chapter shall also implement the integrated comprehensive  
28 screening and assessment process for chemical dependency and mental  
29 disorders adopted pursuant to section 701 of this act and shall  
30 document the numbers of clients with co-occurring mental and substance  
31 abuse disorders based on a quadrant system of low and high needs.

32       (2) Treatment providers contracted to provide treatment under this  
33 chapter who fail to implement the integrated comprehensive screening  
34 and assessment process for chemical dependency and mental disorders by  
35 July 1, 2007, are subject to contractual penalties established under  
36 section 701 of this act.



1        NEW SECTION.    **Sec. 403.**    A new section is added to chapter 70.96A  
2    RCW to read as follows:

3        (1)    The secretary shall assess the availability and cost-  
4    effectiveness of converting disused skilled nursing facilities to  
5    inpatient or residential chemical dependency or mental health treatment  
6    facilities.

7        (2)    The assessment shall include:

8        (a)    An assessment of the impact of the federal institutions of  
9    mental disease exclusion for purposes of medicaid eligibility;

10       (b)    The viability and cost-effectiveness of contracting with  
11   private, nonprofit entities to operate state-owned facilities and the  
12   difference in rates that would engender;

13       (c)    The viability and cost-effectiveness of leasing state-owned  
14   facilities at market rate to private, nonprofit entities;

15       (d)    The estimated time to operation for these facilities.

16       (3)    The department shall provide the appropriate committees of the  
17   legislature with this assessment, not later than September 1, 2005.

18       (4)    To the extent that the assessment demonstrates that conversion  
19   of disused skilled nursing facilities is consistent with the purposes  
20   of this section and capital funds are appropriated for this purpose,  
21   the secretary may acquire and convert such facilities and enter  
22   contracts with private, nonprofit entities to operate them, provided  
23   that rates are set in such a manner that no private, nonprofit entity  
24   receives an effectively higher rate than a comparable vendor that  
25   leases or owns its own facility.

26       NEW SECTION.    **Sec. 404.**    A new section is added to chapter 70.96A  
27   RCW to read as follows:

28        A petition for commitment under this chapter may be joined with a  
29   petition for commitment under chapter 71.05 RCW.

30       NEW SECTION.    **Sec. 405.**    A new section is added to chapter 70.96A  
31   RCW to read as follows:

32        (1)    The department of social and health services shall contract for  
33   a chemical dependency specialist on site at each division of children  
34   and family services office throughout the state to enhance the  
35   timeliness and quality of child protective services assessments and to  
36   better connect families to needed treatment services.

1 (2) The chemical dependency specialist's duties may include, but  
2 are not limited to: Conducting on-site chemical dependency screening  
3 and assessment, facilitating progress reports to department social  
4 workers, in-service training of department social workers and staff on  
5 substance abuse issues, referring clients from the department to  
6 treatment providers, and providing consultation on cases to department  
7 social workers.

8 (3) The department of social and health services shall provide  
9 training in and ensure that each social worker is trained in uniform  
10 assessment for mental health and chemical dependency. This subsection  
11 shall apply to social workers performing risk assessments for the  
12 department's child protective services or child welfare services  
13 clients.

14 **PART V**  
15 **RESOURCES**

16 NEW SECTION. **Sec. 501.** Sections 502 through 525 of this act  
17 constitute a new chapter in Title 70 RCW.

18 NEW SECTION. **Sec. 502.** The legislature finds that there are  
19 persons with mental disorders, including organic or traumatic brain  
20 disorders, and combinations of mental disorders with other medical  
21 conditions or behavior histories that result in behavioral and security  
22 issues that make these persons ineligible for, or unsuccessful in,  
23 existing types of licensed facilities, including adult residential  
24 rehabilitation centers, boarding homes, adult family homes, group  
25 homes, and skilled nursing facilities. The legislature also finds that  
26 many of these persons have been treated on repeated occasions in  
27 inappropriate acute care facilities and released without an appropriate  
28 placement or have been treated or detained for extended periods in  
29 inappropriate settings including state hospitals and correctional  
30 facilities. The legislature further finds that some of these persons  
31 present complex safety and treatment issues that require security  
32 measures that cannot be instituted under most facility licenses or  
33 supported housing programs. These include the ability to detain  
34 persons under involuntary treatment orders or administer court ordered  
35 medications.

1           Consequently, the legislature intends to establish a new type of  
2 facility licensed by the department of social and health services as an  
3 enhanced services facility with standards that will provide a safe,  
4 secure treatment environment for a limited population of persons who  
5 are not appropriately served in other facilities or programs.

6           NEW SECTION.   **Sec. 503.** The definitions in this section apply  
7 throughout this chapter unless the context clearly requires otherwise.

8           (1) "Antipsychotic medications" means that class of drugs primarily  
9 used to treat serious manifestations of mental illness associated with  
10 thought disorders, which includes but is not limited to atypical  
11 antipsychotic medications.

12           (2) "Attending staff" means any person on the staff of a public or  
13 private agency having responsibility for the care and treatment of a  
14 patient.

15           (3) "Chemical dependency" means alcoholism, drug addiction, or  
16 dependence on alcohol and one or more other psychoactive chemicals, as  
17 the context requires and as those terms are defined in chapter 70.96A  
18 RCW.

19           (4) "Chemical dependency professional" means a person certified as  
20 a chemical dependency professional by the department of health under  
21 chapter 18.205 RCW.

22           (5) "Commitment" means the determination by a court that an  
23 individual should be detained for a period of either evaluation or  
24 treatment, or both, in an inpatient or a less restrictive setting.

25           (6) "Conditional release" means a modification of a commitment that  
26 may be revoked upon violation of any of its terms.

27           (7) "Custody" means involuntary detention under chapter 71.05,  
28 70.96A, or 70.-- (sections 302 through 374 of this act) RCW,  
29 uninterrupted by any period of unconditional release from commitment  
30 from a facility providing involuntary care and treatment.

31           (8) "Department" means the department of social and health  
32 services.

33           (9) "Designated responder" means a county designated mental health  
34 professional, a designated chemical dependency specialist, or a  
35 designated crisis responder as those terms are defined in chapter  
36 70.96A, 71.05, 70.-- (sections 202 through 216 of this act), or 70.--  
37 (sections 302 through 374 of this act) RCW.

1 (10) "Detention" or "detain" means the lawful confinement of an  
2 individual under chapter 70.96A, 71.05, or 70.-- (sections 302 through  
3 374 of this act) RCW.

4 (11) "Discharge" means the termination of facility authority. The  
5 commitment may remain in place, be terminated, or be amended by court  
6 order.

7 (12) "Enhanced services facility" means a facility that provides  
8 treatment and services to persons for whom acute inpatient treatment is  
9 not medically necessary and who have been determined by the department  
10 to be inappropriate for placement in other licensed facilities due to  
11 the complex needs that result in behavioral and security issues.

12 (13) "Expanded community services program" means a nonsecure  
13 program of enhanced behavioral and residential support provided to  
14 long-term and residential care providers serving specifically eligible  
15 clients who would otherwise be at risk for hospitalization at state  
16 hospital geriatric units.

17 (14) "Facility" means an enhanced services facility.

18 (15) "Gravely disabled" means a condition in which an individual,  
19 as a result of a mental disorder, as a result of the use of alcohol or  
20 other psychoactive chemicals, or both:

21 (a) Is in danger of serious physical harm resulting from a failure  
22 to provide for his or her essential human needs of health or safety; or

23 (b) Manifests severe deterioration in routine functioning evidenced  
24 by repeated and escalating loss of cognitive or volitional control over  
25 his or her actions and is not receiving such care as is essential for  
26 his or her health or safety.

27 (16) "History of one or more violent acts" refers to the period of  
28 time ten years before the filing of a petition under this chapter, or  
29 chapter 70.96A or 71.05 RCW, excluding any time spent, but not any  
30 violent acts committed, in a mental health facility or a long-term  
31 alcoholism or drug treatment facility, or in confinement as a result of  
32 a criminal conviction.

33 (17) "Licensed physician" means a person licensed to practice  
34 medicine or osteopathic medicine and surgery in the state of  
35 Washington.

36 (18) "Likelihood of serious harm" means:

37 (a) A substantial risk that:

1 (i) Physical harm will be inflicted by an individual upon his or  
2 her own person, as evidenced by threats or attempts to commit suicide  
3 or inflict physical harm on oneself;

4 (ii) Physical harm will be inflicted by an individual upon another,  
5 as evidenced by behavior that has caused such harm or that places  
6 another person or persons in reasonable fear of sustaining such harm;  
7 or

8 (iii) Physical harm will be inflicted by an individual upon the  
9 property of others, as evidenced by behavior that has caused  
10 substantial loss or damage to the property of others; or

11 (b) The individual has threatened the physical safety of another  
12 and has a history of one or more violent acts.

13 (19) "Mental disorder" means any organic, mental, or emotional  
14 impairment that has substantial adverse effects on an individual's  
15 cognitive or volitional functions.

16 (20) "Mental health professional" means a psychiatrist,  
17 psychologist, psychiatric nurse, or social worker, and such other  
18 mental health professionals as may be defined by rules adopted by the  
19 secretary under the authority of chapter 71.05 RCW.

20 (21) "Professional person" means a mental health professional and  
21 also means a physician, registered nurse, and such others as may be  
22 defined in rules adopted by the secretary pursuant to the provisions of  
23 this chapter.

24 (22) "Psychiatric nurse" means:

25 (a) A registered nurse who has a bachelor's degree from an  
26 accredited college or university and who has had, in addition, at least  
27 two years of experience in the direct treatment of mentally ill or  
28 emotionally disturbed persons under the supervision of a mental health  
29 professional; or

30 (b) Any other registered nurse who has three years of such  
31 experience.

32 (23) "Psychiatrist" means a person having a license as a physician  
33 and surgeon in this state who has in addition completed three years of  
34 graduate training in psychiatry in a program approved by the American  
35 medical association or the American osteopathic association and is  
36 certified or eligible to be certified by the American board of  
37 psychiatry and neurology.

1 (24) "Psychologist" means a person who has been licensed as a  
2 psychologist under chapter 18.83 RCW.

3 (25) "Registration records" include all the records of the  
4 department, regional support networks, treatment facilities, and other  
5 persons providing services to the department, county departments, or  
6 facilities which identify individuals who are receiving or who at any  
7 time have received services for mental illness.

8 (26) "Release" means legal termination of the commitment under  
9 chapter 70.96A, 71.05, or 70.-- (sections 302 through 374 of this act)  
10 RCW.

11 (27) "Resident" means a person admitted to an enhanced services  
12 facility.

13 (28) "Secretary" means the secretary of the department or the  
14 secretary's designee.

15 (29) "Significant change" means:

16 (a) A deterioration in a resident's physical, mental, or  
17 psychosocial condition that has caused or is likely to cause clinical  
18 complications or life-threatening conditions; or

19 (b) An improvement in the resident's physical, mental, or  
20 psychosocial condition that may make the resident eligible for release  
21 or for treatment in a less intensive or less secure setting.

22 (30) "Social worker" means a person with a master's or further  
23 advanced degree from an accredited school of social work or a degree  
24 deemed equivalent under rules adopted by the secretary.

25 (31) "Treatment" means the broad range of emergency,  
26 detoxification, residential, inpatient, and outpatient services and  
27 care, including diagnostic evaluation, mental health or chemical  
28 dependency education and counseling, medical, psychiatric,  
29 psychological, and social service care, vocational rehabilitation, and  
30 career counseling, which may be extended to persons with mental  
31 disorders, chemical dependency disorders, or both, and their families.

32 (32) "Treatment records" include registration and all other records  
33 concerning individuals who are receiving or who at any time have  
34 received services for mental illness, which are maintained by the  
35 department, by regional support networks and their staffs, and by  
36 treatment facilities. "Treatment records" do not include notes or  
37 records maintained for personal use by an individual providing

1 treatment services for the department, regional support networks, or a  
2 treatment facility if the notes or records are not available to others.

3 (33) "Violent act" means behavior that resulted in homicide,  
4 attempted suicide, nonfatal injuries, or substantial damage to  
5 property.

6 NEW SECTION. **Sec. 504.** A facility shall honor a mental health  
7 advance directive that was validly executed pursuant to chapter 71.32  
8 RCW.

9 NEW SECTION. **Sec. 505.** (1) A person who is eligible for admission  
10 to or residence in an adult residential rehabilitation center, a  
11 boarding home, a group home, a skilled nursing facility, or a supported  
12 housing program, including an expanded community services program or a  
13 program for assertive community treatment is not eligible for residence  
14 in an enhanced services facility unless his or her treatment needs  
15 cannot adequately be addressed in the other facility or facilities for  
16 which he or she is eligible.

17 (2) A person, eighteen years old or older, may be admitted to an  
18 enhanced services facility if he or she meets the criteria in (a)  
19 through (c) of this subsection:

20 (a) The person requires: (i) Daily care by or under the  
21 supervision of a mental health professional, chemical dependency  
22 professional, or nurse; or (ii) assistance with three or more  
23 activities of daily living; and

24 (b) The person has: (i) A mental disorder, chemical dependency  
25 disorder, or both; (ii) an organic or traumatic brain injury; or (iii)  
26 a cognitive impairment that results in symptoms or behaviors requiring  
27 supervision and facility services;

28 (c) The person has two or more of the following:

29 (i) Self-endangering behaviors that are frequent or difficult to  
30 manage;

31 (ii) Aggressive, threatening, or assaultive behaviors that create  
32 a risk to the health or safety of other residents or staff, or a  
33 significant risk to property and these behaviors are frequent or  
34 difficult to manage;

35 (iii) Intrusive behaviors that put residents or staff at risk;

1 (iv) Complex medication needs and those needs include psychotropic  
2 medications;

3 (v) A history of or likelihood of unsuccessful placements in other  
4 licensed facilities or a history of rejected applications for admission  
5 to other licensed facilities based on the person's behaviors, history,  
6 or security needs;

7 (vi) A history of frequent or protracted mental health  
8 hospitalizations;

9 (vii) A history of offenses against a person or felony offenses  
10 that created substantial damage to property;

11 (viii) A history of other problematic placements, as defined in  
12 rules adopted by the department.

13 NEW SECTION. **Sec. 506.** (1)(a) Every person who is a resident of  
14 an enhanced services facility or is involuntarily detained or committed  
15 under the provisions of this chapter shall be entitled to all the  
16 rights set forth in this chapter, or chapter 71.05, 70.96A, or 70.--  
17 (sections 302 through 374 of this act) RCW and shall retain all rights  
18 not denied him or her under these chapters.

19 (b) No person shall be presumed incompetent as a consequence of  
20 receiving an evaluation or voluntary or involuntary treatment for a  
21 mental disorder, chemical dependency disorder, or both, under this  
22 chapter, chapter 71.05, 70.96A, or 70.-- (sections 302 through 374 of  
23 this act) RCW, or any prior laws of this state dealing with mental  
24 illness. Competency shall not be determined or withdrawn except under  
25 the provisions of chapter 10.77 or 11.88 RCW.

26 (c) Every resident of an enhanced services facility shall be given  
27 a written statement setting forth the substance of this section.

28 (2) Every resident of an enhanced services facility shall have the  
29 right to adequate care and individualized treatment.

30 (3) The provisions of this chapter shall not be construed to deny  
31 to any person treatment by spiritual means through prayer in accordance  
32 with the tenets and practices of a church or religious denomination.

33 (4) Persons receiving evaluation or treatment under this chapter  
34 shall be given a reasonable choice of an available physician or other  
35 professional person qualified to provide such services.

36 (5) The physician-patient privilege or the psychologist-client  
37 privilege shall be deemed waived in proceedings under this chapter



1 relating to the administration of antipsychotic medications. As to  
2 other proceedings under chapter 10.77, 70.96A, 71.05, or 70.--  
3 (sections 302 through 374 of this act) RCW, the privileges shall be  
4 waived when a court of competent jurisdiction in its discretion  
5 determines that such waiver is necessary to protect either the detained  
6 person or the public.

7 (6) Insofar as danger to the person or others is not created, each  
8 resident of an enhanced services facility shall have, in addition to  
9 other rights not specifically withheld by law, the following rights, a  
10 list of which shall be prominently posted in all facilities,  
11 institutions, and hospitals providing such services:

12 (a) To wear his or her own clothes and to keep and use his or her  
13 own personal possessions, except when deprivation of same is essential  
14 to protect the safety of the resident or other persons;

15 (b) To keep and be allowed to spend a reasonable sum of his or her  
16 own money for canteen expenses and small purchases;

17 (c) To have access to individual storage space for his or her  
18 private use;

19 (d) To have visitors at reasonable times;

20 (e) To have reasonable access to a telephone, both to make and  
21 receive confidential calls, consistent with an effective treatment  
22 program;

23 (f) To have ready access to letter writing materials, including  
24 stamps, and to send and receive uncensored correspondence through the  
25 mails;

26 (g) Not to consent to the administration of antipsychotic  
27 medications beyond the hearing conducted pursuant to section 108, 109,  
28 360, or 361 of this act, or the performance of electroconvulsant  
29 therapy, or surgery, except emergency life-saving surgery, unless  
30 ordered by a court under section 109 or 361 of this act;

31 (h) To discuss treatment plans and decisions with professional  
32 persons;

33 (i) Not to have psychosurgery performed on him or her under any  
34 circumstances;

35 (j) To dispose of property and sign contracts unless such person  
36 has been adjudicated an incompetent in a court proceeding directed to  
37 that particular issue.

1 (7) Nothing contained in this chapter shall prohibit a resident  
2 from petitioning by writ of habeas corpus for release.

3 (8) Nothing in this section permits any person to knowingly violate  
4 a no-contact order or a condition of an active judgment and sentence or  
5 active supervision by the department of corrections.

6 NEW SECTION. **Sec. 507.** A person who is gravely disabled or  
7 presents a likelihood of serious harm as a result of a mental or  
8 chemical dependency disorder or co-occurring mental and chemical  
9 dependency disorders has a right to refuse antipsychotic medication.  
10 Antipsychotic medication may be administered over the person's  
11 objections only pursuant to RCW 71.05.215, 71.05.370 (as recodified by  
12 this act), or section 360 or 361 of this act.

13 NEW SECTION. **Sec. 508.** (1) The department shall not license an  
14 enhanced services facility that serves any residents under sixty-five  
15 years of age for a capacity to exceed sixteen residents.

16 (2) The facility shall provide an appropriate level of security for  
17 the characteristics, behaviors, and legal status of the residents.

18 (3) An enhanced services facility may hold only one license but, to  
19 the extent permitted under state and federal law and medicaid  
20 requirements, a facility may be located in the same building as another  
21 licensed facility, provided that:

22 (a) The enhanced services facility is in a location that is totally  
23 separate and discrete from the other licensed facility; and

24 (b) The two facilities maintain separate staffing, unless an  
25 exception to this is permitted by the department in rule.

26 (4) Enhanced services facilities must meet all applicable state and  
27 local rules, regulations, permits, and code requirements. The  
28 secretary may, by rule, establish a list of currently licensed  
29 facilities that are deemed to meet the requirements of this subsection  
30 by virtue of their existing license.

31 NEW SECTION. **Sec. 509.** (1) The enhanced services facility shall  
32 complete a comprehensive assessment for each resident within fourteen  
33 days of admission, and the assessments shall be repeated upon a  
34 significant change in the resident's condition or, at a minimum, every  
35 one hundred eighty days if there is no significant change in condition.

1 (2) The enhanced services facility shall develop an individualized  
2 treatment plan for each resident based on the comprehensive assessment  
3 and any other information in the person's record. The plan shall be  
4 updated as necessary and shall include a plan for appropriate transfer  
5 or discharge. Where the person is under the supervision of the  
6 department of corrections, the facility shall collaborate with the  
7 department of corrections to maximize treatment outcomes and reduce the  
8 likelihood of reoffense.

9 (3) The plan shall maximize the opportunities for independence,  
10 recovery, employment, the resident's participation in treatment  
11 decisions, and collaboration with peer-supported services, and provide  
12 for care and treatment in the least restrictive manner appropriate to  
13 the individual resident, and, where relevant, to any court orders with  
14 which the resident must comply.

15 NEW SECTION. **Sec. 510.** (1) An enhanced services facility must  
16 have sufficient numbers of staff with the appropriate credentials and  
17 training to provide residents with the appropriate care and treatment:

- 18 (a) Mental health and chemical dependency treatment;
- 19 (b) Medication services;
- 20 (c) Assistance with the activities of daily living;
- 21 (d) Medical or habilitative treatment;
- 22 (e) Dietary services; and
- 23 (f) Security.

24 (2) Where an enhanced services facility specializes in medically  
25 fragile persons with mental disorders, the on-site staff must include  
26 at least one licensed nurse twenty-four hours per day. The nurse must  
27 be a registered nurse for at least sixteen hours per day. If the nurse  
28 is not a registered nurse, a registered nurse or a doctor must be on-  
29 call during the remaining eight hours.

30 NEW SECTION. **Sec. 511.** This chapter does not apply to the  
31 following residential facilities:

- 32 (1) Nursing homes licensed under chapter 18.51 RCW;
- 33 (2) Boarding homes licensed under chapter 18.20 RCW;
- 34 (3) Adult family homes licensed under chapter 70.128 RCW;
- 35 (4) Facilities approved and certified under chapter 71A.22 RCW;

- 1 (5) Residential treatment facilities licensed under chapter 71.12  
2 RCW; and  
3 (6) Hospitals licensed under chapter 70.41 RCW.

4 NEW SECTION. **Sec. 512.** (1) The department shall establish  
5 licensing provisions for enhanced services facilities to serve the  
6 populations defined in this chapter.

7 (2) No person or public or private agency may operate or maintain  
8 an enhanced services facility without a license, which must be renewed  
9 annually.

10 (3) A licensee shall have the following readily accessible and  
11 available for review by the department, residents, families of  
12 residents, and the public:

13 (a) Its license to operate and a copy of the department's most  
14 recent inspection report and any recent complaint investigation reports  
15 issued by the department;

16 (b) Its written policies and procedures for all treatment, care,  
17 and services provided directly or indirectly by the facility; and

18 (c) The department's toll-free complaint number, which shall also  
19 be posted in a clearly visible place and manner.

20 (4) No facility shall discriminate or retaliate in any manner  
21 against a resident or employee because the resident, employee, or any  
22 other person made a complaint or provided information to the  
23 department, the long-term care ombudsman, or a mental health ombuds  
24 person.

25 NEW SECTION. **Sec. 513.** (1) In any case in which the department  
26 finds that a licensee of a facility, or any partner, officer, director,  
27 owner of five percent or more of the assets of the facility, or  
28 managing employee failed or refused to comply with the requirements of  
29 this chapter or the rules established under them, the department may  
30 take any or all of the following actions:

31 (a) Suspend, revoke, or refuse to issue or renew a license;

32 (b) Order stop placement; or

33 (c) Assess civil monetary penalties.

34 (2) The department may suspend, revoke, or refuse to renew a  
35 license, assess civil monetary penalties, or both, in any case in which

1 it finds that the licensee of a facility, or any partner, officer,  
2 director, owner of five percent or more of the assets of the facility,  
3 or managing employee:

4 (a) Operated a facility without a license or under a revoked or  
5 suspended license;

6 (b) Knowingly or with reason to know made a false statement of a  
7 material fact in the license application or any data attached thereto,  
8 or in any matter under investigation by the department;

9 (c) Refused to allow representatives or agents of the department to  
10 inspect all books, records, and files required to be maintained or any  
11 portion of the premises of the facility;

12 (d) Willfully prevented, interfered with, or attempted to impede in  
13 any way the work of any duly authorized representative of the  
14 department and the lawful enforcement of any provision of this chapter;

15 (e) Willfully prevented or interfered with any representative of  
16 the department in the preservation of evidence of any violation of any  
17 of the provisions of this chapter or of the rules adopted under it; or

18 (f) Failed to pay any civil monetary penalty assessed by the  
19 department under this chapter within ten days after the assessment  
20 becomes final.

21 (3)(a) Civil penalties collected under this chapter shall be  
22 deposited into a special fund administered by the department.

23 (b) Civil monetary penalties, if imposed, may be assessed and  
24 collected, with interest, for each day the facility is or was out of  
25 compliance. Civil monetary penalties shall not exceed three thousand  
26 dollars per day. Each day upon which the same or a substantially  
27 similar action occurs is a separate violation subject to the assessment  
28 of a separate penalty.

29 (4) The department, through the director of residential care  
30 services, may use the civil penalty monetary fund for the protection of  
31 the health or property of residents of facilities found to be deficient  
32 including:

33 (a) Payment for the cost of relocation of residents to other  
34 facilities;

35 (b) Payment to maintain operation of a facility pending correction  
36 of deficiencies or closure; and

37 (c) Reimbursement of a resident for personal funds or property  
38 loss.

1 (5)(a) The department may issue a stop placement order on a  
2 facility, effective upon oral or written notice, when the department  
3 determines:

4 (i) The facility no longer substantially meets the requirements of  
5 this chapter; and

6 (ii) The deficiency or deficiencies in the facility:

7 (A) Jeopardizes the health and safety of the residents; or

8 (B) Seriously limits the facility's capacity to provide adequate  
9 care.

10 (b) When the department has ordered a stop placement, the  
11 department may approve a readmission to the facility from a hospital,  
12 residential treatment facility, or crisis intervention facility when  
13 the department determines the readmission would be in the best interest  
14 of the individual seeking readmission.

15 (6) If the department determines that an emergency exists and  
16 resident health and safety is immediately jeopardized as a result of a  
17 facility's failure or refusal to comply with this chapter, the  
18 department may summarily suspend the facility's license and order the  
19 immediate closure of the facility, or the immediate transfer of  
20 residents, or both.

21 (7) If the department determines that the health or safety of the  
22 residents is immediately jeopardized as a result of a facility's  
23 failure or refusal to comply with requirements of this chapter, the  
24 department may appoint temporary management to:

25 (a) Oversee the operation of the facility; and

26 (b) Ensure the health and safety of the facility's residents while:

27 (i) Orderly closure of the facility occurs; or

28 (ii) The deficiencies necessitating temporary management are  
29 corrected.

30 NEW SECTION. **Sec. 514.** (1) All orders of the department denying,  
31 suspending, or revoking the license or assessing a monetary penalty  
32 shall become final twenty days after the same has been served upon the  
33 applicant or licensee unless a hearing is requested.

34 (2) All orders of the department imposing stop placement, temporary  
35 management, emergency closure, emergency transfer, or summary license  
36 suspension shall be effective immediately upon notice, pending any  
37 hearing.

1 (3) Subject to the requirements of subsection (2) of this section,  
2 all hearings under this chapter and judicial review of such  
3 determinations shall be in accordance with the administrative procedure  
4 act, chapter 34.05 RCW.

5 NEW SECTION. **Sec. 515.** Operation of a facility without a license  
6 in violation of this chapter and discrimination against medicaid  
7 recipients are unfair or deceptive acts in trade or commerce and an  
8 unfair method of competition for the purpose of applying the consumer  
9 protection act, chapter 19.86 RCW.

10 NEW SECTION. **Sec. 516.** A person operating or maintaining a  
11 facility without a license under this chapter is guilty of a  
12 misdemeanor and each day of a continuing violation after conviction  
13 shall be considered a separate offense.

14 NEW SECTION. **Sec. 517.** Notwithstanding the existence or use of  
15 any other remedy, the department may, in the manner provided by law,  
16 maintain an action in the name of the state for an injunction, civil  
17 penalty, or other process against a person to restrain or prevent the  
18 operation or maintenance of a facility without a license issued under  
19 this chapter.

20 NEW SECTION. **Sec. 518.** (1) The department shall make or cause to  
21 be made at least one inspection of each facility prior to licensure and  
22 an unannounced full inspection of facilities at least once every  
23 eighteen months. The statewide average interval between full facility  
24 inspections must be fifteen months.

25 (2) Any duly authorized officer, employee, or agent of the  
26 department may enter and inspect any facility at any time to determine  
27 that the facility is in compliance with this chapter and applicable  
28 rules, and to enforce any provision of this chapter. Complaint  
29 inspections shall be unannounced and conducted in such a manner as to  
30 ensure maximum effectiveness. No advance notice shall be given of any  
31 inspection unless authorized or required by federal law.

32 (3) During inspections, the facility must give the department  
33 access to areas, materials, and equipment used to provide care or  
34 support to residents, including resident and staff records, accounts,

1 and the physical premises, including the buildings, grounds, and  
2 equipment. The department has the authority to privately interview the  
3 provider, staff, residents, and other individuals familiar with  
4 resident care and treatment.

5 (4) Any public employee giving advance notice of an inspection in  
6 violation of this section shall be suspended from all duties without  
7 pay for a period of not less than five nor more than fifteen days.

8 (5) The department shall prepare a written report describing the  
9 violations found during an inspection, and shall provide a copy of the  
10 inspection report to the facility.

11 (6) The facility shall develop a written plan of correction for any  
12 violations identified by the department and provide a plan of  
13 correction to the department within ten working days from the receipt  
14 of the inspection report.

15 NEW SECTION. **Sec. 519.** The facility shall only admit individuals:

16 (1) Who are over the age of eighteen;

17 (2) Who meet the resident eligibility requirements described in  
18 section 505 of this act; and

19 (3) Whose needs the facility can safely and appropriately meet  
20 through qualified and trained staff, services, equipment, security, and  
21 building design.

22 NEW SECTION. **Sec. 520.** If the facility does not employ a  
23 qualified professional able to furnish needed services, the facility  
24 must have a written contract with a qualified professional or agency  
25 outside the facility to furnish the needed services.

26 NEW SECTION. **Sec. 521.** At least sixty days before the effective  
27 date of any change of ownership, or change of management of a facility,  
28 the current operating entity must provide written notification about  
29 the proposed change separately and in writing, to the department, each  
30 resident of the facility, or the resident's guardian or representative.

31 NEW SECTION. **Sec. 522.** The facility shall:

32 (1) Maintain adequate resident records to enable the provision of  
33 necessary treatment, care, and services and to respond appropriately in  
34 emergency situations;



1 (2) Comply with all state and federal requirements related to  
2 documentation, confidentiality, and information sharing, including  
3 chapters 10.77, 70.02, 70.24, 70.96A, 71.05, and 70.-- (sections 302  
4 through 374 of this act) RCW; and

5 (3) Where possible, obtain signed releases of information  
6 designating the department, the facility, and the department of  
7 corrections where the person is under its supervision, as recipients of  
8 health care information.

9 NEW SECTION. **Sec. 523.** (1) Standards for fire protection and the  
10 enforcement thereof, with respect to all facilities licensed under this  
11 chapter, are the responsibility of the chief of the Washington state  
12 patrol, through the director of fire protection, who must adopt  
13 recognized standards as applicable to facilities for the protection of  
14 life against the cause and spread of fire and fire hazards. If the  
15 facility to be licensed meets with the approval of the chief of the  
16 Washington state patrol, through the director of fire protection, the  
17 director of fire protection must submit to the department a written  
18 report approving the facility with respect to fire protection before a  
19 full license can be issued. The chief of the Washington state patrol,  
20 through the director of fire protection, shall conduct an unannounced  
21 full inspection of facilities at least once every eighteen months. The  
22 statewide average interval between full facility inspections must be  
23 fifteen months.

24 (2) Inspections of facilities by local authorities must be  
25 consistent with the requirements adopted by the chief of the Washington  
26 state patrol, through the director of fire protection. Findings of a  
27 serious nature must be coordinated with the department and the chief of  
28 the Washington state patrol, through the director of fire protection,  
29 for determination of appropriate actions to ensure a safe environment  
30 for residents. The chief of the Washington state patrol, through the  
31 director of fire protection, has exclusive authority to determine  
32 appropriate corrective action under this section.

33 NEW SECTION. **Sec. 524.** No facility providing care and treatment  
34 for individuals placed in a facility, acting in the course of its  
35 duties, shall be civilly or criminally liable for performing its duties

1 under this chapter, provided that such duties were performed in good  
2 faith and without gross negligence.

3 NEW SECTION. **Sec. 525.** The secretary shall adopt rules to  
4 implement this chapter.

5 **PART VI**

6 **FORENSIC AND CORRECTIONAL**

7 **Drug and Mental Health Courts**

8 NEW SECTION. **Sec. 601.** A new section is added to chapter 2.28 RCW  
9 to read as follows:

10 (1) Counties may establish and operate mental health courts.

11 (2) For the purposes of this section, "mental health court" means  
12 a court that has special calendars or dockets designed to achieve a  
13 reduction in recidivism and symptoms of mental illness among  
14 nonviolent, mentally ill felony and nonfelony offenders by increasing  
15 their likelihood for successful rehabilitation through early,  
16 continuous, and intense judicially supervised treatment including drug  
17 treatment for persons with co-occurring disorders; mandatory periodic  
18 reviews, including drug testing if indicated; and the use of  
19 appropriate sanctions and other rehabilitation services.

20 (3)(a) Any jurisdiction that seeks a state appropriation to fund a  
21 mental health court program must first:

22 (i) Exhaust all federal funding that is available to support the  
23 operations of its mental health court and associated services; and

24 (ii) Match, on a dollar-for-dollar basis, state moneys allocated  
25 for mental health court programs with local cash or in-kind resources.  
26 Moneys allocated by the state must be used to supplement, not supplant,  
27 other federal, state, and local funds for mental health court  
28 operations and associated services.

29 (b) Any county that establishes a mental health court pursuant to  
30 this section shall establish minimum requirements for the participation  
31 of offenders in the program. The mental health court may adopt local  
32 requirements that are more stringent than the minimum. The minimum  
33 requirements are:

34 (i) The offender would benefit from psychiatric treatment;

1 (ii) The offender has not previously been convicted of a serious  
2 violent offense or sex offense as defined in RCW 9.94A.030; and

3 (iii) Without regard to whether proof of any of these elements is  
4 required to convict, the offender is not currently charged with or  
5 convicted of an offense:

6 (A) That is a sex offense;

7 (B) That is a serious violent offense;

8 (C) During which the defendant used a firearm; or

9 (D) During which the defendant caused substantial or great bodily  
10 harm or death to another person.

11 NEW SECTION. **Sec. 602.** A new section is added to chapter 2.28 RCW  
12 to read as follows:

13 Any county that has established a drug court and a mental health  
14 court under this chapter may combine the functions of both courts into  
15 a single therapeutic court.

16 NEW SECTION. **Sec. 603.** A new section is added to chapter 26.12  
17 RCW to read as follows:

18 (1) Every county with a juvenile court that hears dependency or  
19 termination proceedings or a family court shall establish and operate  
20 a family therapeutic court component designed to be effective for the  
21 court's size, location, and resources. A county with a drug court for  
22 criminal cases or with a mental health court may include a family  
23 therapeutic court as a component of its existing program.

24 (2) For the purposes of this section, "family therapeutic court"  
25 means a court that has special calendars or dockets designed for the  
26 intense judicial supervision, coordination, and oversight of treatment  
27 provided to parents and families who have substance abuse or mental  
28 health problems and who are involved in the dependency or family law  
29 system and is designed to achieve a reduction in:

30 (a) Child abuse and neglect;

31 (b) Out-of-home placement of children;

32 (c) Termination of parental rights; and

33 (d) Substance abuse or mental health symptoms among parents or  
34 guardians and their children.

35 (3) To the extent possible, the family therapeutic court shall

1 provide services for parents and families co-located with the court or  
2 as near to the court as practicable.

3 (4) The department of social and health services shall furnish  
4 services to the family therapeutic court unless a court contracts with  
5 providers outside of the department.

6 (5) Any jurisdiction that receives a state appropriation to fund a  
7 family therapeutic court must first exhaust all federal funding  
8 available for the development and operation of the family therapeutic  
9 court and associated services.

10 (6) Moneys allocated by the state for a family therapeutic court  
11 must be used to supplement, not supplant, other federal, state, local,  
12 and private funding for court operations and associated services under  
13 this section.

14 (7) Any county that establishes a family therapeutic court or  
15 receives funds for an existing court under this section shall:

16 (a) Establish minimum requirements for the participation in the  
17 program; and

18 (b) Develop an evaluation component of the court, including  
19 tracking the success rates in graduating from treatment, reunifying  
20 parents with their children, and the costs and benefits of the court.

21 **Sec. 604.** RCW 2.28.170 and 2002 c 290 s 13 are each amended to  
22 read as follows:

23 (1) Counties may establish and operate drug courts.

24 (2) For the purposes of this section, "drug court" means a court  
25 that has special calendars or dockets designed to achieve a reduction  
26 in recidivism and substance abuse among nonviolent, substance abusing  
27 felony and nonfelony offenders by increasing their likelihood for  
28 successful rehabilitation through early, continuous, and intense  
29 judicially supervised treatment; mandatory periodic drug testing; and  
30 the use of appropriate sanctions and other rehabilitation services.

31 (3)(a) Any jurisdiction that seeks a state appropriation to fund a  
32 drug court program must first:

33 (i) Exhaust all federal funding received from the office of  
34 national drug control policy that is available to support the  
35 operations of its drug court and associated services; and

36 (ii) Match, on a dollar-for-dollar basis, state moneys allocated  
37 for drug court programs with local cash or in-kind resources. Moneys

1 allocated by the state must be used to supplement, not supplant, other  
2 federal, state, and local funds for drug court operations and  
3 associated services.

4 (b) Any county that establishes a drug court pursuant to this  
5 section shall establish minimum requirements for the participation of  
6 offenders in the program. The drug court may adopt local requirements  
7 that are more stringent than the minimum. The minimum requirements  
8 are:

- 9 (i) The offender would benefit from substance abuse treatment;  
10 (ii) The offender has not previously been convicted of a serious  
11 violent offense or sex offense as defined in RCW 9.94A.030; and  
12 (iii) Without regard to whether proof of any of these elements is  
13 required to convict, the offender is not currently charged with or  
14 convicted of an offense:
- 15 (A) That is a sex offense;
  - 16 (B) That is a serious violent offense;
  - 17 (C) During which the defendant used a firearm; or
  - 18 (D) During which the defendant caused substantial or great bodily  
19 harm or death to another person.

#### 20 **Suspension of Medicaid Benefits**

21 **Sec. 605.** RCW 74.09.010 and 1990 c 296 s 6 are each amended to  
22 read as follows:

23 As used in this chapter:

24 (1) "Children's health program" means the health care services  
25 program provided to children under eighteen years of age and in  
26 households with incomes at or below the federal poverty level as  
27 annually defined by the federal department of health and human services  
28 as adjusted for family size, and who are not otherwise eligible for  
29 medical assistance or the limited casualty program for the medically  
30 needy.

31 (~~2) ("Committee" means the children's health services committee  
32 created in section 3 of this act.~~

33 ~~(3))~~ "Community services office" means the county or local office  
34 defined in RCW 74.04.005.

35 (3) "Confined" means incarcerated in a correctional institution or  
36 admitted to an institution of mental disease.

1        (4) "Correctional institution" means a correctional institution  
2 defined in RCW 9.94.049.

3        (5) "County" means the board of county commissioners, county  
4 council, county executive, or tribal jurisdiction, or its designee. A  
5 combination of two or more county authorities or tribal jurisdictions  
6 may enter into joint agreements to fulfill the requirements of RCW  
7 74.09.415 through 74.09.435.

8        ~~((4))~~ (6) "Department" means the department of social and health  
9 services.

10       ~~((5))~~ (7) "Department of health" means the Washington state  
11 department of health created pursuant to RCW 43.70.020.

12       ~~((6))~~ (8) "Institution of mental disease" has the meaning defined  
13 in 42 C.F.R., part 435, Sec. 1009.

14       (9) "Internal management" means the administration of medical  
15 assistance, medical care services, the children's health program, and  
16 the limited casualty program.

17       ~~((7))~~ (10) "Likely to be eligible" means that a person:

18       (a) Was enrolled in medicaid or supplemental security income before  
19 he or she was confined and his or her enrollment was terminated during  
20 his or her confinement;

21       (b) Was enrolled in medicaid or supplemental security income at any  
22 time during the five years before his or her confinement based on a  
23 disability, and medical or psychiatric examinations during the person's  
24 confinement indicate that the person continues to be disabled and the  
25 disability is likely to last at least twelve months following release;  
26 or

27       (c) Is likely to meet categorical eligibility criteria upon his or  
28 her release from confinement based on his or her status as a person who  
29 is, or will be, a member of a categorically eligible class.

30       (11) "Limited casualty program" means the medical care program  
31 provided to medically needy persons as defined under Title XIX of the  
32 federal social security act, and to medically indigent persons who are  
33 without income or resources sufficient to secure necessary medical  
34 services.

35       ~~((8))~~ (12) "Medicaid eligibility category" refers to all existing  
36 eligibility categories established in the state medicaid plan,  
37 including enrollment in medicaid by virtue of eligibility to receive

1 cash payments under the supplemental security income program of the  
2 social security administration.

3 (13) "Medical assistance" means the federal aid medical care  
4 program provided to categorically needy persons as defined under Title  
5 XIX of the federal social security act.

6 ~~((9))~~ (14) "Medical care services" means the limited scope of  
7 care financed by state funds and provided to general assistance  
8 recipients, and recipients of alcohol and drug addiction services  
9 provided under chapter 74.50 RCW.

10 ~~((10))~~ (15) "Nursing home" means nursing home as defined in RCW  
11 18.51.010.

12 ~~((11))~~ (16) "Parent" means a parent, guardian, or legal  
13 custodian.

14 (17) "Poverty" means the federal poverty level determined annually  
15 by the United States department of health and human services, or  
16 successor agency.

17 ~~((12))~~ (18) "Secretary" means the secretary of social and health  
18 services.

19 NEW SECTION. Sec. 606. A new section is added to chapter 74.09  
20 RCW to read as follows:

21 (1) The economic services administration shall adopt standardized  
22 statewide screening and application practices and forms. These  
23 practices and forms shall be implemented in every local office not  
24 later than January 1, 2006.

25 (2) The forms shall be structured to facilitate completion by  
26 persons with disabilities, including those with mental disorders.

27 (3) Neither the department nor any local office may exclude a  
28 person from application or screen that person as ineligible for  
29 medicaid based solely on a determination that the person is using or  
30 addicted to alcohol or other psychoactive substances, as defined in  
31 chapter 70.96A RCW.

32 (4) Neither the department nor any local office may remove a  
33 confined person from an active medicaid caseload sooner than required  
34 by federal law.

35 (5) Subject to available funds, the department shall provide  
36 persons with technical assistance in preparing applications and

1 maintaining eligibility for medicaid. The department shall seek public  
2 or private funding to establish technical assistance programs including  
3 bilingual supports and peer support networks.

4 NEW SECTION. **Sec. 607.** A new section is added to chapter 74.09  
5 RCW to read as follows:

6 The secretary shall require the department to negotiate with the  
7 social security administration in good faith to establish a prerelease  
8 agreement or agreements under which the department will work  
9 collaboratively with social security administration, correctional  
10 facilities, institutions for mental disease, and the department of  
11 corrections to ensure that applications on behalf of confined persons  
12 who are likely to be eligible for social security income or social  
13 security disability income are accepted, whenever possible, at the  
14 earliest possible date prior to release from confinement and are  
15 speedily handled by the social security administration to maximize the  
16 opportunity for confined persons to have an eligibility determination  
17 and enrollment in place on the day of release from confinement.

18 NEW SECTION. **Sec. 608.** A new section is added to chapter 74.09  
19 RCW to read as follows:

20 (1) The secretary shall require the economic services  
21 administration or its community services offices to enter interlocal  
22 agreements with correctional institutions, the department of  
23 corrections, and institutions of mental disease to expedite eligibility  
24 determinations for medical assistance payments and, whenever possible,  
25 to ensure that eligible persons leave confinement with medical  
26 assistance in place.

27 (2) At a minimum, the agreements shall provide, subject to federal  
28 time limits and restrictions, that:

29 (a) Where a confined person was receiving supplemental security  
30 income, or supplemental security income related medical assistance at  
31 the time, or immediately prior to the time, he or she was confined and  
32 the correctional facility, department of corrections, or institution of  
33 mental disease knows the person's anticipated release date, the  
34 correctional facility, department of corrections, or institution of  
35 mental disease shall notify the designated community services office of  
36 the person's anticipated release date and the community service office



1 shall enroll the person in social security-related medical assistance  
2 for up to ninety days upon release from confinement unless the person  
3 is not likely to be eligible upon release from confinement;

4 (b) Where the person was not receiving supplemental security  
5 income, or supplemental security income-related medical assistance at  
6 the time he or she was confined, but is likely to be eligible upon  
7 release and the correctional facility, department of corrections, or  
8 institution of mental disease knows the person's anticipated release  
9 date, the correctional facility, department of corrections, or  
10 institution of mental disease shall notify the designated community  
11 services office of the person's anticipated release date and the  
12 community service office shall enroll the person in social security-  
13 related medical assistance for up to ninety days upon release from  
14 confinement;

15 (c) Where the correctional facility, department of corrections, or  
16 institution of mental disease has examined a person who has not  
17 previously been enrolled with the social security administration or  
18 with medical assistance and has determined that the person is disabled,  
19 the correctional facility, department of corrections, or institution of  
20 mental disease shall provide that information to the department and the  
21 department shall, to the maximum extent permitted by federal law, use  
22 the examination done by the correctional facility, department of  
23 corrections, or institution of mental disease in making its  
24 determination whether the person is eligible for medical assistance;

25 (d) Where the correctional facility, department of corrections, or  
26 institution of mental disease does not know the anticipated date of the  
27 person's release, procedures for notification of the release at the  
28 earliest practicable time and expediting disability determinations and  
29 enrollment in medical assistance programs for which the person is  
30 eligible or is likely to be eligible on release.

31 (3) The interlocal agreements shall define the responsibilities of  
32 the department, its community service office and correctional facility,  
33 department of corrections, or institution of mental disease and  
34 establish procedures to facilitate eligibility determinations and  
35 enrollment, whenever possible, on the day of release. Whenever  
36 possible these agreements shall also include the regional support  
37 networks unless a separate agreement has been negotiated with the  
38 regional support networks.



1 facilities in the state that could be converted to use as a regional  
2 jail for offenders who have mental or chemical dependency disorders, or  
3 both, that need specialized housing and treatment arrangements.

4 (2) The joint legislative audit and review committee shall consider  
5 the feasibility of using at least the following facilities or types of  
6 facilities:

7 (a) Green Hill School;

8 (b) Existing or renovated facilities at the former Northern State  
9 Hospital;

10 (c) Closed wards at Western State Hospital;

11 (d) Fircrest School; and

12 (e) Closed or abandoned nursing homes.

13 (3) The analysis shall include an assessment of when such  
14 facilities could be available for use as a regional jail and the  
15 potential costs, costs avoided, and benefits of at least the following  
16 considerations:

17 (a) Any impact on existing offenders or residents;

18 (b) The conversion of the facilities;

19 (c) Infrastructure tied to the facilities;

20 (d) Whether the facility is, or can be, sized proportionately to  
21 the available pool of offenders;

22 (e) Changes in criminal justice costs, including transport, access  
23 to legal assistance, and access to courts;

24 (f) Reductions in jail populations; and

25 (g) Changes in treatment costs for these offenders.

26 (4) The joint legislative audit and review committee shall report  
27 its findings and recommendations to the appropriate committees of the  
28 legislature not later than December 15, 2005.

### 29 **Competency and Criminal Insanity**

30 NEW SECTION. **Sec. 613.** (1) By January 1, 2006, the department of  
31 social and health services shall reduce the waiting times for  
32 competency evaluation and restoration as follows:

33 (a) Not longer than seven days for outpatient competency  
34 evaluation;

35 (b) Not longer than ten days for inpatient competency evaluation;  
36 and

1 (c) Not longer than seven days for inpatient competency  
2 restoration.

3 (2) The department of social and health services shall report to  
4 the legislature with an analysis of several alternative strategies for  
5 addressing increases in forensic population and minimizing waiting  
6 periods for competency evaluation and restoration. The report shall  
7 discuss, at a minimum, the costs and advantages of, and barriers to co-  
8 locating professional persons in jails, performing restoration  
9 treatment in less restrictive alternatives than the state hospitals,  
10 and the use of regional jail facilities to accomplish competency  
11 evaluation and restoration.

12 **ESSB 6358 Implementation Issues**

13 **Sec. 614.** RCW 71.05.157 and 2004 c 166 s 16 are each amended to  
14 read as follows:

15 (1) When a county designated mental health professional is notified  
16 by a jail that a defendant or offender who was subject to a discharge  
17 review under RCW 71.05.232 is to be released to the community, the  
18 county designated mental health professional shall evaluate the person  
19 within seventy-two hours of release.

20 (2) When an offender is under court-ordered treatment in the  
21 community and the supervision of the department of corrections, and the  
22 treatment provider becomes aware that the person is in violation of the  
23 terms of the court order, the treatment provider shall notify the  
24 county designated mental health professional and the department of  
25 corrections of the violation and request an evaluation for purposes of  
26 revocation of the less restrictive alternative.

27 (3) When a county designated mental health professional becomes  
28 aware that an offender who is under court-ordered treatment in the  
29 community and the supervision of the department of corrections is in  
30 violation of a treatment order or a condition of supervision that  
31 relates to public safety, or the county designated mental health  
32 professional detains a person under this chapter, the county designated  
33 mental health professional shall notify the person's treatment provider  
34 and the department of corrections.

35 (4) When an offender who is confined in a state correctional  
36 facility or is under supervision of the department of corrections in

1 the community is subject to a petition for involuntary treatment under  
2 this chapter, the petitioner shall notify the department of corrections  
3 and the department of corrections shall provide documentation of its  
4 risk assessment or other concerns to the petitioner and the court if  
5 the department of corrections classified the offender as a high risk or  
6 high needs offender.

7 (5) Nothing in this section creates a duty on any treatment  
8 provider or county designated mental health professional to provide  
9 offender supervision.

10 NEW SECTION. **Sec. 615.** A new section is added to chapter 70.96A  
11 RCW to read as follows:

12 (1) Treatment providers shall inquire of each person seeking  
13 treatment, at intake, whether the person is subject to court ordered  
14 mental health or chemical dependency treatment, whether civil or  
15 criminal, and document the person's response in his or her record. If  
16 the person is in treatment on the effective date of this section, and  
17 the treatment provider has not inquired whether the person is subject  
18 to court ordered mental health or chemical dependency treatment, the  
19 treatment provider shall inquire on the person's next treatment session  
20 and document the person's response in his or her record.

21 (2) Treatment providers shall inquire of each person seeking  
22 treatment, at intake, whether the person is subject to supervision of  
23 any kind by the department of corrections and document the person's  
24 response in his or her record. If the person is in treatment on the  
25 effective date of this section, and the treatment provider has not  
26 inquired whether the person is subject to supervision of any kind by  
27 the department of corrections, the treatment provider shall inquire on  
28 the person's next treatment session and document the person's response  
29 in his or her record.

30 (3) For all persons who are subject to both court ordered mental  
31 health or chemical dependency treatment and supervision by the  
32 department of corrections, the treatment provider shall request an  
33 authorization to release records and notify the person that, unless  
34 expressly excluded by the court order the law requires treatment  
35 providers to share information with the department of corrections and  
36 the person's mental health treatment provider.

1 (4) If the treatment provider has reason to believe that a person  
2 is subject to supervision by the department of corrections but the  
3 person's record does not indicate that he or she is, the treatment  
4 provider may call any department of corrections office and provide the  
5 person's name and birth date. If the person is subject to supervision,  
6 the treatment provider shall request, and the department of corrections  
7 shall provide, the name and contact information for the person's  
8 community corrections officer.

9 **PART VII**

10 **BEST PRACTICES AND COLLABORATION**

11 NEW SECTION. **Sec. 701.** (1) The department of social and health  
12 services shall adopt, not later than January 1, 2006, an integrated and  
13 comprehensive screening and assessment process for chemical dependency  
14 and mental disorders. The integrated, comprehensive screening and  
15 assessment process shall be implemented statewide by all chemical  
16 dependency and mental health treatment providers as well as all county  
17 designated mental health professionals, county designated chemical  
18 dependency specialists, and county designated crisis responders not  
19 later than January 1, 2007.

20 (2) The department shall provide adequate training to effect  
21 statewide implementation by the dates designated in this section and  
22 shall report the rates of co-occurring disorders and the stage of  
23 screening or assessment at which the co-occurring disorder was  
24 identified to the caseload forecast council.

25 (3) The department shall establish contractual penalties to  
26 contracted treatment providers, the regional support networks, and  
27 their contracted providers for failure to implement the integrated  
28 screening and assessment process by July 1, 2007.

29 NEW SECTION. **Sec. 702.** The department of corrections shall, to  
30 the extent that resources are available for this purpose, utilize the  
31 integrated, comprehensive screening and assessment process for chemical  
32 dependency and mental disorders developed under section 701 of this  
33 act.

1        NEW SECTION.    **Sec. 703.**    A new section is added to chapter 71.02

2    RCW to read as follows:

3        (1) By June 30, 2006, the department shall develop and implement a  
4    matrix or set of matrices for providing services based on the following  
5    principles:

6        (a) Maximizing evidence-based practices where these practices  
7    exist; where no evidence-based practice exists, the use of research-  
8    based practices, including but not limited to, the adaptation of  
9    evidence-based practices to new situations; where no evidence-based or  
10   research-based practices exist the use of consensus-based practices;  
11   and, to the extent that funds are available, the use of promising  
12   practices;

13        (b) Maximizing the person's independence, recovery, and employment  
14   by consideration of the person's strengths and supports in the  
15   community;

16        (c) Maximizing the person's participation in treatment decisions  
17   including, where possible, the person's awareness of, and technical  
18   assistance in preparing, mental health advance directives; and

19        (d) Collaboration with consumer-based support programs.

20        (2) The matrix or set of matrices shall include both adults and  
21   children and persons with co-occurring mental and substance abuse  
22   disorders and shall build on the service intensity quadrant models that  
23   have been developed in this state.

24        (3)(a) The matrix or set of matrices shall be developed in  
25   collaboration with experts in evidence-based practices for mental  
26   disorders, chemical dependency disorders, and co-occurring mental and  
27   chemical dependency disorders at the University of Washington, and in  
28   consultation with representatives of the regional support networks,  
29   community mental health providers, county chemical dependency  
30   coordinators, chemical dependency providers, consumers, family  
31   advocates, and community inpatient providers.

32        (b) The matrix or set of matrices shall, to the extent possible,  
33   adopt or utilize materials already prepared by the department or by  
34   other states.

35        (4)(a) The department shall require, by contract with the regional  
36   support networks, that providers maximize the use of evidence-based,  
37   research-based, and consensus-based practices and document the

1 percentage of clients enrolled in evidence-based, research-based, and  
2 consensus-based programs by program type.

3 (b) The department shall establish a schedule by which regional  
4 support networks and providers must adopt the matrix or set of matrices  
5 and a schedule of penalties for failure to adopt and implement the  
6 matrices. The department may act against the regional support networks  
7 or providers or both to enforce the provisions of this section and  
8 shall provide the appropriate committees of the legislature with the  
9 schedules adopted under this subsection by June 30, 2006.

10 (5) The following definitions apply to this section:

11 (a) "Evidence-based" means a program or practice that has had  
12 multiple site random controlled trials across heterogeneous populations  
13 demonstrating that the program or practice is effective for the  
14 population.

15 (b) "Research-based" means a program or practice that has some  
16 research demonstrating effectiveness, but that does not yet meet the  
17 standard of evidence-based practices.

18 (c) "Consensus-based" means a program or practice that has general  
19 support among treatment providers and experts, based on experience or  
20 professional literature, and may have anecdotal or case study support,  
21 or that is agreed but not possible to perform studies with random  
22 assignment and controlled groups.

23 (d) "Promising practice" means a practice that presents, based on  
24 preliminary information, potential for becoming a research-based or  
25 consensus-based practice.

26 NEW SECTION. **Sec. 704.** A new section is added to chapter 13.34  
27 RCW to read as follows:

28 The department of social and health services and the department of  
29 health shall develop and expand comprehensive services for the drug-  
30 affected and alcohol-affected infants model project, developed pursuant  
31 to RCW 13.34.800. The expansion shall be in evidence-based, research-  
32 based, or consensus-based practices, as those terms are defined in  
33 section 703 of this act, and shall expand capacity in underserved  
34 regions of the state.

35 NEW SECTION. **Sec. 705.** A new section is added to chapter 71.02  
36 RCW to read as follows:



1 (1) The department of social and health services shall collaborate  
2 with community providers of mental health services, early learning and  
3 child care providers, child serving agencies, and child-placing  
4 agencies to identify and utilize federal, state, and local services and  
5 providers, including federally qualified health centers for children in  
6 out-of-home care and other populations of vulnerable children who are  
7 in need of an evaluation and treatment for mental health services and  
8 do not qualify for medicaid or treatment services through the regional  
9 support networks.

10 (2) If no appropriate mental health services are available through  
11 federal, state, or local services and providers for a child described  
12 in subsection (1) of this section, the regional support network must  
13 provide a child, at a minimum, with a mental health evaluation and out-  
14 patient mental health treatment, where appropriate.

15 (3) The department, in collaboration with the office of the  
16 superintendent of public instruction, local providers, local school  
17 districts, and the regional support networks, shall identify and review  
18 existing programs and services as well as the unmet need for programs  
19 and services serving birth to five and school-aged children who exhibit  
20 early signs of behavioral or mental health disorders and who are not  
21 otherwise eligible for services through the regional support networks.  
22 The review of programs and services shall include, but not be limited  
23 to, the utilization and effectiveness of early intervention or  
24 prevention services and the primary intervention programs.

25 The department of social and health services shall provide a  
26 briefing on the collaboration's findings and recommendations to the  
27 appropriate committee of the legislature by December 31, 2005.

28 NEW SECTION. **Sec. 706.** The Washington state institute for public  
29 policy shall assess the long-term and intergenerational cost-  
30 effectiveness of investing in the treatment of chemical dependency  
31 disorders, mental disorders, and co-occurring mental and substance  
32 abuse disorders. The assessment shall use, to the extent possible,  
33 existing governmental data bases and research and determine the net  
34 present value of costs avoided or minimized. These costs include, but  
35 are not limited to, primary care, jail or prison, competency  
36 evaluations and restorations, child protective services interventions,  
37 dependencies, foster care, emergency service interventions, and

1 prosecutorial, defense, and court costs. If possible, the institute  
2 shall indicate whether prevention and early intervention programs  
3 differ from acute and chronic treatment programs in long-term cost-  
4 effectiveness.

5 **PART VIII**

6 **REPEALERS AND CROSS-REFERENCE CORRECTIONS**

7 NEW SECTION. **Sec. 801.** The following acts or parts of acts are  
8 each repealed on the effective date of section 107 of this act:

9 (1) RCW 71.05.060 (Rights of persons complained against) and 1973  
10 1st ex.s. c 142 s 11;

11 (2) RCW 71.05.070 (Prayer treatment) and 1973 1st ex.s. c 142 s 12;

12 (3) RCW 71.05.090 (Choice of physicians) and 1973 2nd ex.s. c 24 s  
13 3 & 1973 1st ex.s. c 142 s 14;

14 (4) RCW 71.05.200 (Notice and statement of rights--Probable cause  
15 hearing) and 1998 c 297 s 11, 1997 c 112 s 14, 1989 c 120 s 5, 1974  
16 ex.s. c 145 s 13, & 1973 1st ex.s. c 142 s 25;

17 (5) RCW 71.05.250 (Probable cause hearing--Detained person's  
18 rights--Waiver of privilege--Limitation--Records as evidence) and 1989  
19 c 120 s 7, 1987 c 439 s 6, 1974 ex.s. c 145 s 17, & 1973 1st ex.s. c  
20 142 s 30;

21 (6) RCW 71.05.450 (Competency--Effect--Statement of Washington law)  
22 and 1994 sp.s. c 7 s 440 & 1973 1st ex.s. c 142 s 50;

23 (7) RCW 71.05.460 (Right to counsel) and 1997 c 112 s 33 & 1973 1st  
24 ex.s. c 142 s 51;

25 (8) RCW 71.05.470 (Right to examination) and 1997 c 112 s 34 & 1973  
26 1st ex.s. c 142 s 52;

27 (9) RCW 71.05.480 (Petitioning for release--Writ of habeas corpus)  
28 and 1974 ex.s. c 145 s 29 & 1973 1st ex.s. c 142 s 53; and

29 (10) RCW 71.05.490 (Rights of persons committed before January 1,  
30 1974) and 1997 c 112 s 35 & 1973 1st ex.s. c 142 s 54.

31 NEW SECTION. **Sec. 802.** The following acts or parts of acts are  
32 each repealed on the effective date of section 111 of this act:

33 (1) RCW 71.05.155 (Request to mental health professional by law  
34 enforcement agency for investigation under RCW 71.05.150--Advisory  
35 report of results) and 1997 c 112 s 9 & 1979 ex.s. c 215 s 10;

1 (2) RCW 71.05.395 (Application of uniform health care information  
2 act, chapter 70.02 RCW) and 1993 c 448 s 8;

3 (3) RCW 71.05.400 (Release of information to patient's next of kin,  
4 attorney, guardian, conservator--Notification of patient's death) and  
5 1993 c 448 s 7, 1974 ex.s. c 115 s 1, 1973 2nd ex.s. c 24 s 6, & 1973  
6 1st ex.s. c 142 s 45;

7 (4) RCW 71.05.410 (Notice of disappearance of patient) and 1997 c  
8 112 s 32, 1973 2nd ex.s. c 24 s 7, & 1973 1st ex.s. c 142 s 46; and

9 (5) RCW 71.05.430 (Statistical data) and 1973 1st ex.s. c 142 s 48.

10 NEW SECTION. **Sec. 803.** RCW 71.05.610 (Treatment records--  
11 Definitions) and 1989 c 205 s 11 are each repealed on the effective  
12 date of sections 104 through 106 of this act.

13 NEW SECTION. **Sec. 804.** The following acts or parts of acts are  
14 each repealed:

15 (1) RCW 71.05.650 (Treatment records--Notation of and access to  
16 released data) and 1989 c 205 s 15; and

17 (2) RCW 71.05.670 (Treatment records--Violations--Civil action) and  
18 1999 c 13 s 10.

19 **Sec. 805.** RCW 5.60.060 and 2001 c 286 s 2 are each amended to read  
20 as follows:

21 (1) A husband shall not be examined for or against his wife,  
22 without the consent of the wife, nor a wife for or against her husband  
23 without the consent of the husband; nor can either during marriage or  
24 afterward, be without the consent of the other, examined as to any  
25 communication made by one to the other during marriage. But this  
26 exception shall not apply to a civil action or proceeding by one  
27 against the other, nor to a criminal action or proceeding for a crime  
28 committed by one against the other, nor to a criminal action or  
29 proceeding against a spouse if the marriage occurred subsequent to the  
30 filing of formal charges against the defendant, nor to a criminal  
31 action or proceeding for a crime committed by said husband or wife  
32 against any child of whom said husband or wife is the parent or  
33 guardian, nor to a proceeding under chapter 70.96A, 70.-- (sections 202  
34 through 216 of this act), 70.-- (sections 302 through 374 of this act),  
35 71.05, or 71.09 RCW: PROVIDED, That the spouse of a person sought to

1 be detained under chapter 70.96A, 70.-- (sections 202 through 216 of  
2 this act), 70.-- (sections 302 through 374 of this act), 71.05, or  
3 71.09 RCW may not be compelled to testify and shall be so informed by  
4 the court prior to being called as a witness.

5 (2)(a) An attorney or counselor shall not, without the consent of  
6 his or her client, be examined as to any communication made by the  
7 client to him or her, or his or her advice given thereon in the course  
8 of professional employment.

9 (b) A parent or guardian of a minor child arrested on a criminal  
10 charge may not be examined as to a communication between the child and  
11 his or her attorney if the communication was made in the presence of  
12 the parent or guardian. This privilege does not extend to  
13 communications made prior to the arrest.

14 (3) A member of the clergy or a priest shall not, without the  
15 consent of a person making the confession, be examined as to any  
16 confession made to him or her in his or her professional character, in  
17 the course of discipline enjoined by the church to which he or she  
18 belongs.

19 (4) Subject to the limitations under RCW 70.96A.140 or  
20 (~~71.05.250~~) 71.05.360 (8) and (9), a physician or surgeon or  
21 osteopathic physician or surgeon or podiatric physician or surgeon  
22 shall not, without the consent of his or her patient, be examined in a  
23 civil action as to any information acquired in attending such patient,  
24 which was necessary to enable him or her to prescribe or act for the  
25 patient, except as follows:

26 (a) In any judicial proceedings regarding a child's injury,  
27 neglect, or sexual abuse or the cause thereof; and

28 (b) Ninety days after filing an action for personal injuries or  
29 wrongful death, the claimant shall be deemed to waive the physician-  
30 patient privilege. Waiver of the physician-patient privilege for any  
31 one physician or condition constitutes a waiver of the privilege as to  
32 all physicians or conditions, subject to such limitations as a court  
33 may impose pursuant to court rules.

34 (5) A public officer shall not be examined as a witness as to  
35 communications made to him or her in official confidence, when the  
36 public interest would suffer by the disclosure.

37 (6)(a) A peer support group counselor shall not, without consent of  
38 the law enforcement officer making the communication, be compelled to

1 testify about any communication made to the counselor by the officer  
2 while receiving counseling. The counselor must be designated as such  
3 by the sheriff, police chief, or chief of the Washington state patrol,  
4 prior to the incident that results in counseling. The privilege only  
5 applies when the communication was made to the counselor while acting  
6 in his or her capacity as a peer support group counselor. The  
7 privilege does not apply if the counselor was an initial responding  
8 officer, a witness, or a party to the incident which prompted the  
9 delivery of peer support group counseling services to the law  
10 enforcement officer.

11 (b) For purposes of this section, "peer support group counselor"  
12 means a:

13 (i) Law enforcement officer, or civilian employee of a law  
14 enforcement agency, who has received training to provide emotional and  
15 moral support and counseling to an officer who needs those services as  
16 a result of an incident in which the officer was involved while acting  
17 in his or her official capacity; or

18 (ii) Nonemployee counselor who has been designated by the sheriff,  
19 police chief, or chief of the Washington state patrol to provide  
20 emotional and moral support and counseling to an officer who needs  
21 those services as a result of an incident in which the officer was  
22 involved while acting in his or her official capacity.

23 (7) A sexual assault advocate may not, without the consent of the  
24 victim, be examined as to any communication made by the victim to the  
25 sexual assault advocate.

26 (a) For purposes of this section, "sexual assault advocate" means  
27 the employee or volunteer from a rape crisis center, victim assistance  
28 unit, program, or association, that provides information, medical or  
29 legal advocacy, counseling, or support to victims of sexual assault,  
30 who is designated by the victim to accompany the victim to the hospital  
31 or other health care facility and to proceedings concerning the alleged  
32 assault, including police and prosecution interviews and court  
33 proceedings.

34 (b) A sexual assault advocate may disclose a confidential  
35 communication without the consent of the victim if failure to disclose  
36 is likely to result in a clear, imminent risk of serious physical  
37 injury or death of the victim or another person. Any sexual assault  
38 advocate participating in good faith in the disclosing of records and

1 communications under this section shall have immunity from any  
2 liability, civil, criminal, or otherwise, that might result from the  
3 action. In any proceeding, civil or criminal, arising out of a  
4 disclosure under this section, the good faith of the sexual assault  
5 advocate who disclosed the confidential communication shall be  
6 presumed.

7 **Sec. 806.** RCW 18.83.110 and 1989 c 271 s 303 are each amended to  
8 read as follows:

9 Confidential communications between a client and a psychologist  
10 shall be privileged against compulsory disclosure to the same extent  
11 and subject to the same conditions as confidential communications  
12 between attorney and client, but this exception is subject to the  
13 limitations under RCW 70.96A.140 and (~~71.05.250~~) 71.05.360 (8) and  
14 (9).

15 **Sec. 807.** RCW 18.225.105 and 2003 c 204 s 1 are each amended to  
16 read as follows:

17 A person licensed under this chapter shall not disclose the written  
18 acknowledgment of the disclosure statement pursuant to RCW 18.225.100,  
19 nor any information acquired from persons consulting the individual in  
20 a professional capacity when the information was necessary to enable  
21 the individual to render professional services to those persons except:

22 (1) With the written authorization of that person or, in the case  
23 of death or disability, the person's personal representative;

24 (2) If the person waives the privilege by bringing charges against  
25 the person licensed under this chapter;

26 (3) In response to a subpoena from the secretary. The secretary  
27 may subpoena only records related to a complaint or report under RCW  
28 18.130.050;

29 (4) As required under chapter 26.44 or 74.34 RCW or RCW  
30 (~~71.05.250~~) 71.05.360 (8) and (9); or

31 (5) To any individual if the person licensed under this chapter  
32 reasonably believes that disclosure will avoid or minimize an imminent  
33 danger to the health or safety of the individual or any other  
34 individual; however, there is no obligation on the part of the provider  
35 to so disclose.

1       **Sec. 808.** RCW 71.05.235 and 2000 c 74 s 6 are each amended to read  
2 as follows:

3       (1) If an individual is referred to a county designated mental  
4 health professional under RCW 10.77.090(1)(d)(iii)(A), the county  
5 designated mental health professional shall examine the individual  
6 within forty-eight hours. If the county designated mental health  
7 professional determines it is not appropriate to detain the individual  
8 or petition for a ninety-day less restrictive alternative under RCW  
9 71.05.230(4), that decision shall be immediately presented to the  
10 superior court for hearing. The court shall hold a hearing to consider  
11 the decision of the county designated mental health professional not  
12 later than the next judicial day. At the hearing the superior court  
13 shall review the determination of the county designated mental health  
14 professional and determine whether an order should be entered requiring  
15 the person to be evaluated at an evaluation and treatment facility. No  
16 person referred to an evaluation and treatment facility may be held at  
17 the facility longer than seventy-two hours.

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

1 prosecutor, the court may order that the person named in the petition  
2 be detained at the evaluation and treatment facility that performed the  
3 evaluation under this subsection or order the respondent to be in  
4 outpatient treatment. If a petition is filed but the individual fails  
5 to appear in court for the surety hearing, the court shall order that  
6 a mental health professional or peace officer shall take such person or  
7 cause such person to be taken into custody and placed in an evaluation  
8 and treatment facility to be brought before the court the next judicial  
9 day after detention. Upon the individual's first appearance in court  
10 after a petition has been filed, proceedings under RCW 71.05.310 and  
11 71.05.320 shall commence. For an individual subject to this  
12 subsection, the prosecutor or professional person may directly file a  
13 petition for ninety-day inpatient or outpatient treatment and no  
14 petition for initial detention or fourteen-day detention is required  
15 before such a petition may be filed.

16 The court shall conduct the hearing on the petition filed under  
17 this subsection within five judicial days of the date the petition is  
18 filed. The court may continue the hearing upon the written request of  
19 the person named in the petition or the person's attorney, for good  
20 cause shown, which continuance shall not exceed five additional  
21 judicial days. If the person named in the petition requests a jury  
22 trial, the trial shall commence within ten judicial days of the date of  
23 the filing of the petition. The burden of proof shall be by clear,  
24 cogent, and convincing evidence and shall be upon the petitioner. The  
25 person shall be present at such proceeding, which shall in all respects  
26 accord with the constitutional guarantees of due process of law and the  
27 rules of evidence pursuant to RCW (~~(71.05.250)~~) 71.05.360 (8) and (9).

28 During the proceeding the person named in the petition shall  
29 continue to be detained and treated until released by order of the  
30 court. If no order has been made within thirty days after the filing  
31 of the petition, not including any extensions of time requested by the  
32 detained person or his or her attorney, the detained person shall be  
33 released.

34 (3) If a county designated mental health professional or the  
35 professional person and prosecuting attorney for the county in which  
36 the criminal charge was dismissed or attorney general, as appropriate,  
37 stipulate that the individual does not present a likelihood of serious



1 harm or is not gravely disabled, the hearing under this section is not  
2 required and the individual, if in custody, shall be released.

3 (4) The individual shall have the rights specified in RCW  
4 (~~71.05.250~~) 71.05.360 (8) and (9).

5 **Sec. 809.** RCW 71.05.310 and 1987 c 439 s 9 are each amended to  
6 read as follows:

7 The court shall conduct a hearing on the petition for ninety day  
8 treatment within five judicial days of the first court appearance after  
9 the probable cause hearing. The court may continue the hearing upon  
10 the written request of the person named in the petition or the person's  
11 attorney, for good cause shown, which continuance shall not exceed five  
12 additional judicial days. If the person named in the petition requests  
13 a jury trial, the trial shall commence within ten judicial days of the  
14 first court appearance after the probable cause hearing. The burden of  
15 proof shall be by clear, cogent, and convincing evidence and shall be  
16 upon the petitioner. The person shall be present at such proceeding,  
17 which shall in all respects accord with the constitutional guarantees  
18 of due process of law and the rules of evidence pursuant to RCW  
19 (~~71.05.250~~) 71.05.360 (8) and (9).

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

25 **Sec. 810.** RCW 71.05.425 and 2000 c 94 s 10 are each amended to  
26 read as follows:

27 (1)(a) Except as provided in subsection (2) of this section, at the  
28 earliest possible date, and in no event later than thirty days before  
29 conditional release, final release, authorized leave under RCW  
30 71.05.325(2), or transfer to a facility other than a state mental  
31 hospital, the superintendent shall send written notice of conditional  
32 release, release, authorized leave, or transfer of a person committed  
33 under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex,  
34 violent, or felony harassment offense pursuant to RCW 10.77.090(4) to  
35 the following:

1 (i) The chief of police of the city, if any, in which the person  
2 will reside; and

3 (ii) The sheriff of the county in which the person will reside.

4 (b) The same notice as required by (a) of this subsection shall be  
5 sent to the following, if such notice has been requested in writing  
6 about a specific person committed under RCW 71.05.280(3) or  
7 71.05.320(2)(c) following dismissal of a sex, violent, or felony  
8 harassment offense pursuant to RCW 10.77.090(4):

9 (i) The victim of the sex, violent, or felony harassment offense  
10 that was dismissed pursuant to RCW 10.77.090(4) preceding commitment  
11 under RCW 71.05.280(3) or 71.05.320(2)(c) or the victim's next of kin  
12 if the crime was a homicide;

13 (ii) Any witnesses who testified against the person in any court  
14 proceedings; and

15 (iii) Any person specified in writing by the prosecuting attorney.  
16 Information regarding victims, next of kin, or witnesses requesting the  
17 notice, information regarding any other person specified in writing by  
18 the prosecuting attorney to receive the notice, and the notice are  
19 confidential and shall not be available to the person committed under  
20 this chapter.

21 (c) The thirty-day notice requirements contained in this subsection  
22 shall not apply to emergency medical transfers.

23 (d) The existence of the notice requirements in this subsection  
24 will not require any extension of the release date in the event the  
25 release plan changes after notification.

26 (2) If a person committed under RCW 71.05.280(3) or 71.05.320(2)(c)  
27 following dismissal of a sex, violent, or felony harassment offense  
28 pursuant to RCW 10.77.090(4) escapes, the superintendent shall  
29 immediately notify, by the most reasonable and expedient means  
30 available, the chief of police of the city and the sheriff of the  
31 county in which the person resided immediately before the person's  
32 arrest. If previously requested, the superintendent shall also notify  
33 the witnesses and the victim of the sex, violent, or felony harassment  
34 offense that was dismissed pursuant to RCW 10.77.090(4) preceding  
35 commitment under RCW 71.05.280(3) or 71.05.320(2) or the victim's next  
36 of kin if the crime was a homicide. In addition, the secretary shall  
37 also notify appropriate parties pursuant to RCW ((~~71.05.410~~))  
38 71.05.390(18). If the person is recaptured, the superintendent shall

1 send notice to the persons designated in this subsection as soon as  
2 possible but in no event later than two working days after the  
3 department learns of such recapture.

4 (3) If the victim, the victim's next of kin, or any witness is  
5 under the age of sixteen, the notice required by this section shall be  
6 sent to the parent or legal guardian of the child.

7 (4) The superintendent shall send the notices required by this  
8 chapter to the last address provided to the department by the  
9 requesting party. The requesting party shall furnish the department  
10 with a current address.

11 (5) For purposes of this section the following terms have the  
12 following meanings:

13 (a) "Violent offense" means a violent offense under RCW 9.94A.030;

14 (b) "Sex offense" means a sex offense under RCW 9.94A.030;

15 (c) "Next of kin" means a person's spouse, parents, siblings, and  
16 children;

17 (d) "Felony harassment offense" means a crime of harassment as  
18 defined in RCW 9A.46.060 that is a felony.

19 **Sec. 811.** RCW 71.05.445 and 2004 c 166 s 4 are each amended to  
20 read as follows:

21 (1) The definitions in this subsection apply throughout this  
22 section unless the context clearly requires otherwise.

23 (a) "Information related to mental health services" means all  
24 information and records compiled, obtained, or maintained in the course  
25 of providing services to either voluntary or involuntary recipients of  
26 services by a mental health service provider. This may include  
27 documents of legal proceedings under this chapter or chapter 71.34 or  
28 10.77 RCW, or somatic health care information.

29 (b) "Mental health service provider" means a public or private  
30 agency that provides services to persons with mental disorders as  
31 defined under RCW 71.05.020 and receives funding from public sources.  
32 This includes evaluation and treatment facilities as defined in RCW  
33 71.05.020, community mental health service delivery systems, or  
34 community mental health programs as defined in RCW 71.24.025, and  
35 facilities conducting competency evaluations and restoration under  
36 chapter 10.77 RCW.

1 (2)(a) Information related to mental health services delivered to  
2 a person subject to chapter 9.94A or 9.95 RCW shall be released, upon  
3 request, by a mental health service provider to department of  
4 corrections personnel for whom the information is necessary to carry  
5 out the responsibilities of their office. The information must be  
6 provided only for the purposes of completing presentence investigations  
7 or risk assessment reports, supervision of an incarcerated offender or  
8 offender under supervision in the community, planning for and provision  
9 of supervision of an offender, or assessment of an offender's risk to  
10 the community. The request shall be in writing and shall not require  
11 the consent of the subject of the records.

12 (b) If an offender subject to chapter 9.94A or 9.95 RCW has failed  
13 to report for department of corrections supervision or in the event of  
14 an emergent situation that poses a significant risk to the public or  
15 the offender, information related to mental health services delivered  
16 to the offender and, if known, information regarding where the offender  
17 is likely to be found shall be released by the mental health services  
18 provider to the department of corrections upon request. The initial  
19 request may be written or oral. All oral requests must be subsequently  
20 confirmed in writing. Information released in response to an oral  
21 request is limited to a statement as to whether the offender is or is  
22 not being treated by the mental health services provider and the  
23 address or information about the location or whereabouts of the  
24 offender. Information released in response to a written request may  
25 include information identified by rule as provided in subsections (4)  
26 and (5) of this section. For purposes of this subsection a written  
27 request includes requests made by e-mail or facsimile so long as the  
28 requesting person at the department of corrections is clearly  
29 identified. The request must specify the information being requested.  
30 Disclosure of the information requested does not require the consent of  
31 the subject of the records unless the offender has received relief from  
32 disclosure under RCW 9.94A.562, 70.96A.155, or 71.05.132.

33 (3)(a) When a mental health service provider conducts its initial  
34 assessment for a person receiving court-ordered treatment, the service  
35 provider shall inquire and shall be told by the offender whether he or  
36 she is subject to supervision by the department of corrections.

37 (b) When a person receiving court-ordered treatment or treatment  
38 ordered by the department of corrections discloses to his or her mental

1 health service provider that he or she is subject to supervision by the  
2 department of corrections, the mental health services provider shall  
3 notify the department of corrections that he or she is treating the  
4 offender and shall notify the offender that his or her community  
5 corrections officer will be notified of the treatment, provided that if  
6 the offender has received relief from disclosure pursuant to RCW  
7 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the  
8 mental health services provider with a copy of the order granting  
9 relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or  
10 71.05.132, the mental health services provider is not required to  
11 notify the department of corrections that the mental health services  
12 provider is treating the offender. The notification may be written or  
13 oral and shall not require the consent of the offender. If an oral  
14 notification is made, it must be confirmed by a written notification.  
15 For purposes of this section, a written notification includes  
16 notification by e-mail or facsimile, so long as the notifying mental  
17 health service provider is clearly identified.

18 (4) The information to be released to the department of corrections  
19 shall include all relevant records and reports, as defined by rule,  
20 necessary for the department of corrections to carry out its duties,  
21 including those records and reports identified in subsection (2) of  
22 this section.

23 (5) The department and the department of corrections, in  
24 consultation with regional support networks, mental health service  
25 providers as defined in subsection (1) of this section, mental health  
26 consumers, and advocates for persons with mental illness, shall adopt  
27 rules to implement the provisions of this section related to the type  
28 and scope of information to be released. These rules shall:

29 (a) Enhance and facilitate the ability of the department of  
30 corrections to carry out its responsibility of planning and ensuring  
31 community protection with respect to persons subject to sentencing  
32 under chapter 9.94A or 9.95 RCW, including accessing and releasing or  
33 disclosing information of persons who received mental health services  
34 as a minor; and

35 (b) Establish requirements for the notification of persons under  
36 the supervision of the department of corrections regarding the  
37 provisions of this section.

1 (6) The information received by the department of corrections under  
2 this section shall remain confidential and subject to the limitations  
3 on disclosure outlined in chapter 71.05 RCW, except as provided in RCW  
4 72.09.585.

5 (7) No mental health service provider or individual employed by a  
6 mental health service provider shall be held responsible for  
7 information released to or used by the department of corrections under  
8 the provisions of this section or rules adopted under this section  
9 except under RCW (~~71.05.670~~ and) 71.05.440.

10 (8) Whenever federal law or federal regulations restrict the  
11 release of information contained in the treatment records of any  
12 patient who receives treatment for alcoholism or drug dependency, the  
13 release of the information may be restricted as necessary to comply  
14 with federal law and regulations.

15 (9) This section does not modify the terms and conditions of  
16 disclosure of information related to sexually transmitted diseases  
17 under chapter 70.24 RCW.

18 (10) The department shall, subject to available resources,  
19 electronically, or by the most cost-effective means available, provide  
20 the department of corrections with the names, last dates of services,  
21 and addresses of specific regional support networks and mental health  
22 service providers that delivered mental health services to a person  
23 subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between  
24 the departments.

25 **Sec. 812.** RCW 71.05.640 and 2000 c 94 s 11 are each amended to  
26 read as follows:

27 (1) Procedures shall be established by resource management services  
28 to provide reasonable and timely access to individual treatment  
29 records. However, access may not be denied at any time to records of  
30 all medications and somatic treatments received by the individual.

31 (2) Following discharge, the individual shall have a right to a  
32 complete record of all medications and somatic treatments prescribed  
33 during evaluation, admission, or commitment and to a copy of the  
34 discharge summary prepared at the time of his or her discharge. A  
35 reasonable and uniform charge for reproduction may be assessed.

36 (3) Treatment records may be modified prior to inspection to  
37 protect the confidentiality of other patients or the names of any other

1 persons referred to in the record who gave information on the condition  
2 that his or her identity remain confidential. Entire documents may not  
3 be withheld to protect such confidentiality.

4 (4) At the time of discharge all individuals shall be informed by  
5 resource management services of their rights as provided in RCW  
6 ((71.05.610)) 71.05.620 through 71.05.690.

7 **Sec. 813.** RCW 71.05.680 and 1999 c 13 s 11 are each amended to  
8 read as follows:

9 Any person who requests or obtains confidential information  
10 pursuant to RCW ((71.05.610)) 71.05.620 through 71.05.690 under false  
11 pretenses shall be guilty of a gross misdemeanor.

12 **Sec. 814.** RCW 71.05.690 and 1999 c 13 s 12 are each amended to  
13 read as follows:

14 The department shall adopt rules to implement RCW ((71.05.610))  
15 71.05.620 through 71.05.680.

16 **Sec. 815.** RCW 71.24.035 and 2001 c 334 s 7 and 2001 c 323 s 10 are  
17 each reenacted and amended to read as follows:

18 (1) The department is designated as the state mental health  
19 authority.

20 (2) The secretary shall provide for public, client, and licensed  
21 service provider participation in developing the state mental health  
22 program, developing contracts with regional support networks, and any  
23 waiver request to the federal government under medicaid.

24 (3) The secretary shall provide for participation in developing the  
25 state mental health program for children and other underserved  
26 populations, by including representatives on any committee established  
27 to provide oversight to the state mental health program.

28 (4) The secretary shall be designated as the county authority if a  
29 county fails to meet state minimum standards or refuses to exercise  
30 responsibilities under RCW 71.24.045.

31 (5) The secretary shall:

32 (a) Develop a biennial state mental health program that  
33 incorporates county biennial needs assessments and county mental health  
34 service plans and state services for mentally ill adults and children.  
35 The secretary may also develop a six-year state mental health plan;

1 (b) Assure that any regional or county community mental health  
2 program provides access to treatment for the county's residents in the  
3 following order of priority: (i) The acutely mentally ill; (ii)  
4 chronically mentally ill adults and severely emotionally disturbed  
5 children; and (iii) the seriously disturbed. Such programs shall  
6 provide:

7 (A) Outpatient services;

8 (B) Emergency care services for twenty-four hours per day;

9 (C) Day treatment for mentally ill persons which includes training  
10 in basic living and social skills, supported work, vocational  
11 rehabilitation, and day activities. Such services may include  
12 therapeutic treatment. In the case of a child, day treatment includes  
13 age-appropriate basic living and social skills, educational and  
14 prevocational services, day activities, and therapeutic treatment;

15 (D) Screening for patients being considered for admission to state  
16 mental health facilities to determine the appropriateness of admission;

17 (E) Employment services, which may include supported employment,  
18 transitional work, placement in competitive employment, and other work-  
19 related services, that result in mentally ill persons becoming engaged  
20 in meaningful and gainful full or part-time work. Other sources of  
21 funding such as the division of vocational rehabilitation may be  
22 utilized by the secretary to maximize federal funding and provide for  
23 integration of services;

24 (F) Consultation and education services; and

25 (G) Community support services;

26 (c) Develop and adopt rules establishing state minimum standards  
27 for the delivery of mental health services pursuant to RCW 71.24.037  
28 including, but not limited to:

29 (i) Licensed service providers. The secretary shall provide for  
30 deeming of compliance with state minimum standards for those entities  
31 accredited by recognized behavioral health accrediting bodies  
32 recognized and having a current agreement with the department;

33 (ii) Regional support networks; and

34 (iii) Inpatient services, evaluation and treatment services and  
35 facilities under chapter 71.05 RCW, resource management services, and  
36 community support services;

37 (d) Assure that the special needs of minorities, the elderly,



1 disabled, children, and low-income persons are met within the  
2 priorities established in this section;

3 (e) Establish a standard contract or contracts, consistent with  
4 state minimum standards, which shall be used in contracting with  
5 regional support networks or counties. The standard contract shall  
6 include a maximum fund balance, which shall not exceed ten percent;

7 (f) Establish, to the extent possible, a standardized auditing  
8 procedure which minimizes paperwork requirements of county authorities  
9 and licensed service providers. The audit procedure shall focus on the  
10 outcomes of service and not the processes for accomplishing them;

11 (g) Develop and maintain an information system to be used by the  
12 state, counties, and regional support networks that includes a tracking  
13 method which allows the department and regional support networks to  
14 identify mental health clients' participation in any mental health  
15 service or public program on an immediate basis. The information  
16 system shall not include individual patient's case history files.  
17 Confidentiality of client information and records shall be maintained  
18 as provided in this chapter and in RCW 71.05.390, (~~(71.05.400,~~  
19 ~~71.05.410,~~)) 71.05.420, (~~(71.05.430,~~)) and 71.05.440. The design of  
20 the system and the data elements to be collected shall be reviewed by  
21 the work group appointed by the secretary under section 5(1) of this  
22 act and representing the department, regional support networks, service  
23 providers, consumers, and advocates. The data elements shall be  
24 designed to provide information that is needed to measure performance  
25 and achieve the service outcomes (~~(identified in section 5 of this~~  
26 ~~act))~~);

27 (h) License service providers who meet state minimum standards;

28 (i) Certify regional support networks that meet state minimum  
29 standards;

30 (j) Periodically monitor the compliance of certified regional  
31 support networks and their network of licensed service providers for  
32 compliance with the contract between the department, the regional  
33 support network, and federal and state rules at reasonable times and in  
34 a reasonable manner;

35 (k) Fix fees to be paid by evaluation and treatment centers to the  
36 secretary for the required inspections;

37 (l) Monitor and audit counties, regional support networks, and

1 licensed service providers as needed to assure compliance with  
2 contractual agreements authorized by this chapter; and

3 (m) Adopt such rules as are necessary to implement the department's  
4 responsibilities under this chapter.

5 (6) The secretary shall use available resources only for regional  
6 support networks.

7 (7) Each certified regional support network and licensed service  
8 provider shall file with the secretary, on request, such data,  
9 statistics, schedules, and information as the secretary reasonably  
10 requires. A certified regional support network or licensed service  
11 provider which, without good cause, fails to furnish any data,  
12 statistics, schedules, or information as requested, or files fraudulent  
13 reports thereof, may have its certification or license revoked or  
14 suspended.

15 (8) The secretary may suspend, revoke, limit, or restrict a  
16 certification or license, or refuse to grant a certification or license  
17 for failure to conform to: (a) The law; (b) applicable rules and  
18 regulations; (c) applicable standards; or (d) state minimum standards.

19 (9) The superior court may restrain any regional support network or  
20 service provider from operating without certification or a license or  
21 any other violation of this section. The court may also review,  
22 pursuant to procedures contained in chapter 34.05 RCW, any denial,  
23 suspension, limitation, restriction, or revocation of certification or  
24 license, and grant other relief required to enforce the provisions of  
25 this chapter.

26 (10) Upon petition by the secretary, and after hearing held upon  
27 reasonable notice to the facility, the superior court may issue a  
28 warrant to an officer or employee of the secretary authorizing him or  
29 her to enter at reasonable times, and examine the records, books, and  
30 accounts of any regional support network or service provider refusing  
31 to consent to inspection or examination by the authority.

32 (11) Notwithstanding the existence or pursuit of any other remedy,  
33 the secretary may file an action for an injunction or other process  
34 against any person or governmental unit to restrain or prevent the  
35 establishment, conduct, or operation of a regional support network or  
36 service provider without certification or a license under this chapter.

37 (12) The standards for certification of evaluation and treatment  
38 facilities shall include standards relating to maintenance of good

1 physical and mental health and other services to be afforded persons  
2 pursuant to this chapter and chapters 71.05 and 71.34 RCW, and shall  
3 otherwise assure the effectuation of the purposes of these chapters.

4 (13)(a) The department, in consultation with affected parties,  
5 shall establish a distribution formula that reflects county needs  
6 assessments based on the number of persons who are acutely mentally  
7 ill, chronically mentally ill, severely emotionally disturbed children,  
8 and seriously disturbed. The formula shall take into consideration the  
9 impact on counties of demographic factors in counties which result in  
10 concentrations of priority populations as set forth in subsection  
11 (5)(b) of this section. These factors shall include the population  
12 concentrations resulting from commitments under chapters 71.05 and  
13 71.34 RCW to state psychiatric hospitals, as well as concentration in  
14 urban areas, at border crossings at state boundaries, and other  
15 significant demographic and workload factors.

16 (b) The formula shall also include a projection of the funding  
17 allocations that will result for each county, which specifies  
18 allocations according to priority populations, including the allocation  
19 for services to children and other underserved populations.

20 (c) After July 1, 2003, the department may allocate up to two  
21 percent of total funds to be distributed to the regional support  
22 networks for incentive payments to reward the achievement of superior  
23 outcomes, or significantly improved outcomes, as measured by a  
24 statewide performance measurement system consistent with the framework  
25 recommended in the joint legislative audit and review committee's  
26 performance audit of the mental health system. The department shall  
27 annually report to the legislature on its criteria and allocation of  
28 the incentives provided under this subsection.

29 (14) The secretary shall assume all duties assigned to the  
30 nonparticipating counties under chapters 71.05, 71.34, and 71.24 RCW.  
31 Such responsibilities shall include those which would have been  
32 assigned to the nonparticipating counties under regional support  
33 networks.

34 The regional support networks, or the secretary's assumption of all  
35 responsibilities under chapters 71.05, 71.34, and 71.24 RCW, shall be  
36 included in all state and federal plans affecting the state mental  
37 health program including at least those required by this chapter, the

1    medicaid program, and P.L. 99-660.  Nothing in these plans shall be  
2    inconsistent with the intent and requirements of this chapter.

3           (15) The secretary shall:

4           (a) Disburse funds for the regional support networks within sixty  
5    days of approval of the biennial contract.  The department must either  
6    approve or reject the biennial contract within sixty days of receipt.

7           (b) Enter into biennial contracts with regional support networks.  
8    The contracts shall be consistent with available resources.  No  
9    contract shall be approved that does not include progress toward  
10   meeting the goals of this chapter by taking responsibility for:  (i)  
11   Short-term commitments; (ii) residential care; and (iii) emergency  
12   response systems.

13           (c) Allocate one hundred percent of available resources to the  
14   regional support networks in accordance with subsection (13) of this  
15   section.  Incentive payments authorized under subsection (13) of this  
16   section may be allocated separately from other available resources.

17           (d) Notify regional support networks of their allocation of  
18   available resources at least sixty days prior to the start of a new  
19   biennial contract period.

20           (e) Deny funding allocations to regional support networks based  
21   solely upon formal findings of noncompliance with the terms of the  
22   regional support network's contract with the department.  Written  
23   notice and at least thirty days for corrective action must precede any  
24   such action.  In such cases, regional support networks shall have full  
25   rights to appeal under chapter 34.05 RCW.

26           (16) The department, in cooperation with the state congressional  
27   delegation, shall actively seek waivers of federal requirements and  
28   such modifications of federal regulations as are necessary to allow  
29   federal medicaid reimbursement for services provided by free-standing  
30   evaluation and treatment facilities certified under chapter 71.05 RCW.  
31   The department shall periodically report its efforts to the appropriate  
32   committees of the senate and the house of representatives.

33   **PART IX**

34   **MISCELLANEOUS PROVISIONS**

35           NEW SECTION.  **Sec. 901.**  RCW 71.05.035 is recodified as a new  
36   section in chapter 71A.12 RCW.

1        NEW SECTION.    **Sec. 902.**    The sum of . . . . . dollars, or as much  
2        thereof as may be necessary, is appropriated for the biennium ending  
3        June 30, 2007, from the general fund to the department of social and  
4        health services to provide vendor rate increases for inpatient mental  
5        health treatment providers, children's long-term inpatient treatment  
6        providers, and chemical dependency treatment providers.

7        The rate increases shall be prioritized for those programs that  
8        maximize the use of evidence-based practices, research-based practices,  
9        and consensus-based practices as defined in section 703 of this act.

10       NEW SECTION.    **Sec. 903.**    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.

14       NEW SECTION.    **Sec. 904.**    A new section is added to chapter 82.14  
15       RCW to read as follows:

16       (1) A county legislative authority may authorize, fix, and impose  
17       a sales and use tax in accordance with the terms of this chapter.

18       (2) The tax authorized in this section shall be in addition to any  
19       other taxes authorized by law and shall be collected from those persons  
20       who are taxable by the state under chapters 82.08 and 82.12 RCW upon  
21       the occurrence of any taxable event within the county. The rate of tax  
22       shall equal one-tenth of one percent of the selling price in the case  
23       of a sales tax, or value of the article used, in the case of a use tax.

24       (3) Moneys collected under this section shall be used solely for  
25       the purpose of providing new or expanded chemical dependency or mental  
26       health treatment services. Moneys collected under this section shall  
27       not be used to supplant existing funding for these purposes.

28       NEW SECTION.    **Sec. 905.**    This act shall be so applied and construed  
29       as to effectuate its general purpose to make uniform the law with  
30       respect to the subject of this act among those states which enact it.

31       NEW SECTION.    **Sec. 906.**    Captions and part headings used in this  
32       chapter are not part of the law.

1        NEW SECTION.    **Sec. 907.**    (1) If specific funding for the purposes  
2 of this act, with the exception of sections 302 through 374 of this  
3 act, referencing this act by bill or chapter number, is not provided by  
4 June 30, 2005, this act is null and void.

5        (2) If specific funding for the purposes of sections 302 through  
6 374 of this act, referencing these sections by bill or chapter number,  
7 or by RCW citation, is not provided by June 30, 2009, sections 302  
8 through 374 of this act are null and void.

9        NEW SECTION.    **Sec. 908.**    The code reviser shall alphabetize and  
10 renumber the definitions, and correct any internal references affected  
11 by this act.

12        NEW SECTION.    **Sec. 909.**    The code reviser shall, not later than  
13 January 1, 2009, report to the appropriate policy committees of the  
14 legislature which sections, or portions thereof, should be repealed on  
15 the effective date of sections 302 through 374 of this act. The report  
16 shall include draft legislation.

17        NEW SECTION.    **Sec. 910.**    (1) The secretary of the department of  
18 social and health services may adopt rules as necessary to implement  
19 the provisions of this act.

20        (2) The secretary of corrections may adopt rules as necessary to  
21 implement the provisions of this act.

22        NEW SECTION.    **Sec. 911.**    This act is necessary for the immediate  
23 preservation of the public peace, health, or safety, or support of the  
24 state government and its existing public institutions, and takes effect  
25 July 1, 2005, except for sections 302 through 374 of this act, which  
26 take effect July 1, 2009.

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