
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5763

State of Washington

59th Legislature

2005 Regular Session

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

READ FIRST TIME 03/08/05.

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 a
9 new section to chapter 13.34 RCW; adding new sections to chapter 2.28
10 RCW; adding a new section to chapter 26.12 RCW; adding new sections to
11 chapter 74.09 RCW; adding a new section to chapter 71.24 RCW; adding a
12 new section to chapter 72.09 RCW; adding new sections to chapter 71.02
13 RCW; adding a new section to chapter 71A.12 RCW; adding a new section
14 to chapter 43.20A RCW; adding a new section to chapter 82.14 RCW;
15 adding new chapters to Title 70 RCW; creating new sections; recodifying
16 RCW 71.05.370 and 71.05.035; repealing RCW 71.05.060, 71.05.070,
17 71.05.090, 71.05.200, 71.05.250, 71.05.450, 71.05.460, 71.05.470,
18 71.05.480, 71.05.490, 71.05.155, 71.05.395, 71.05.400, 71.05.410,
19 71.05.430, 71.05.610, 71.05.650, and 71.05.670; prescribing penalties;
20 providing effective dates; providing expiration dates; and declaring an

1 emergency.

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

3 **PART I**

4 **GENERAL PROVISIONS**

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

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

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

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

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

31 (5) Improve access to treatment for persons who are not enrolled in
32 medicaid by improving and creating consistency in the application
33 processes, and by minimizing the numbers of eligible confined persons
34 who leave confinement without medical assistance;

1 (6) Improve access to inpatient treatment by creating expanded
2 services facilities for persons needing intensive treatment in a secure
3 setting who do not need inpatient care, but are unable to access
4 treatment under current licensing restrictions in other settings;

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

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

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

18 (10) Improve cross-system collaboration including collaboration
19 with first responders and hospital emergency rooms, schools, primary
20 care, developmental disabilities, law enforcement and corrections, and
21 federally funded and licensed programs; and

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

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

32 (a) The optional clinic provisions;

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

36 (c) Targeted case management, including a plan for coordination of
37 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) "Psychiatric nurse" means a registered nurse who has
20 a bachelor's degree from an accredited college or university, and who
21 has had, in addition, at least two years of experience in the direct
22 treatment of mentally ill or emotionally disturbed persons under the
23 supervision of a mental health professional. "Psychiatric nurse" also
24 means any other registered nurse who has at least three years of such
25 experience.

26 (28) "Psychiatrist" means a person having a license as a physician
27 and surgeon in this state who has in addition completed three years of
28 graduate training in psychiatry in a program approved by the American
29 medical association or the American osteopathic association and is
30 certified or eligible to be certified by the American board of
31 psychiatry and neurology;

32 ~~((+26+))~~ (29) "Psychologist" means a person who has been licensed
33 as a psychologist pursuant to chapter 18.83 RCW;

34 ~~((+27+))~~ (30) "Public agency" means any evaluation and treatment
35 facility or institution, hospital, or sanitarium which is conducted
36 for, or includes a department or ward conducted for, the care and
37 treatment of persons who are mentally ill~~((+28+))~~, if the agency is

1 operated directly by, federal, state, county, or municipal government,
2 or a combination of such governments;

3 ~~((+28+))~~ (31) "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 persons who are receiving or who at any time
7 have received services for mental illness.

8 (32) "Release" means legal termination of the commitment under the
9 provisions of this chapter;

10 ~~((+29+))~~ (33) "Resource management services" has the meaning given
11 in chapter 71.24 RCW;

12 ~~((+30+))~~ (34) "Secretary" means the secretary of the department of
13 social and health services, or his or her designee;

14 ~~((+31+))~~ (35) "Social worker" means a person with a master's or
15 further advanced degree from an accredited school of social work or a
16 degree deemed equivalent under rules adopted by the secretary;

17 ~~((+32+))~~ (36) "Treatment records" include registration and all
18 other records concerning persons who are receiving or who at any time
19 have received services for mental illness, which are maintained by the
20 department, by regional support networks and their staffs, and by
21 treatment facilities. Treatment records do not include notes or
22 records maintained for personal use by a person providing treatment
23 services for the department, regional support networks, or a treatment
24 facility if the notes or records are not available to others.

25 (37) "Violent act" means behavior that resulted in homicide,
26 attempted suicide, nonfatal injuries, or substantial damage to
27 property.

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

30 Unless the context clearly requires otherwise, the definitions in
31 this section apply throughout this chapter.

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

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

36 (b) Being gravely disabled as defined in RCW 71.05.020 or, in the

1 case of a child, a gravely disabled minor as defined in RCW 71.34.020;
2 or

3 (c) Presenting a likelihood of serious harm as defined in RCW
4 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

5 (2) "Available resources" means funds appropriated for the purpose
6 of providing community mental health programs under RCW 71.24.045,
7 federal funds, except those provided according to Title XIX of the
8 Social Security Act, and state funds appropriated under this chapter or
9 chapter 71.05 RCW by the legislature during any biennium for the
10 purpose of providing residential services, resource management
11 services, community support services, and other mental health services.
12 This does not include funds appropriated for the purpose of operating
13 and administering the state psychiatric hospitals, except as negotiated
14 according to RCW 71.24.300(1)(e).

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

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

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

20 (b) Has experienced a continuous psychiatric hospitalization or
21 residential treatment exceeding six months' duration within the
22 preceding year; or

23 (c) Has been unable to engage in any substantial gainful activity
24 by reason of any mental disorder which has lasted for a continuous
25 period of not less than twelve months. "Substantial gainful activity"
26 shall be defined by the department by rule consistent with Public Law
27 92-603, as amended.

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

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

34 (7) "Community support services" means services authorized,
35 planned, and coordinated through resource management services
36 including, at a minimum, assessment, diagnosis, emergency crisis
37 intervention available twenty-four hours, seven days a week,
38 prescreening determinations for mentally ill persons being considered

1 for placement in nursing homes as required by federal law, screening
2 for patients being considered for admission to residential services,
3 diagnosis and treatment for acutely mentally ill and severely
4 emotionally disturbed children discovered under screening through the
5 federal Title XIX early and periodic screening, diagnosis, and
6 treatment program, investigation, legal, and other nonresidential
7 services under chapter 71.05 RCW, case management services, psychiatric
8 treatment including medication supervision, counseling, psychotherapy,
9 assuring transfer of relevant patient information between service
10 providers, and other services determined by regional support networks.

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

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

18 (10) "Licensed service provider" means an entity licensed according
19 to this chapter or chapter 71.05 RCW or an entity deemed to meet state
20 minimum standards as a result of accreditation by a recognized
21 behavioral health accrediting body recognized and having a current
22 agreement with the department, that meets state minimum standards or
23 (~~individuals~~) persons licensed under chapter 18.57, 18.71, 18.83, or
24 18.79 RCW, as it applies to registered nurses and advanced registered
25 nurse practitioners.

26 (11) "Mental health services" means all services provided by
27 regional support networks and other services provided by the state for
28 the mentally ill.

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

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

36 (14) "Registration records" include all the records of the
37 department, regional support networks, treatment facilities, and other

1 persons providing services to the department, county departments, or
2 facilities which identify persons who are receiving or who at any time
3 have received services for mental illness.

4 (15) "Residential services" means a complete range of residences
5 and supports authorized by resource management services and which may
6 involve a facility, a distinct part thereof, or services which support
7 community living, for acutely mentally ill persons, chronically
8 mentally ill adults, severely emotionally disturbed children, or
9 seriously disturbed adults determined by the regional support network
10 to be at risk of becoming acutely or chronically mentally ill. The
11 services shall include at least evaluation and treatment services as
12 defined in chapter 71.05 RCW, acute crisis respite care, long-term
13 adaptive and rehabilitative care, and supervised and supported living
14 services, and shall also include any residential services developed to
15 service mentally ill persons in nursing homes. Residential services
16 for children in out-of-home placements related to their mental disorder
17 shall not include the costs of food and shelter, except for children's
18 long-term residential facilities existing prior to January 1, 1991.

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

34 ~~((16))~~ (17) "Secretary" means the secretary of social and health
35 services.

36 ~~((17))~~ (18) "Seriously disturbed person" means a person who:

37 (a) Is gravely disabled or presents a likelihood of serious harm to

1 himself or herself or others, or to the property of others, as a result
2 of a mental disorder as defined in chapter 71.05 RCW;

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

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

9 (d) Exhibits suicidal preoccupation or attempts; or

10 (e) Is a child diagnosed by a mental health professional, as
11 defined in chapter 71.34 RCW, as experiencing a mental disorder which
12 is clearly interfering with the child's functioning in family or school
13 or with peers or is clearly interfering with the child's personality
14 development and learning.

15 ((+18+)) (19) "Severely emotionally disturbed child" means a child
16 who has been determined by the regional support network to be
17 experiencing a mental disorder as defined in chapter 71.34 RCW,
18 including those mental disorders that result in a behavioral or conduct
19 disorder, that is clearly interfering with the child's functioning in
20 family or school or with peers and who meets at least one of the
21 following criteria:

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

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

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

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

30 (i) Chronic family dysfunction involving a mentally ill or
31 inadequate caretaker;

32 (ii) Changes in custodial adult;

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

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

38 (v) Drug or alcohol abuse; or

1 (vi) Homelessness.

2 ((+19+)) (20) "State minimum standards" means minimum requirements
3 established by rules adopted by the secretary and necessary to
4 implement this chapter for: (a) Delivery of mental health services;
5 (b) licensed service providers for the provision of mental health
6 services; (c) residential services; and (d) community support services
7 and resource management services.

8 ((+20+)) (21) "Treatment records" include registration and all
9 other records concerning persons who are receiving or who at any time
10 have received services for mental illness, which are maintained by the
11 department, by regional support networks and their staffs, and by
12 treatment facilities. Treatment records do not include notes or
13 records maintained for personal use by a person providing treatment
14 services for the department, regional support networks, or a treatment
15 facility if the notes or records are not available to others.

16 (22) "Tribal authority," for the purposes of this section and RCW
17 71.24.300 only, means: The federally recognized Indian tribes and the
18 major Indian organizations recognized by the secretary insofar as these
19 organizations do not have a financial relationship with any regional
20 support network that would present a conflict of interest.

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

23 As used in this chapter:

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

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

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

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

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

1 security unless kept under further control by the court or other
2 persons or institutions.

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

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

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

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

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

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

25 (12) "Habilitative services" means those services provided by
26 program personnel to assist persons in acquiring and maintaining life
27 skills and in raising their levels of physical, mental, social, and
28 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 (13) "History of one or more violent acts" means violent acts
34 committed during: (a) The ten-year period of time prior to the filing
35 of criminal charges; plus (b) the amount of time equal to time spent
36 during the ten-year period in a mental health facility or in
37 confinement as a result of a criminal conviction.

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

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

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

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

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

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

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

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

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

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

27 (17) "Professional person" means:

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

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

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

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

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

8 ~~((19))~~ (20) "Secretary" means the secretary of the department of
9 social and health services or his or her designee.

10 ~~((20))~~ (21) "Treatment" means any currently standardized medical
11 or mental health procedure including medication.

12 ~~((21))~~ (22) "Treatment records" include registration and all
13 other records concerning persons who are receiving or who at any time
14 have received services for mental illness, which are maintained by the
15 department, by regional support networks and their staffs, and by
16 treatment facilities. Treatment records do not include notes or
17 records maintained for personal use by a person providing treatment
18 services for the department, regional support networks, or a treatment
19 facility if the notes or records are not available to others.

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

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

32 (1)(a) Every person involuntarily detained or committed under the
33 provisions of this chapter shall be entitled to all the rights set
34 forth in this chapter, which shall be prominently posted in the
35 facility, and shall retain all rights not denied him or her under this
36 chapter except as chapter 9.41 RCW may limit the right of a person to

1 purchase or possess a firearm or to qualify for a concealed pistol
2 license.

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

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

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

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

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

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

29 (a) A judicial hearing in a superior court, either by a judge or
30 court commissioner thereof, shall be held not more than seventy-two
31 hours after the initial detention to determine whether there is
32 probable cause to detain the person after the seventy-two hours have
33 expired for up to an additional fourteen days without further automatic
34 hearing for the reason that the person is a person whose mental
35 disorder presents a likelihood of serious harm or that the person is
36 gravely disabled;

37 (b) The person has a right to communicate immediately with an
38 attorney; has a right to have an attorney appointed to represent him or

1 her before and at the probable cause hearing if he or she is indigent;
2 and has the right to be told the name and address of the attorney that
3 the mental health professional has designated pursuant to this chapter;

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

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

9 (e) The person has the right to refuse psychiatric medications,
10 including antipsychotic medication beginning twenty-four hours prior to
11 the probable cause hearing.

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

20 (7) The judicial hearing described in subsection (5) of this
21 section is hereby authorized, and shall be held according to the
22 provisions of subsection (5) of this section and rules promulgated by
23 the supreme court.

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

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

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

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

29 (d) To remain silent;

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

31 (9) The physician-patient privilege or the psychologist-client
32 privilege shall be deemed waived in proceedings under this chapter
33 relating to the administration of antipsychotic medications. As to
34 other proceedings under this chapter, the privileges shall be waived
35 when a court of competent jurisdiction in its discretion determines
36 that such waiver is necessary to protect either the detained person or
37 the public.

1 The waiver of a privilege under this section is limited to records
2 or testimony relevant to evaluation of the detained person for purposes
3 of a proceeding under this chapter. Upon motion by the detained person
4 or on its own motion, the court shall examine a record or testimony
5 sought by a petitioner to determine whether it is within the scope of
6 the waiver.

7 The record maker shall not be required to testify in order to
8 introduce medical or psychological records of the detained person so
9 long as the requirements of RCW 5.45.020 are met except that portions
10 of the record which contain opinions as to the detained person's mental
11 state must be deleted from such records unless the person making such
12 conclusions is available for cross-examination.

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

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

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

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

25 (d) To have visitors at reasonable times;

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

29 (f) To have ready access to letter writing materials, including
30 stamps, and to send and receive uncensored correspondence through the
31 mails;

32 (g) To discuss treatment plans and decisions with professional
33 persons;

34 (h) Not to consent to the administration of antipsychotic
35 medications and not to thereafter be administered antipsychotic
36 medications unless ordered by a court under RCW 71.05.370 (as
37 recodified by this act) or pursuant to an administrative hearing under
38 RCW 71.05.215;

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

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

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

9 (11) Every person involuntarily detained shall immediately be
10 informed of his or her right to a hearing to review the legality of his
11 or her detention and of his or her right to counsel, by the
12 professional person in charge of the facility providing evaluation and
13 treatment, or his or her designee, and, when appropriate, by the court.
14 If the person so elects, the court shall immediately appoint an
15 attorney to assist him or her.

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

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

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

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

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

35 (1) A person (~~found to be~~) who is gravely disabled or presents a
36 likelihood of serious harm as a result of a mental or chemical
37 dependency disorder or co-occurring mental and chemical dependency

1 disorders has a right to refuse antipsychotic medication unless it is
2 determined that the failure to medicate may result in a likelihood of
3 serious harm or substantial deterioration or substantially prolong the
4 length of involuntary commitment and there is no less intrusive course
5 of treatment than medication in the best interest of that person.

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

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

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

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

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

24 ~~(e) Documentation in the medical record of the physician's attempt
25 to obtain informed consent and the reasons why antipsychotic medication
26 is being administered over the person's objection or lack of consent.))~~

27 The physician must attempt to obtain the informed consent of an
28 involuntary committed person prior to administration of antipsychotic
29 medication and document the attempt to obtain consent in the person's
30 medical record with the reasons that antipsychotic medication is
31 necessary. If the physician determines that the patient is not able to
32 provide informed consent, the physician may obtain informed consent
33 from a person who is named as an agent in the patient's mental health
34 advance directive executed pursuant to chapter 71.32 RCW, provided that
35 the agent otherwise has authority under the directive to consent to the
36 proposed medication.

37 (3) When a person is detained pursuant to RCW 71.05.150, or
38 detained for involuntary treatment not to exceed fourteen days pursuant

1 to RCW 71.05.240, the person may refuse antipsychotic medications
2 unless there is an additional concurring medical opinion following an
3 examination of the person that the medications are necessary pursuant
4 to subsection (1) of this section. Medications administered under this
5 subsection may not continue beyond the hearing conducted pursuant to
6 RCW 71.05.320(1) and the petitioner shall notify the court of
7 administration of involuntary medications under this subsection and
8 provide the court with an opinion regarding whether continued
9 involuntary administration of antipsychotic medication is medically
10 necessary.

11 (4) If a person involuntarily committed under RCW 71.05.320(1) for
12 up to ninety days, or for less restrictive alternative treatment not to
13 exceed ninety days pursuant to RCW 71.05.240 refuses antipsychotic
14 medications, the medications may not be administered unless the person
15 has first had a hearing by a panel composed of a physician and two
16 other persons. The two persons shall be selected from among the
17 following: A physician, advanced registered nurse practitioner,
18 psychologist, psychiatric nurse, physician's assistant, and the medical
19 director of the facility. Recognizing that some facilities will not
20 have three staff members of the required expertise who are not directly
21 involved in the person's treatment, the panel shall be composed to the
22 greatest extent possible of treatment providers who are not directly
23 involved in the person's treatment at the time of the hearing.

24 (5) If a majority of the panel, including a psychiatrist if one is
25 on the panel or another physician in the absence of a psychiatrist,
26 determines that there is clear, cogent, and convincing evidence
27 demonstrating that treatment with antipsychotic medications is
28 medically appropriate, that failure to medicate may result in a
29 likelihood of serious harm or substantial deterioration or
30 substantially prolong the length of involuntary commitment, and that
31 there is no less intrusive course of treatment than medication in the
32 best interest of that person, the person may be medicated, subject to
33 the provisions of subsections (6) through (8) of this section.

34 (6) Medication ordered pursuant to a decision of the panel may only
35 be continued beyond seven days on an involuntary basis if the panel
36 conducts a second hearing on the written record and a majority of the
37 panel determines that there continues to be clear, cogent, and
38 convincing evidence demonstrating that treatment with antipsychotic

1 medications continues to be medically appropriate, that failure to
2 medicate may result in a likelihood of serious harm or substantial
3 deterioration or substantially prolong the length of involuntary
4 commitment, and that there is no less intrusive course of treatment
5 than medication in the best interest of that person.

6 (a) Following the second hearing, involuntary medication with
7 antipsychotic medication may be continued if the treating psychiatrist
8 certifies, not less than every fourteen days, that the medication
9 continues to be medically appropriate and failure to medicate may
10 result in a likelihood of serious harm or substantial deterioration or
11 substantially prolong the length of involuntary commitment, and that
12 there is no less intrusive course of treatment than medication in the
13 best interest of that person.

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

17 (7) The committed person may appeal the panel's decision to the
18 medical director within twenty-four hours, excluding weekends and
19 holidays, and the medical director must decide the appeal within
20 twenty-four hours of receipt.

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

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

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

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

32 (b) Not to be medicated between the delivery of the notice and the
33 hearing;

34 (c) To attend the hearing;

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

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

1 (f) To receive a copy of the minutes of the hearing; and
2 (g) To appeal the panel's decision to the medical director.

3 (11) Antipsychotic medications may be administered in an emergency
4 without the consent of the person pursuant to the provisions of RCW
5 71.05.370(3)(b) (as recodified by this act).

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

8 ~~((Insofar as danger to the individual or others is not created,~~
9 ~~each person involuntarily detained, treated in a less restrictive~~
10 ~~alternative course of treatment, or committed for treatment and~~
11 ~~evaluation pursuant to this chapter shall have, in addition to other~~
12 ~~rights not specifically withheld by law, the following rights, a list~~
13 ~~of which shall be prominently posted in all facilities, institutions,~~
14 ~~and hospitals providing such services:~~

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

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

20 ~~(3) To have access to individual storage space for his or her~~
21 ~~private use;~~

22 ~~(4) To have visitors at reasonable times;~~

23 ~~(5) To have reasonable access to a telephone, both to make and~~
24 ~~receive confidential calls;~~

25 ~~(6) To have ready access to letter writing materials, including~~
26 ~~stamps, and to send and receive uncensored correspondence through the~~
27 ~~mails;~~

28 ~~(7) Not to consent to the administration of antipsychotic~~
29 ~~medications beyond the hearing conducted pursuant to RCW 71.05.320(2)~~
30 ~~or the performance of electroconvulsant therapy or surgery, except~~
31 ~~emergency life saving surgery, unless ordered by a court of competent~~
32 ~~jurisdiction))~~

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

1 (a) The administration of antipsychotic medication or
2 electroconvulsant therapy shall not be ordered by the court unless the
3 petitioning party proves by clear, cogent, and convincing evidence that
4 ~~((there exists a compelling state interest that justifies overriding~~
5 ~~the patient's lack of consent to the administration of antipsychotic~~
6 ~~medications or electroconvulsant therapy, that the proposed treatment~~
7 ~~is necessary and effective, and that medically acceptable alternative~~
8 ~~forms of treatment are not available, have not been successful, or are~~
9 ~~not likely to be effective)) treatment with antipsychotic medications
10 is medically appropriate, that failure to medicate may result in a
11 likelihood of serious harm or substantial deterioration or
12 substantially prolong the length of involuntary commitment, and that
13 there is no less intrusive course of treatment than medication or
14 electroconvulsive therapy in the best interest of the person.~~

15 (b) The court shall make specific findings of fact concerning: (i)
16 The existence of ~~((one or more compelling state interests))~~ the
17 likelihood of serious harm or substantial deterioration or
18 substantially prolonging the length of involuntary commitment; (ii) the
19 necessity and effectiveness of the treatment; ~~((and))~~ (iii) the
20 person's desires regarding the proposed treatment; and (iv) the best
21 interests of the person.

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

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

- 31 (i) To be represented by an attorney;
- 32 (ii) To present evidence;
- 33 (iii) To cross-examine witnesses;
- 34 (iv) To have the rules of evidence enforced;
- 35 (v) To remain silent;
- 36 (vi) To view and copy all petitions and reports in the court file;
- 37 and

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

3 (e) The court may appoint a psychiatrist, psychologist within their
4 scope of practice, or physician to examine and testify on behalf of
5 such person. The court shall appoint a psychiatrist, psychologist
6 within their scope of practice, or physician designated by such person
7 or the person's counsel to testify on behalf of the person in cases
8 where an order for electroconvulsant therapy is sought.

9 ((+d)) (f) An order for the administration of antipsychotic
10 medications entered following a hearing conducted pursuant to this
11 section shall be effective for the period of the current involuntary
12 treatment order, and any interim period during which the person is
13 awaiting trial or hearing on a new petition for involuntary treatment
14 or involuntary medication.

15 ((+e)) (2) Any person detained for a period of greater than ninety
16 days pursuant to RCW 71.05.320((+2)), who subsequently refuses
17 antipsychotic medication, shall be entitled to the procedures set forth
18 in ((RCW 71.05.370(+7))) subsection (1) of this section.

19 ((+f)) (3) Antipsychotic medication may be administered to a
20 nonconsenting person detained or committed pursuant to this chapter
21 without a court order:

22 (a) Pursuant to RCW 71.05.215((+2)); or

23 (b) Under the following circumstances:

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

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

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

32 If antipsychotic medications are administered over a person's lack
33 of consent pursuant to (b) of this subsection, a petition for an order
34 authorizing the administration of antipsychotic medications shall be
35 filed on the next judicial day. The hearing shall be held within two
36 judicial days. If deemed necessary by the physician with
37 responsibility for the treatment of the person, administration of
38 antipsychotic medications may continue until the hearing is held;

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

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

9 (5) A petition for involuntary medication may be joined with a
10 petition for involuntary treatment.

11 NEW SECTION. Sec. 110. RCW 71.05.370 is recodified as a new
12 section in chapter 71.05 RCW to be codified in proximity to RCW
13 71.05.215.

14 **Sec. 111.** RCW 71.05.390 and 2004 c 166 s 6, 2004 c 157 s 5, and
15 2004 c 33 s 2 are each reenacted and amended to read as follows:

16 Except as provided in this section, RCW 71.05.445, 71.05.630,
17 70.96A.150, or pursuant to a valid release under RCW 70.02.030, the
18 fact of admission and all information and records compiled, obtained,
19 or maintained in the course of providing services to either voluntary
20 or involuntary recipients of services at public or private agencies
21 shall be confidential.

22 Information and records may be disclosed only:

23 (1) In communications between qualified professional persons to
24 meet the requirements of this chapter, in the provision of services or
25 appropriate referrals, or in the course of guardianship proceedings.
26 The consent of the ~~((patient))~~ person, or his or her personal
27 representative or guardian, shall be obtained before information or
28 records may be disclosed by a professional person employed by a
29 facility unless provided to a professional person:

- 30 (a) Employed by the facility;
31 (b) Who has medical responsibility for the patient's care;
32 (c) Who is a county designated mental health professional;
33 (d) Who is providing services under chapter 71.24 RCW;
34 (e) Who is employed by a state or local correctional facility where
35 the person is confined or supervised; or

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

3 (2) When the communications regard the special needs of a patient
4 and the necessary circumstances giving rise to such needs and the
5 disclosure is made by a facility providing (~~outpatient~~) services to
6 the operator of a (~~care~~) facility in which the patient resides or
7 will reside.

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

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

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

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

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

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

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

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

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

3 /s/ "

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

8 (6)(a) To the courts as necessary to the administration of this
9 chapter or to a court ordering an evaluation or treatment under chapter
10 10.77 RCW solely for the purpose of preventing the entry of any
11 evaluation or treatment order that is inconsistent with any order
12 entered under this chapter.

13 (b) To a court or its designee in which a motion under chapter
14 10.77 RCW has been made for involuntary medication of a defendant for
15 the purpose of competency restoration.

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

18 (7)(a) When a mental health professional is requested by a
19 representative of a law enforcement or corrections agency, including a
20 police officer, sheriff, community corrections officer, a municipal
21 attorney, or prosecuting attorney to undertake an investigation under
22 RCW 71.05.150, the mental health professional shall, if requested to do
23 so, advise the representative in writing of the results of the
24 investigation including a statement of reasons for the decision to
25 detain or release the person investigated. Such written report shall
26 be submitted within seventy-two hours of the completion of the
27 investigation or the request from the law enforcement or corrections
28 representative, whichever occurs later.

29 (b) To law enforcement officers, public health officers, or
30 personnel of the department of corrections or the indeterminate
31 sentence review board for persons who are the subject of the records
32 and who are committed to the custody or supervision of the department
33 of corrections or indeterminate sentence review board which information
34 or records are necessary to carry out the responsibilities of their
35 office. Except for dissemination of information released pursuant to

1 RCW 71.05.425 and 4.24.550, regarding persons committed under this
2 chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of
3 a sex offense as defined in RCW 9.94A.030, the extent of information
4 that may be released is limited as follows:

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

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

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

21 ~~((d))~~ (iv) Information and records shall be disclosed to the
22 department of corrections pursuant to and in compliance with the
23 provisions of RCW 71.05.445 for the purposes of completing presentence
24 investigations or risk assessment reports, supervision of an
25 incarcerated offender or offender under supervision in the community,
26 planning for and provision of supervision of an offender, or assessment
27 of an offender's risk to the community; and

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

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

31 (9) To the prosecuting attorney as necessary to carry out the
32 responsibilities of the office under RCW 71.05.330(2) and
33 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access
34 to records regarding the committed person's treatment and prognosis,
35 medication, behavior problems, and other records relevant to the issue
36 of whether treatment less restrictive than inpatient treatment is in
37 the best interest of the committed person or others. Information shall

1 be disclosed only after giving notice to the committed person and the
2 person's counsel.

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

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

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

24 (13) Civil liability and immunity for the release of information
25 about a particular person who is committed to the department under RCW
26 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
27 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

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

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

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

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

11 (17) When a patient would otherwise be subject to the provisions of
12 RCW 71.05.390 and disclosure is necessary for the protection of the
13 patient or others due to his or her unauthorized disappearance from the
14 facility, and his or her whereabouts is unknown, notice of such
15 disappearance, along with relevant information, may be made to
16 relatives, the department of corrections when the person is under the
17 supervision of the department, and governmental law enforcement
18 agencies designated by the physician in charge of the patient or the
19 professional person in charge of the facility, or his or her
20 professional designee.

21 Except as otherwise provided in this chapter, the uniform health
22 care information act, chapter 70.02 RCW, applies to all records and
23 information compiled, obtained, or maintained in the course of
24 providing services.

25 (18) The fact of admission, as well as all records, files,
26 evidence, findings, or orders made, prepared, collected, or maintained
27 pursuant to this chapter shall not be admissible as evidence in any
28 legal proceeding outside this chapter without the written consent of
29 the person who was the subject of the proceeding except in a subsequent
30 criminal prosecution of a person committed pursuant to RCW 71.05.280(3)
31 or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter
32 10.77 RCW due to incompetency to stand trial (~~(or)~~), in a civil
33 commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of
34 a minor, a guardianship or dependency proceeding. The records and
35 files maintained in any court proceeding pursuant to this chapter shall
36 be confidential and available subsequent to such proceedings only to
37 the person who was the subject of the proceeding or his or her
38 attorney. In addition, the court may order the subsequent release or

1 use of such records or files only upon good cause shown if the court
2 finds that appropriate safeguards for strict confidentiality are and
3 will be maintained.

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

6 Except as provided in RCW 71.05.425, when any disclosure of
7 information or records is made as authorized by RCW 71.05.390 (~~through~~
8 ~~71.05.410~~), the physician in charge of the patient or the professional
9 person in charge of the facility shall promptly cause to be entered
10 into the patient's medical record the date and circumstances under
11 which said disclosure was made, the names and relationships to the
12 patient, if any, of the persons or agencies to whom such disclosure was
13 made, and the information disclosed.

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

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

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

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

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

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

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

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

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

29 ~~(2))~~ The files and records of court proceedings under this chapter
30 and chapters (~~(71.05))~~ 70.96A, 71.34, 70.-- (sections 202 through 216
31 of this act), and 70.-- (sections 302 through 374 of this act) RCW
32 shall be closed but shall be accessible to any (~~individual~~) person
33 who is the subject of a petition and to the (~~individual's~~) person's
34 attorney, guardian ad litem, resource management services, or service
35 providers authorized to receive such information by resource management
36 services.

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

3 (1) Except as otherwise provided by law, all treatment records
4 shall remain confidential(~~((an individual))~~) and may be released
5 only to the persons designated in this section, or to other persons
6 designated in an informed written consent of the patient.

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

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

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

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

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

21 (e) To qualified staff members of the department, to the director
22 of regional support networks, to resource management services
23 responsible for serving a patient, or to service providers designated
24 by resource management services as necessary to determine the progress
25 and adequacy of treatment and to determine whether the person should be
26 transferred to a less restrictive or more appropriate treatment
27 modality or facility. The information shall remain confidential.

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

33 (g) Within the department as necessary to coordinate treatment for
34 mental illness, developmental disabilities, alcoholism, or drug abuse
35 of (~~(individuals))~~ persons who are under the supervision of the
36 department.

37 (h) To a licensed physician who has determined that the life or
38 health of the (~~(individual))~~ person is in danger and that treatment

1 without the information contained in the treatment records could be
2 injurious to the patient's health. Disclosure shall be limited to the
3 portions of the records necessary to meet the medical emergency.

4 (i) To a facility that is to receive (~~(an individual)~~) a person who
5 is involuntarily committed under chapter 71.05 RCW, or upon transfer of
6 the (~~(individual)~~) person from one treatment facility to another. The
7 release of records under this subsection shall be limited to the
8 treatment records required by law, a record or summary of all somatic
9 treatments, and a discharge summary. The discharge summary may include
10 a statement of the patient's problem, the treatment goals, the type of
11 treatment which has been provided, and recommendation for future
12 treatment, but may not include the patient's complete treatment record.

13 (j) Notwithstanding the provisions of RCW 71.05.390(7), to a
14 correctional facility or a corrections officer who is responsible for
15 the supervision of (~~(an individual)~~) a person who is receiving
16 inpatient or outpatient evaluation or treatment. Except as provided in
17 RCW 71.05.445 and 71.34.225, release of records under this section is
18 limited to:

19 (i) An evaluation report provided pursuant to a written supervision
20 plan.

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

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

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

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

37 (l) To staff members of the protection and advocacy agency or to
38 staff members of a private, nonprofit corporation for the purpose of

1 protecting and advocating the rights of persons with mental ((~~illness~~))
2 disorders or developmental disabilities. Resource management services
3 may limit the release of information to the name, birthdate, and county
4 of residence of the patient, information regarding whether the patient
5 was voluntarily admitted, or involuntarily committed, the date and
6 place of admission, placement, or commitment, the name and address of
7 a guardian of the patient, and the date and place of the guardian's
8 appointment. Any staff member who wishes to obtain additional
9 information shall notify the patient's resource management services in
10 writing of the request and of the resource management services' right
11 to object. The staff member shall send the notice by mail to the
12 guardian's address. If the guardian does not object in writing within
13 fifteen days after the notice is mailed, the staff member may obtain
14 the additional information. If the guardian objects in writing within
15 fifteen days after the notice is mailed, the staff member may not
16 obtain the additional information.

17 (3) Whenever federal law or federal regulations restrict the
18 release of information contained in the treatment records of any
19 patient who receives treatment for ((~~alcoholism or drug~~)) chemical
20 dependency, the department may restrict the release of the information
21 as necessary to comply with federal law and regulations.

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

24 (1) Procedures shall be established by resource management services
25 to provide reasonable and timely access to individual treatment
26 records. However, access may not be denied at any time to records of
27 all medications and somatic treatments received by the ((~~individual~~))
28 person.

29 (2) Following discharge, the ((~~individual~~)) person shall have a
30 right to a complete record of all medications and somatic treatments
31 prescribed during evaluation, admission, or commitment and to a copy of
32 the 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 (~~individuals~~) persons shall be
4 informed by resource management services of their rights as provided in
5 RCW (~~71.05.610~~) 71.05.390 and 71.05.620 through 71.05.690.

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

8 Nothing in this chapter (~~(205, Laws of 1989)~~) or chapter 70.96A,
9 71.05, 71.34, 70.-- (sections 202 through 216 of this act), or 70.--
10 (sections 302 through 374 of this act) RCW shall be construed to
11 interfere with communications between physicians or psychologists and
12 patients and attorneys and clients.

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

15 A petition for commitment under this chapter may be joined with a
16 petition for commitment under chapter 70.96A RCW.

17 **PART II**
18 **PILOT PROGRAMS**

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

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

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

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

1 (3) "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 (4) "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 (5) "Chemical dependency" means:

9 (a) Alcoholism;

10 (b) Drug addiction; or

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

13 (6) "Chemical dependency professional" means a person certified as
14 a chemical dependency professional by the department of health under
15 chapter 18.205 RCW.

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

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

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

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

27 (11) "Custody" means involuntary detention under either chapter
28 71.05 or 70.96A RCW or this chapter, uninterrupted by any period of
29 unconditional release from commitment from a facility providing
30 involuntary care and treatment.

31 (12) "Department" means the department of social and health
32 services.

33 (13) "Designated chemical dependency specialist" or "specialist"
34 means a person designated by the county alcoholism and other drug
35 addiction program coordinator designated under RCW 70.96A.310 to
36 perform the commitment duties described in RCW 70.96A.140 and this
37 chapter, and qualified to do so by meeting standards adopted by the
38 department.

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

3 (15) "Developmental disabilities professional" means a person who
4 has specialized training and three years of experience in directly
5 treating or working with individuals with developmental disabilities
6 and is a psychiatrist, psychologist, or social worker, and such other
7 developmental disabilities professionals as may be defined by rules
8 adopted by the secretary.

9 (16) "Developmental disability" means that condition defined in RCW
10 71A.10.020.

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

14 (18) "Evaluation and treatment facility" means any facility that
15 can provide directly, or by direct arrangement with other public or
16 private agencies, emergency evaluation and treatment, outpatient care,
17 and timely and appropriate inpatient care to persons suffering from a
18 mental disorder, and that is certified as such by the department. A
19 physically separate and separately operated portion of a state hospital
20 may be designated as an evaluation and treatment facility. A facility
21 that is part of, or operated by, the department or any federal agency
22 does not require certification. No correctional institution or
23 facility, or jail, may be an evaluation and treatment facility within
24 the meaning of this chapter.

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

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

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

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

36 (21) "History of one or more violent acts" refers to the period of
37 time ten years before the filing of a petition under this chapter, or
38 chapter 70.96A or 71.05 RCW, excluding any time spent, but not any

1 violent acts committed, in a mental health facility or a long-term
2 alcoholism or drug treatment facility, or in confinement as a result of
3 a criminal conviction.

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

7 (23) "Judicial commitment" means a commitment by a court under this
8 chapter.

9 (24) "Licensed physician" means a person licensed to practice
10 medicine or osteopathic medicine and surgery in the state of
11 Washington.

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

13 (a) A substantial risk that:

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

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

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

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

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

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

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

36 (29) "Person in charge" means a physician or chemical dependency
37 counselor as defined in rule by the department, who is empowered by a

1 certified treatment program with authority to make assessment,
2 admission, continuing care, and discharge decisions on behalf of the
3 certified program.

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

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

15 (32) "Psychiatric nurse" means a registered nurse who has a
16 bachelor's degree from an accredited college or university, and who
17 has, in addition, at least two years' experience in the direct
18 treatment of mentally ill or emotionally disturbed persons under the
19 supervision of a mental health professional. "Psychiatric nurse" also
20 means any other registered nurse who has three years of such
21 experience.

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

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

30 (35) "Public agency" means any evaluation and treatment facility or
31 institution, hospital, or sanitarium, or approved treatment program
32 that is conducted for, or includes a department or ward conducted for,
33 the care and treatment of persons who are mentally ill and/or
34 chemically dependent, if the agency is operated directly by federal,
35 state, county, or municipal government, or a combination of such
36 governments.

37 (36) "Registration records" means all the records of the
38 department, regional support networks, treatment facilities, and other

1 persons providing services to the department, county departments, or
2 facilities which identify persons who are receiving or who at any time
3 have received services for mental illness.

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

6 (38) "Secretary" means the secretary of the department or the
7 secretary's designee.

8 (39) "Secure detoxification facility" means a facility operated by
9 either a public or private agency or by the program of an agency that
10 serves the purpose of providing evaluation and assessment, and acute
11 and/or subacute detoxification services for intoxicated persons and
12 includes security measures sufficient to protect the patients, staff,
13 and community.

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

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

25 (42) "Violent act" means behavior that resulted in homicide,
26 attempted suicide, nonfatal injuries, or substantial damage to
27 property.

28 NEW SECTION. **Sec. 203.** (1) The secretary, in consultation with
29 the Washington state association of counties, shall select and contract
30 with regional support networks or counties to provide two integrated
31 crisis response and involuntary treatment pilot programs for adults and
32 shall allocate resources for both integrated services and secure
33 detoxification services in the pilot areas. In selecting the two
34 regional support networks or counties, the secretary shall endeavor to
35 site one in an urban and one in a rural regional support network or
36 county; and to site them in counties other than those selected pursuant

1 to section 220 of this act, to the extent necessary to facilitate
2 evaluation of pilot project results.

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

7 (a) Combine the crisis responder functions of a county-designated
8 mental health professional under chapter 71.05 RCW and a county-
9 designated chemical dependency specialist under chapter 70.96A RCW by
10 establishing a new county-designated crisis responder who is authorized
11 to conduct investigations and detain persons up to seventy-two hours to
12 the proper facility;

13 (b) Provide training to the crisis responders as required by the
14 department;

15 (c) Provide sufficient staff and resources to ensure availability
16 of an adequate number of crisis responders twenty-four hours a day,
17 seven days a week;

18 (d) Provide the administrative and court-related staff, resources,
19 and processes necessary to facilitate the legal requirements of the
20 initial detention and the commitment hearings for persons with a
21 chemical dependency;

22 (e) Participate in the evaluation and report to assess the outcomes
23 of the pilot programs including providing data and information as
24 requested;

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

28 (g) Collaborate with the department of corrections where persons
29 detained or committed are also subject to supervision by the department
30 of corrections.

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

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

36 (1) Psychiatrist, psychologist, psychiatric nurse, or social
37 worker;

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

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

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

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

15 NEW SECTION. **Sec. 205.** In addition to the provisions of this
16 chapter, a designated crisis responder has all the powers and duties of
17 a county-designated mental health professional as well as the powers
18 and duties of a designated chemical dependency specialist under RCW
19 70.96A.120.

20 NEW SECTION. **Sec. 206.** (1)(a) When a county-designated crisis
21 responder receives information alleging that a person, as a result of
22 a mental disorder, chemical dependency disorder, or both, presents a
23 likelihood of serious harm or is gravely disabled, the
24 county-designated crisis responder may, after investigation and
25 evaluation of the specific facts alleged and of the reliability and
26 credibility of any person providing information to initiate detention,
27 if satisfied that the allegations are true and that the person will not
28 voluntarily seek appropriate treatment, file a petition for initial
29 detention. Before filing the petition, the county-designated crisis
30 responder must personally interview the person, unless the person
31 refuses an interview, and determine whether the person will voluntarily
32 receive appropriate evaluation and treatment at either an evaluation
33 and treatment facility, a detoxification facility, or other certified
34 chemical dependency provider.

35 (b)(i)(A) Whenever it appears, by petition for initial detention,
36 to the satisfaction of a judge of the superior court that a person

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

8 (B) Whenever it appears, by petition for initial detention, to the
9 satisfaction of a judge of the superior court, district court, or other
10 court permitted by court rule, that a person presents as a result of a
11 chemical dependency, a likelihood of serious harm, or is gravely
12 disabled, and that the person has refused or failed to accept
13 appropriate evaluation and treatment voluntarily, the judge may issue
14 an order requiring the person to appear within twenty-four hours after
15 service of the order at a secure detoxification facility or other
16 certified chemical dependency provider for not more than a seventy-two
17 hour evaluation and treatment period.

18 (ii) The order issued under this subsection (1)(b) shall state the
19 address of the evaluation and treatment facility, secure detoxification
20 facility, or other certified chemical dependency provider to which the
21 person is to report; whether the required seventy-two hour evaluation
22 and treatment services may be delivered on an outpatient or inpatient
23 basis; and that if the person named in the order fails to appear at the
24 evaluation and treatment facility, secure detoxification facility, or
25 other certified chemical dependency provider at or before the date and
26 time stated in the order, the person may be involuntarily taken into
27 custody for evaluation and treatment. The order shall also designate
28 retained counsel or, if counsel is appointed from a list provided by
29 the court, the name, business address, and telephone number of the
30 attorney appointed to represent the person.

31 (c) The county-designated crisis responder shall then serve or
32 cause to be served on such person, his or her guardian, and
33 conservator, if any, a copy of the order to appear, together with a
34 notice of rights and a petition for initial detention. After service
35 on the person, the county-designated crisis responder shall file the
36 return of service in court and provide copies of all papers in the
37 court file to the evaluation and treatment facility or secure
38 detoxification facility and the designated attorney. The

1 county-designated crisis responder shall notify the court and the
2 prosecuting attorney that a probable cause hearing will be held within
3 seventy-two hours of the date and time of outpatient evaluation or
4 admission to the evaluation and treatment facility, secure
5 detoxification facility, or other certified chemical dependency
6 provider. The person shall be permitted to remain in his or her home
7 or other place of his or her choosing before the time of evaluation and
8 shall be permitted to be accompanied by one or more of his or her
9 relatives, friends, an attorney, a personal physician, or other
10 professional or religious advisor to the place of evaluation. An
11 attorney accompanying the person to the place of evaluation shall be
12 permitted to be present during the admission evaluation. Any other
13 person accompanying the person may be present during the admission
14 evaluation. The facility may exclude the person if his or her presence
15 would present a safety risk, delay the proceedings, or otherwise
16 interfere with the evaluation.

17 (d) If the person ordered to appear does appear on or before the
18 date and time specified, the evaluation and treatment facility, secure
19 detoxification facility, or other certified chemical dependency
20 provider may admit the person as required by subsection (3) of this
21 section or may provide treatment on an outpatient basis. If the person
22 ordered to appear fails to appear on or before the date and time
23 specified, the evaluation and treatment facility, secure detoxification
24 facility, or other certified chemical dependency provider shall
25 immediately notify the county-designated crisis responder who may
26 notify a peace officer to take the person or cause the person to be
27 taken into custody and placed in an evaluation and treatment facility,
28 a secure detoxification facility, or other certified chemical
29 dependency provider. Should the county-designated crisis responder
30 notify a peace officer authorizing the officer to take a person into
31 custody under this subsection, the county-designated crisis responder
32 shall file with the court a copy of the authorization and a notice of
33 detention. At the time the person is taken into custody there shall
34 commence to be served on the person, his or her guardian, and
35 conservator, if any, a copy of the original order together with a
36 notice of detention, a notice of rights, and a petition for initial
37 detention.

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

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

11 (b) Chemical dependency, presents an imminent likelihood of serious
12 harm, or is in imminent danger because of being gravely disabled, after
13 investigation and evaluation of the specific facts alleged and of the
14 reliability and credibility of the person or persons providing the
15 information if any, the county-designated crisis responder may take the
16 person, or cause by oral or written order the person to be taken into
17 emergency custody in a secure detoxification facility for not more than
18 seventy-two hours as described in this chapter.

19 (3) If the county-designated crisis responder petitions for
20 detention of a person whose actions constitute a likelihood of serious
21 harm, or who is gravely disabled, the evaluation and treatment
22 facility, the secure detoxification facility, or other certified
23 chemical dependency provider providing seventy-two hour evaluation and
24 treatment must immediately accept on a provisional basis the petition
25 and the person. The evaluation and treatment facility, the secure
26 detoxification facility, or other certified chemical dependency
27 provider shall then evaluate the person's condition and admit, detain,
28 transfer, or discharge such person in accordance with this chapter.
29 The facility shall notify in writing the court and the
30 county-designated crisis responder of the date and time of the initial
31 detention of each person involuntarily detained so that a probable
32 cause hearing will be held no later than seventy-two hours after
33 detention.

34 (4) A peace officer may, without prior notice of the proceedings
35 provided for in subsection (1) of this section, take or cause the
36 person to be taken into custody and immediately delivered to an
37 evaluation and treatment facility, secure detoxification facility,

1 other certified chemical dependency treatment provider only pursuant to
2 subsections (1)(d) and (2) of this section.

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

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

11 (2) This section does not relieve a person from giving the required
12 notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the duty to warn
13 or to take reasonable precautions to provide protection from violent
14 behavior where the patient has communicated an actual threat of
15 physical violence against a reasonably identifiable victim or victims.
16 The duty to warn or to take reasonable precautions to provide
17 protection from violent behavior is discharged if reasonable efforts
18 are made to communicate the threat to the victim or victims and to law
19 enforcement personnel.

20 NEW SECTION. **Sec. 208.** If the evaluation and treatment facility,
21 secure detoxification facility, or other certified chemical dependency
22 provider admits the person, it may detain the person for evaluation and
23 treatment for a period not to exceed seventy-two hours from the time of
24 acceptance. The computation of the seventy-two hour period excludes
25 Saturdays, Sundays, and holidays.

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

29 NEW SECTION. **Sec. 210.** (1) A person detained for seventy-two hour
30 evaluation and treatment under section 206 of this act or RCW
31 70.96A.120 may be detained for not more than fourteen additional days
32 of involuntary chemical dependency treatment if there are beds
33 available at the secure detoxification facility and the following
34 conditions are met:

1 (a) The professional person in charge of the agency or facility or
2 the person's designee providing evaluation and treatment services in a
3 secure detoxification facility has assessed the person's condition and
4 finds that the condition is caused by chemical dependency and either
5 results in a likelihood of serious harm or in the detained person being
6 gravely disabled, and the professional person or his or her designee is
7 prepared to testify those conditions are met;

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

12 (c) The professional person in charge of the agency or facility or
13 the person's designee has filed a petition for fourteen-day involuntary
14 detention with the superior court, district court, or other court
15 permitted by court rule. The petition must be signed by the chemical
16 dependency professional who has examined the person.

17 (2) The petition under subsection (1)(c) of this section shall be
18 accompanied by a certificate of a licensed physician who has examined
19 the person, unless the person whose commitment is sought has refused to
20 submit to a medical examination, in which case the fact of refusal
21 shall be alleged in the petition. The certificate shall set forth the
22 licensed physician's findings in support of the allegations of the
23 petition. A physician employed by the petitioning program or the
24 department is eligible to be the certifying physician.

25 (3) The petition shall state facts that support the finding that
26 the person, as a result of chemical dependency, presents a likelihood
27 of serious harm or is gravely disabled, and that there are no less
28 restrictive alternatives to detention in the best interest of the
29 person or others. The petition shall state specifically that less
30 restrictive alternative treatment was considered and specify why
31 treatment less restrictive than detention is not appropriate.

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

35 (5)(a) The court shall inform the person whose commitment is sought
36 of his or her right to contest the petition, be represented by counsel
37 at every stage of any proceedings relating to his or her commitment,
38 and have counsel appointed by the court or provided by the court, if he

1 or she wants the assistance of counsel and is unable to obtain counsel.
2 If the court believes that the person needs the assistance of counsel,
3 the court shall require, by appointment if necessary, counsel for him
4 or her regardless of his or her wishes. The person shall, if he or she
5 is financially able, bear the costs of such legal service; otherwise
6 such legal service shall be at public expense. The person whose
7 commitment is sought shall be informed of his or her right to be
8 examined by a licensed physician of his or her choice. If the person
9 is unable to obtain a licensed physician and requests examination by a
10 physician, the court shall appoint a reasonably available licensed
11 physician designated by the person.

12 (b) At the conclusion of the probable cause hearing, if the court
13 finds by a preponderance of the evidence that the person, as the result
14 of chemical dependency, presents a likelihood of serious harm or is
15 gravely disabled and, after considering less restrictive alternatives
16 to involuntary detention and treatment, finds that no such alternatives
17 are in the best interest of such person or others, the court shall
18 order that the person be detained for involuntary chemical dependency
19 treatment not to exceed fourteen days in a secure detoxification
20 facility.

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

25 NEW SECTION. **Sec. 212.** The prosecuting attorney of the county in
26 which an action under this chapter is taken must represent the
27 petitioner in judicial proceedings under this chapter for the
28 involuntary chemical dependency treatment of a person, including any
29 judicial proceeding where the person sought to be treated for chemical
30 dependency challenges the action.

31 NEW SECTION. **Sec. 213.** (1) Every person involuntarily detained or
32 committed under this chapter as a result of a mental disorder is
33 entitled to all the rights set forth in this chapter and in chapter
34 71.05 RCW, and retains all rights not denied him or her under this
35 chapter or chapter 71.05 RCW.

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

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

11 (2) When an offender is under court-ordered treatment in the
12 community and the supervision of the department of corrections, and the
13 treatment provider becomes aware that the person is in violation of the
14 terms of the court order, the treatment provider shall notify the
15 county designated crisis responder of the violation and request an
16 evaluation for purposes of revocation of the less restrictive
17 alternative.

18 (3) When a county designated crisis responder becomes aware that an
19 offender who is under court-ordered treatment in the community and the
20 supervision of the department of corrections is in violation of a
21 treatment order or a condition of supervision that relates to public
22 safety, or the county designated crisis responder detains a person
23 under this chapter, the county designated crisis responder shall notify
24 the person's treatment provider and the department of corrections.

25 (4) When an offender who is confined in a state correctional
26 facility or is under supervision of the department of corrections in
27 the community is subject to a petition for involuntary treatment under
28 this chapter, the petitioner shall notify the department of corrections
29 and the department of corrections shall provide documentation of its
30 risk assessment or other concerns to the petitioner and the court if
31 the department of corrections classified the offender as a high risk or
32 high needs offender.

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

1 NEW SECTION. **Sec. 215.** The secretary may adopt rules to implement
2 this chapter.

3 NEW SECTION. **Sec. 216.** The provisions of RCW 71.05.550 apply to
4 this chapter.

5 NEW SECTION. **Sec. 217.** (1) The Washington state institute for
6 public policy shall evaluate the pilot programs and make a preliminary
7 report to appropriate committees of the legislature by December 1,
8 2007, and a final report by September 30, 2008.

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

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

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

13 (ii) Is cost-effective;

14 (iii) Results in better outcomes for persons involuntarily
15 detained;

16 (iv) Increased the effectiveness of the crisis response system in
17 the pilot catchment areas;

18 (b) The effectiveness of providing a single chapter in the Revised
19 Code of Washington to address initial detention of persons with mental
20 disorders or chemical dependency, in crisis response situations and the
21 likelihood of effectiveness of providing a single, comprehensive
22 involuntary treatment act.

23 (3) The reports shall consider the impact of the pilot programs on
24 the existing mental health system and on the persons served by the
25 system.

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

28 The department of social and health services, in planning and
29 providing funding to counties pursuant to chapter 71.24 RCW, shall
30 recognize the financial necessities imposed upon counties by
31 implementation of this chapter and chapter 70.-- RCW (sections 202
32 through 216 of this act), and shall consider needs, if any, for
33 additional community mental health services and facilities and
34 reduction in commitments to state hospitals for the mentally ill
35 accomplished by individual counties, in planning and providing such

1 funding. The state shall provide financial assistance to the counties
2 to enable the counties to meet all increased costs, if any, to the
3 counties resulting from their administration of the provisions of
4 chapter 142, Laws of 1973 1st ex. sess.

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

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

9 (1) The secretary shall select and contract with counties to
10 provide intensive case management for chemically dependent persons with
11 histories of high utilization of crisis services at two sites. In
12 selecting the two sites, the secretary shall endeavor to site one in an
13 urban county, and one in a rural county; and to site them in counties
14 other than those selected pursuant to section 203 of this act, to the
15 extent necessary to facilitate evaluation of pilot project results.

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

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

23 (b) Reduce the use of crisis medical, chemical dependency and
24 mental health services, including but not limited to, emergency room
25 admissions, hospitalizations, detoxification programs, inpatient
26 psychiatric admissions, involuntary treatment petitions, emergency
27 medical services, and ambulance services;

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

30 (d) Reduce the number of criminal justice interventions including
31 arrests, violations of conditions of supervision, bookings, jail days,
32 prison sanction day for violations, court appearances, and prosecutor
33 and defense costs;

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

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

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

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

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

15 (j) Where a program participant is under supervision by the
16 department of corrections, collaborate with the department of
17 corrections to maximize treatment outcomes and reduce the likelihood of
18 reoffense.

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

21 (4) This section expires June 30, 2008.

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

24 The department shall, in cooperation with the Washington state
25 institute for public policy, develop a pilot program to evaluate the
26 effectiveness of clubhouse psychiatric rehabilitation programs. A
27 clubhouse program means a program in which consumers of mental health
28 services are involved in the design, development, and operation of the
29 program and where a primary goal of the program is the employment of
30 the members of the program. The pilot project shall provide support
31 and evaluation of existing and established clubhouse programs.
32 Clubhouse programs shall be evaluated on at least the following
33 criteria:

34 (1) Number of members in independent, supported, or transitional
35 employment, the stability of that employment, and the income to members
36 as a result of employment;

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

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

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

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

9 **PART III**

10 **OMNIBUS INVOLUNTARY TREATMENT ACT**

11 NEW SECTION. **Sec. 301.** Sections 302 through 374 of this act
12 constitute a new chapter in Title 70 RCW.

13 NEW SECTION. **Sec. 302.** The legislature finds that mental
14 disorders and the abuse of alcohol and other drugs have become a
15 serious threat to the health of the citizens of the state of Washington
16 and that the use of psychoactive chemicals is a prime factor in the
17 current AIDS epidemic. The legislature also finds that some persons
18 with mental disorders and substance abuse disorders have little or no
19 insight into their condition and are unable or unwilling to seek
20 treatment voluntarily. The legislature further finds that it is not
21 always evident at the time of commitment that a person has co-occurring
22 mental and substance abuse disorders but that treatment of the
23 disabilities in isolation can lead to inappropriate or conflicting
24 treatment plans that can substantially reduce the opportunity for the
25 person to recover from his or her disorders. Therefore, a unified
26 involuntary treatment act is necessary.

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

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

31 (2) To adequately assess whether a person presents a likelihood of
32 serious harm or a grave disability due to his or her disorder,
33 including an assessment of any prior history or pattern of repeated
34 hospitalizations or law enforcement interventions due to decompensation
35 in his or her mental or substance abuse disorder. The consideration of

1 prior mental history is particularly relevant in determining whether
2 the person would receive, if released, such care as is essential for
3 his or her health or safety;

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

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

9 (5) To safeguard individual rights;

10 (6) To provide continuity of care for persons with serious mental
11 and substance abuse disorders, so that the procedures and services
12 authorized in this chapter are integrated with those in chapter 71.24
13 RCW to the maximum extent possible to provide a continuum of care
14 founded on evidence-based practices that support recovery, promote
15 independent living, encourage persons to participate in education and
16 employment to the maximum extent that they are able, reduce criminal
17 involvement, and reduce family violence and cycles of child abuse and
18 neglect leading to long-term use of the child welfare system;

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

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

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

31 (10) To protect the public safety.

32 **Definitions**

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

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

1 evaluation and treatment facility, or other inpatient facility, or a
2 decision by a professional person in charge or his or her designee that
3 a person should be detained as a patient for evaluation and treatment
4 in a secure detoxification facility or other certified chemical
5 dependency provider.

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

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

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

17 (5) "Approved treatment program" means a discrete program of
18 chemical dependency treatment provided by a treatment program certified
19 by the department as meeting standards adopted under chapter 70.96A
20 RCW.

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

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

29 (8) "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 (9) "Chemical dependency professional" means a person certified as
35 a chemical dependency professional by the department of health under
36 chapter 18.205 RCW.

37 (10) "Chemical dependency program" means expenditures and

1 activities of the department designed and conducted to prevent or treat
2 alcoholism and other drug addiction, including reasonable
3 administration and overhead.

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

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

9 (13) "Custody" means involuntary detention under either chapter
10 71.05 or 70.96A RCW or this chapter, uninterrupted by any period of
11 unconditional release from commitment from a facility providing
12 involuntary care and treatment.

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

15 (15) "Designated chemical dependency specialist" means a person
16 designated by the county alcoholism and other drug addiction program
17 coordinator designated under RCW 70.96A.310 to perform the commitment
18 duties described in this chapter and chapter 70.96A RCW.

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

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

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

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

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

36 (21) "Developmental disability" means that condition defined in RCW
37 71A.10.020.

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

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

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

9 (25) "Drug addiction" means a disease characterized by a dependency
10 on psychoactive chemicals, loss of control over the amount and
11 circumstances of use, symptoms of tolerance, physiological or
12 psychological withdrawal, or both, if use is reduced or discontinued,
13 and impairment of health or disruption of social or economic
14 functioning.

15 (26) "Evaluation and treatment facility" means any facility that
16 can provide directly, or by direct arrangement with other public or
17 private agencies, emergency evaluation and treatment, outpatient care,
18 and timely and appropriate inpatient care to persons suffering from a
19 mental disorder, and that is certified as such by the department. A
20 physically separate and separately operated portion of a state hospital
21 may be designated as an evaluation and treatment facility. A facility
22 that is part of, or operated by, the department or any federal agency
23 does not require certification. No correctional institution or
24 facility, or jail, may be an evaluation and treatment facility within
25 the meaning of this chapter.

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

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

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

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

37 (29) "Habilitative services" means those services provided by
38 program personnel to assist persons in acquiring and maintaining life

1 skills and in raising their levels of physical, mental, social, and
2 vocational functioning. Habilitative services include education,
3 training for employment, and therapy. The habilitative process shall
4 be undertaken with recognition of the risk to the public safety
5 presented by the person being assisted as manifested by prior charged
6 criminal conduct.

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

13 (31) "Incapacitated by alcohol or other psychoactive chemicals"
14 means that a person, as a result of the use of alcohol or other
15 psychoactive chemicals, is gravely disabled or presents a likelihood of
16 serious harm to himself or herself, to any other person, or to
17 property.

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

20 (33) "Individualized service plan" means a plan prepared by a
21 developmental disabilities professional with other professionals as a
22 team, for an individual with developmental disabilities, which shall
23 state:

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

26 (b) The conditions and strategies necessary to achieve the purposes
27 of habilitation;

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

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

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

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

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

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

4 (35) "Judicial commitment" means a commitment by a court under this
5 chapter.

6 (36) "Licensed physician" means a person licensed to practice
7 medicine or osteopathic medicine and surgery in the state of
8 Washington.

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

10 (a) A substantial risk that:

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

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

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

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

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

24 (a) Diagnose, arrest, or alleviate a chemical dependency; or (b)
25 prevent the worsening of chemical dependency conditions that endanger
26 life or cause suffering and pain, or result in illness or infirmity or
27 threaten to cause or aggravate a handicap, or cause physical deformity
28 or malfunction, and there is no adequate less restrictive alternative
29 available.

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

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

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

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

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

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

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

13 (46) "Private agency" means any person, partnership, corporation,
14 or association that is not a public agency, whether or not financed in
15 whole or in part by public funds, that constitutes an evaluation and
16 treatment facility or private institution, hospital, or sanitarium, or
17 approved treatment program, that is conducted for, or includes a
18 department or ward conducted for, the care and treatment of persons who
19 are mentally ill and/or chemically dependent.

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

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

30 (49) "Psychiatrist" means a person having a license as a physician
31 and surgeon in this state who has in addition completed three years of
32 graduate training in psychiatry in a program approved by the American
33 medical association or the American osteopathic association and is
34 certified or eligible to be certified by the American board of
35 psychiatry and neurology.

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

1 (51) "Public agency" means any evaluation and treatment facility or
2 institution, hospital, or sanitarium, or approved treatment program
3 that is conducted for, or includes a department or ward conducted for,
4 the care and treatment of persons who are mentally ill and/or
5 chemically dependent, if the agency is operated directly by federal,
6 state, county, or municipal government, or a combination of such
7 governments.

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

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

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

17 (55) "Secretary" means the secretary of the department or the
18 secretary's designee.

19 (56) "Secure detoxification facility" means a facility operated by
20 either a public or private agency or by the program of an agency that
21 serves the purpose of providing evaluation and assessment, and acute
22 and/or subacute detoxification services for intoxicated persons and
23 includes security measures sufficient to protect the patients, staff,
24 and community.

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

28 (58) "Treatment" means the broad range of emergency,
29 detoxification, residential, inpatient and outpatient services and
30 care, including diagnostic evaluation, mental health or chemical
31 dependency education and counseling, medical, psychiatric,
32 psychological, and social service care, vocational rehabilitation and
33 career counseling, which may be extended to persons with mental and
34 substance abuse disorders, and their families.

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

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

9 (61) "Violent act" means behavior that resulted in homicide,
10 attempted suicide, nonfatal injuries, or substantial damage to
11 property.

12 General Provisions

13 NEW SECTION. **Sec. 304.** Persons suffering from a mental disorder,
14 chemical dependency disorder, or both may not be involuntarily
15 committed for treatment of such disorder except pursuant to provisions
16 of this chapter, or chapter 10.77 or 71.09 RCW, transfer pursuant to
17 RCW 72.68.031 through 72.68.037, or pursuant to court ordered
18 evaluation and treatment not to exceed ninety days pending a criminal
19 trial or sentencing.

20 NEW SECTION. **Sec. 305.** Persons who are developmentally disabled,
21 impaired by chronic alcoholism or drug abuse, or suffering from
22 dementia and who otherwise meet the criteria for detention or judicial
23 commitment are not ineligible for detention or commitment based on this
24 condition alone.

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

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

31 NEW SECTION. **Sec. 308.** To qualify as a designated crisis

1 responder, a person must have received chemical dependency training as
2 determined by the department and be a:

3 (1) Psychiatrist, psychologist, psychiatric nurse, or social
4 worker;

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

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

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

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

19 NEW SECTION. **Sec. 309.** The prosecuting attorney of the county in
20 which an action under this chapter is taken must represent the
21 petitioner in judicial proceedings under this chapter for the
22 involuntary chemical dependency treatment of a person, including any
23 judicial proceeding where the person sought to be treated for chemical
24 dependency challenges the action.

25 **Department Responsibilities**

26 NEW SECTION. **Sec. 310.** The department shall have the
27 responsibility to determine whether all rights of persons recognized
28 and guaranteed by the provisions of this chapter and the Constitutions
29 of the state of Washington and the United States are, in fact,
30 protected and effectively secured. To this end, the department shall
31 assign appropriate staff who shall from time to time as may be
32 necessary have authority to examine records, inspect facilities, attend
33 proceedings, and do whatever is necessary to monitor, evaluate, and
34 assure adherence to such rights. Such persons shall also recommend

1 such additional safeguards or procedures as may be appropriate to
2 secure individual rights set forth in this chapter and as guaranteed by
3 the state and federal Constitutions.

4 NEW SECTION. **Sec. 311.** The department shall adopt such rules as
5 may be necessary to effectuate the intent and purposes of this chapter,
6 which shall include but not be limited to evaluation of the quality of
7 the program and facilities operating pursuant to this chapter,
8 evaluation of the effectiveness and cost effectiveness of such programs
9 and facilities, and procedures and standards for certification and
10 other action relevant to facilities.

11 NEW SECTION. **Sec. 312.** The provisions of chapter 420, Laws of
12 1989 shall apply equally to persons in the custody of the department on
13 May 13, 1989, who were found by a court to be not guilty by reason of
14 insanity or incompetent to stand trial, or who have been found to have
15 committed acts constituting a felony pursuant to RCW 71.05.280(3) and
16 present a substantial likelihood of repeating similar acts, and the
17 secretary shall cause such persons to be evaluated to ascertain if such
18 persons are developmentally disabled for placement in a program
19 specifically reserved for the treatment and training of persons with
20 developmental disabilities.

21 NEW SECTION. **Sec. 313.** By December 1, 2006, the department shall
22 provide the appropriate committees of the legislature with a report
23 identifying the types of facilities that will be certified for
24 detention or commitment under this chapter including the locations and
25 capacity of existing facilities and facilities under development, by
26 type of facility, in a manner that indicates the geographic
27 distribution of the available capacity.

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

1 **Initial Detention**

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

5 (i) Presents a likelihood of serious harm; or

6 (ii) Is gravely disabled;

7 the designated responder may, after investigation and evaluation of the
8 specific facts alleged and of the reliability and credibility of any
9 person providing information to initiate detention, if satisfied that
10 the allegations are true and that the person will not voluntarily seek
11 appropriate treatment, file a petition for initial detention. Before
12 filing the petition, the designated responder must personally interview
13 the person, unless the person refuses an interview, and determine
14 whether the person will voluntarily receive appropriate evaluation and
15 treatment at a certified facility.

16 (b)(i) Whenever it appears, by petition for initial detention, to
17 the satisfaction of a judge of the superior court that a person
18 presents, as a result of a mental disorder, chemical dependency
19 disorder, or both, a likelihood of serious harm, or is gravely
20 disabled, and that the person has refused or failed to accept
21 appropriate evaluation and treatment voluntarily, the judge may issue
22 an order requiring the person to appear within twenty-four hours after
23 service of the order at a certified facility for not more than a
24 seventy-two hour evaluation and treatment period.

25 (ii) The order shall state the address of the certified facility to
26 which the person is to report and whether the required seventy-two hour
27 evaluation and treatment services may be delivered on an outpatient or
28 inpatient basis and that if the person named in the order fails to
29 appear at the certified facility at or before the date and time stated
30 in the order, such person may be involuntarily taken into custody for
31 evaluation and treatment. The order shall also designate retained
32 counsel or, if counsel is appointed from a list provided by the court,
33 the name, business address, and telephone number of the attorney
34 appointed to represent the person.

35 (c) The designated responder shall then serve or cause to be served
36 on such person, and his or her personal representative, guardian, or
37 conservator, if any, a copy of the order to appear together with a
38 notice of rights and a petition for initial detention. After service

1 on the person, the designated responder shall file the return of
2 service in court and provide copies of all papers in the court file to
3 the certified facility and the designated attorney. The designated
4 responder shall notify the court and the prosecuting attorney that a
5 probable cause hearing will be held within seventy-two hours of the
6 date and time of outpatient evaluation or admission to the certified
7 facility. The person shall be permitted to remain in his or her home
8 or other place of his or her choosing prior to the time of evaluation
9 and shall be permitted to be accompanied by one or more of his or her
10 relatives, friends, an attorney, a personal physician, or other
11 professional or religious advisor to the place of evaluation. An
12 attorney accompanying the person to the place of evaluation shall be
13 permitted to be present during the admission evaluation. Any other
14 person accompanying the person may be present during the admission
15 evaluation. The facility may exclude the person if his or her presence
16 would present a safety risk, delay the proceedings, or otherwise
17 interfere with the evaluation.

18 (d) If the person ordered to appear does appear on or before the
19 date and time specified, the evaluation and treatment facility may
20 admit such person as required by section 317 of this act or may provide
21 treatment on an outpatient basis. If the person ordered to appear
22 fails to appear on or before the date and time specified, the
23 evaluation and treatment facility shall immediately notify the
24 designated responder who may notify a peace officer to take such person
25 or cause such person to be taken into custody and placed in a certified
26 facility. Should the designated responder notify a peace officer
27 authorizing him or her to take a person into custody under the
28 provisions of this subsection, he or she shall file with the court a
29 copy of such authorization and a notice of detention. At the time such
30 person is taken into custody there shall commence to be served on the
31 person, and his or her personal representative, guardian, or
32 conservator, if any, a copy of the original order together with a
33 notice of detention, a notice of rights, and a petition for initial
34 detention.

35 (2) When a designated responder receives information alleging that
36 a person, as the result of a mental disorder, chemical dependency
37 disorder, or both, presents an imminent likelihood of serious harm, or
38 is in imminent danger because of being gravely disabled, after

1 investigation and evaluation of the specific facts alleged and of the
2 reliability and credibility of the person or persons providing the
3 information if any, the designated responder may take the person or
4 cause, by oral or written order the person to be taken into emergency
5 custody in a certified facility for not more than seventy-two hours as
6 described in section 318 of this act.

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

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

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

15 (b) When he or she has reasonable cause to believe that such person
16 is suffering from a mental disorder, chemical dependency disorder, or
17 both and presents an imminent likelihood of serious harm or is in
18 imminent danger because of being gravely disabled.

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

27 NEW SECTION. **Sec. 316.** Any facility receiving a person pursuant
28 to section 315 of this act shall require a petition for initial
29 detention stating the circumstances under which the person's condition
30 was made known and stating that such officer or person has evidence, as
31 a result of his or her personal observation or investigation, that the
32 actions of the person for which application is made constitute a
33 likelihood of serious harm, or that he or she is gravely disabled, and
34 stating the specific facts known to him or her as a result of his or
35 her personal observation or investigation, upon which he or she bases
36 the belief that such person should be detained for the purposes and
37 under the authority of this chapter.

1 If a person is involuntarily placed in a certified facility
2 pursuant to section 315 of this act, on the next judicial day following
3 the initial detention, the designated responder shall file with the
4 court and serve the designated attorney of the detained person the
5 petition or supplemental petition for initial detention, proof of
6 service of notice, and a copy of a notice of emergency detention.

7 NEW SECTION. **Sec. 317.** Whenever the designated responder
8 petitions for detention of a person whose actions constitute a
9 likelihood of serious harm, or who is gravely disabled, the facility
10 providing seventy-two hour evaluation and treatment must immediately
11 accept on a provisional basis the petition and the person. The
12 facility shall then evaluate the person's condition and admit, detain,
13 transfer, or discharge such person in accordance with section 337 of
14 this act. The facility shall notify in writing the court and the
15 designated responder of the date and time of the initial detention of
16 each person involuntarily detained in order that a probable cause
17 hearing shall be held no later than seventy-two hours after detention.

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

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

25 NEW SECTION. **Sec. 319.** If the person is not approved for
26 admission by a facility providing seventy-two hour evaluation and
27 treatment, and the person has not been arrested, the facility shall
28 furnish transportation, if not otherwise available, for the person to
29 his or her place of residence or other appropriate place. If the
30 person has been arrested, the certified facility shall detain the
31 person for not more than eight hours at the request of the peace
32 officer in order to enable a peace officer to return to the facility
33 and take the person back into custody.

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

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

12 NEW SECTION. **Sec. 322.** (1) When a designated responder is
13 notified by a jail that a defendant or offender who was subject to a
14 discharge review under section 339 of this act is to be released to the
15 community, the designated responder shall evaluate the person within
16 seventy-two hours of release.

17 (2) When an offender is under court-ordered treatment in the
18 community and the supervision of the department of corrections, and the
19 treatment provider becomes aware that the person is in violation of the
20 terms of the court order, the treatment provider shall notify the
21 designated responder and the department of corrections of the violation
22 and request an evaluation for purposes of revocation of the less
23 restrictive alternative.

24 (3) When a designated responder becomes aware that an offender who
25 is under court-ordered treatment in the community and the supervision
26 of the department of corrections is in violation of a treatment order
27 or a condition of supervision that relates to public safety, or the
28 designated responder detains a person under this chapter, the
29 designated responder shall notify the person's treatment provider and
30 the department of corrections.

31 (4) When an offender who is confined in a state correctional
32 facility or is under supervision of the department of corrections in
33 the community is subject to a petition for involuntary treatment under
34 this chapter, the petitioner shall notify the department of corrections
35 and the department of corrections shall provide documentation of its

1 risk assessment or other concerns to the petitioner and the court if
2 the department of corrections classified the offender as a high risk or
3 high needs offender.

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

6 NEW SECTION. **Sec. 323.** (1) If a person is referred to a
7 designated responder under RCW 10.77.090(1)(d)(iii)(A), the designated
8 responder shall examine the person within forty-eight hours. If the
9 designated responder determines it is not appropriate to detain the
10 person or petition for a ninety-day less restrictive alternative under
11 section 324(4) of this act, that decision shall be immediately
12 presented to the superior court for hearing. The court shall hold a
13 hearing to consider the decision of the designated responder not later
14 than the next judicial day. At the hearing the superior court shall
15 review the determination of the designated responder and determine
16 whether an order should be entered requiring the person to be evaluated
17 at a certified facility. No person referred to a certified facility
18 may be held at the facility longer than seventy-two hours.

19 (2) If a person is placed in an evaluation and treatment facility
20 under RCW 10.77.090(1)(d)(iii)(B), a professional person shall evaluate
21 the person for purposes of determining whether to file a ninety-day
22 inpatient or outpatient petition under this chapter. Before expiration
23 of the seventy-two hour evaluation period authorized under RCW
24 10.77.090(1)(d)(iii)(B), the professional person shall file a petition
25 or, if the recommendation of the professional person is to release the
26 person, present his or her recommendation to the superior court of the
27 county in which the criminal charge was dismissed. The superior court
28 shall review the recommendation not later than forty-eight hours,
29 excluding Saturdays, Sundays, and holidays, after the recommendation is
30 presented. If the court rejects the recommendation to unconditionally
31 release the person, the court may order the person detained at a
32 certified facility for not more than a seventy-two hour evaluation and
33 treatment period and direct the person to appear at a surety hearing
34 before that court within seventy-two hours, or the court may release
35 the person but direct the person to appear at a surety hearing set
36 before that court within eleven days, at which time the prosecutor may
37 file a petition under this chapter for ninety-day inpatient or

1 outpatient treatment. If a petition is filed by the prosecutor, the
2 court may order that the person named in the petition be detained at
3 the certified facility that performed the evaluation under this
4 subsection or order the respondent to be in outpatient treatment. If
5 a petition is filed but the person fails to appear in court for the
6 surety hearing, the court shall order that a mental health
7 professional, a chemical dependency professional, or peace officer
8 shall take such person or cause such person to be taken into custody
9 and placed in a certified facility to be brought before the court the
10 next judicial day after detention. Upon the person's first appearance
11 in court after a petition has been filed, proceedings under sections
12 330 and 331 of this act shall commence. For a person subject to this
13 subsection, the prosecutor or professional person may directly file a
14 petition for ninety-day inpatient or outpatient treatment and no
15 petition for initial detention or fourteen-day detention is required
16 before such a petition may be filed.

17 The court shall conduct the hearing on the petition filed under
18 this subsection within five judicial days of the date the petition is
19 filed. The court may continue the hearing upon the written request of
20 the person named in the petition or the person's attorney, for good
21 cause shown. Such a continuance shall not exceed five additional
22 judicial days. If the person named in the petition requests a jury
23 trial, the trial shall commence within ten judicial days of the date of
24 the filing of the petition. The burden of proof shall be by clear,
25 cogent, and convincing evidence and shall be upon the petitioner. The
26 person shall be present at such proceeding, which shall in all respects
27 accord with the constitutional guarantees of due process of law and the
28 rules of evidence pursuant to section 359 (8) and (9) of this act.

29 During the proceeding the person named in the petition shall
30 continue to be detained and treated until released by order of the
31 court. If no order has been made within thirty days after the filing
32 of the petition, not including any extensions of time requested by the
33 detained person or his or her attorney, the detained person shall be
34 released.

35 (3) If a designated responder or the professional person and
36 prosecuting attorney for the county in which the criminal charge was
37 dismissed or attorney general, as appropriate, stipulate that the

1 person does not present a likelihood of serious harm or is not gravely
2 disabled, the hearing under this section is not required and the
3 person, if in custody, shall be released.

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

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

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

12 (1) The professional staff of the agency or facility providing
13 evaluation services has analyzed the person's condition and finds that
14 the condition is caused by mental disorder, chemical dependency
15 disorder, or both, and either results in a likelihood of serious harm,
16 or results in the detained person being gravely disabled and are
17 prepared to testify those conditions are met; and

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

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

23 (4) The professional staff of the agency or facility or the
24 designated responder has filed a petition for fourteen day involuntary
25 detention or a ninety day less restrictive alternative with the court.
26 The petition must be signed either by two physicians or by one
27 physician and a mental health professional or chemical dependency
28 professional, as appropriate, who have examined the person. If
29 involuntary detention is sought the petition shall state facts that
30 support the finding that the person, as a result of mental disorder,
31 chemical dependency disorder, or both, presents a likelihood of serious
32 harm, or is gravely disabled and that there are no less restrictive
33 alternatives to detention in the best interest of the person or others.
34 The petition shall state specifically that less restrictive alternative
35 treatment was considered and specify why treatment less restrictive
36 than detention is not appropriate. If an involuntary less restrictive

1 alternative is sought, the petition shall state facts that support the
2 finding that the person, as a result of mental disorder, chemical
3 dependency disorder, or both, presents a likelihood of serious harm, or
4 is gravely disabled and shall set forth the less restrictive
5 alternative proposed by the facility; and

6 (5) A copy of the petition has been served on the detained person,
7 his or her attorney and his or her personal representative, guardian,
8 or conservator, if any, if the person is a minor, his or her parent,
9 and if the person is under the supervision of the department of
10 corrections, the department of corrections prior to the probable cause
11 hearing; and

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

15 (7) The court has ordered a fourteen day involuntary intensive
16 treatment or a ninety day less restrictive alternative treatment after
17 a probable cause hearing has been held pursuant to section 325 of this
18 act; and

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

24 (9) If the hospital or facility designated to provide outpatient
25 treatment is other than the facility providing involuntary treatment,
26 the outpatient facility so designated has agreed to assume such
27 responsibility.

28 NEW SECTION. **Sec. 325.** If a petition is filed for fourteen day
29 involuntary treatment or ninety days of less restrictive alternative
30 treatment, the court shall hold a probable cause hearing within
31 seventy-two hours of the initial detention of such person as determined
32 in section 318 of this act. If requested by the detained person or his
33 or her attorney, the hearing may be postponed for a period not to
34 exceed forty-eight hours. The hearing may also be continued subject to
35 the conditions set forth in section 337 of this act or subject to the
36 petitioner's showing of good cause for a period not to exceed twenty-
37 four hours.

1 At the conclusion of the probable cause hearing, if the court finds
2 by a preponderance of the evidence that the person, as the result of a
3 mental disorder, chemical dependency disorder, or both, presents a
4 likelihood of serious harm, or is gravely disabled, and, after
5 considering less restrictive alternatives to involuntary detention and
6 treatment, finds that no such alternatives are in the best interests of
7 such person or others, the court shall order that such person be
8 detained for involuntary treatment not to exceed fourteen days in a
9 facility certified to provide treatment by the department. If the
10 court finds that the person, as the result of a mental disorder,
11 chemical dependency disorder, or both, presents a likelihood of serious
12 harm, or is gravely disabled, but that treatment in a less restrictive
13 setting than detention is in the best interest of such person or
14 others, the court shall order an appropriate less restrictive course of
15 treatment for not to exceed ninety days.

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

23 NEW SECTION. **Sec. 326.** (1) Involuntary intensive treatment
24 ordered at the time of the probable cause hearing shall be for no more
25 than fourteen days, and shall terminate sooner when, in the opinion of
26 the professional person in charge of the facility or his or her
27 professional designee, (a) the person no longer constitutes a
28 likelihood of serious harm, or (b) no longer is gravely disabled, or
29 (c) is prepared to accept voluntary treatment upon referral, or (d) is
30 to remain in the facility providing intensive treatment on a voluntary
31 basis.

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

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

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

5 (1) Such person after having been taken into custody for evaluation
6 and treatment has threatened, attempted, or inflicted: (a) Physical
7 harm upon the person of another or himself or herself, or substantial
8 damage upon the property of another, and (b) as a result of mental
9 disorder, chemical dependency disorder, or both presents a likelihood
10 of serious harm; or

11 (2) Such person was taken into custody as a result of conduct in
12 which he or she attempted or inflicted physical harm upon the person of
13 another or himself or herself, or substantial damage upon the property
14 of others, and continues to present, as a result of mental disorder,
15 chemical dependency disorder, or both, a likelihood of serious harm; or

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

24 (4) Such person is gravely disabled.

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

32 (2) The petition shall summarize the facts which support the need
33 for further confinement and shall be supported by affidavits signed by
34 two examining physicians, or by one examining physician and examining
35 mental health professional or chemical dependency specialist, as
36 appropriate. The affidavits shall describe in detail the behavior of
37 the detained person which supports the petition and shall explain what,

1 if any, less restrictive treatments which are alternatives to detention
2 are available to such person, and shall state the willingness of the
3 affiant to testify to such facts in subsequent judicial proceedings
4 under this chapter.

5 (3) If a person has been determined to be incompetent pursuant to
6 RCW 10.77.090(4), then the professional person in charge of the
7 treatment facility or his or her professional designee or the
8 designated responder may directly file a petition for one hundred
9 eighty day treatment under section 327(3) of this act. No petition for
10 initial detention or fourteen day detention is required before such a
11 petition may be filed.

12 NEW SECTION. **Sec. 329.** The petition for ninety day treatment
13 shall be filed with the clerk of the superior court at least three days
14 before expiration of the fourteen-day period of intensive treatment.
15 At the time of filing such petition, the clerk shall set a time for the
16 person to come before the court on the next judicial day after the day
17 of filing unless such appearance is waived by the person's attorney,
18 and the clerk shall notify the designated responder. The designated
19 responder shall immediately notify the person detained, his or her
20 attorney, if any, his or her personal representative, guardian, or
21 conservator, if any, where the person is a minor, his or her guardian,
22 the department of corrections where the person is under its
23 supervision, and the prosecuting attorney, and provide a copy of the
24 petition to such persons as soon as possible.

25 At the time set for appearance the detained person shall be brought
26 before the court, unless such appearance has been waived and the court
27 shall advise him or her of his or her right to be represented by an
28 attorney and of his or her right to a jury trial. If the detained
29 person is not represented by an attorney, or is indigent or is
30 unwilling to retain an attorney, the court shall immediately appoint an
31 attorney to represent him or her. The court shall, if requested,
32 appoint a reasonably available licensed physician, psychologist, or
33 psychiatrist, designated by the detained person to examine and testify
34 on behalf of the detained person.

35 The court may, if requested, also appoint a professional person as
36 defined in section 303 of this act to seek less restrictive alternative
37 courses of treatment and to testify on behalf of the detained person.

1 In the case of a developmentally disabled person who has been
2 determined to be incompetent pursuant to RCW 10.77.090(4), then the
3 appointed professional person under this section shall be a
4 developmental disabilities professional.

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

7 NEW SECTION. **Sec. 330.** The court shall conduct a hearing on the
8 petition for ninety day treatment within five judicial days of the
9 first court appearance after the probable cause hearing. The court may
10 continue the hearing upon the written request of the person named in
11 the petition or the person's attorney, for good cause shown, which
12 continuance shall not exceed five additional judicial days. If the
13 person named in the petition requests a jury trial, the trial shall
14 commence within ten judicial days of the first court appearance after
15 the probable cause hearing. The burden of proof shall be by clear,
16 cogent, and convincing evidence and shall be upon the petitioner. The
17 person shall be present at such proceeding, which shall in all respects
18 accord with the constitutional guarantees of due process of law and the
19 rules of evidence pursuant to section 359 (8) and (9) of this act.

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

1 certified by the department to provide treatment to persons committed
2 under this chapter.

3 (b) If the committed person is developmentally disabled and has
4 been determined incompetent pursuant to RCW 10.77.090(4), and the best
5 interests of the person or others will not be served by a less-
6 restrictive treatment which is an alternative to detention, the court
7 shall remand him or her to the custody of the department or to a
8 facility certified by the department to provide treatment to persons
9 committed under this chapter. When appropriate and subject to
10 available funds, treatment and training of such persons must be
11 provided in a program specifically reserved for the treatment and
12 training of developmentally disabled persons. A person so committed
13 shall receive habilitation services pursuant to an individualized
14 service plan specifically developed to treat the behavior which was the
15 subject of the criminal proceedings. The treatment program shall be
16 administered by developmental disabilities professionals and others
17 trained specifically in the needs of developmentally disabled persons.

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

21 (d) The department may limit admissions to these specialized
22 programs in order to ensure that expenditures for services do not
23 exceed amounts appropriated by the legislature and allocated by the
24 department for such services. The department may establish admission
25 priorities in the event that the number of eligible persons exceeds the
26 limits set by the department. An order for treatment less restrictive
27 than involuntary detention may include conditions, and if such
28 conditions are not adhered to, the designated mental health
29 professional, designated chemical dependency specialist, or
30 developmental disabilities professional may order the person
31 apprehended under the terms and conditions of section 336 of this act.

32 If the court or jury finds that grounds set forth in section 327 of
33 this act have been proven, but finds that treatment less restrictive
34 than detention will be in the best interest of the person or others,
35 then the court shall remand him or her to the custody of the department
36 or to a facility certified by the department to provide treatment to
37 persons committed under this chapter or to a less restrictive
38 alternative for a further period of less restrictive treatment not to

1 exceed ninety days from the date of judgment: PROVIDED, That if the
2 grounds set forth in section 327(3) of this act are the basis of
3 commitment, then the period of treatment may be up to but not exceed
4 one hundred eighty days from the date of judgment.

5 (2) The person shall be released from involuntary treatment at the
6 expiration of the period of commitment imposed under subsection (1) of
7 this section unless the superintendent or professional person in charge
8 of the facility in which he or she is confined, or in the event of a
9 less restrictive alternative, the designated mental health professional
10 or developmental disabilities professional, files a new petition for
11 involuntary treatment on the grounds that the committed person;

12 (a) During the current period of court ordered treatment: (i) Has
13 threatened, attempted, or inflicted physical harm upon the person of
14 another, or substantial damage upon the property of another, and (ii)
15 as a result of a mental disorder, chemical dependency disorder, or
16 both, or as the result of a developmental disability, presents a
17 likelihood of serious harm; or

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

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

28 (d) Continues to be gravely disabled.

29 If the conduct required to be proven in (b) and (c) of this
30 subsection was found by a judge or jury in a prior trial under this
31 chapter, it shall not be necessary to reprove that element. Such new
32 petition for involuntary treatment shall be filed and heard in the
33 superior court of the county of the facility which is filing the new
34 petition for involuntary treatment unless good cause is shown for a
35 change of venue. The cost of the proceedings shall be borne by the
36 state.

37 The hearing shall be held as provided in RCW 71.05.310, and if the
38 court or jury finds that the grounds for additional confinement as set

1 forth in this subsection are present, the court may order the committed
2 person returned for an additional period of treatment not to exceed one
3 hundred eighty days from the date of judgment. At the end of the one
4 hundred eighty day period of commitment, the committed person shall be
5 released unless a petition for another one hundred eighty day period of
6 continued treatment is filed and heard in the same manner as provided
7 in this subsection. Successive one hundred eighty day commitments are
8 permissible on the same grounds and pursuant to the same procedures as
9 the original one hundred eighty day commitment.

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

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

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

23 (a) Make the long-term placement of the minor in the most
24 appropriate, available state-funded evaluation and treatment facility,
25 having carefully considered factors including the treatment needs of
26 the minor, the most appropriate facility able to respond to the minor's
27 identified treatment needs, the geographic proximity of the facility to
28 the minor's family, the immediate availability of bed space, and the
29 probable impact of the placement on other residents of the facility;

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

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

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

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

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

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

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

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

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

17 (3) Prior determinations of incompetency or insanity under chapter
18 10.77 RCW; and

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

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

25 NEW SECTION. **Sec. 334.** The department shall develop statewide
26 protocols to be utilized by professional persons, and designated
27 responders in administration of this chapter and chapter 10.77 RCW.
28 The protocols shall be updated at least every three years. The
29 protocols shall provide uniform development and application of criteria
30 in evaluation and commitment recommendations, of persons who have, or
31 are alleged to have, a mental disorder, chemical dependency disorder,
32 or both, and are subject to this chapter.

33 The initial protocols shall be developed not later than September
34 1, 2008. The department shall develop and update the protocols in
35 consultation with representatives of designated responders, local

1 government, law enforcement, county and city prosecutors, public
2 defenders, the department of corrections, and groups concerned with
3 mental and chemical dependency disorders. The protocols shall be
4 submitted to the governor and legislature upon adoption by the
5 department.

6 **Modifications and Reviews**

7 NEW SECTION. **Sec. 335.** In any proceeding under this chapter to
8 modify a commitment order of a person committed to inpatient treatment
9 under grounds set forth in section 327(3) or 331(2)(c) of this act in
10 which the requested relief includes treatment less restrictive than
11 detention, the prosecuting attorney shall be entitled to intervene.
12 The party initiating the motion to modify the commitment order shall
13 serve the prosecuting attorney of the county in which the criminal
14 charges against the committed person were dismissed with written notice
15 and copies of the initiating papers.

16 NEW SECTION. **Sec. 336.** (1)(a) When, in the opinion of the
17 superintendent or the professional person in charge of the hospital or
18 facility providing involuntary treatment, the committed person can be
19 appropriately served by outpatient treatment prior to or at the
20 expiration of the period of commitment, then such outpatient care may
21 be required as a term of conditional release for a period which, when
22 added to the inpatient treatment period, shall not exceed the period of
23 commitment. If the hospital or facility designated to provide
24 outpatient treatment is other than the facility providing involuntary
25 treatment, the outpatient facility so designated must agree in writing
26 to assume such responsibility. A copy of the terms of conditional
27 release shall be given to the person, and if the person is a minor, the
28 person's parent, the designated responder in the county in which the
29 patient is to receive outpatient treatment, the department of
30 corrections if the person is under supervision by the department of
31 corrections, and the court of original commitment.

32 (b) Before a person committed under grounds set forth in RCW
33 71.05.280(3) or 71.05.320(2)(c) is conditionally released under (a) of
34 this subsection, the superintendent or professional person in charge of
35 the hospital or facility providing involuntary treatment shall in

1 writing notify the prosecuting attorney of the county in which the
2 criminal charges against the committed person were dismissed, of the
3 decision to conditionally release the person. Notice and a copy of the
4 terms of conditional release shall be provided at least thirty days
5 before the person is released from inpatient care. Within twenty days
6 after receiving notice, the prosecuting attorney may petition the court
7 in the county that issued the commitment order to hold a hearing to
8 determine whether the person may be conditionally released and the
9 terms of the conditional release. The prosecuting attorney shall
10 provide a copy of the petition to the superintendent or professional
11 person in charge of the hospital or facility providing involuntary
12 treatment, the committed person and, if the person is a minor, his or
13 her parent, the attorney, if any, and personal representative,
14 guardian, or conservator of the committed person, the department of
15 corrections if the person is under its supervision, and the court of
16 original commitment. If the county in which the committed person is to
17 receive outpatient treatment is the same county in which the criminal
18 charges against the committed person were dismissed, then the court
19 shall, upon the motion of the prosecuting attorney, transfer the
20 proceeding to the court in that county. The court shall conduct a
21 hearing on the petition within ten days of the filing of the petition.
22 The committed person shall have the same rights with respect to notice,
23 hearing, and counsel as for an involuntary treatment proceeding, except
24 as set forth in this subsection and except that there shall be no right
25 to jury trial. The issue to be determined at the hearing is whether or
26 not the person may be conditionally released without substantial danger
27 to other persons, or substantial likelihood of committing criminal acts
28 jeopardizing public safety or security. If the court disapproves of
29 the conditional release, it may do so only on the basis of substantial
30 evidence. Pursuant to the determination of the court upon the hearing,
31 the conditional release of the person shall be approved by the court on
32 the same or modified conditions or the person shall be returned for
33 involuntary treatment on an inpatient basis subject to release at the
34 end of the period for which he or she was committed, or otherwise in
35 accordance with the provisions of this chapter.

36 (2) The hospital or facility designated to provide outpatient care
37 or the secretary may modify the conditions for continued release when

1 such modification is in the best interest of the person. Notification
2 of such changes shall be sent to all persons receiving a copy of the
3 original conditions.

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

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

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

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

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

14 Upon notification by the hospital or facility designated to provide
15 outpatient care, or on his or her own motion, the designated responder
16 or the secretary may order that the conditionally released person be
17 apprehended and taken into custody and temporarily detained in a
18 certified facility in or near the county in which he or she is
19 receiving outpatient treatment.

20 (b) The hospital or facility designated to provide outpatient
21 treatment shall notify the secretary or designated responder when a
22 conditionally released person fails to adhere to terms and conditions
23 of his or her conditional release or experiences substantial
24 deterioration in his or her condition and, as a result, presents an
25 increased likelihood of serious harm. The designated responder or
26 secretary shall order the person apprehended and temporarily detained
27 in a certified facility in or near the county in which he or she is
28 receiving outpatient treatment. When the person is under the
29 supervision of the department of corrections the designated responder
30 shall also notify the department of corrections.

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

37 (d) The court that originally ordered commitment shall be notified
38 within two judicial days of a person's detention under the provisions

1 of this section, and the designated responder or the secretary shall
2 file his or her petition and order of apprehension and detention with
3 the court and serve them upon the person detained, and if the person is
4 a minor, his or her parent, his or her attorney, personal
5 representative, guardian, or conservator, if any, and the department of
6 corrections, where the person is under its supervision, shall receive
7 a copy of such papers as soon as possible. Such person shall have the
8 same rights with respect to notice, hearing, and counsel as for an
9 involuntary treatment proceeding, except as specifically set forth in
10 this section and except that there shall be no right to jury trial.
11 The issues to be determined shall be: (i) Whether the conditionally
12 released person did or did not adhere to the terms and conditions of
13 his or her conditional release; (ii) that substantial deterioration in
14 the person's functioning has occurred; (iii) there is evidence of
15 substantial decompensation with a reasonable probability that the
16 decompensation can be reversed by further inpatient treatment; or (iv)
17 there is a likelihood of serious harm; and, if any of the conditions
18 listed in this subsection (3)(d) have occurred, whether the terms of
19 conditional release should be modified or the person should be returned
20 to the facility.

21 (e) Pursuant to the determination of the court upon such hearing,
22 the conditionally released person shall either continue to be
23 conditionally released on the same or modified conditions or shall be
24 returned for involuntary treatment on an inpatient basis subject to
25 release at the end of the period for which he or she was committed for
26 involuntary treatment, or otherwise in accordance with the provisions
27 of this chapter. Such hearing may be waived by the person, his or her
28 counsel, his or her personal representative, guardian, or conservator,
29 if any, and, where the person is a minor, his or her parent, but shall
30 not be waivable unless all such persons agree to waive, and upon such
31 waiver the person may be returned for involuntary treatment or
32 continued on conditional release on the same or modified conditions.

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

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

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

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

10 **Treatment Provider Responsibilities**

11 NEW SECTION. **Sec. 337.** Each person involuntarily detained and
12 accepted or admitted at a certified facility shall, within twenty-four
13 hours of his or her admission or acceptance at the facility, be
14 examined and evaluated by a licensed physician who may be assisted by
15 a physician assistant according to chapter 18.71A RCW or an advanced
16 registered nurse practitioner according to chapter 18.79 RCW and a
17 mental health professional or chemical dependency professional, as
18 appropriate, and shall receive such treatment and care as his or her
19 condition requires including treatment on an outpatient basis for the
20 period that he or she is detained, except that, beginning twenty-four
21 hours prior to a trial or hearing pursuant to section 325, 330, 331,
22 336, 360, or 361 of this act, the person may refuse psychiatric
23 medications, but may not refuse: (1) Any other medication previously
24 prescribed by a person licensed under Title 18 RCW; or (2) emergency
25 lifesaving treatment, and the person shall be informed at an
26 appropriate time of his or her right of such refusal. The person shall
27 be detained up to seventy-two hours if, in the opinion of the
28 professional person in charge of the facility, or his or her
29 professional designee, the person presents a likelihood of serious harm
30 or is gravely disabled. A person who has been detained for seventy-two
31 hours shall, no later than the end of such period, be released unless
32 referred for further care on a voluntary basis or detained pursuant to
33 court order for further treatment as provided in this chapter.

34 If, after examination and evaluation, the licensed physician and
35 mental health professional determine that the initial needs of the

1 person would be better served by placement in an alternate facility,
2 then the person shall be referred to that facility.

3 A certified facility admitting or accepting any person pursuant to
4 this chapter whose physical condition reveals the need for
5 hospitalization shall assure that such person is transferred to an
6 appropriate hospital for evaluation or admission for treatment. Notice
7 of such fact shall be given to the court, the designated attorney, and
8 the designated responder and where the person is a minor, his or her
9 parent, and the court shall order such continuance in proceedings under
10 this chapter as may be necessary, but in no event may this continuance
11 be more than fourteen days.

12 NEW SECTION. **Sec. 338.** At the time a person is involuntarily
13 admitted to a certified facility, the professional person in charge or
14 his or her designee shall take reasonable precautions to inventory and
15 safeguard the personal property of the person detained. A copy of the
16 inventory, signed by the staff member making it, shall be given to the
17 person detained and where the person is a minor, his or her parent. It
18 shall, in addition, be open to inspection to the person's attorney,
19 guardian, or conservator, if any, and any responsible relative, subject
20 to limitations, if any, specifically imposed by the detained person.
21 For purposes of this section, "responsible relative" includes the
22 spouse, parent, adult child, or adult brother or sister of the person.
23 The facility shall not disclose the contents of the inventory to any
24 other person without the consent of the person or order of the court.

25 NEW SECTION. **Sec. 339.** (1) When a state hospital admits a person
26 for evaluation or treatment under this chapter, the state hospital
27 shall consult with the appropriate corrections and chemical dependency
28 personnel and the appropriate forensic staff at the state hospital to
29 conduct a discharge review to determine whether the person presents a
30 likelihood of serious harm and whether the person is appropriate for
31 release to a less restrictive alternative, if the person has a history
32 of one or more violent acts and:

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

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

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

10 NEW SECTION. **Sec. 341.** No indigent patient shall be conditionally
11 released or discharged from involuntary treatment without suitable
12 clothing, and the superintendent of a state hospital shall furnish the
13 same, together with such sum of money as he or she deems necessary for
14 the immediate welfare of the patient. Such sum of money shall be the
15 same as the amount required by RCW 72.02.100 to be provided to persons
16 in need being released from correctional institutions. As funds are
17 available, the secretary may provide payment to indigent persons
18 conditionally released pursuant to this chapter consistent with the
19 optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules
20 and regulations to do so.

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

25 NEW SECTION. **Sec. 343.** (1) Before a person committed under
26 grounds set forth in section 327(3) of this act is released because a
27 new petition for involuntary treatment has not been filed under section
28 331(2) of this act, the superintendent, professional person, or
29 designated responder responsible for the decision whether to file a new
30 petition shall in writing notify the prosecuting attorney of the county
31 in which the criminal charges against the committed person were
32 dismissed, of the decision not to file a new petition for involuntary
33 treatment. Notice shall be provided at least forty-five days before
34 the period of commitment expires.

1 (2)(a) Before a person committed under grounds set forth in section
2 327(3) of this act is permitted temporarily to leave a treatment
3 facility pursuant to section 340 of this act for any period of time
4 without constant accompaniment by facility staff, the superintendent,
5 professional person in charge of a treatment facility, or his or her
6 professional designee shall in writing notify the prosecuting attorney
7 of any county of the person's destination and the prosecuting attorney
8 of the county in which the criminal charges against the committed
9 person were dismissed. The notice shall be provided at least forty-
10 five days before the anticipated leave and shall describe the
11 conditions under which the leave is to occur.

12 (b) The provisions of section 344(2) of this act apply to proposed
13 leaves, and either or both prosecuting attorneys receiving notice under
14 this subsection may petition the court under section 344(2) of this
15 act.

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

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

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

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

25 NEW SECTION. **Sec. 344.** (1) Nothing in this chapter shall prohibit
26 the superintendent or professional person in charge of the hospital or
27 facility in which the person is being involuntarily treated from
28 releasing him or her prior to the expiration of the commitment period
29 when, in the opinion of the superintendent or professional person in
30 charge, the person being involuntarily treated no longer presents a
31 likelihood of serious harm.

32 Whenever the superintendent or professional person in charge of a
33 hospital or facility providing involuntary treatment pursuant to this
34 chapter releases a person prior to the expiration of the period of
35 commitment, the superintendent or professional person in charge shall
36 in writing notify the court which committed the person for treatment.

1 (2) Before a person committed under grounds set forth in section
2 327(3) or 331(2)(c) of this act is released under this section, the
3 superintendent or professional person in charge shall in writing notify
4 the prosecuting attorney of the county in which the criminal charges
5 against the committed person were dismissed, of the release date.
6 Notice shall be provided at least thirty days before the release date.
7 Within twenty days after receiving notice, the prosecuting attorney may
8 petition the court in the county in which the person is being
9 involuntarily treated for a hearing to determine whether the person is
10 to be released. The prosecuting attorney shall provide a copy of the
11 petition to the superintendent or professional person in charge of the
12 hospital or facility providing involuntary treatment, the committed
13 person and his or her attorney, personal representative, guardian, or
14 conservator, if any, the department of corrections if the person is
15 under its supervision, and where the person is a minor, his or her
16 parent. The court shall conduct a hearing on the petition within ten
17 days of filing the petition. The committed person shall have the same
18 rights with respect to notice, hearing, and counsel as for an
19 involuntary treatment proceeding, except as set forth in this
20 subsection and except that there shall be no right to jury trial. The
21 issue to be determined at the hearing is whether or not the person may
22 be released without substantial danger to other persons, or substantial
23 likelihood of committing criminal acts jeopardizing public safety or
24 security. If the court disapproves of the release, it may do so only
25 on the basis of substantial evidence. Pursuant to the determination of
26 the court upon the hearing, the committed person shall be released or
27 shall be returned for involuntary treatment subject to release at the
28 end of the period for which he or she was committed, or otherwise in
29 accordance with the provisions of this chapter.

30 NEW SECTION. **Sec. 345.** (1)(a) Except as provided in subsection
31 (2) of this section, at the earliest possible date, and in no event
32 later than thirty days before conditional release, final release,
33 authorized leave under section 343(2) of this act, or transfer to a
34 facility other than a state mental hospital, the superintendent shall
35 send written notice of conditional release, release, authorized leave,
36 or transfer of a person committed under section 327(3) or 331(2)(c) of

1 this act following dismissal of a sex, violent, or felony harassment
2 offense pursuant to RCW 10.77.090(4) to the following:

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

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

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

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

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

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

19 (iii) Any person specified in writing by the prosecuting attorney.
20 Information regarding victims, next of kin, or witnesses requesting the
21 notice, information regarding any other person specified in writing by
22 the prosecuting attorney to receive the notice, and the notice are
23 confidential and shall not be available to the person committed under
24 this chapter.

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

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

30 (2) If a person committed under section 327(3) or 331(2)(c) of this
31 act following dismissal of a sex, violent, or felony harassment offense
32 pursuant to RCW 10.77.090(4) escapes, the superintendent shall
33 immediately notify, by the most reasonable and expedient means
34 available, the chief of police of the city, the sheriff of the county
35 in which the person resided immediately before the person's arrest, and
36 the department of corrections if the person is subject to its
37 supervision. If previously requested, the superintendent shall also
38 notify the witnesses and the victim of the sex, violent, or felony

1 harassment offense that was dismissed pursuant to RCW 10.77.090(4)
2 preceding commitment under section 327(3) or 331(2)(c) of this act or
3 the victim's next of kin if the crime was a homicide. In addition, the
4 secretary shall also notify appropriate parties pursuant to section
5 363(18) of this act. If the person is recaptured, the superintendent
6 shall send notice to the persons designated in this subsection as soon
7 as possible but in no event later than two working days after the
8 department learns of such recapture.

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

12 (4) The superintendent shall send the notices required by this
13 chapter to the last address provided to the department by the
14 requesting party. The requesting party shall furnish the department
15 with a current address.

16 (5) For purposes of this section the following terms have the
17 following meanings:

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

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

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

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

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

30 **Attorneys and Courts**

31 NEW SECTION. **Sec. 347.** Attorneys appointed for persons pursuant
32 to this chapter shall be compensated for their services as follows:

33 (1) The person for whom an attorney is appointed shall, if he or she is
34 financially able pursuant to standards as to financial capability and
35 indigency set by the superior court of the county in which the

1 proceeding is held, bear the costs of such legal services; (2) if such
2 person is indigent pursuant to such standards, the costs of such
3 services shall be borne by the county in which the proceeding is held,
4 subject however to the responsibility for costs provided in section
5 331(2) of this act.

6 NEW SECTION. **Sec. 348.** In any judicial proceeding for involuntary
7 commitment or detention, or in any proceeding challenging such
8 commitment or detention, the prosecuting attorney for the county in
9 which the proceeding was initiated shall represent the persons or
10 agencies petitioning for commitment or detention and shall defend all
11 challenges to such commitment or detention: PROVIDED, That the
12 attorney general shall represent and provide legal services and advice
13 to state hospitals with regard to all provisions of and proceedings
14 under this chapter except in proceedings initiated by hospitals seeking
15 fourteen day detention.

16 NEW SECTION. **Sec. 349.** When any court orders a person to receive
17 treatment under this chapter, the order shall include a statement that
18 if the person is, or becomes, subject to supervision by the department
19 of corrections, the person must notify the treatment provider and the
20 person's mental health and chemical dependency treatment information
21 must be shared with the department of corrections for the duration of
22 the offender's incarceration and supervision, under RCW 71.05.445.
23 Upon a petition by a person who does not have a history of one or more
24 violent acts, the court may, for good cause, find that public safety
25 would not be enhanced by the sharing of this person's information.

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

30 (1) One or more attorneys to act as involuntary treatment
31 commissioners; and

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

1 The appointments provided for in this section shall be made by a
2 majority vote of the judges of the superior court of the county and may
3 be in addition to all other appointments of commissioners and other
4 judicial attaches otherwise authorized by law. Involuntary treatment
5 commissioners and investigators shall serve at the pleasure of the
6 judges appointing them and shall receive such compensation as the
7 county legislative authority shall determine. The appointments may be
8 full or part-time positions. A person appointed as an involuntary
9 treatment commissioner may also be appointed to any other commissioner
10 position authorized by law.

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

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

18 (2) Investigate the facts upon which to base warrants, subpoenas,
19 orders to directions in actions, or proceedings filed pursuant to this
20 chapter;

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

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

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

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

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

34 NEW SECTION. **Sec. 353.** In any judicial proceeding in which a
35 professional person has made a recommendation regarding whether a

1 person should be committed for treatment under this chapter, and the
2 court does not follow the recommendation, the court shall enter
3 findings that state with particularity its reasoning, including a
4 finding whether the state met its burden of proof in showing whether
5 the person presents a likelihood of serious harm or grave disability.

6 NEW SECTION. **Sec. 354.** In making a determination of whether there
7 is a likelihood of serious harm in a hearing conducted under section
8 325 or 331 of this act, the court shall give great weight to any
9 evidence before the court regarding whether the person has: (1) A
10 recent history of one or more violent acts; or (2) a recent history of
11 one or more commitments under this chapter or its equivalent provisions
12 under the laws of another state which were based on a likelihood of
13 serious harm. The existence of prior violent acts or commitments under
14 this chapter or its equivalent shall not be the sole basis for
15 determining whether a person presents a likelihood of serious harm.

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

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

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

32 NEW SECTION. **Sec. 357.** (1) When making a decision under this
33 chapter whether to require a less restrictive alternative treatment,

1 the court shall consider whether it is appropriate to include or
2 exclude time spent in confinement when determining whether the person
3 has committed a recent overt act.

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

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

12 **Individual Rights and Medications**

13 NEW SECTION. **Sec. 359.** (1)(a) Every person involuntarily detained
14 or committed under the provisions of this chapter shall be entitled to
15 all the rights set forth in this chapter, which shall be prominently
16 posted in the facility, and shall retain all rights not denied him or
17 her under this chapter except as chapter 9.41 RCW may limit the right
18 of a person to purchase or possess a firearm or to qualify for a
19 concealed pistol license.

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

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

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

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

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

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

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

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

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

30 (d) That the person has the right to present evidence and to cross-
31 examine witnesses who testify against him or her at the probable cause
32 hearing; and

33 (e) That the person has the right to refuse psychiatric
34 medications, including antipsychotic medication beginning twenty-four
35 hours prior to the probable cause hearing.

36 (6) When proceedings are initiated under section 315 (2), (3), or
37 (4)(b) of this act, no later than twelve hours after such person is
38 admitted to the certified facility the personnel of the certified

1 facility or the designated responder shall serve on such person and if
2 the person is a minor, the person's parent, a copy of the petition for
3 initial detention and the name, business address, and phone number of
4 the designated attorney and shall forthwith commence service of a copy
5 of the petition for initial detention on the designated attorney.

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

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

- 12 (a) To present evidence on his or her behalf;
- 13 (b) To cross-examine witnesses who testify against him or her;
- 14 (c) To be proceeded against by the rules of evidence;
- 15 (d) To remain silent;
- 16 (e) To view and copy all petitions and reports in the court file.

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

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

30 The record maker shall not be required to testify in order to
31 introduce medical or psychological records of the detained person so
32 long as the requirements of RCW 5.45.020 are met except that portions
33 of the record which contains opinions as to the detained person's
34 mental state must be deleted from such records unless the person making
35 such conclusions is available for cross-examination.

36 (10) Insofar as danger to the person or others is not created, each
37 person involuntarily detained, treated in a less restrictive

1 alternative course of treatment, or committed for treatment and
2 evaluation pursuant to this chapter shall have, in addition to other
3 rights not specifically withheld by law, the following rights:

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

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

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

11 (d) To have visitors at reasonable times;

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

15 (f) To have ready access to letter writing materials, including
16 stamps, and to send and receive uncensored correspondence through the
17 mails;

18 (g) To discuss treatment plans and decisions with professional
19 persons;

20 (h) Not to consent to the administration of antipsychotic
21 medications beyond the hearing conducted pursuant to section 331 of
22 this act, or the performance of electroconvulsant therapy or surgery,
23 except emergency life-saving surgery, unless ordered by a court under
24 section 361 of this act;

25 (i) Not to have psychosurgery performed on him or her under any
26 circumstances;

27 (j) 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 (11) Every person involuntarily detained shall immediately be
31 informed, and if the person is a minor, his or her parent shall be
32 informed, of his or her right to a hearing to review the legality of
33 his or her detention and of his or her right to counsel, by the
34 professional person in charge of the facility providing evaluation and
35 treatment, or his or her designee, and, when appropriate, by the court.
36 If the person so elects, the court shall immediately appoint an
37 attorney to assist him or her.

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

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

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

14 (15) The court shall inform the person whose commitment or
15 recommitment is sought and, if the person is a minor, his or her
16 parent, of his or her right to contest the application, be represented
17 by counsel at every stage of any proceedings relating to his or her
18 commitment and recommitment, and have counsel appointed by the court or
19 provided by the court, if he or she wants the assistance of counsel and
20 is unable to obtain counsel. If the court believes that the person
21 needs the assistance of counsel, the court shall require, by
22 appointment if necessary, counsel for him or her regardless of his or
23 her wishes. The person shall, if he or she is financially able, bear
24 the costs of such legal service; otherwise such legal service shall be
25 at public expense. The person whose commitment or recommitment is
26 sought shall be informed of his or her right to be examined by a
27 licensed physician of his or her choice. If the person is unable to
28 obtain a licensed physician and requests examination by a physician,
29 the court shall employ a licensed physician.

30 NEW SECTION. **Sec. 360.** (1) A person who is gravely disabled or
31 presents a likelihood of serious harm as a result of a mental or
32 chemical dependency disorder or co-occurring mental and chemical
33 dependency disorders has a right to refuse antipsychotic medication
34 unless it is determined that the failure to medicate may result in a
35 likelihood of serious harm or substantial deterioration or
36 substantially prolong the length of involuntary commitment and there is

1 no less intrusive course of treatment than medication in the best
2 interest of that person.

3 (2) The physician must attempt to obtain the informed consent of an
4 involuntary committed person prior to administration of antipsychotic
5 medication and document the attempt to obtain consent in the person's
6 medical record with the reasons that antipsychotic medication is
7 necessary. If the physician determines that the patient is not able to
8 provide informed consent, the physician may obtain informed consent
9 from a person who is named as an agent in the patient's mental health
10 advance directive executed pursuant to chapter 71.32 RCW, provided that
11 the agent otherwise has authority under the directive to consent to the
12 proposed medication.

13 (3) When a person is detained pursuant to section 315 of this act,
14 or detained for involuntary treatment not to exceed fourteen days
15 pursuant to section 324 of this act, the person may refuse
16 antipsychotic medications unless there is an additional concurring
17 medical opinion following an examination of the person that the
18 medications are necessary pursuant to subsection (1) of this section.
19 Medications administered under this subsection may not continue beyond
20 the hearing conducted pursuant to section 331 of this act and the
21 petitioner shall notify the court of administration of involuntary
22 medications under this subsection and provide the court with an opinion
23 regarding whether continued involuntary administration of antipsychotic
24 medication is medically necessary.

25 (4) If a person involuntarily committed pursuant to section 331(1)
26 of this act for up to ninety days, or for less restrictive alternative
27 treatment not to exceed ninety days pursuant to section 324 of this
28 act, refuses antipsychotic medications, the medications may not be
29 administered unless the person has first had a hearing by a panel
30 composed of a physician and two other persons. The two persons shall
31 be selected from among the following: A physician, advanced registered
32 nurse practitioner, psychologist, psychiatric nurse, physician's
33 assistant, and the medical director of the facility. Recognizing that
34 some facilities will not have three staff members of the required
35 expertise who are not directly involved in the person's treatment, the
36 panel shall be composed to the greatest extent possible of treatment
37 providers who are not directly involved in the person's treatment at
38 the time of the hearing.

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

11 (6) Medication ordered pursuant to a decision of the panel may only
12 be continued beyond seven days on an involuntary basis if the panel
13 conducts a second hearing on the written record and a majority of the
14 panel determines that there continues to be clear, cogent, and
15 convincing evidence demonstrating that treatment with antipsychotic
16 medications continues to be medically appropriate, that failure to
17 medicate may result in a likelihood of serious harm or substantial
18 deterioration or substantially prolong the length of involuntary
19 commitment, and that there is no less intrusive course of treatment
20 than medication in the best interest of that person.

21 (a) Following the second hearing, involuntary medication with
22 antipsychotic medication may be continued if the treating psychiatrist
23 certifies, not less than every fourteen days, that the medication
24 continues to be medically appropriate and failure to medicate may
25 result in a likelihood of serious harm or substantial deterioration or
26 substantially prolong the length of involuntary commitment, and that
27 there is no less intrusive course of treatment than medication in the
28 best interest of that person.

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

32 (7) The committed person may appeal the panel's decision to the
33 medical director within twenty-four hours excluding weekends and
34 holidays and the medical director must decide the appeal within twenty-
35 four hours of receipt.

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

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

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

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

9 (b) Not to be medicated between the delivery of the notice and the
10 hearing;

11 (c) To attend the hearing;

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

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

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

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

18 (11) Antipsychotic medications may be administered in an emergency
19 without the consent of the person pursuant to section 361 of this act.

20 NEW SECTION. **Sec. 361.** (1) A court of competent jurisdiction may
21 order that a person involuntarily detained, or committed for inpatient
22 treatment and evaluation or to treatment in a less restrictive
23 alternative pursuant to this chapter be administered antipsychotic
24 medications or the performance of electroconvulsant therapy or surgery
25 pursuant to the 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 treatment with antipsychotic medications is medically appropriate, that
30 failure to medicate may result in a likelihood of serious harm or
31 substantial deterioration or substantially prolong the length of
32 involuntary commitment, and that there is no less intrusive course of
33 treatment than medication or electroconvulsive therapy in the best
34 interest of the person.

35 (b) The court shall make specific findings of fact concerning: (i)
36 The existence of the likelihood of serious harm or substantial
37 deterioration or substantially prolonging the length of involuntary

1 commitment; (ii) the necessity and effectiveness of the treatment;
2 (iii) the person's desires regarding the proposed treatment; and (iv)
3 the best interests of the person.

4 (c) If the person is unable to make a rational and informed
5 decision about consenting to or refusing the proposed electroconvulsive
6 therapy, the court shall make a substituted judgment for the patient as
7 if he or she were competent to make such a determination.

8 (d) The person shall be present at any hearing on a request to
9 administer antipsychotic medication or electroconvulsant therapy filed
10 pursuant to this section. The person has the right:

11 (i) To be represented by an attorney;

12 (ii) To present evidence;

13 (iii) To cross-examine witnesses;

14 (iv) To have the rules of evidence enforced;

15 (v) To remain silent;

16 (vi) To view and copy all petitions and reports in the court file;

17 and

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

20 (e) The court may appoint a psychiatrist, psychologist within their
21 scope of practice, or physician to examine and testify on behalf of
22 such person. The court shall appoint a psychiatrist, psychologist
23 within their scope of practice, or physician designated by such person
24 or the person's counsel to testify on behalf of the person in cases
25 where an order for electroconvulsant therapy is sought.

26 (f) An order for the administration of antipsychotic medications
27 entered following a hearing conducted pursuant to this section shall be
28 effective for the period of the current involuntary treatment order,
29 and any interim period during which the person is awaiting trial or
30 hearing on a new petition for involuntary treatment or involuntary
31 medication.

32 (2) Any person detained for a period of greater than ninety days
33 pursuant to section 331 of this act, who subsequently refuses
34 antipsychotic medication, shall be entitled to the procedures set forth
35 in subsection (1) of this section.

36 (3) Antipsychotic medication may be administered to a nonconsenting
37 person detained or committed pursuant to this chapter without a court
38 order:

1 (a) Pursuant to section 360 of this act; or

2 (b) Under the following circumstances:

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

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

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

11 If antipsychotic medications are administered over a person's lack
12 of consent pursuant to (b) of this subsection, a petition for an order
13 authorizing the administration of antipsychotic medications shall be
14 filed on the next judicial day. The hearing shall be held within two
15 judicial days. If deemed necessary by the physician with
16 responsibility for the treatment of the person, administration of
17 antipsychotic medications may continue until the hearing is held.

18 (4) No court has the authority to order psychosurgery performed on
19 any person involuntarily detained, treated in a less restrictive
20 alternative course of treatment, or committed for treatment and
21 evaluation pursuant to this chapter under any circumstances.

22 (5) A petition for involuntary medication may be joined with a
23 petition for involuntary treatment.

24 **Financial Responsibility**

25 NEW SECTION. **Sec. 362.** (1)(a) In addition to the responsibility
26 provided for by RCW 43.20B.330, any person, or his or her estate, or
27 his or her spouse, or the parents of a minor person who is
28 involuntarily detained pursuant to this chapter for the purpose of
29 treatment and evaluation outside of a facility maintained and operated
30 by the department shall be responsible for the cost of such care and
31 treatment.

32 (b) In the event that a person is unable to pay for such treatment
33 or in the event payment would result in a substantial hardship upon the
34 person or his or her family, then the county of residence of such
35 person shall be responsible for such costs. If it is not possible to

1 determine the county of residence of the person, the cost shall be
2 borne by the county where the person was originally detained.

3 (c) The department shall, pursuant to chapter 34.05 RCW, adopt
4 standards as to:

5 (i) Inability to pay in whole or in part;

6 (ii) A definition of substantial hardship; and

7 (iii) Appropriate payment schedules. Such standards shall be
8 applicable to all county mental health administrative boards.

9 (d) Financial responsibility with respect to department services
10 and facilities shall continue to be as provided in RCW 43.20B.320
11 through 43.20B.360 and 43.20B.370.

12 (2) If the person has not paid or is unable to pay for treatment or
13 payment would result in a substantial hardship on the person or his or
14 her family, the program is entitled to any payment:

15 (a) Received by the person or to which he or she may be entitled
16 because of the services rendered; and

17 (b) From any public or private source available to the program
18 because of the treatment provided to the person.

19 (3) The department shall not refuse admission for diagnosis,
20 evaluation, guidance, or treatment to any applicant because it is
21 determined that the applicant is financially unable to contribute fully
22 or in part to the cost of any services.

23 (4)(a) The department may limit admissions of such applicants or
24 modify its programs in order to ensure that expenditures for services
25 or programs do not exceed amounts appropriated by the legislature and
26 are allocated by the department for such services or programs. The
27 department may establish admission priorities in the event that the
28 number of eligible applicants exceeds the limits set by the department.

29 (b) The department is authorized to allocate appropriated funds in
30 the manner that it determines best meets the purposes of this chapter.
31 Nothing in this chapter shall be construed to entitle any person to
32 services authorized in this chapter, or to require the department or
33 its contractors to reallocate funds in order to ensure that services
34 are available to any eligible person upon demand.

35 **Confidentiality**

1 NEW SECTION. **Sec. 363.** Except as provided in this section, RCW
2 71.05.445, 71.05.630, 70.96A.150, or pursuant to a valid release under
3 RCW 70.02.030, the fact of admission and all information and records
4 compiled, obtained, or maintained in the course of providing services
5 to either voluntary or involuntary recipients of services at public or
6 private agencies shall be confidential.

7 Information and records may be disclosed only:

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

15 (a) Employed by the facility;

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

17 (c) Who is a designated responder;

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

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

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

23 (2) When the communications regard the special needs of a patient
24 and the necessary circumstances giving rise to such needs and the
25 disclosure is made by a facility providing services to the operator of
26 a care facility in which the patient resides.

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

31 (b) A public or private agency shall release to a patient's next of
32 kin, attorney, personal representative, guardian, or conservator, if
33 any:

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

36 (ii) A statement evaluating the mental and physical condition of
37 the patient, and a statement of the probable duration of the patient's
38 confinement, if such information is requested by the next of kin,

1 attorney, personal representative, guardian, or conservator; and such
2 other information requested by the next of kin or attorney as may be
3 necessary to decide whether or not proceedings should be instituted to
4 appoint a guardian or conservator.

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

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

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

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

22 /s/"

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

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

33 (b) To a court or its designee in which a motion under chapter
34 10.77 RCW has been made for involuntary medication of a defendant for
35 the purpose of competency restoration.

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

3 (7)(a) When a designated responder is requested by a representative
4 of a law enforcement agency, including a police officer, sheriff, a
5 municipal attorney, or prosecuting attorney to undertake an
6 investigation under section 315 of this act, the designated responder
7 shall, if requested to do so, advise the representative in writing of
8 the results of the investigation including a statement of reasons for
9 the decision to detain or release the person investigated. Such
10 written report shall be submitted within seventy-two hours of the
11 completion of the investigation or the request from the law enforcement
12 representative, whichever occurs later.

13 (b) To law enforcement officers, public health officers, or
14 personnel of the department of corrections or the indeterminate
15 sentence review board for persons who are the subject of the records
16 and who are committed to the custody or supervision of the department
17 of corrections or indeterminate sentence review board which information
18 or records are necessary to carry out the responsibilities of their
19 office. Except for dissemination of information released pursuant to
20 section 345 of this act and RCW 4.24.550, regarding persons committed
21 under this chapter under sections 327(3) and 331(2)(c) of this act
22 after dismissal of a sex offense as defined in RCW 9.94A.030, the
23 extent of information that may be released is limited as follows:

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

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

31 (iii) Additional information shall be disclosed only after giving
32 notice to said person and his or her counsel and upon a showing of
33 clear, cogent, and convincing evidence that such information is
34 necessary and that appropriate safeguards for strict confidentiality
35 are and will be maintained. However, in the event the said person has
36 escaped from custody, said notice prior to disclosure is not necessary
37 and the facility from which the person escaped shall include an

1 evaluation as to whether the person is of danger to persons or property
2 and has a propensity toward violence;

3 (iv) Information and records shall be disclosed to the department
4 of corrections pursuant to and in compliance with the provisions of RCW
5 71.05.445 for the purposes of completing presentence investigations or
6 risk assessment reports, supervision of an incarcerated offender or
7 offender under supervision in the community, planning for and provision
8 of supervision of an offender, or assessment of an offender's risk to
9 the community; and

10 (v) Disclosure under this subsection is mandatory for the purposes
11 of the health insurance portability and accountability act.

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

13 (9) To the prosecuting attorney as necessary to carry out the
14 responsibilities of the office under sections 335, 336(1)(b), and
15 344(2) of this act. The prosecutor shall be provided access to records
16 regarding the committed person's treatment and prognosis, medication,
17 behavior problems, and other records relevant to the issue of whether
18 treatment less restrictive than inpatient treatment is in the best
19 interest of the committed person or others. Information shall be
20 disclosed only after giving notice to the committed person and the
21 person's counsel.

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

35 (11) To appropriate corrections and law enforcement agencies all
36 necessary and relevant information in the event of a crisis or emergent
37 situation that poses a significant and imminent risk to the public.

1 The decision to disclose or not shall not result in civil liability for
2 the mental health service provider or its employees so long as the
3 decision was reached in good faith and without gross negligence.

4 (12) To the persons designated in section 345 of this act for the
5 purposes described in that section.

6 (13) Civil liability and immunity for the release of information
7 about a particular person who is committed to the department under
8 sections 327(3) and 331(2)(c) of this act after dismissal of a sex
9 offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

10 (14) Upon the death of a patient, his or her parent if the patient
11 is a minor, his or her next of kin, personal representative, guardian,
12 or conservator, if any, shall be notified.

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

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

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

29 (17) Except as otherwise provided in this chapter, the uniform
30 health care information act, chapter 70.02 RCW, applies to all records
31 and information compiled, obtained, or maintained in the course of
32 providing services.

33 (18) When a person would otherwise be subject to the provisions of
34 this section and disclosure is necessary for the protection of the
35 person 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

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

4 (19) The fact of admission, as well as all records, files,
5 evidence, findings, or orders made, prepared, collected, or maintained
6 pursuant to this chapter shall not be admissible as evidence in any
7 legal proceeding outside this chapter without the written consent of
8 the person who was the subject of the proceeding except in a subsequent
9 criminal prosecution of a person committed pursuant to sections 327(3)
10 and 331(2)(c) of this act on charges that were dismissed pursuant to
11 chapter 10.77 RCW due to incompetency to stand trial or in a civil
12 commitment proceeding pursuant to chapter 71.09 RCW. The records and
13 files maintained in any court proceeding pursuant to this chapter shall
14 be confidential and available subsequent to such proceedings only to
15 the person who was the subject of the proceeding or his or her
16 attorney. In addition, the court may order the subsequent release or
17 use of such records or files only upon good cause shown if the court
18 finds that appropriate safeguards for strict confidentiality are and
19 will be maintained.

20 NEW SECTION. **Sec. 364.** Except as provided in section 345 of this
21 act, when any disclosure of information or records is made as
22 authorized by sections 363 through 368 of this act, or pursuant to RCW
23 71.05.390 or 70.96A.150, the physician in charge of the patient or the
24 professional person in charge of the facility shall promptly cause to
25 be entered into the patient's medical record the date and circumstances
26 under which said disclosure was made, the names and relationships to
27 the patient, if any, of the persons or agencies to whom such disclosure
28 was made, and the information disclosed.

29 NEW SECTION. **Sec. 365.** The files and records of court proceedings
30 under this chapter, chapters 71.05, 70.96A, 71.34, and 70.-- (sections
31 202 through 216 of this act) RCW shall be closed but shall be
32 accessible to any person who is the subject of a petition and to the
33 person's attorney, guardian ad litem, resource management services, or
34 service providers authorized to receive such information by resource
35 management services.

1 NEW SECTION. **Sec. 366.** (1) Except as otherwise provided by law,
2 all treatment records shall remain confidential and may be released
3 only to the persons designated in this section, or to other persons
4 designated in an informed written consent of the patient.

5 (2) Treatment records of a person may be released without informed
6 written consent in the following circumstances:

7 (a) To a person, organization, or agency as necessary for
8 management or financial audits, or program monitoring and evaluation.
9 Information obtained under this subsection shall remain confidential
10 and may not be used in a manner that discloses the name or other
11 identifying information about the person whose records are being
12 released.

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

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

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

19 (e) To qualified staff members of the department, to the director
20 of regional support networks, to resource management services
21 responsible for serving a patient, or to service providers designated
22 by resource management services as necessary to determine the progress
23 and adequacy of treatment and to determine whether the person should be
24 transferred to a less restrictive or more appropriate treatment
25 modality or facility. The information shall remain confidential.

26 (f) Within the treatment facility where the patient is receiving
27 treatment, confidential information may be disclosed to persons
28 employed, serving in bona fide training programs, or participating in
29 supervised volunteer programs, at the facility when it is necessary to
30 perform their duties.

31 (g) Within the department as necessary to coordinate treatment for
32 mental illness, developmental disabilities, alcoholism, or drug abuse
33 of persons who are under the supervision of the department.

34 (h) To a licensed physician who has determined that the life or
35 health of the person is in danger and that treatment without the
36 information contained in the treatment records could be injurious to
37 the patient's health. Disclosure shall be limited to the portions of
38 the records necessary to meet the medical emergency.

1 (i) To a facility that is to receive a person who is involuntarily
2 committed under this chapter or upon transfer of the person from one
3 treatment facility to another. The release of records under this
4 subsection shall be limited to the treatment records required by law,
5 a record or summary of all somatic treatments, and a discharge summary.
6 The discharge summary may include a statement of the patient's problem,
7 the treatment goals, the type of treatment which has been provided, and
8 recommendation for future treatment, but may not include the patient's
9 complete treatment record.

10 (j) Notwithstanding the provisions of section 363(7) of this act,
11 to a correctional facility or a corrections officer who is responsible
12 for the supervision of a person who is receiving inpatient or
13 outpatient evaluation or treatment. Except as provided in RCW
14 71.05.445 and 71.34.225, release of records under this section is
15 limited to:

16 (i) An evaluation report provided pursuant to a written supervision
17 plan.

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

21 (iii) When a person is returned from a treatment facility to a
22 correctional facility, the information provided under (j)(iv) of this
23 subsection.

24 (iv) Any information necessary to establish or implement changes in
25 the person's treatment plan or the level or kind of supervision as
26 determined by resource management services. In cases involving a
27 person transferred back to a correctional facility, disclosure shall be
28 made to clinical staff only.

29 (k) To the person's counsel or guardian ad litem, without
30 modification, at any time in order to prepare for involuntary
31 commitment or recommitment proceedings, reexaminations, appeals, or
32 other actions relating to detention, admission, commitment, or
33 patient's rights under chapter 71.05 RCW.

34 (l) To staff members of the protection and advocacy agency or to
35 staff members of a private, nonprofit corporation for the purpose of
36 protecting and advocating the rights of persons with mental or chemical
37 dependency disorders, or both, or developmental disabilities. Resource
38 management services may limit the release of information to the name,

1 birthdate, and county of residence of the patient, information
2 regarding whether the patient was voluntarily admitted, or
3 involuntarily committed, the date and place of admission, placement, or
4 commitment, the name and address of a guardian of the patient, and the
5 date and place of the guardian's appointment. Any staff member who
6 wishes to obtain additional information shall notify the patient's
7 resource management services in writing of the request and of the
8 resource management services' right to object. The staff member shall
9 send the notice by mail to the guardian's address. If the guardian
10 does not object in writing within fifteen days after the notice is
11 mailed, the staff member may obtain the additional information. If the
12 guardian objects in writing within fifteen days after the notice is
13 mailed, the staff member may not obtain the additional information.

14 (3) Whenever federal law or federal regulations restrict the
15 release of information contained in the treatment records of any
16 patient who receives treatment for chemical dependency, the department
17 may restrict the release of the information as necessary to comply with
18 federal law and regulations.

19 NEW SECTION. **Sec. 367.** (1) Procedures shall be established by
20 resource management services to provide reasonable and timely access to
21 individual treatment records. However, access may not be denied at any
22 time to records of all medications and somatic treatments received by
23 the person.

24 (2) Following discharge, the person shall have a right to a
25 complete record of all medications and somatic treatments prescribed
26 during evaluation, admission, or commitment and to a copy of the
27 discharge summary prepared at the time of his or her discharge. A
28 reasonable and uniform charge for reproduction may be assessed.

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

34 (4) At the time of discharge all persons shall be informed by
35 resource management services of their rights as provided in sections
36 363 through 368 of this act.

1 NEW SECTION. **Sec. 368.** Nothing in this chapter, chapter 70.96A,
2 71.05, 71.34, or 70.-- (sections 202 through 216 of this act) RCW shall
3 be construed to interfere with communications between physicians or
4 psychologists and patients and attorneys and clients.

5 **Liability**

6 NEW SECTION. **Sec. 369.** (1) Neither the state nor any officer of
7 a public or private agency; superintendent, professional person in
8 charge or his or her professional designee, or attending staff of any
9 such agency; public official performing functions necessary to the
10 administration of this chapter; peace officer; designated responder; a
11 unit of local government; or certified facility shall be civilly or
12 criminally liable for performing duties pursuant to this chapter with
13 regard to the decision of whether to admit, discharge, release,
14 administer antipsychotic medications, or detain a person for evaluation
15 and treatment: PROVIDED, That such duties were performed in good faith
16 and without gross negligence.

17 (2) This section does not relieve a person from giving the required
18 notices under this chapter or chapter 70.96A, 71.05, 71.34, or 70.--
19 (sections 202 through 216 of this act), or the duty to warn or to take
20 reasonable precautions to provide protection from violent behavior
21 where the patient has communicated an actual threat of physical
22 violence against a reasonably identifiable victim or victims. The duty
23 to warn or to take reasonable precautions to provide protection from
24 violent behavior is discharged if reasonable efforts are made to
25 communicate the threat to the victim or victims and to law enforcement
26 personnel.

27 NEW SECTION. **Sec. 370.** Except as provided in RCW 4.24.550, any
28 person may bring an action against a person who has willfully released
29 confidential information or records concerning him or her in violation
30 of the provisions of this chapter, for the greater of the following
31 amounts:

- 32 (1) One thousand dollars; or
- 33 (2) Three times the amount of actual damages sustained, if any. It
34 shall not be a prerequisite to recovery under this section that the

1 plaintiff shall have suffered or be threatened with special, as
2 contrasted with general, damages.

3 Any person may bring an action to enjoin the release of
4 confidential information or records concerning him or her or his or her
5 ward, in violation of the provisions of this chapter, and may in the
6 same action seek damages as provided in this section.

7 The court may award to the plaintiff, should he or she prevail in
8 an action authorized by this section, reasonable attorney fees in
9 addition to those otherwise provided by law.

10 NEW SECTION. **Sec. 371.** Any person making or filing an application
11 alleging that a person should be involuntarily detained, certified,
12 committed, treated, or evaluated pursuant to this chapter shall not be
13 rendered civilly or criminally liable where the making and filing of
14 such application was in good faith.

15 NEW SECTION. **Sec. 372.** Any person who knowingly, willfully, or
16 through gross negligence violates the provisions of this chapter by
17 detaining a person for more than the allowable number of days shall be
18 liable to the person detained in civil damages. It shall not be a
19 prerequisite to an action under this section that the plaintiff shall
20 have suffered or be threatened with special, as contrasted with general
21 damages.

22 NEW SECTION. **Sec. 373.** Any person who requests or obtains
23 confidential information pursuant to sections 363 through 368 of this
24 act under false pretenses shall be guilty of a gross misdemeanor.

25 NEW SECTION. **Sec. 374.** The provisions of RCW 71.05.025,
26 71.05.530, and 71.05.550 apply to this chapter.

27 **PART IV**
28 **TREATMENT GAP**

29 NEW SECTION. **Sec. 401.** A new section is added to chapter 70.96A
30 RCW to read as follows:

31 (1) The division of alcohol and substance abuse shall increase its

1 capacity to serve adults who meet chemical dependency treatment
2 criteria and who are enrolled in medicaid as follows:

3 (a) In fiscal year 2006, the division of alcohol and substance
4 abuse shall serve forty percent of the calculated need; and

5 (b) In fiscal year 2007, the division of alcohol and substance
6 abuse shall serve sixty percent of the calculated need.

7 (2) The division of alcohol and substance abuse shall increase its
8 capacity to serve minors who have passed their twelfth birthday and who
9 are not yet eighteen, who are under two hundred percent of the federal
10 poverty level as follows:

11 (a) In fiscal year 2006, the division of alcohol and substance
12 abuse shall serve forty percent of the calculated need; and

13 (b) In fiscal year 2007, the division of alcohol and substance
14 abuse shall serve sixty percent of the calculated need.

15 (3) For purposes of this section, "calculated need" means the
16 percentage of the population under two hundred percent of the federal
17 poverty level in need of chemical dependency services as determined in
18 the 2003 Washington state needs assessment study.

19 NEW SECTION. **Sec. 402.** A new section is added to chapter 70.96A
20 RCW to read as follows:

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

27 (2) Treatment providers contracted to provide treatment under this
28 chapter who fail to implement the integrated comprehensive screening
29 and assessment process for chemical dependency and mental disorders by
30 July 1, 2007, are subject to contractual penalties established under
31 section 701 of this act.

32 NEW SECTION. **Sec. 403.** A new section is added to chapter 13.34
33 RCW to read as follows:

34 The department of social and health services and the department of
35 health shall develop and expand comprehensive services for drug-
36 affected and alcohol-affected mothers and infants. Subject to funds

1 appropriated for this purpose, the expansion shall be in evidence-
2 based, research-based, or consensus-based practices, as those terms are
3 defined in section 703 of this act, and shall expand capacity in
4 underserved regions of the state.

5 NEW SECTION. **Sec. 404.** A new section is added to chapter 70.96A
6 RCW to read as follows:

7 (1) The secretary shall assess the availability and cost-
8 effectiveness of converting disused skilled nursing facilities to
9 inpatient or residential chemical dependency or mental health treatment
10 facilities.

11 (2) The assessment shall include:

12 (a) An assessment of the impact of the federal institutions of
13 mental disease exclusion for purposes of medicaid eligibility;

14 (b) The viability and cost-effectiveness of contracting with
15 private, nonprofit entities to operate state-owned facilities and the
16 difference in rates that would engender;

17 (c) The viability and cost-effectiveness of leasing state-owned
18 facilities at market rate to private, nonprofit entities;

19 (d) The estimated time to operation for these facilities.

20 (3) The department shall provide the appropriate committees of the
21 legislature with this assessment, not later than September 1, 2005.

22 (4) To the extent that the assessment demonstrates that conversion
23 of disused skilled nursing facilities is consistent with the purposes
24 of this section and capital funds are appropriated for this purpose,
25 the secretary may acquire and convert such facilities and enter
26 contracts with private, nonprofit entities to operate them, provided
27 that rates are set in such a manner that no private, nonprofit entity
28 receives an effectively higher rate than a comparable vendor that
29 leases or owns its own facility.

30 NEW SECTION. **Sec. 405.** A new section is added to chapter 70.96A
31 RCW to read as follows:

32 A petition for commitment under this chapter may be joined with a
33 petition for commitment under chapter 71.05 RCW.

34 NEW SECTION. **Sec. 406.** A new section is added to chapter 70.96A
35 RCW to read as follows:

1 (1) The department of social and health services shall contract for
2 chemical dependency specialist services at each division of children
3 and family services office to enhance the timeliness and quality of
4 child protective services assessments and to better connect families to
5 needed treatment services.

6 (2) The chemical dependency specialist's duties may include, but
7 are not limited to: Conducting on-site chemical dependency screening
8 and assessment, facilitating progress reports to department social
9 workers, in-service training of department social workers and staff on
10 substance abuse issues, referring clients from the department to
11 treatment providers, and providing consultation on cases to department
12 social workers.

13 (3) The department of social and health services shall provide
14 training in and ensure that each case-carrying social worker is trained
15 in uniform screening for mental health and chemical dependency.

16 **PART V**
17 **RESOURCES**

18 NEW SECTION. **Sec. 501.** Sections 502 through 525 of this act
19 constitute a new chapter in Title 70 RCW.

20 NEW SECTION. **Sec. 502.** The legislature finds that there are
21 persons with mental disorders, including organic or traumatic brain
22 disorders, and combinations of mental disorders with other medical
23 conditions or behavior histories that result in behavioral and security
24 issues that make these persons ineligible for, or unsuccessful in,
25 existing types of licensed facilities, including adult residential
26 rehabilitation centers, boarding homes, adult family homes, group
27 homes, and skilled nursing facilities. The legislature also finds that
28 many of these persons have been treated on repeated occasions in
29 inappropriate acute care facilities and released without an appropriate
30 placement or have been treated or detained for extended periods in
31 inappropriate settings including state hospitals and correctional
32 facilities. The legislature further finds that some of these persons
33 present complex safety and treatment issues that require security
34 measures that cannot be instituted under most facility licenses or

1 supported housing programs. These include the ability to detain
2 persons under involuntary treatment orders or administer court ordered
3 medications.

4 Consequently, the legislature intends to establish a new type of
5 facility licensed by the department of social and health services as an
6 enhanced services facility with standards that will provide a safe,
7 secure treatment environment for a limited population of persons who
8 are not appropriately served in other facilities or programs.

9 NEW SECTION. **Sec. 503.** The definitions in this section apply
10 throughout this chapter unless the context clearly requires otherwise.

11 (1) "Antipsychotic medications" means that class of drugs primarily
12 used to treat serious manifestations of mental illness associated with
13 thought disorders, which includes but is not limited to atypical
14 antipsychotic medications.

15 (2) "Attending staff" means any person on the staff of a public or
16 private agency having responsibility for the care and treatment of a
17 patient.

18 (3) "Chemical dependency" means alcoholism, drug addiction, or
19 dependence on alcohol and one or more other psychoactive chemicals, as
20 the context requires and as those terms are defined in chapter 70.96A
21 RCW.

22 (4) "Chemical dependency professional" means a person certified as
23 a chemical dependency professional by the department of health under
24 chapter 18.205 RCW.

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

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

30 (7) "Custody" means involuntary detention under chapter 71.05,
31 70.96A, or 70.-- (sections 302 through 374 of this act) RCW,
32 uninterrupted by any period of unconditional release from commitment
33 from a facility providing involuntary care and treatment.

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

36 (9) "Designated responder" means a county designated mental health
37 professional, a designated chemical dependency specialist, or a

1 designated crisis responder as those terms are defined in chapter
2 70.96A, 71.05, 70.-- (sections 202 through 216 of this act), or 70.--
3 (sections 302 through 374 of this act) RCW.

4 (10) "Detention" or "detain" means the lawful confinement of an
5 individual under chapter 70.96A, 71.05, or 70.-- (sections 302 through
6 374 of this act) RCW.

7 (11) "Discharge" means the termination of facility authority. The
8 commitment may remain in place, be terminated, or be amended by court
9 order.

10 (12) "Enhanced services facility" means a facility that provides
11 treatment and services to persons for whom acute inpatient treatment is
12 not medically necessary and who have been determined by the department
13 to be inappropriate for placement in other licensed facilities due to
14 the complex needs that result in behavioral and security issues.

15 (13) "Expanded community services program" means a nonsecure
16 program of enhanced behavioral and residential support provided to
17 long-term and residential care providers serving specifically eligible
18 clients who would otherwise be at risk for hospitalization at state
19 hospital geriatric units.

20 (14) "Facility" means an enhanced services facility.

21 (15) "Gravely disabled" means a condition in which an individual,
22 as a result of a mental disorder, as a result of the use of alcohol or
23 other psychoactive chemicals, or both:

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

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

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

36 (17) "Licensed physician" means a person licensed to practice
37 medicine or osteopathic medicine and surgery in the state of
38 Washington.

1 (18) "Likelihood of serious harm" means:
2 (a) A substantial risk that:
3 (i) Physical harm will be inflicted by an individual upon his or
4 her own person, as evidenced by threats or attempts to commit suicide
5 or inflict physical harm on oneself;
6 (ii) Physical harm will be inflicted by an individual upon another,
7 as evidenced by behavior that has caused such harm or that places
8 another person or persons in reasonable fear of sustaining such harm;
9 or
10 (iii) Physical harm will be inflicted by an individual upon the
11 property of others, as evidenced by behavior that has caused
12 substantial loss or damage to the property of others; or
13 (b) The individual has threatened the physical safety of another
14 and has a history of one or more violent acts.
15 (19) "Mental disorder" means any organic, mental, or emotional
16 impairment that has substantial adverse effects on an individual's
17 cognitive or volitional functions.
18 (20) "Mental health professional" means a psychiatrist,
19 psychologist, psychiatric nurse, or social worker, and such other
20 mental health professionals as may be defined by rules adopted by the
21 secretary under the authority of chapter 71.05 RCW.
22 (21) "Professional person" means a mental health professional and
23 also means a physician, registered nurse, and such others as may be
24 defined in rules adopted by the secretary pursuant to the provisions of
25 this chapter.
26 (22) "Psychiatric nurse" means:
27 (a) A registered nurse who has a bachelor's degree from an
28 accredited college or university and who has had, in addition, at least
29 two years of experience in the direct treatment of mentally ill or
30 emotionally disturbed persons under the supervision of a mental health
31 professional; or
32 (b) Any other registered nurse who has three years of such
33 experience.
34 (23) "Psychiatrist" means a person having a license as a physician
35 and surgeon in this state who has in addition completed three years of
36 graduate training in psychiatry in a program approved by the American
37 medical association or the American osteopathic association and is

1 certified or eligible to be certified by the American board of
2 psychiatry and neurology.

3 (24) "Psychologist" means a person who has been licensed as a
4 psychologist under chapter 18.83 RCW.

5 (25) "Registration records" include all the records of the
6 department, regional support networks, treatment facilities, and other
7 persons providing services to the department, county departments, or
8 facilities which identify individuals who are receiving or who at any
9 time have received services for mental illness.

10 (26) "Release" means legal termination of the commitment under
11 chapter 70.96A, 71.05, or 70.-- (sections 302 through 374 of this act)
12 RCW.

13 (27) "Resident" means a person admitted to an enhanced services
14 facility.

15 (28) "Secretary" means the secretary of the department or the
16 secretary's designee.

17 (29) "Significant change" means:

18 (a) A deterioration in a resident's physical, mental, or
19 psychosocial condition that has caused or is likely to cause clinical
20 complications or life-threatening conditions; or

21 (b) An improvement in the resident's physical, mental, or
22 psychosocial condition that may make the resident eligible for release
23 or for treatment in a less intensive or less secure setting.

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

27 (31) "Treatment" means the broad range of emergency,
28 detoxification, residential, inpatient, and outpatient services and
29 care, including diagnostic evaluation, mental health or chemical
30 dependency education and counseling, medical, psychiatric,
31 psychological, and social service care, vocational rehabilitation, and
32 career counseling, which may be extended to persons with mental
33 disorders, chemical dependency disorders, or both, and their families.

34 (32) "Treatment records" include registration and all other records
35 concerning individuals who are receiving or who at any time have
36 received services for mental illness, which are maintained by the
37 department, by regional support networks and their staffs, and by
38 treatment facilities. "Treatment records" do not include notes or

1 records maintained for personal use by an individual providing
2 treatment services for the department, regional support networks, or a
3 treatment facility if the notes or records are not available to others.

4 (33) "Violent act" means behavior that resulted in homicide,
5 attempted suicide, nonfatal injuries, or substantial damage to
6 property.

7 NEW SECTION. **Sec. 504.** A facility shall honor a mental health
8 advance directive that was validly executed pursuant to chapter 71.32
9 RCW.

10 NEW SECTION. **Sec. 505.** (1) A person who is eligible for admission
11 to or residence in an adult residential rehabilitation center, a
12 boarding home, a group home, a skilled nursing facility, or a supported
13 housing program, including an expanded community services program or a
14 program for assertive community treatment is not eligible for residence
15 in an enhanced services facility unless his or her treatment needs
16 cannot adequately be addressed in the other facility or facilities for
17 which he or she is eligible.

18 (2) A person, eighteen years old or older, may be admitted to an
19 enhanced services facility if he or she meets the criteria in (a)
20 through (c) of this subsection:

21 (a) The person requires: (i) Daily care by or under the
22 supervision of a mental health professional, chemical dependency
23 professional, or nurse; or (ii) assistance with three or more
24 activities of daily living; and

25 (b) The person has: (i) A mental disorder, chemical dependency
26 disorder, or both; (ii) an organic or traumatic brain injury; or (iii)
27 a cognitive impairment that results in symptoms or behaviors requiring
28 supervision and facility services;

29 (c) The person has two or more of the following:

30 (i) Self-endangering behaviors that are frequent or difficult to
31 manage;

32 (ii) Aggressive, threatening, or assaultive behaviors that create
33 a risk to the health or safety of other residents or staff, or a
34 significant risk to property and these behaviors are frequent or
35 difficult to manage;

36 (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)(a) 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 (b) The department may contract for services for the operation of
17 enhanced services facilities only to the extent that funds are
18 specifically provided for that purpose.

19 (2) The facility shall provide an appropriate level of security for
20 the characteristics, behaviors, and legal status of the residents.

21 (3) An enhanced services facility may hold only one license but, to
22 the extent permitted under state and federal law and medicaid
23 requirements, a facility may be located in the same building as another
24 licensed facility, provided that:

25 (a) The enhanced services facility is in a location that is totally
26 separate and discrete from the other licensed facility; and

27 (b) The two facilities maintain separate staffing, unless an
28 exception to this is permitted by the department in rule.

29 (4) Enhanced services facilities must meet all applicable state and
30 local rules, regulations, permits, and code requirements. The
31 secretary may, by rule, establish a list of currently licensed
32 facilities that are deemed to meet the requirements of this subsection
33 by virtue of their existing license.

34 NEW SECTION. **Sec. 509.** (1) The enhanced services facility shall
35 complete a comprehensive assessment for each resident within fourteen

1 days of admission, and the assessments shall be repeated upon a
2 significant change in the resident's condition or, at a minimum, every
3 one hundred eighty days if there is no significant change in condition.

4 (2) The enhanced services facility shall develop an individualized
5 treatment plan for each resident based on the comprehensive assessment
6 and any other information in the person's record. The plan shall be
7 updated as necessary and shall include a plan for appropriate transfer
8 or discharge. Where the person is under the supervision of the
9 department of corrections, the facility shall collaborate with the
10 department of corrections to maximize treatment outcomes and reduce the
11 likelihood of reoffense.

12 (3) The plan shall maximize the opportunities for independence,
13 recovery, employment, the resident's participation in treatment
14 decisions, and collaboration with peer-supported services, and provide
15 for care and treatment in the least restrictive manner appropriate to
16 the individual resident, and, where relevant, to any court orders with
17 which the resident must comply.

18 NEW SECTION. **Sec. 510.** (1) An enhanced services facility must
19 have sufficient numbers of staff with the appropriate credentials and
20 training to provide residents with the appropriate care and treatment:

- 21 (a) Mental health and chemical dependency treatment;
- 22 (b) Medication services;
- 23 (c) Assistance with the activities of daily living;
- 24 (d) Medical or habilitative treatment;
- 25 (e) Dietary services; and
- 26 (f) Security.

27 (2) Where an enhanced services facility specializes in medically
28 fragile persons with mental disorders, the on-site staff must include
29 at least one licensed nurse twenty-four hours per day. The nurse must
30 be a registered nurse for at least sixteen hours per day. If the nurse
31 is not a registered nurse, a registered nurse or a doctor must be on-
32 call during the remaining eight hours.

33 NEW SECTION. **Sec. 511.** This chapter does not apply to the
34 following residential facilities:

- 35 (1) Nursing homes licensed under chapter 18.51 RCW;
- 36 (2) Boarding homes licensed under chapter 18.20 RCW;

- 1 (3) Adult family homes licensed under chapter 70.128 RCW;
- 2 (4) Facilities approved and certified under chapter 71A.22 RCW;
- 3 (5) Residential treatment facilities licensed under chapter 71.12
- 4 RCW; and
- 5 (6) Hospitals licensed under chapter 70.41 RCW.

6 NEW SECTION. **Sec. 512.** (1) The department shall establish
7 licensing provisions for enhanced services facilities to serve the
8 populations defined in this chapter.

9 (2) No person or public or private agency may operate or maintain
10 an enhanced services facility without a license, which must be renewed
11 annually.

12 (3) A licensee shall have the following readily accessible and
13 available for review by the department, residents, families of
14 residents, and the public:

15 (a) Its license to operate and a copy of the department's most
16 recent inspection report and any recent complaint investigation reports
17 issued by the department;

18 (b) Its written policies and procedures for all treatment, care,
19 and services provided directly or indirectly by the facility; and

20 (c) The department's toll-free complaint number, which shall also
21 be posted in a clearly visible place and manner.

22 (4) No facility shall discriminate or retaliate in any manner
23 against a resident or employee because the resident, employee, or any
24 other person made a complaint or provided information to the
25 department, the long-term care ombudsman, or a mental health ombuds
26 person.

27 NEW SECTION. **Sec. 513.** (1) In any case in which the department
28 finds that a licensee of a facility, or any partner, officer, director,
29 owner of five percent or more of the assets of the facility, or
30 managing employee failed or refused to comply with the requirements of
31 this chapter or the rules established under them, the department may
32 take any or all of the following actions:

- 33 (a) Suspend, revoke, or refuse to issue or renew a license;
- 34 (b) Order stop placement; or
- 35 (c) Assess civil monetary penalties.

1 (2) The department may suspend, revoke, or refuse to renew a
2 license, assess civil monetary penalties, or both, in any case in which
3 it finds that the licensee of a facility, or any partner, officer,
4 director, owner of five percent or more of the assets of the facility,
5 or managing employee:

6 (a) Operated a facility without a license or under a revoked or
7 suspended license;

8 (b) Knowingly or with reason to know made a false statement of a
9 material fact in the license application or any data attached thereto,
10 or in any matter under investigation by the department;

11 (c) Refused to allow representatives or agents of the department to
12 inspect all books, records, and files required to be maintained or any
13 portion of the premises of the facility;

14 (d) Willfully prevented, interfered with, or attempted to impede in
15 any way the work of any duly authorized representative of the
16 department and the lawful enforcement of any provision of this chapter;

17 (e) Willfully prevented or interfered with any representative of
18 the department in the preservation of evidence of any violation of any
19 of the provisions of this chapter or of the rules adopted under it; or

20 (f) Failed to pay any civil monetary penalty assessed by the
21 department under this chapter within ten days after the assessment
22 becomes final.

23 (3)(a) Civil penalties collected under this chapter shall be
24 deposited into a special fund administered by the department.

25 (b) Civil monetary penalties, if imposed, may be assessed and
26 collected, with interest, for each day the facility is or was out of
27 compliance. Civil monetary penalties shall not exceed three thousand
28 dollars per day. Each day upon which the same or a substantially
29 similar action occurs is a separate violation subject to the assessment
30 of a separate penalty.

31 (4) The department, through the director of residential care
32 services, may use the civil penalty monetary fund for the protection of
33 the health or property of residents of facilities found to be deficient
34 including:

35 (a) Payment for the cost of relocation of residents to other
36 facilities;

37 (b) Payment to maintain operation of a facility pending correction
38 of deficiencies or closure; and

1 (c) Reimbursement of a resident for personal funds or property
2 loss.

3 (5)(a) The department may issue a stop placement order on a
4 facility, effective upon oral or written notice, when the department
5 determines:

6 (i) The facility no longer substantially meets the requirements of
7 this chapter; and

8 (ii) The deficiency or deficiencies in the facility:

9 (A) Jeopardizes the health and safety of the residents; or

10 (B) Seriously limits the facility's capacity to provide adequate
11 care.

12 (b) When the department has ordered a stop placement, the
13 department may approve a readmission to the facility from a hospital,
14 residential treatment facility, or crisis intervention facility when
15 the department determines the readmission would be in the best interest
16 of the individual seeking readmission.

17 (6) If the department determines that an emergency exists and
18 resident health and safety is immediately jeopardized as a result of a
19 facility's failure or refusal to comply with this chapter, the
20 department may summarily suspend the facility's license and order the
21 immediate closure of the facility, or the immediate transfer of
22 residents, or both.

23 (7) If the department determines that the health or safety of the
24 residents is immediately jeopardized as a result of a facility's
25 failure or refusal to comply with requirements of this chapter, the
26 department may appoint temporary management to:

27 (a) Oversee the operation of the facility; and

28 (b) Ensure the health and safety of the facility's residents while:

29 (i) Orderly closure of the facility occurs; or

30 (ii) The deficiencies necessitating temporary management are
31 corrected.

32 NEW SECTION. Sec. 514. (1) All orders of the department denying,
33 suspending, or revoking the license or assessing a monetary penalty
34 shall become final twenty days after the same has been served upon the
35 applicant or licensee unless a hearing is requested.

36 (2) All orders of the department imposing stop placement, temporary

1 management, emergency closure, emergency transfer, or summary license
2 suspension shall be effective immediately upon notice, pending any
3 hearing.

4 (3) Subject to the requirements of subsection (2) of this section,
5 all hearings under this chapter and judicial review of such
6 determinations shall be in accordance with the administrative procedure
7 act, chapter 34.05 RCW.

8 NEW SECTION. **Sec. 515.** Operation of a facility without a license
9 in violation of this chapter and discrimination against medicaid
10 recipients are unfair or deceptive acts in trade or commerce and an
11 unfair method of competition for the purpose of applying the consumer
12 protection act, chapter 19.86 RCW.

13 NEW SECTION. **Sec. 516.** A person operating or maintaining a
14 facility without a license under this chapter is guilty of a
15 misdemeanor and each day of a continuing violation after conviction
16 shall be considered a separate offense.

17 NEW SECTION. **Sec. 517.** Notwithstanding the existence or use of
18 any other remedy, the department may, in the manner provided by law,
19 maintain an action in the name of the state for an injunction, civil
20 penalty, or other process against a person to restrain or prevent the
21 operation or maintenance of a facility without a license issued under
22 this chapter.

23 NEW SECTION. **Sec. 518.** (1) The department shall make or cause to
24 be made at least one inspection of each facility prior to licensure and
25 an unannounced full inspection of facilities at least once every
26 eighteen months. The statewide average interval between full facility
27 inspections must be fifteen months.

28 (2) Any duly authorized officer, employee, or agent of the
29 department may enter and inspect any facility at any time to determine
30 that the facility is in compliance with this chapter and applicable
31 rules, and to enforce any provision of this chapter. Complaint
32 inspections shall be unannounced and conducted in such a manner as to
33 ensure maximum effectiveness. No advance notice shall be given of any
34 inspection unless authorized or required by federal law.

1 (3) During inspections, the facility must give the department
2 access to areas, materials, and equipment used to provide care or
3 support to residents, including resident and staff records, accounts,
4 and the physical premises, including the buildings, grounds, and
5 equipment. The department has the authority to privately interview the
6 provider, staff, residents, and other individuals familiar with
7 resident care and treatment.

8 (4) Any public employee giving advance notice of an inspection in
9 violation of this section shall be suspended from all duties without
10 pay for a period of not less than five nor more than fifteen days.

11 (5) The department shall prepare a written report describing the
12 violations found during an inspection, and shall provide a copy of the
13 inspection report to the facility.

14 (6) The facility shall develop a written plan of correction for any
15 violations identified by the department and provide a plan of
16 correction to the department within ten working days from the receipt
17 of the inspection report.

18 NEW SECTION. **Sec. 519.** The facility shall only admit individuals:

19 (1) Who are over the age of eighteen;

20 (2) Who meet the resident eligibility requirements described in
21 section 505 of this act; and

22 (3) Whose needs the facility can safely and appropriately meet
23 through qualified and trained staff, services, equipment, security, and
24 building design.

25 NEW SECTION. **Sec. 520.** If the facility does not employ a
26 qualified professional able to furnish needed services, the facility
27 must have a written contract with a qualified professional or agency
28 outside the facility to furnish the needed services.

29 NEW SECTION. **Sec. 521.** At least sixty days before the effective
30 date of any change of ownership, or change of management of a facility,
31 the current operating entity must provide written notification about
32 the proposed change separately and in writing, to the department, each
33 resident of the facility, or the resident's guardian or representative.

34 NEW SECTION. **Sec. 522.** The facility shall:

1 (1) Maintain adequate resident records to enable the provision of
2 necessary treatment, care, and services and to respond appropriately in
3 emergency situations;

4 (2) Comply with all state and federal requirements related to
5 documentation, confidentiality, and information sharing, including
6 chapters 10.77, 70.02, 70.24, 70.96A, 71.05, and 70.-- (sections 302
7 through 374 of this act) RCW; and

8 (3) Where possible, obtain signed releases of information
9 designating the department, the facility, and the department of
10 corrections where the person is under its supervision, as recipients of
11 health care information.

12 NEW SECTION. **Sec. 523.** (1) Standards for fire protection and the
13 enforcement thereof, with respect to all facilities licensed under this
14 chapter, are the responsibility of the chief of the Washington state
15 patrol, through the director of fire protection, who must adopt
16 recognized standards as applicable to facilities for the protection of
17 life against the cause and spread of fire and fire hazards. If the
18 facility to be licensed meets with the approval of the chief of the
19 Washington state patrol, through the director of fire protection, the
20 director of fire protection must submit to the department a written
21 report approving the facility with respect to fire protection before a
22 full license can be issued. The chief of the Washington state patrol,
23 through the director of fire protection, shall conduct an unannounced
24 full inspection of facilities at least once every eighteen months. The
25 statewide average interval between full facility inspections must be
26 fifteen months.

27 (2) Inspections of facilities by local authorities must be
28 consistent with the requirements adopted by the chief of the Washington
29 state patrol, through the director of fire protection. Findings of a
30 serious nature must be coordinated with the department and the chief of
31 the Washington state patrol, through the director of fire protection,
32 for determination of appropriate actions to ensure a safe environment
33 for residents. The chief of the Washington state patrol, through the
34 director of fire protection, has exclusive authority to determine
35 appropriate corrective action under this section.

1 of offenders in the program. The mental health court may adopt local
2 requirements that are more stringent than the minimum. The minimum
3 requirements are:

- 4 (i) The offender would benefit from psychiatric treatment;
- 5 (ii) The offender has not previously been convicted of a serious
6 violent offense or sex offense as defined in RCW 9.94A.030; and
- 7 (iii) Without regard to whether proof of any of these elements is
8 required to convict, the offender is not currently charged with or
9 convicted of an offense:
 - 10 (A) That is a sex offense;
 - 11 (B) That is a serious violent offense;
 - 12 (C) During which the defendant used a firearm; or
 - 13 (D) During which the defendant caused substantial or great bodily
14 harm or death to another person.

15 NEW SECTION. **Sec. 602.** A new section is added to chapter 2.28 RCW
16 to read as follows:

17 Any county that has established a drug court and a mental health
18 court under this chapter may combine the functions of both courts into
19 a single therapeutic court.

20 NEW SECTION. **Sec. 603.** A new section is added to chapter 26.12
21 RCW to read as follows:

22 (1) Every county that authorizes the tax provided in section 904 of
23 this act shall, and every county may, establish and operate a
24 therapeutic court component for dependency proceedings designed to be
25 effective for the court's size, location, and resources. A county with
26 a drug court for criminal cases or with a mental health court may
27 include a therapeutic court for dependency proceedings as a component
28 of its existing program.

29 (2) For the purposes of this section, "therapeutic court" means a
30 court that has special calendars or dockets designed for the intense
31 judicial supervision, coordination, and oversight of treatment provided
32 to parents and families who have substance abuse or mental health
33 problems and who are involved in the dependency and is designed to
34 achieve a reduction in:

- 35 (a) Child abuse and neglect;
- 36 (b) Out-of-home placement of children;

1 (c) Termination of parental rights; and

2 (d) Substance abuse or mental health symptoms among parents or
3 guardians and their children.

4 (3) To the extent possible, the therapeutic court shall provide
5 services for parents and families co-located with the court or as near
6 to the court as practicable.

7 (4) The department of social and health services shall furnish
8 services to the therapeutic court unless a court contracts with
9 providers outside of the department.

10 (5) Any jurisdiction that receives a state appropriation to fund a
11 therapeutic court must first exhaust all federal funding available for
12 the development and operation of the therapeutic court and associated
13 services.

14 (6) Moneys allocated by the state for a therapeutic court must be
15 used to supplement, not supplant, other federal, state, local, and
16 private funding for court operations and associated services under this
17 section.

18 (7) Any county that establishes a therapeutic court or receives
19 funds for an existing court under this section shall:

20 (a) Establish minimum requirements for the participation in the
21 program; and

22 (b) Develop an evaluation component of the court, including
23 tracking the success rates in graduating from treatment, reunifying
24 parents with their children, and the costs and benefits of the court.

25 **Sec. 604.** RCW 2.28.170 and 2002 c 290 s 13 are each amended to
26 read as follows:

27 (1) Counties may establish and operate drug courts.

28 (2) For the purposes of this section, "drug court" means a court
29 that has special calendars or dockets designed to achieve a reduction
30 in recidivism and substance abuse among nonviolent, substance abusing
31 felony and nonfelony offenders by increasing their likelihood for
32 successful rehabilitation through early, continuous, and intense
33 judicially supervised treatment; mandatory periodic drug testing; and
34 the use of appropriate sanctions and other rehabilitation services.

35 (3)(a) Any jurisdiction that seeks a state appropriation to fund a
36 drug court program must first:

1 (i) Exhaust all federal funding (~~received from the office of~~
2 ~~national drug control policy~~) that is available to support the
3 operations of its drug court and associated services; and

4 (ii) Match, on a dollar-for-dollar basis, state moneys allocated
5 for drug court programs with local cash or in-kind resources. Moneys
6 allocated by the state must be used to supplement, not supplant, other
7 federal, state, and local funds for drug court operations and
8 associated services.

9 (b) Any county that establishes a drug court pursuant to this
10 section shall establish minimum requirements for the participation of
11 offenders in the program. The drug court may adopt local requirements
12 that are more stringent than the minimum. The minimum requirements
13 are:

14 (i) The offender would benefit from substance abuse treatment;

15 (ii) The offender has not previously been convicted of a serious
16 violent offense or sex offense as defined in RCW 9.94A.030; and

17 (iii) Without regard to whether proof of any of these elements is
18 required to convict, the offender is not currently charged with or
19 convicted of an offense:

20 (A) That is a sex offense;

21 (B) That is a serious violent offense;

22 (C) During which the defendant used a firearm; or

23 (D) During which the defendant caused substantial or great bodily
24 harm or death to another person.

25 **Medical Benefits**

26 **Sec. 605.** RCW 74.09.010 and 1990 c 296 s 6 are each amended to
27 read as follows:

28 As used in this chapter:

29 (1) "Children's health program" means the health care services
30 program provided to children under eighteen years of age and in
31 households with incomes at or below the federal poverty level as
32 annually defined by the federal department of health and human services
33 as adjusted for family size, and who are not otherwise eligible for
34 medical assistance or the limited casualty program for the medically
35 needy.

1 (2) (~~"Committee" means the children's health services committee~~
2 ~~created in section 3 of this act.~~

3 ~~(3))~~ "Community services office" means the county or local office
4 defined in RCW 74.04.005.

5 (3) "Confined" or "confinement" means incarcerated in a
6 correctional institution or admitted to an institution for mental
7 diseases.

8 (4) "Correctional institution" means a correctional institution
9 defined in RCW 9.94.049.

10 (5) "County" means the board of county commissioners, county
11 council, county executive, or tribal jurisdiction, or its designee. A
12 combination of two or more county authorities or tribal jurisdictions
13 may enter into joint agreements to fulfill the requirements of RCW
14 74.09.415 through 74.09.435.

15 ~~((4))~~ (6) "Department" means the department of social and health
16 services.

17 ~~((5))~~ (7) "Department of health" means the Washington state
18 department of health created pursuant to RCW 43.70.020.

19 ~~((6))~~ (8) "Institution for mental diseases" has the meaning
20 defined in 42 C.F.R., part 435, Sec. 1009.

21 (9) "Internal management" means the administration of medical
22 assistance, medical care services, the children's health program, and
23 the limited casualty program.

24 ~~((7))~~ (10) "Likely to be eligible" means that a person:

25 (a) Was enrolled in medicaid or supplemental security income or
26 general assistance immediately before he or she was confined and his or
27 her enrollment was terminated during his or her confinement; or

28 (b) Was enrolled in medicaid or supplemental security income or
29 general assistance at any time during the five years before his or her
30 confinement, and medical or psychiatric examinations during the
31 person's confinement indicate that the person continues to be disabled
32 and the disability is likely to last at least twelve months following
33 release.

34 (11) "Limited casualty program" means the medical care program
35 provided to medically needy persons as defined under Title XIX of the
36 federal social security act, and to medically indigent persons who are
37 without income or resources sufficient to secure necessary medical
38 services.

1 ~~((+8))~~ (12) "Medicaid eligibility category" refers to all existing
2 eligibility categories established in the state medicaid plan,
3 including enrollment in medicaid by virtue of eligibility to receive
4 cash payments under the supplemental security income program of the
5 social security administration.

6 (13) "Medical assistance" means the federal aid medical care
7 program provided to categorically needy persons as defined under Title
8 XIX of the federal social security act.

9 ~~((+9))~~ (14) "Medical care services" means the limited scope of
10 care financed by state funds and provided to general assistance
11 recipients, and recipients of alcohol and drug addiction services
12 provided under chapter 74.50 RCW.

13 ~~((+10))~~ (15) "Nursing home" means nursing home as defined in RCW
14 18.51.010.

15 ~~((+11))~~ (16) "Parent" means a parent, guardian, or legal
16 custodian.

17 (17) "Poverty" means the federal poverty level determined annually
18 by the United States department of health and human services, or
19 successor agency.

20 ~~((+12))~~ (18) "Secretary" means the secretary of social and health
21 services.

22 NEW SECTION. Sec. 606. A new section is added to chapter 74.09
23 RCW to read as follows:

24 (1) The economic services administration shall adopt standardized
25 statewide screening and application practices and forms. These
26 practices and forms shall be implemented in every local office not
27 later than January 1, 2006.

28 (2) The forms shall be structured to facilitate completion by
29 persons with disabilities, including those with mental disorders.

30 (3) Neither the department nor any local office may exclude a
31 person from application or screen that person as ineligible for
32 medicaid based solely on a determination that the person is using or
33 addicted to alcohol or other psychoactive substances, as defined in
34 chapter 70.96A RCW.

35 (4) Neither the department nor any local office may remove a
36 confined person from an active medicaid caseload sooner than required
37 by federal law.

1 (5) Subject to available funds, the department shall provide
2 persons with assistance in preparing applications and maintaining
3 eligibility for medicaid.

4 NEW SECTION. **Sec. 607.** A new section is added to chapter 74.09
5 RCW to read as follows:

6 The secretary shall negotiate with the social security
7 administration in good faith to establish a prerelease agreement or
8 agreements under which the department will work collaboratively with
9 the social security administration, correctional institutions,
10 institutions for mental diseases, and the department of corrections to
11 ensure that applications on behalf of confined persons who are likely
12 to be eligible for supplemental security income or social security
13 disability income are accepted, whenever possible, at the earliest
14 possible date prior to release from confinement and are speedily
15 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 department and each of its community services offices shall
21 enter interlocal agreements with correctional institutions, the
22 regional support networks, the department of corrections, and
23 institutions for mental diseases to expedite medical assistance
24 eligibility determinations for persons likely to be eligible for
25 services under this chapter, upon release from confinement.

26 (2) The interlocal agreements shall establish procedures to
27 facilitate eligibility determinations, and enrollment on the day of
28 release from confinement whenever possible.

29 (3) The interlocal agreements shall define the responsibilities of
30 each party, and the procedures through which those responsibilities
31 will be fulfilled. At a minimum, the agreements shall provide that:

32 (a) If a person is likely to be eligible, as defined in this
33 chapter, the correctional institution, department of corrections, or
34 institution for mental diseases shall notify the designated community
35 services office of the person's anticipated release date at the
36 earliest practicable time prior to release from confinement. If a

1 correctional institution does not know the anticipated release date, or
2 a person is ordered to be immediately released, the correctional
3 institution shall notify the community services office at the earliest
4 opportunity;

5 (b) The community services office shall find the person
6 presumptively eligible for medical assistance under this chapter, to
7 the maximum extent allowable under federal law, and shall facilitate
8 prompt completion of a final eligibility determination;

9 (c) Where medical or psychiatric examinations during a person's
10 confinement indicate that the person is disabled, the correctional
11 institution, department of corrections, or institution for mental
12 diseases shall provide that information to the department and the
13 department shall, to the maximum extent permitted by federal law, use
14 the examination in making its determination whether the person is
15 disabled and eligible for medical assistance.

16 NEW SECTION. Sec. 609. A new section is added to chapter 71.24
17 RCW to read as follows:

18 The secretary shall require the regional support networks to
19 develop interlocal agreements pursuant to section 608 of this act. To
20 this end, the regional support networks shall accept referrals for
21 enrollment on behalf of a confined person, prior to the person's
22 release.

23 NEW SECTION. Sec. 610. A new section is added to chapter 72.09
24 RCW to read as follows:

25 The secretary shall negotiate with the department of social and
26 health services and the regional support networks to reach an agreement
27 under section 608 of this act.

28 NEW SECTION. Sec. 611. A new section is added to chapter 71.05
29 RCW to read as follows:

30 The department shall report to the appropriate committees of the
31 legislature by September 30, 2005, and annually thereafter:

32 (1) The number of agreements developed under sections 607 through
33 610 of this act;

34 (2) The number of persons with mental disorders and co-occurring

1 mental and chemical dependency disorders leaving confinement with
2 established or restored medical assistance enrollment;

3 (3) The number of persons enrolled in the regional support networks
4 upon release; and

5 (4) The number of persons denied eligibility or enrollment.

6 **Regional Jails**

7 NEW SECTION. **Sec. 612.** (1) The joint legislative audit and review
8 committee shall investigate and assess whether there are existing
9 facilities in the state that could be converted to use as a regional
10 jail for offenders who have mental or chemical dependency disorders, or
11 both, that need specialized housing and treatment arrangements.

12 (2) The joint legislative audit and review committee shall consider
13 the feasibility of using at least the following facilities or types of
14 facilities:

15 (a) Green Hill School;

16 (b) Existing or renovated facilities at the former Northern State
17 Hospital;

18 (c) Closed wards at Western State Hospital;

19 (d) Fircrest School; and

20 (e) Closed or abandoned nursing homes.

21 (3) The analysis shall include an assessment of when such
22 facilities could be available for use as a regional jail and the
23 potential costs, costs avoided, and benefits of at least the following
24 considerations:

25 (a) Any impact on existing offenders or residents;

26 (b) The conversion of the facilities;

27 (c) Infrastructure tied to the facilities;

28 (d) Whether the facility is, or can be, sized proportionately to
29 the available pool of offenders;

30 (e) Changes in criminal justice costs, including transport, access
31 to legal assistance, and access to courts;

32 (f) Reductions in jail populations; and

33 (g) Changes in treatment costs for these offenders.

34 (4) The joint legislative audit and review committee shall report
35 its findings and recommendations to the appropriate committees of the
36 legislature not later than December 15, 2005.

1 **Competency and Criminal Insanity**

2 NEW SECTION. **Sec. 613.** By January 1, 2006, the department of
3 social and health services shall:

4 (1) Reduce the waiting times for competency evaluation and
5 restoration to the maximum extent possible using funds appropriated for
6 this purpose; and

7 (2) Report to the legislature with an analysis of several
8 alternative strategies for addressing increases in forensic population
9 and minimizing waiting periods for competency evaluation and
10 restoration. The report shall discuss, at a minimum, the costs and
11 advantages of, and barriers to co-locating professional persons in
12 jails, performing restoration treatment in less restrictive
13 alternatives than the state hospitals, and the use of regional jail
14 facilities to accomplish competency evaluation and restoration.

15 **ESSB 6358 Implementation Issues**

16 **Sec. 614.** RCW 71.05.157 and 2004 c 166 s 16 are each amended to
17 read as follows:

18 (1) When a county designated mental health professional is notified
19 by a jail that a defendant or offender who was subject to a discharge
20 review under RCW 71.05.232 is to be released to the community, the
21 county designated mental health professional shall evaluate the person
22 within seventy-two hours of release.

23 (2) When an offender is under court-ordered treatment in the
24 community and the supervision of the department of corrections, and the
25 treatment provider becomes aware that the person is in violation of the
26 terms of the court order, the treatment provider shall notify the
27 county designated mental health professional and the department of
28 corrections of the violation and request an evaluation for purposes of
29 revocation of the less restrictive alternative.

30 (3) When a county designated mental health professional becomes
31 aware that an offender who is under court-ordered treatment in the
32 community and the supervision of the department of corrections is in
33 violation of a treatment order or a condition of supervision that
34 relates to public safety, or the county designated mental health
35 professional detains a person under this chapter, the county designated

1 mental health professional shall notify the person's treatment provider
2 and the department of corrections.

3 (4) When an offender who is confined in a state correctional
4 facility or is under supervision of the department of corrections in
5 the community is subject to a petition for involuntary treatment under
6 this chapter, the petitioner shall notify the department of corrections
7 and the department of corrections shall provide documentation of its
8 risk assessment or other concerns to the petitioner and the court if
9 the department of corrections classified the offender as a high risk or
10 high needs offender.

11 (5) Nothing in this section creates a duty on any treatment
12 provider or county designated mental health professional to provide
13 offender supervision.

14 NEW SECTION. **Sec. 615.** A new section is added to chapter 70.96A
15 RCW to read as follows:

16 (1) Treatment providers shall inquire of each person seeking
17 treatment, at intake, whether the person is subject to court ordered
18 mental health or chemical dependency treatment, whether civil or
19 criminal, and document the person's response in his or her record. If
20 the person is in treatment on the effective date of this section, and
21 the treatment provider has not inquired whether the person is subject
22 to court ordered mental health or chemical dependency treatment, the
23 treatment provider shall inquire on the person's next treatment session
24 and document the person's response in his or her record.

25 (2) Treatment providers shall inquire of each person seeking
26 treatment, at intake, whether the person is subject to supervision of
27 any kind by the department of corrections and document the person's
28 response in his or her record. If the person is in treatment on the
29 effective date of this section, and the treatment provider has not
30 inquired whether the person is subject to supervision of any kind by
31 the department of corrections, the treatment provider shall inquire on
32 the person's next treatment session and document the person's response
33 in his or her record.

34 (3) For all persons who are subject to both court ordered mental
35 health or chemical dependency treatment and supervision by the
36 department of corrections, the treatment provider shall request an
37 authorization to release records and notify the person that, unless

1 expressly excluded by the court order the law requires treatment
2 providers to share information with the department of corrections and
3 the person's mental health treatment provider.

4 (4) If the treatment provider has reason to believe that a person
5 is subject to supervision by the department of corrections but the
6 person's record does not indicate that he or she is, the treatment
7 provider may call any department of corrections office and provide the
8 person's name and birth date. If the person is subject to supervision,
9 the treatment provider shall request, and the department of corrections
10 shall provide, the name and contact information for the person's
11 community corrections officer.

12 PART VII

13 BEST PRACTICES AND COLLABORATION

14 NEW SECTION. **Sec. 701.** (1) The department of social and health
15 services, in consultation with the members of the team charged with
16 developing the state plan for co-occurring mental and substance abuse
17 disorders, shall adopt, not later than January 1, 2006, an integrated
18 and comprehensive screening and assessment process for chemical
19 dependency and mental disorders and co-occurring chemical dependency
20 and mental disorders.

21 (a) The process adopted shall include, at a minimum:

22 (i) An initial screening tool that can be used by intake personnel
23 system-wide and which will identify the most common types of co-
24 occurring disorders;

25 (ii) An assessment process for those cases in which assessment is
26 indicated that provides an appropriate degree of assessment for most
27 situations, which can be expanded for complex situations;

28 (iii) Identification of triggers in the screening that indicate the
29 need to begin an assessment;

30 (iv) Identification of triggers after or outside the screening that
31 indicate a need to begin or resume an assessment;

32 (v) The components of an assessment process and a protocol for
33 determining whether part or all of the assessment is necessary, and at
34 what point; and

35 (vi) Emphasis that the process adopted under this section is to

1 replace and not to duplicate existing intake, screening, and assessment
2 tools and processes.

3 (b) The department shall consider existing models, including those
4 already adopted by other states, and to the extent possible, adopt an
5 established, proven model.

6 (c) The integrated, comprehensive screening and assessment process
7 shall be implemented statewide by all chemical dependency and mental
8 health treatment providers as well as all county designated mental
9 health professionals, county designated chemical dependency
10 specialists, and county designated crisis responders not later than
11 January 1, 2007.

12 (2) The department shall provide adequate training to effect
13 statewide implementation by the dates designated in this section and
14 shall report the rates of co-occurring disorders and the stage of
15 screening or assessment at which the co-occurring disorder was
16 identified to the caseload forecast council.

17 (3) The department shall establish contractual penalties to
18 contracted treatment providers, the regional support networks, and
19 their contracted providers for failure to implement the integrated
20 screening and assessment process by July 1, 2007.

21 NEW SECTION. **Sec. 702.** The department of corrections shall, to
22 the extent that resources are available for this purpose, utilize the
23 integrated, comprehensive screening and assessment process for chemical
24 dependency and mental disorders developed under section 701 of this
25 act.

26 NEW SECTION. **Sec. 703.** A new section is added to chapter 71.02
27 RCW to read as follows:

28 (1) By June 30, 2006, the department shall develop and implement a
29 matrix or set of matrices for providing services based on the following
30 principles:

31 (a) Maximizing evidence-based practices where these practices
32 exist; where no evidence-based practice exists, the use of research-
33 based practices, including but not limited to, the adaptation of
34 evidence-based practices to new situations; where no evidence-based or
35 research-based practices exist the use of consensus-based practices;

1 and, to the extent that funds are available, the use of promising
2 practices;

3 (b) Maximizing the person's independence, recovery, and employment
4 by consideration of the person's strengths and supports in the
5 community;

6 (c) Maximizing the person's participation in treatment decisions
7 including, where possible, the person's awareness of, and technical
8 assistance in preparing, mental health advance directives; and

9 (d) Collaboration with consumer-based support programs.

10 (2) The matrix or set of matrices shall include both adults and
11 children and persons with co-occurring mental and substance abuse
12 disorders and shall build on the service intensity quadrant models that
13 have been developed in this state.

14 (3)(a) The matrix or set of matrices shall be developed in
15 collaboration with experts in evidence-based practices for mental
16 disorders, chemical dependency disorders, and co-occurring mental and
17 chemical dependency disorders at the University of Washington, and in
18 consultation with representatives of the regional support networks,
19 community mental health providers, county chemical dependency
20 coordinators, chemical dependency providers, consumers, family
21 advocates, and community inpatient providers.

22 (b) The matrix or set of matrices shall, to the extent possible,
23 adopt or utilize materials already prepared by the department or by
24 other states.

25 (4)(a) The department shall require, by contract with the regional
26 support networks, that providers maximize the use of evidence-based,
27 research-based, and consensus-based practices and document the
28 percentage of clients enrolled in evidence-based, research-based, and
29 consensus-based programs by program type.

30 (b) The department shall establish a schedule by which regional
31 support networks and providers must adopt the matrix or set of matrices
32 and a schedule of penalties for failure to adopt and implement the
33 matrices. The department may act against the regional support networks
34 or providers or both to enforce the provisions of this section and
35 shall provide the appropriate committees of the legislature with the
36 schedules adopted under this subsection by June 30, 2006.

37 (5) The following definitions apply to this section:

1 (a) "Evidence-based" means a program or practice that has had
2 multiple site random controlled trials across heterogeneous populations
3 demonstrating that the program or practice is effective for the
4 population.

5 (b) "Research-based" means a program or practice that has some
6 research demonstrating effectiveness, but that does not yet meet the
7 standard of evidence-based practices.

8 (c) "Consensus-based" means a program or practice that has general
9 support among treatment providers and experts, based on experience or
10 professional literature, and may have anecdotal or case study support,
11 or that is agreed but not possible to perform studies with random
12 assignment and controlled groups.

13 (d) "Promising practice" means a practice that presents, based on
14 preliminary information, potential for becoming a research-based or
15 consensus-based practice.

16 NEW SECTION. **Sec. 704.** A new section is added to chapter 71.02
17 RCW to read as follows:

18 (1) The department of social and health services shall collaborate
19 with community providers of mental health services, early learning and
20 child care providers, child serving agencies, and child-placing
21 agencies to identify and utilize federal, state, and local services and
22 providers for children in out-of-home care and other populations of
23 vulnerable children who are in need of an evaluation and treatment for
24 mental health services and do not qualify for medicaid or treatment
25 services through the regional support networks.

26 (2) If no appropriate mental health services are available through
27 federal, state, or local services and providers for a child described
28 in subsection (1) of this section, the regional support network must
29 provide a child, at a minimum, with a mental health evaluation
30 consistent with chapter 71.24 RCW.

31 (3) The department, in collaboration with the office of the
32 superintendent of public instruction, local providers, local school
33 districts, and the regional support networks, shall identify and review
34 existing programs and services as well as the unmet need for programs
35 and services serving birth to five and school-aged children who exhibit
36 early signs of behavioral or mental health disorders and who are not
37 otherwise eligible for services through the regional support networks.

1 The review of programs and services shall include, but not be limited
2 to, the utilization and effectiveness of early intervention or
3 prevention services and the primary intervention programs.

4 The department of social and health services shall provide a
5 briefing on the collaboration's findings and recommendations to the
6 appropriate committee of the legislature by December 31, 2005.

7 NEW SECTION. **Sec. 705.** The Washington state institute for public
8 policy shall assess the long-term and intergenerational cost-
9 effectiveness of investing in the treatment of chemical dependency
10 disorders, mental disorders, and co-occurring mental and substance
11 abuse disorders. The assessment shall use, to the extent possible,
12 existing governmental data bases and research and determine the net
13 present value of costs avoided or minimized. These costs include, but
14 are not limited to, primary care, jail or prison, competency
15 evaluations and restorations, child protective services interventions,
16 dependencies, foster care, emergency service interventions, and
17 prosecutorial, defense, and court costs. If possible, the institute
18 shall indicate whether prevention and early intervention programs
19 differ from acute and chronic treatment programs in long-term cost-
20 effectiveness.

21 **PART VIII**

22 **REPEALERS AND CROSS-REFERENCE CORRECTIONS**

23 NEW SECTION. **Sec. 801.** The following acts or parts of acts are
24 each repealed on the effective date of section 107 of this act:

25 (1) RCW 71.05.060 (Rights of persons complained against) and 1973
26 1st ex.s. c 142 s 11;

27 (2) RCW 71.05.070 (Prayer treatment) and 1973 1st ex.s. c 142 s 12;

28 (3) RCW 71.05.090 (Choice of physicians) and 1973 2nd ex.s. c 24 s
29 3 & 1973 1st ex.s. c 142 s 14;

30 (4) RCW 71.05.200 (Notice and statement of rights--Probable cause
31 hearing) and 1998 c 297 s 11, 1997 c 112 s 14, 1989 c 120 s 5, 1974
32 ex.s. c 145 s 13, & 1973 1st ex.s. c 142 s 25;

33 (5) RCW 71.05.250 (Probable cause hearing--Detained person's
34 rights--Waiver of privilege--Limitation--Records as evidence) and 1989

1 c 120 s 7, 1987 c 439 s 6, 1974 ex.s. c 145 s 17, & 1973 1st ex.s. c
2 142 s 30;

3 (6) RCW 71.05.450 (Competency--Effect--Statement of Washington law)
4 and 1994 sp.s. c 7 s 440 & 1973 1st ex.s. c 142 s 50;

5 (7) RCW 71.05.460 (Right to counsel) and 1997 c 112 s 33 & 1973 1st
6 ex.s. c 142 s 51;

7 (8) RCW 71.05.470 (Right to examination) and 1997 c 112 s 34 & 1973
8 1st ex.s. c 142 s 52;

9 (9) RCW 71.05.480 (Petitioning for release--Writ of habeas corpus)
10 and 1974 ex.s. c 145 s 29 & 1973 1st ex.s. c 142 s 53; and

11 (10) RCW 71.05.490 (Rights of persons committed before January 1,
12 1974) and 1997 c 112 s 35 & 1973 1st ex.s. c 142 s 54.

13 NEW SECTION. **Sec. 802.** The following acts or parts of acts are
14 each repealed on the effective date of section 111 of this act:

15 (1) RCW 71.05.155 (Request to mental health professional by law
16 enforcement agency for investigation under RCW 71.05.150--Advisory
17 report of results) and 1997 c 112 s 9 & 1979 ex.s. c 215 s 10;

18 (2) RCW 71.05.395 (Application of uniform health care information
19 act, chapter 70.02 RCW) and 1993 c 448 s 8;

20 (3) RCW 71.05.400 (Release of information to patient's next of kin,
21 attorney, guardian, conservator--Notification of patient's death) and
22 1993 c 448 s 7, 1974 ex.s. c 115 s 1, 1973 2nd ex.s. c 24 s 6, & 1973
23 1st ex.s. c 142 s 45;

24 (4) RCW 71.05.410 (Notice of disappearance of patient) and 1997 c
25 112 s 32, 1973 2nd ex.s. c 24 s 7, & 1973 1st ex.s. c 142 s 46; and

26 (5) RCW 71.05.430 (Statistical data) and 1973 1st ex.s. c 142 s 48.

27 NEW SECTION. **Sec. 803.** RCW 71.05.610 (Treatment records--
28 Definitions) and 1989 c 205 s 11 are each repealed on the effective
29 date of sections 104 through 106 of this act.

30 NEW SECTION. **Sec. 804.** The following acts or parts of acts are
31 each repealed:

32 (1) RCW 71.05.650 (Treatment records--Notation of and access to
33 released data) and 1989 c 205 s 15; and

34 (2) RCW 71.05.670 (Treatment records--Violations--Civil action) and
35 1999 c 13 s 10.

1 **Sec. 805.** RCW 5.60.060 and 2001 c 286 s 2 are each amended to read
2 as follows:

3 (1) A husband shall not be examined for or against his wife,
4 without the consent of the wife, nor a wife for or against her husband
5 without the consent of the husband; nor can either during marriage or
6 afterward, be without the consent of the other, examined as to any
7 communication made by one to the other during marriage. But this
8 exception shall not apply to a civil action or proceeding by one
9 against the other, nor to a criminal action or proceeding for a crime
10 committed by one against the other, nor to a criminal action or
11 proceeding against a spouse if the marriage occurred subsequent to the
12 filing of formal charges against the defendant, nor to a criminal
13 action or proceeding for a crime committed by said husband or wife
14 against any child of whom said husband or wife is the parent or
15 guardian, nor to a proceeding under chapter 70.96A, 70.-- (sections 202
16 through 216 of this act), 70.-- (sections 302 through 374 of this act),
17 71.05, or 71.09 RCW: PROVIDED, That the spouse of a person sought to
18 be detained under chapter 70.96A, 70.-- (sections 202 through 216 of
19 this act), 70.-- (sections 302 through 374 of this act), 71.05, or
20 71.09 RCW may not be compelled to testify and shall be so informed by
21 the court prior to being called as a witness.

22 (2)(a) An attorney or counselor shall not, without the consent of
23 his or her client, be examined as to any communication made by the
24 client to him or her, or his or her advice given thereon in the course
25 of professional employment.

26 (b) A parent or guardian of a minor child arrested on a criminal
27 charge may not be examined as to a communication between the child and
28 his or her attorney if the communication was made in the presence of
29 the parent or guardian. This privilege does not extend to
30 communications made prior to the arrest.

31 (3) A member of the clergy or a priest shall not, without the
32 consent of a person making the confession, be examined as to any
33 confession made to him or her in his or her professional character, in
34 the course of discipline enjoined by the church to which he or she
35 belongs.

36 (4) Subject to the limitations under RCW 70.96A.140 or
37 (~~71.05.250~~) 71.05.360 (8) and (9), a physician or surgeon or
38 osteopathic physician or surgeon or podiatric physician or surgeon

1 shall not, without the consent of his or her patient, be examined in a
2 civil action as to any information acquired in attending such patient,
3 which was necessary to enable him or her to prescribe or act for the
4 patient, except as follows:

5 (a) In any judicial proceedings regarding a child's injury,
6 neglect, or sexual abuse or the cause thereof; and

7 (b) Ninety days after filing an action for personal injuries or
8 wrongful death, the claimant shall be deemed to waive the physician-
9 patient privilege. Waiver of the physician-patient privilege for any
10 one physician or condition constitutes a waiver of the privilege as to
11 all physicians or conditions, subject to such limitations as a court
12 may impose pursuant to court rules.

13 (5) A public officer shall not be examined as a witness as to
14 communications made to him or her in official confidence, when the
15 public interest would suffer by the disclosure.

16 (6)(a) A peer support group counselor shall not, without consent of
17 the law enforcement officer making the communication, be compelled to
18 testify about any communication made to the counselor by the officer
19 while receiving counseling. The counselor must be designated as such
20 by the sheriff, police chief, or chief of the Washington state patrol,
21 prior to the incident that results in counseling. The privilege only
22 applies when the communication was made to the counselor while acting
23 in his or her capacity as a peer support group counselor. The
24 privilege does not apply if the counselor was an initial responding
25 officer, a witness, or a party to the incident which prompted the
26 delivery of peer support group counseling services to the law
27 enforcement officer.

28 (b) For purposes of this section, "peer support group counselor"
29 means a:

30 (i) Law enforcement officer, or civilian employee of a law
31 enforcement agency, who has received training to provide emotional and
32 moral support and counseling to an officer who needs those services as
33 a result of an incident in which the officer was involved while acting
34 in his or her official capacity; or

35 (ii) Nonemployee counselor who has been designated by the sheriff,
36 police chief, or chief of the Washington state patrol to provide
37 emotional and moral support and counseling to an officer who needs

1 those services as a result of an incident in which the officer was
2 involved while acting in his or her official capacity.

3 (7) A sexual assault advocate may not, without the consent of the
4 victim, be examined as to any communication made by the victim to the
5 sexual assault advocate.

6 (a) For purposes of this section, "sexual assault advocate" means
7 the employee or volunteer from a rape crisis center, victim assistance
8 unit, program, or association, that provides information, medical or
9 legal advocacy, counseling, or support to victims of sexual assault,
10 who is designated by the victim to accompany the victim to the hospital
11 or other health care facility and to proceedings concerning the alleged
12 assault, including police and prosecution interviews and court
13 proceedings.

14 (b) A sexual assault advocate may disclose a confidential
15 communication without the consent of the victim if failure to disclose
16 is likely to result in a clear, imminent risk of serious physical
17 injury or death of the victim or another person. Any sexual assault
18 advocate participating in good faith in the disclosing of records and
19 communications under this section shall have immunity from any
20 liability, civil, criminal, or otherwise, that might result from the
21 action. In any proceeding, civil or criminal, arising out of a
22 disclosure under this section, the good faith of the sexual assault
23 advocate who disclosed the confidential communication shall be
24 presumed.

25 **Sec. 806.** RCW 18.83.110 and 1989 c 271 s 303 are each amended to
26 read as follows:

27 Confidential communications between a client and a psychologist
28 shall be privileged against compulsory disclosure to the same extent
29 and subject to the same conditions as confidential communications
30 between attorney and client, but this exception is subject to the
31 limitations under RCW 70.96A.140 and (~~71.05.250~~) 71.05.360 (8) and
32 (9).

33 **Sec. 807.** RCW 18.225.105 and 2003 c 204 s 1 are each amended to
34 read as follows:

35 A person licensed under this chapter shall not disclose the written
36 acknowledgment of the disclosure statement pursuant to RCW 18.225.100,

1 nor any information acquired from persons consulting the individual in
2 a professional capacity when the information was necessary to enable
3 the individual to render professional services to those persons except:

4 (1) With the written authorization of that person or, in the case
5 of death or disability, the person's personal representative;

6 (2) If the person waives the privilege by bringing charges against
7 the person licensed under this chapter;

8 (3) In response to a subpoena from the secretary. The secretary
9 may subpoena only records related to a complaint or report under RCW
10 18.130.050;

11 (4) As required under chapter 26.44 or 74.34 RCW or RCW
12 (~~71.05.250~~) 71.05.360 (8) and (9); or

13 (5) To any individual if the person licensed under this chapter
14 reasonably believes that disclosure will avoid or minimize an imminent
15 danger to the health or safety of the individual or any other
16 individual; however, there is no obligation on the part of the provider
17 to so disclose.

18 **Sec. 808.** RCW 71.05.235 and 2000 c 74 s 6 are each amended to read
19 as follows:

20 (1) If an individual is referred to a county designated mental
21 health professional under RCW 10.77.090(1)(d)(iii)(A), the county
22 designated mental health professional shall examine the individual
23 within forty-eight hours. If the county designated mental health
24 professional determines it is not appropriate to detain the individual
25 or petition for a ninety-day less restrictive alternative under RCW
26 71.05.230(4), that decision shall be immediately presented to the
27 superior court for hearing. The court shall hold a hearing to consider
28 the decision of the county designated mental health professional not
29 later than the next judicial day. At the hearing the superior court
30 shall review the determination of the county designated mental health
31 professional and determine whether an order should be entered requiring
32 the person to be evaluated at an evaluation and treatment facility. No
33 person referred to an evaluation and treatment facility may be held at
34 the facility longer than seventy-two hours.

35 (2) If an individual is placed in an evaluation and treatment
36 facility under RCW 10.77.090(1)(d)(iii)(B), a professional person shall
37 evaluate the individual for purposes of determining whether to file a

1 ninety-day inpatient or outpatient petition under chapter 71.05 RCW.
2 Before expiration of the seventy-two hour evaluation period authorized
3 under RCW 10.77.090(1)(d)(iii)(B), the professional person shall file
4 a petition or, if the recommendation of the professional person is to
5 release the individual, present his or her recommendation to the
6 superior court of the county in which the criminal charge was
7 dismissed. The superior court shall review the recommendation not
8 later than forty-eight hours, excluding Saturdays, Sundays, and
9 holidays, after the recommendation is presented. If the court rejects
10 the recommendation to unconditionally release the individual, the court
11 may order the individual detained at a designated evaluation and
12 treatment facility for not more than a seventy-two hour evaluation and
13 treatment period and direct the individual to appear at a surety
14 hearing before that court within seventy-two hours, or the court may
15 release the individual but direct the individual to appear at a surety
16 hearing set before that court within eleven days, at which time the
17 prosecutor may file a petition under this chapter for ninety-day
18 inpatient or outpatient treatment. If a petition is filed by the
19 prosecutor, the court may order that the person named in the petition
20 be detained at the evaluation and treatment facility that performed the
21 evaluation under this subsection or order the respondent to be in
22 outpatient treatment. If a petition is filed but the individual fails
23 to appear in court for the surety hearing, the court shall order that
24 a mental health professional or peace officer shall take such person or
25 cause such person to be taken into custody and placed in an evaluation
26 and treatment facility to be brought before the court the next judicial
27 day after detention. Upon the individual's first appearance in court
28 after a petition has been filed, proceedings under RCW 71.05.310 and
29 71.05.320 shall commence. For an individual subject to this
30 subsection, the prosecutor or professional person may directly file a
31 petition for ninety-day inpatient or outpatient treatment and no
32 petition for initial detention or fourteen-day detention is required
33 before such a petition may be filed.

34 The court shall conduct the hearing on the petition filed under
35 this subsection within five judicial days of the date the petition is
36 filed. The court may continue the hearing upon the written request of
37 the person named in the petition or the person's attorney, for good
38 cause shown, which continuance shall not exceed five additional

1 judicial days. If the person named in the petition requests a jury
2 trial, the trial shall commence within ten judicial days of the date of
3 the filing of the petition. The burden of proof shall be by clear,
4 cogent, and convincing evidence and shall be upon the petitioner. The
5 person shall be present at such proceeding, which shall in all respects
6 accord with the constitutional guarantees of due process of law and the
7 rules of evidence pursuant to RCW ((71.05.250)) 71.05.360 (8) and (9).

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

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

20 (4) The individual shall have the rights specified in RCW
21 ((71.05.250)) 71.05.360 (8) and (9).

22 **Sec. 809.** RCW 71.05.310 and 1987 c 439 s 9 are each amended to
23 read as follows:

24 The court shall conduct a hearing on the petition for ninety day
25 treatment within five judicial days of the first court appearance after
26 the probable cause hearing. The court may continue the hearing upon
27 the written request of the person named in the petition or the person's
28 attorney, for good cause shown, which continuance shall not exceed five
29 additional judicial days. If the person named in the petition requests
30 a jury trial, the trial shall commence within ten judicial days of the
31 first court appearance after the probable cause hearing. The burden of
32 proof shall be by clear, cogent, and convincing evidence and shall be
33 upon the petitioner. The person shall be present at such proceeding,
34 which shall in all respects accord with the constitutional guarantees
35 of due process of law and the rules of evidence pursuant to RCW
36 ((71.05.250)) 71.05.360 (8) and (9).

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

6 **Sec. 810.** RCW 71.05.425 and 2000 c 94 s 10 are each amended to
7 read as follows:

8 (1)(a) Except as provided in subsection (2) of this section, at the
9 earliest possible date, and in no event later than thirty days before
10 conditional release, final release, authorized leave under RCW
11 71.05.325(2), or transfer to a facility other than a state mental
12 hospital, the superintendent shall send written notice of conditional
13 release, release, authorized leave, or transfer of a person committed
14 under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex,
15 violent, or felony harassment offense pursuant to RCW 10.77.090(4) to
16 the following:

17 (i) The chief of police of the city, if any, in which the person
18 will reside; and

19 (ii) The sheriff of the county in which the person will reside.

20 (b) The same notice as required by (a) of this subsection shall be
21 sent to the following, if such notice has been requested in writing
22 about a specific person committed under RCW 71.05.280(3) or
23 71.05.320(2)(c) following dismissal of a sex, violent, or felony
24 harassment offense pursuant to RCW 10.77.090(4):

25 (i) The victim of the sex, violent, or felony harassment offense
26 that was dismissed pursuant to RCW 10.77.090(4) preceding commitment
27 under RCW 71.05.280(3) or 71.05.320(2)(c) or the victim's next of kin
28 if the crime was a homicide;

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

31 (iii) Any person specified in writing by the prosecuting attorney.
32 Information regarding victims, next of kin, or witnesses requesting the
33 notice, information regarding any other person specified in writing by
34 the prosecuting attorney to receive the notice, and the notice are
35 confidential and shall not be available to the person committed under
36 this chapter.

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

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

6 (2) If a person committed under RCW 71.05.280(3) or 71.05.320(2)(c)
7 following dismissal of a sex, violent, or felony harassment offense
8 pursuant to RCW 10.77.090(4) escapes, the superintendent shall
9 immediately notify, by the most reasonable and expedient means
10 available, the chief of police of the city and the sheriff of the
11 county in which the person resided immediately before the person's
12 arrest. If previously requested, the superintendent shall also notify
13 the witnesses and the victim of the sex, violent, or felony harassment
14 offense that was dismissed pursuant to RCW 10.77.090(4) preceding
15 commitment under RCW 71.05.280(3) or 71.05.320(2) or the victim's next
16 of kin if the crime was a homicide. In addition, the secretary shall
17 also notify appropriate parties pursuant to RCW ((71.05.410))
18 71.05.390(18). If the person is recaptured, the superintendent shall
19 send notice to the persons designated in this subsection as soon as
20 possible but in no event later than two working days after the
21 department learns of such recapture.

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

25 (4) The superintendent shall send the notices required by this
26 chapter to the last address provided to the department by the
27 requesting party. The requesting party shall furnish the department
28 with a current address.

29 (5) For purposes of this section the following terms have the
30 following meanings:

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

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

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

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

1 **Sec. 811.** RCW 71.05.445 and 2004 c 166 s 4 are each amended to
2 read as follows:

3 (1) The definitions in this subsection apply throughout this
4 section unless the context clearly requires otherwise.

5 (a) "Information related to mental health services" means all
6 information and records compiled, obtained, or maintained in the course
7 of providing services to either voluntary or involuntary recipients of
8 services by a mental health service provider. This may include
9 documents of legal proceedings under this chapter or chapter 71.34 or
10 10.77 RCW, or somatic health care information.

11 (b) "Mental health service provider" means a public or private
12 agency that provides services to persons with mental disorders as
13 defined under RCW 71.05.020 and receives funding from public sources.
14 This includes evaluation and treatment facilities as defined in RCW
15 71.05.020, community mental health service delivery systems, or
16 community mental health programs as defined in RCW 71.24.025, and
17 facilities conducting competency evaluations and restoration under
18 chapter 10.77 RCW.

19 (2)(a) Information related to mental health services delivered to
20 a person subject to chapter 9.94A or 9.95 RCW shall be released, upon
21 request, by a mental health service provider to department of
22 corrections personnel for whom the information is necessary to carry
23 out the responsibilities of their office. The information must be
24 provided only for the purposes of completing presentence investigations
25 or risk assessment reports, supervision of an incarcerated offender or
26 offender under supervision in the community, planning for and provision
27 of supervision of an offender, or assessment of an offender's risk to
28 the community. The request shall be in writing and shall not require
29 the consent of the subject of the records.

30 (b) If an offender subject to chapter 9.94A or 9.95 RCW has failed
31 to report for department of corrections supervision or in the event of
32 an emergent situation that poses a significant risk to the public or
33 the offender, information related to mental health services delivered
34 to the offender and, if known, information regarding where the offender
35 is likely to be found shall be released by the mental health services
36 provider to the department of corrections upon request. The initial
37 request may be written or oral. All oral requests must be subsequently
38 confirmed in writing. Information released in response to an oral

1 request is limited to a statement as to whether the offender is or is
2 not being treated by the mental health services provider and the
3 address or information about the location or whereabouts of the
4 offender. Information released in response to a written request may
5 include information identified by rule as provided in subsections (4)
6 and (5) of this section. For purposes of this subsection a written
7 request includes requests made by e-mail or facsimile so long as the
8 requesting person at the department of corrections is clearly
9 identified. The request must specify the information being requested.
10 Disclosure of the information requested does not require the consent of
11 the subject of the records unless the offender has received relief from
12 disclosure under RCW 9.94A.562, 70.96A.155, or 71.05.132.

13 (3)(a) When a mental health service provider conducts its initial
14 assessment for a person receiving court-ordered treatment, the service
15 provider shall inquire and shall be told by the offender whether he or
16 she is subject to supervision by the department of corrections.

17 (b) When a person receiving court-ordered treatment or treatment
18 ordered by the department of corrections discloses to his or her mental
19 health service provider that he or she is subject to supervision by the
20 department of corrections, the mental health services provider shall
21 notify the department of corrections that he or she is treating the
22 offender and shall notify the offender that his or her community
23 corrections officer will be notified of the treatment, provided that if
24 the offender has received relief from disclosure pursuant to RCW
25 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the
26 mental health services provider with a copy of the order granting
27 relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or
28 71.05.132, the mental health services provider is not required to
29 notify the department of corrections that the mental health services
30 provider is treating the offender. The notification may be written or
31 oral and shall not require the consent of the offender. If an oral
32 notification is made, it must be confirmed by a written notification.
33 For purposes of this section, a written notification includes
34 notification by e-mail or facsimile, so long as the notifying mental
35 health service provider is clearly identified.

36 (4) The information to be released to the department of corrections
37 shall include all relevant records and reports, as defined by rule,

1 necessary for the department of corrections to carry out its duties,
2 including those records and reports identified in subsection (2) of
3 this section.

4 (5) The department and the department of corrections, in
5 consultation with regional support networks, mental health service
6 providers as defined in subsection (1) of this section, mental health
7 consumers, and advocates for persons with mental illness, shall adopt
8 rules to implement the provisions of this section related to the type
9 and scope of information to be released. These rules shall:

10 (a) Enhance and facilitate the ability of the department of
11 corrections to carry out its responsibility of planning and ensuring
12 community protection with respect to persons subject to sentencing
13 under chapter 9.94A or 9.95 RCW, including accessing and releasing or
14 disclosing information of persons who received mental health services
15 as a minor; and

16 (b) Establish requirements for the notification of persons under
17 the supervision of the department of corrections regarding the
18 provisions of this section.

19 (6) The information received by the department of corrections under
20 this section shall remain confidential and subject to the limitations
21 on disclosure outlined in chapter 71.05 RCW, except as provided in RCW
22 72.09.585.

23 (7) No mental health service provider or individual employed by a
24 mental health service provider shall be held responsible for
25 information released to or used by the department of corrections under
26 the provisions of this section or rules adopted under this section
27 except under RCW (~~71.05.670~~ and) 71.05.440.

28 (8) Whenever federal law or federal regulations restrict the
29 release of information contained in the treatment records of any
30 patient who receives treatment for alcoholism or drug dependency, the
31 release of the information may be restricted as necessary to comply
32 with federal law and regulations.

33 (9) This section does not modify the terms and conditions of
34 disclosure of information related to sexually transmitted diseases
35 under chapter 70.24 RCW.

36 (10) The department shall, subject to available resources,
37 electronically, or by the most cost-effective means available, provide
38 the department of corrections with the names, last dates of services,

1 and addresses of specific regional support networks and mental health
2 service providers that delivered mental health services to a person
3 subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between
4 the departments.

5 **Sec. 812.** RCW 71.05.640 and 2000 c 94 s 11 are each amended to
6 read as follows:

7 (1) Procedures shall be established by resource management services
8 to provide reasonable and timely access to individual treatment
9 records. However, access may not be denied at any time to records of
10 all medications and somatic treatments received by the individual.

11 (2) Following discharge, the individual shall have a right to a
12 complete record of all medications and somatic treatments prescribed
13 during evaluation, admission, or commitment and to a copy of the
14 discharge summary prepared at the time of his or her discharge. A
15 reasonable and uniform charge for reproduction may be assessed.

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

21 (4) At the time of discharge all individuals shall be informed by
22 resource management services of their rights as provided in RCW
23 (~~71.05.610~~) 71.05.620 through 71.05.690.

24 **Sec. 813.** RCW 71.05.680 and 1999 c 13 s 11 are each amended to
25 read as follows:

26 Any person who requests or obtains confidential information
27 pursuant to RCW (~~71.05.610~~) 71.05.620 through 71.05.690 under false
28 pretenses shall be guilty of a gross misdemeanor.

29 **Sec. 814.** RCW 71.05.690 and 1999 c 13 s 12 are each amended to
30 read as follows:

31 The department shall adopt rules to implement RCW (~~71.05.610~~)
32 71.05.620 through 71.05.680.

33 **Sec. 815.** RCW 71.24.035 and 2001 c 334 s 7 and 2001 c 323 s 10 are
34 each reenacted and amended to read as follows:

1 (1) The department is designated as the state mental health
2 authority.

3 (2) The secretary shall provide for public, client, and licensed
4 service provider participation in developing the state mental health
5 program, developing contracts with regional support networks, and any
6 waiver request to the federal government under medicaid.

7 (3) The secretary shall provide for participation in developing the
8 state mental health program for children and other underserved
9 populations, by including representatives on any committee established
10 to provide oversight to the state mental health program.

11 (4) The secretary shall be designated as the county authority if a
12 county fails to meet state minimum standards or refuses to exercise
13 responsibilities under RCW 71.24.045.

14 (5) The secretary shall:

15 (a) Develop a biennial state mental health program that
16 incorporates county biennial needs assessments and county mental health
17 service plans and state services for mentally ill adults and children.
18 The secretary may also develop a six-year state mental health plan;

19 (b) Assure that any regional or county community mental health
20 program provides access to treatment for the county's residents in the
21 following order of priority: (i) The acutely mentally ill; (ii)
22 chronically mentally ill adults and severely emotionally disturbed
23 children; and (iii) the seriously disturbed. Such programs shall
24 provide:

25 (A) Outpatient services;

26 (B) Emergency care services for twenty-four hours per day;

27 (C) Day treatment for mentally ill persons which includes training
28 in basic living and social skills, supported work, vocational
29 rehabilitation, and day activities. Such services may include
30 therapeutic treatment. In the case of a child, day treatment includes
31 age-appropriate basic living and social skills, educational and
32 prevocational services, day activities, and therapeutic treatment;

33 (D) Screening for patients being considered for admission to state
34 mental health facilities to determine the appropriateness of admission;

35 (E) Employment services, which may include supported employment,
36 transitional work, placement in competitive employment, and other work-
37 related services, that result in mentally ill persons becoming engaged
38 in meaningful and gainful full or part-time work. Other sources of

1 funding such as the division of vocational rehabilitation may be
2 utilized by the secretary to maximize federal funding and provide for
3 integration of services;

4 (F) Consultation and education services; and

5 (G) Community support services;

6 (c) Develop and adopt rules establishing state minimum standards
7 for the delivery of mental health services pursuant to RCW 71.24.037
8 including, but not limited to:

9 (i) Licensed service providers. The secretary shall provide for
10 deeming of compliance with state minimum standards for those entities
11 accredited by recognized behavioral health accrediting bodies
12 recognized and having a current agreement with the department;

13 (ii) Regional support networks; and

14 (iii) Inpatient services, evaluation and treatment services and
15 facilities under chapter 71.05 RCW, resource management services, and
16 community support services;

17 (d) Assure that the special needs of minorities, the elderly,
18 disabled, children, and low-income persons are met within the
19 priorities established in this section;

20 (e) Establish a standard contract or contracts, consistent with
21 state minimum standards, which shall be used in contracting with
22 regional support networks or counties. The standard contract shall
23 include a maximum fund balance, which shall not exceed ten percent;

24 (f) Establish, to the extent possible, a standardized auditing
25 procedure which minimizes paperwork requirements of county authorities
26 and licensed service providers. The audit procedure shall focus on the
27 outcomes of service and not the processes for accomplishing them;

28 (g) Develop and maintain an information system to be used by the
29 state, counties, and regional support networks that includes a tracking
30 method which allows the department and regional support networks to
31 identify mental health clients' participation in any mental health
32 service or public program on an immediate basis. The information
33 system shall not include individual patient's case history files.
34 Confidentiality of client information and records shall be maintained
35 as provided in this chapter and in RCW 71.05.390, (~~71.05.400,~~
36 ~~71.05.410,~~) 71.05.420, (~~71.05.430,~~) and 71.05.440. The design of
37 the system and the data elements to be collected shall be reviewed by
38 the work group appointed by the secretary under section 5(1) of this

1 act and representing the department, regional support networks, service
2 providers, consumers, and advocates. The data elements shall be
3 designed to provide information that is needed to measure performance
4 and achieve the service outcomes (~~identified in section 5 of this~~
5 ~~act~~));

6 (h) License service providers who meet state minimum standards;

7 (i) Certify regional support networks that meet state minimum
8 standards;

9 (j) Periodically monitor the compliance of certified regional
10 support networks and their network of licensed service providers for
11 compliance with the contract between the department, the regional
12 support network, and federal and state rules at reasonable times and in
13 a reasonable manner;

14 (k) Fix fees to be paid by evaluation and treatment centers to the
15 secretary for the required inspections;

16 (l) Monitor and audit counties, regional support networks, and
17 licensed service providers as needed to assure compliance with
18 contractual agreements authorized by this chapter; and

19 (m) Adopt such rules as are necessary to implement the department's
20 responsibilities under this chapter.

21 (6) The secretary shall use available resources only for regional
22 support networks.

23 (7) Each certified regional support network and licensed service
24 provider shall file with the secretary, on request, such data,
25 statistics, schedules, and information as the secretary reasonably
26 requires. A certified regional support network or licensed service
27 provider which, without good cause, fails to furnish any data,
28 statistics, schedules, or information as requested, or files fraudulent
29 reports thereof, may have its certification or license revoked or
30 suspended.

31 (8) The secretary may suspend, revoke, limit, or restrict a
32 certification or license, or refuse to grant a certification or license
33 for failure to conform to: (a) The law; (b) applicable rules and
34 regulations; (c) applicable standards; or (d) state minimum standards.

35 (9) The superior court may restrain any regional support network or
36 service provider from operating without certification or a license or
37 any other violation of this section. The court may also review,
38 pursuant to procedures contained in chapter 34.05 RCW, any denial,

1 suspension, limitation, restriction, or revocation of certification or
2 license, and grant other relief required to enforce the provisions of
3 this chapter.

4 (10) Upon petition by the secretary, and after hearing held upon
5 reasonable notice to the facility, the superior court may issue a
6 warrant to an officer or employee of the secretary authorizing him or
7 her to enter at reasonable times, and examine the records, books, and
8 accounts of any regional support network or service provider refusing
9 to consent to inspection or examination by the authority.

10 (11) Notwithstanding the existence or pursuit of any other remedy,
11 the secretary may file an action for an injunction or other process
12 against any person or governmental unit to restrain or prevent the
13 establishment, conduct, or operation of a regional support network or
14 service provider without certification or a license under this chapter.

15 (12) The standards for certification of evaluation and treatment
16 facilities shall include standards relating to maintenance of good
17 physical and mental health and other services to be afforded persons
18 pursuant to this chapter and chapters 71.05 and 71.34 RCW, and shall
19 otherwise assure the effectuation of the purposes of these chapters.

20 (13)(a) The department, in consultation with affected parties,
21 shall establish a distribution formula that reflects county needs
22 assessments based on the number of persons who are acutely mentally
23 ill, chronically mentally ill, severely emotionally disturbed children,
24 and seriously disturbed. The formula shall take into consideration the
25 impact on counties of demographic factors in counties which result in
26 concentrations of priority populations as set forth in subsection
27 (5)(b) of this section. These factors shall include the population
28 concentrations resulting from commitments under chapters 71.05 and
29 71.34 RCW to state psychiatric hospitals, as well as concentration in
30 urban areas, at border crossings at state boundaries, and other
31 significant demographic and workload factors.

32 (b) The formula shall also include a projection of the funding
33 allocations that will result for each county, which specifies
34 allocations according to priority populations, including the allocation
35 for services to children and other underserved populations.

36 (c) After July 1, 2003, the department may allocate up to two
37 percent of total funds to be distributed to the regional support
38 networks for incentive payments to reward the achievement of superior

1 outcomes, or significantly improved outcomes, as measured by a
2 statewide performance measurement system consistent with the framework
3 recommended in the joint legislative audit and review committee's
4 performance audit of the mental health system. The department shall
5 annually report to the legislature on its criteria and allocation of
6 the incentives provided under this subsection.

7 (14) The secretary shall assume all duties assigned to the
8 nonparticipating counties under chapters 71.05, 71.34, and 71.24 RCW.
9 Such responsibilities shall include those which would have been
10 assigned to the nonparticipating counties under regional support
11 networks.

12 The regional support networks, or the secretary's assumption of all
13 responsibilities under chapters 71.05, 71.34, and 71.24 RCW, shall be
14 included in all state and federal plans affecting the state mental
15 health program including at least those required by this chapter, the
16 medicaid program, and P.L. 99-660. Nothing in these plans shall be
17 inconsistent with the intent and requirements of this chapter.

18 (15) The secretary shall:

19 (a) Disburse funds for the regional support networks within sixty
20 days of approval of the biennial contract. The department must either
21 approve or reject the biennial contract within sixty days of receipt.

22 (b) Enter into biennial contracts with regional support networks.
23 The contracts shall be consistent with available resources. No
24 contract shall be approved that does not include progress toward
25 meeting the goals of this chapter by taking responsibility for: (i)
26 Short-term commitments; (ii) residential care; and (iii) emergency
27 response systems.

28 (c) Allocate one hundred percent of available resources to the
29 regional support networks in accordance with subsection (13) of this
30 section. Incentive payments authorized under subsection (13) of this
31 section may be allocated separately from other available resources.

32 (d) Notify regional support networks of their allocation of
33 available resources at least sixty days prior to the start of a new
34 biennial contract period.

35 (e) Deny funding allocations to regional support networks based
36 solely upon formal findings of noncompliance with the terms of the
37 regional support network's contract with the department. Written

1 notice and at least thirty days for corrective action must precede any
2 such action. In such cases, regional support networks shall have full
3 rights to appeal under chapter 34.05 RCW.

4 (16) The department, in cooperation with the state congressional
5 delegation, shall actively seek waivers of federal requirements and
6 such modifications of federal regulations as are necessary to allow
7 federal medicaid reimbursement for services provided by free-standing
8 evaluation and treatment facilities certified under chapter 71.05 RCW.
9 The department shall periodically report its efforts to the appropriate
10 committees of the senate and the house of representatives.

11 **PART IX**

12 **MISCELLANEOUS PROVISIONS**

13 NEW SECTION. **Sec. 901.** RCW 71.05.035 is recodified as a new
14 section in chapter 71A.12 RCW.

15 NEW SECTION. **Sec. 902.** A new section is added to chapter 43.20A
16 RCW to read as follows:

17 Beginning July 1, 2007, the secretary shall require, in the
18 contracts the department negotiates pursuant to chapters 71.24 and
19 70.96A RCW, that any vendor rate increases provided for mental health
20 and chemical dependency treatment providers or programs who are parties
21 to the contract or subcontractors of any party to the contract shall be
22 prioritized to those providers and programs that maximize the use of
23 evidence-based and research-based practices, as those terms are defined
24 in section 703 of this act, unless otherwise designated by the
25 legislature.

26 NEW SECTION. **Sec. 903.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 904.** A new section is added to chapter 82.14
31 RCW to read as follows:

32 (1) A county legislative authority may authorize, fix, and impose
33 a sales and use tax in accordance with the terms of this chapter.

1 (2) The tax authorized in this section shall be in addition to any
2 other taxes authorized by law and shall be collected from those persons
3 who are taxable by the state under chapters 82.08 and 82.12 RCW upon
4 the occurrence of any taxable event within the county. The rate of tax
5 shall equal one-tenth of one percent of the selling price in the case
6 of a sales tax, or value of the article used, in the case of a use tax.

7 (3) Moneys collected under this section shall be used solely for
8 the purpose of providing new or expanded chemical dependency or mental
9 health treatment services and for the operation of new or expanded
10 therapeutic court programs. Moneys collected under this section shall
11 not be used to supplant existing funding for these purposes.

12 NEW SECTION. **Sec. 905.** This act shall be so applied and construed
13 as to effectuate its general purpose to make uniform the law with
14 respect to the subject of this act among those states which enact it.

15 NEW SECTION. **Sec. 906.** Captions, part headings, and subheadings
16 used in this act are not part of the law.

17 NEW SECTION. **Sec. 907.** (1) If specific funding for the purposes
18 of sections 203, 217, 220, 221, 401, 406, 612, 701, and 705 of this
19 act, referencing the section by section number and by bill or chapter
20 number, is not provided by June 30, 2005, each section not referenced
21 is null and void.

22 (2) If specific funding for the purposes of sections 302 through
23 374 of this act, referencing these sections by section numbers and by
24 bill or chapter number, or by RCW citation, is not provided by June 30,
25 2009, sections 302 through 374 of this act are null and void.

26 NEW SECTION. **Sec. 908.** The code reviser shall alphabetize and
27 renumber the definitions, and correct any internal references affected
28 by this act.

29 NEW SECTION. **Sec. 909.** The code reviser shall, not later than
30 January 1, 2009, report to the appropriate policy committees of the
31 legislature which sections, or portions thereof, should be repealed on
32 the effective date of sections 302 through 374 of this act. The report
33 shall include draft legislation.

1 NEW SECTION. **Sec. 910.** (1) The secretary of the department of
2 social and health services may adopt rules as necessary to implement
3 the provisions of this act.

4 (2) The secretary of corrections may adopt rules as necessary to
5 implement the provisions of this act.

6 NEW SECTION. **Sec. 911.** (1) Except for sections 302 through 374
7 and 603 of this act, this act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 July 1, 2005.

11 (2) Section 603 of this act takes effect July 1, 2006.

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

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