
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 82.14 RCW; adding new chapters to Title 70 RCW; creating new
15 sections; recodifying RCW 71.05.370 and 71.05.035; repealing RCW
16 71.05.060, 71.05.070, 71.05.090, 71.05.200, 71.05.250, 71.05.450,
17 71.05.460, 71.05.470, 71.05.480, 71.05.490, 71.05.155, 71.05.395,
18 71.05.400, 71.05.410, 71.05.430, 71.05.610, 71.05.650, and 71.05.670;
19 prescribing penalties; providing effective dates; providing expiration
20 dates; and declaring an emergency.

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

2 **PART I**

3 **GENERAL PROVISIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (a) The optional clinic provisions;

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

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

36 (2) The department shall provide the appropriate committees of the

1 legislature with a clear and concise explanation of the reasons for
2 reducing state hospital capacity and the differences in costs and
3 benefits of treatment in state and community hospital treatment.

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

15 **Mental Health Treatment**

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

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

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

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

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

33 (1) "Admission" or "admit" means a decision by a physician that a
34 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.

32 (3) When a person is detained pursuant to RCW 71.05.150 (1)(d),
33 (2), or (4), the person may refuse antipsychotic medications unless
34 there is an additional concurring medical opinion that the medications
35 are necessary for the imminent prevention of harm to the detained
36 person or another person. Medications administered under this
37 subsection may not continue beyond the probable cause hearing held
38 pursuant to RCW 71.05.240 and the petitioner shall notify the court of

1 administration of involuntary medications under this subsection and
2 provide the court with an opinion regarding whether continued
3 involuntary administration of antipsychotic medication is medically
4 necessary.

5 (4) Except as provided in subsection (3) of this section or in RCW
6 71.05.370 (as recodified by this act), if an involuntary committed
7 person refuses antipsychotic medications, the medications may not be
8 administered unless the person has first had a hearing by a panel
9 composed of a physician and two other persons. The two persons shall
10 be selected from among the following: A physician, advanced registered
11 nurse practitioner, psychologist, psychiatric nurse, physician's
12 assistant, and the medical director of the facility. Recognizing that
13 some facilities will not have three staff members of the required
14 expertise who are not directly involved in the person's treatment, the
15 panel shall be composed to the greatest extent possible of treatment
16 providers who are not directly involved in the person's treatment at
17 the time of the hearing.

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

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

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

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

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

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

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

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

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

26 (b) Not to be medicated between the delivery of the notice and the
27 hearing;

28 (c) To attend the hearing;

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

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

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

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

35 (11) Antipsychotic medications may be administered in an emergency
36 without the consent of the person pursuant to the provisions of RCW
37 71.05.370(3)(b) (as recodified by this act).

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

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

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

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

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

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

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

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

23 ~~(7) Not to consent to the administration of antipsychotic~~
24 ~~medications beyond the hearing conducted pursuant to RCW 71.05.320(2)~~
25 ~~or the performance of electroconvulsant therapy or surgery, except~~
26 ~~emergency life saving surgery, unless ordered by a court of competent~~

27 ~~jurisdiction)) (1) A court of competent jurisdiction may order that a~~
28 ~~person involuntarily detained, or committed for inpatient treatment and~~
29 ~~evaluation or to treatment in a less restrictive alternative pursuant~~
30 ~~to this chapter be administered antipsychotic medications or the~~
31 ~~performance of electroconvulsant therapy or surgery pursuant to the~~
32 ~~following standards and procedures:~~

33 (a) The administration of antipsychotic medication or
34 electroconvulsant therapy shall not be ordered by the court unless the
35 petitioning party proves by clear, cogent, and convincing evidence that
36 ~~((there exists a compelling state interest that justifies overriding~~
37 ~~the patient's lack of consent to the administration of antipsychotic~~
38 ~~medications or electroconvulsant therapy, that the proposed treatment~~

1 ~~is necessary and effective, and that medically acceptable alternative~~
2 ~~forms of treatment are not available, have not been successful, or are~~
3 ~~not likely to be effective)) treatment with antipsychotic medications
4 is medically appropriate, that failure to medicate may result in a
5 likelihood of serious harm or substantial deterioration or
6 substantially prolong the length of involuntary commitment, and that
7 there is no less intrusive course of treatment than medication or
8 electroconvulsive therapy in the best interest of the person.~~

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

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

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

- 25 (i) To be represented by an attorney;
- 26 (ii) To present evidence;
- 27 (iii) To cross-examine witnesses;
- 28 (iv) To have the rules of evidence enforced;
- 29 (v) To remain silent;
- 30 (vi) To view and copy all petitions and reports in the court file;

31 and

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

34 (e) The court may appoint a psychiatrist, psychologist within their
35 scope of practice, or physician to examine and testify on behalf of
36 such person. The court shall appoint a psychiatrist, psychologist
37 within their scope of practice, or physician designated by such person

1 or the person's counsel to testify on behalf of the person in cases
2 where an order for electroconvulsant therapy is sought.

3 ~~((d))~~ (f) An order for the administration of antipsychotic
4 medications entered following a hearing conducted pursuant to this
5 section shall be effective for the period of the current involuntary
6 treatment order, and any interim period during which the person is
7 awaiting trial or hearing on a new petition for involuntary treatment
8 or involuntary medication.

9 ~~((e))~~ (2) Any person detained pursuant to RCW 71.05.320(2), who
10 subsequently refuses antipsychotic medication, shall be entitled to the
11 procedures set forth in ~~((RCW 71.05.370(7))~~ subsection (1) of this
12 section.

13 ~~((f))~~ (3) Antipsychotic medication may be administered to a
14 nonconsenting person detained or committed pursuant to this chapter
15 without a court order:

16 (a) Pursuant to RCW 71.05.215~~((2))~~; or

17 (b) Under the following circumstances:

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

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

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

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

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

36 ~~(9) Not to have))~~ (4) No court has the authority to order
37 psychosurgery performed on ((him or her)) any person involuntarily

1 detained, treated in a less restrictive alternative course of
2 treatment, or committed for treatment and evaluation pursuant to this
3 chapter under any circumstances.

4 NEW SECTION. Sec. 110. RCW 71.05.370 is recodified as a new
5 section in chapter 71.05 RCW to be codified in proximity to RCW
6 71.05.215.

7 **Sec. 111.** RCW 71.05.390 and 2004 c 166 s 6, 2004 c 157 s 5, and
8 2004 c 33 s 2 are each reenacted and amended to read as follows:

9 Except as provided in this section, RCW 71.05.445, 71.05.630,
10 70.96A.150, or pursuant to a valid release under RCW 70.02.030, the
11 fact of admission and all information and records compiled, obtained,
12 or maintained in the course of providing services to either voluntary
13 or involuntary recipients of services at public or private agencies
14 shall be confidential.

15 Information and records may be disclosed only:

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

- 23 (a) Employed by the facility;
24 (b) Who has medical responsibility for the patient's care;
25 (c) Who is a county designated mental health professional;
26 (d) Who is providing services under chapter 71.24 RCW;
27 (e) Who is employed by a state or local correctional facility where
28 the person is confined or supervised; or
29 (f) Who is providing evaluation, treatment, or follow-up services
30 under chapter 10.77 RCW.

31 (2) When the communications regard the special needs of a patient
32 and the necessary circumstances giving rise to such needs and the
33 disclosure is made by a facility providing ((outpatient)) services to
34 the operator of a ((care)) facility in which the patient resides or
35 will reside.

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

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

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

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

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

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

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

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

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

34 /s/ "

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

5 (6)(a) To the courts as necessary to the administration of this
6 chapter or to a court ordering an evaluation or treatment under chapter
7 10.77 RCW solely for the purpose of preventing the entry of any
8 evaluation or treatment order that is inconsistent with any order
9 entered under this chapter.

10 (b) To a court or its designee in which a motion under chapter
11 10.77 RCW has been made for involuntary medication of a defendant for
12 the purpose of competency restoration.

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

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

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

37 ~~((a))~~ (i) Only the fact, place, and date of involuntary

1 commitment, the fact and date of discharge or release, and the last
2 known address shall be disclosed upon request;

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

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

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

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

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

26 (9) To the prosecuting attorney as necessary to carry out the
27 responsibilities of the office under RCW 71.05.330(2) and
28 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access
29 to records regarding the committed person's treatment and prognosis,
30 medication, behavior problems, and other records relevant to the issue
31 of whether treatment less restrictive than inpatient treatment is in
32 the best interest of the committed person or others. Information shall
33 be disclosed only after giving notice to the committed person and the
34 person's counsel.

35 (10) To appropriate law enforcement agencies and to a person, when
36 the identity of the person is known to the public or private agency,
37 whose health and safety has been threatened, or who is known to have
38 been repeatedly harassed, by the patient. The person may designate a

1 representative to receive the disclosure. The disclosure shall be made
2 by the professional person in charge of the public or private agency or
3 his or her designee and shall include the dates of commitment,
4 admission, discharge, or release, authorized or unauthorized absence
5 from the agency's facility, and only such other information that is
6 pertinent to the threat or harassment. The decision to disclose or not
7 shall not result in civil liability for the agency or its employees so
8 long as the decision was reached in good faith and without gross
9 negligence.

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

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

18 (13) Civil liability and immunity for the release of information
19 about a particular person who is committed to the department under RCW
20 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
21 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

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

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

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

37 (16) To mark headstones or otherwise memorialize patients interred
38 at state hospital cemeteries. The department of social and health

1 services shall make available the name, date of birth, and date of
2 death of patients buried in state hospital cemeteries fifty years after
3 the death of a patient.

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

14 Except as otherwise provided in this chapter, the uniform health
15 care information act, chapter 70.02 RCW, applies to all records and
16 information compiled, obtained, or maintained in the course of
17 providing services.

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

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

37 Except as provided in RCW 71.05.425, when any disclosure of

1 information or records is made as authorized by RCW 71.05.390 (~~through~~
2 ~~71.05.410~~)), the physician in charge of the patient or the professional
3 person in charge of the facility shall promptly cause to be entered
4 into the patient's medical record the date and circumstances under
5 which said disclosure was made, the names and relationships to the
6 patient, if any, of the persons or agencies to whom such disclosure was
7 made, and the information disclosed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (g) Within the department as necessary to coordinate treatment for
28 mental illness, developmental disabilities, alcoholism, or drug abuse
29 of (~~(individuals)~~) persons who are under the supervision of the
30 department.

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

36 (i) To a facility that is to receive (~~(an individual)~~) a person who
37 is involuntarily committed under chapter 71.05 RCW, or upon transfer of
38 the (~~(individual)~~) person from one treatment facility to another. The

1 release of records under this subsection shall be limited to the
2 treatment records required by law, a record or summary of all somatic
3 treatments, and a discharge summary. The discharge summary may include
4 a statement of the patient's problem, the treatment goals, the type of
5 treatment which has been provided, and recommendation for future
6 treatment, but may not include the patient's complete treatment record.

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

13 (i) An evaluation report provided pursuant to a written supervision
14 plan.

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

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

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

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

31 (l) To staff members of the protection and advocacy agency or to
32 staff members of a private, nonprofit corporation for the purpose of
33 protecting and advocating the rights of persons with mental (~~(illness)~~)
34 disorders or developmental disabilities. Resource management services
35 may limit the release of information to the name, birthdate, and county
36 of residence of the patient, information regarding whether the patient
37 was voluntarily admitted, or involuntarily committed, the date and
38 place of admission, placement, or commitment, the name and address of

1 a guardian of the patient, and the date and place of the guardian's
2 appointment. Any staff member who wishes to obtain additional
3 information shall notify the patient's resource management services in
4 writing of the request and of the resource management services' right
5 to object. The staff member shall send the notice by mail to the
6 guardian's address. If the guardian does not object in writing within
7 fifteen days after the notice is mailed, the staff member may obtain
8 the additional information. If the guardian objects in writing within
9 fifteen days after the notice is mailed, the staff member may not
10 obtain the additional information.

11 (3) Whenever federal law or federal regulations restrict the
12 release of information contained in the treatment records of any
13 patient who receives treatment for (~~(alcoholism or drug)~~) chemical
14 dependency, the department may restrict the release of the information
15 as necessary to comply with federal law and regulations.

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

18 (1) Procedures shall be established by resource management services
19 to provide reasonable and timely access to individual treatment
20 records. However, access may not be denied at any time to records of
21 all medications and somatic treatments received by the (~~(individual)~~)
22 person.

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

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

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

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

3 Nothing in this chapter ((205, ~~Laws of 1989~~)) or chapter 70.96A,
4 71.05, 71.34, 70.-- (sections 202 through 216 of this act), or 70.--
5 (sections 302 through 374 of this act) RCW shall be construed to
6 interfere with communications between physicians or psychologists and
7 patients and attorneys and clients.

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

10 A petition for commitment under this chapter may be joined with a
11 petition for commitment under chapter 70.96A RCW.

12 **PART II**
13 **PILOT PROGRAMS**

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

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

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

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

29 (3) "Approved treatment program" means a discrete program of
30 chemical dependency treatment provided by a treatment program certified
31 by the department as meeting standards adopted under chapter 70.96A
32 RCW.

33 (4) "Attending staff" means any person on the staff of a public or

1 private agency having responsibility for the care and treatment of a
2 patient.

3 (5) "Chemical dependency" means:

- 4 (a) Alcoholism;
- 5 (b) Drug addiction; or
- 6 (c) Dependence on alcohol and one or more other psychoactive
7 chemicals, as the context requires.

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

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

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

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

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

22 (11) "Custody" means involuntary detention under either chapter
23 71.05 or 70.96A RCW or this chapter, uninterrupted by any period of
24 unconditional release from commitment from a facility providing
25 involuntary care and treatment.

26 (12) "Department" means the department of social and health
27 services.

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

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

36 (15) "Developmental disabilities professional" means a person who
37 has specialized training and three years of experience in directly
38 treating or working with individuals with developmental disabilities

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

4 (16) "Developmental disability" means that condition defined in RCW
5 71A.10.020.

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

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

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

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

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

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

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

37 (22) "Intoxicated person" means a person whose mental or physical

1 functioning is substantially impaired as a result of the use of alcohol
2 or other psychoactive chemicals.

3 (23) "Judicial commitment" means a commitment by a court under this
4 chapter.

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

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

9 (a) A substantial risk that:

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

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

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

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

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

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

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

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

37 (30) "Private agency" means any person, partnership, corporation,
38 or association that is not a public agency, whether or not financed in

1 whole or in part by public funds, that constitutes an evaluation and
2 treatment facility or private institution, hospital, or sanitarium, or
3 approved treatment program, that is conducted for, or includes a
4 department or ward conducted for, the care and treatment of persons who
5 are mentally ill and/or chemically dependent.

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

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

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

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

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

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

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

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

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

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

12 (41) "Treatment records" means registration records and all other
13 records concerning persons who are receiving or who at any time have
14 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 (42) "Violent act" means behavior that resulted in homicide,
21 attempted suicide, nonfatal injuries, or substantial damage to
22 property.

23 NEW SECTION. **Sec. 203.** (1) The secretary, in consultation with
24 the Washington state association of counties, shall select and contract
25 with regional support networks or counties to provide two integrated
26 crisis response and involuntary treatment pilot programs for adults and
27 shall allocate resources for both integrated services and secure
28 detoxification services in the pilot areas. In selecting the two
29 regional support networks or counties, the secretary shall endeavor to
30 site one in an urban and one in a rural regional support network or
31 county; and to site them in counties other than those selected pursuant
32 to section 220 of this act, to the extent necessary to facilitate
33 evaluation of pilot project results.

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

1 (a) Combine the crisis responder functions of a county-designated
2 mental health professional under chapter 71.05 RCW and a county-
3 designated chemical dependency specialist under chapter 70.96A RCW by
4 establishing a new county-designated crisis responder who is authorized
5 to conduct investigations and detain persons up to seventy-two hours to
6 the proper facility;

7 (b) Provide training to the crisis responders as required by the
8 department;

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

12 (d) Provide the administrative and court-related staff, resources,
13 and processes necessary to facilitate the legal requirements of the
14 initial detention and the commitment hearings for persons with a
15 chemical dependency;

16 (e) Participate in the evaluation and report to assess the outcomes
17 of the pilot programs including providing data and information as
18 requested;

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

22 (g) Collaborate with the department of corrections where persons
23 detained or committed are also subject to supervision by the department
24 of corrections.

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

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

30 (1) Psychiatrist, psychologist, psychiatric nurse, or social
31 worker;

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

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

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

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

9 NEW SECTION. **Sec. 205.** In addition to the provisions of this
10 chapter, a designated crisis responder has all the powers and duties of
11 a county-designated mental health professional as well as the powers
12 and duties of a designated chemical dependency specialist under RCW
13 70.96A.120.

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

29 (b)(i)(A) Whenever it appears, by petition for initial detention,
30 to the satisfaction of a judge of the superior court that a person
31 presents as a result of a mental disorder, a likelihood of serious
32 harm, or is gravely disabled, and that the person has refused or failed
33 to accept appropriate evaluation and treatment voluntarily, the judge
34 may issue an order requiring the person to appear within twenty-four
35 hours after service of the order at a designated evaluation and

1 treatment facility for not more than a seventy-two hour evaluation and
2 treatment period; or

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

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

26 (c) The county-designated crisis responder shall then serve or
27 cause to be served on such person, his or her guardian, and
28 conservator, if any, a copy of the order to appear, together with a
29 notice of rights and a petition for initial detention. After service
30 on the person, the county-designated crisis responder shall file the
31 return of service in court and provide copies of all papers in the
32 court file to the evaluation and treatment facility or secure
33 detoxification facility and the designated attorney. The
34 county-designated crisis responder shall notify the court and the
35 prosecuting attorney that a probable cause hearing will be held within
36 seventy-two hours of the date and time of outpatient evaluation or
37 admission to the evaluation and treatment facility, secure
38 detoxification facility, or other certified chemical dependency

1 provider. The person shall be permitted to remain in his or her home
2 or other place of his or her choosing before the time of evaluation and
3 shall be permitted to be accompanied by one or more of his or her
4 relatives, friends, an attorney, a personal physician, or other
5 professional or religious advisor to the place of evaluation. An
6 attorney accompanying the person to the place of evaluation shall be
7 permitted to be present during the admission evaluation. Any other
8 person accompanying the person may be present during the admission
9 evaluation. The facility may exclude the person if his or her presence
10 would present a safety risk, delay the proceedings, or otherwise
11 interfere with the evaluation.

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

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

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

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

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

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

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

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

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

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

14 NEW SECTION. **Sec. 208.** If the evaluation and treatment facility,
15 secure detoxification facility, or other certified chemical dependency
16 provider admits the person, it may detain the person for evaluation and
17 treatment for a period not to exceed seventy-two hours from the time of
18 acceptance. The computation of the seventy-two hour period excludes
19 Saturdays, Sundays, and holidays.

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

23 NEW SECTION. **Sec. 210.** (1) A person detained for seventy-two hour
24 evaluation and treatment under section 206 of this act or RCW
25 70.96A.120 may be detained for not more than fourteen additional days
26 of involuntary chemical dependency treatment if there are beds
27 available at the secure detoxification facility and the following
28 conditions are met:

29 (a) The professional person in charge of the agency or facility or
30 the person's designee providing evaluation and treatment services in a
31 secure detoxification facility has assessed the person's condition and
32 finds that the condition is caused by chemical dependency and either
33 results in a likelihood of serious harm or in the detained person being
34 gravely disabled, and the professional person or his or her designee is
35 prepared to testify those conditions are met;

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

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

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

18 (3) The petition shall state facts that support the finding that
19 the person, as a result of chemical dependency, presents a likelihood
20 of serious harm or is gravely disabled, and that there are no less
21 restrictive alternatives to detention in the best interest of the
22 person or others. The petition shall state specifically that less
23 restrictive alternative treatment was considered and specify why
24 treatment less restrictive than detention is not appropriate.

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

28 (5)(a) The court shall inform the person whose commitment is sought
29 of his or her right to contest the petition, be represented by counsel
30 at every stage of any proceedings relating to his or her commitment,
31 and have counsel appointed by the court or provided by the court, if he
32 or she wants the assistance of counsel and is unable to obtain counsel.
33 If the court believes that the person needs the assistance of counsel,
34 the court shall require, by appointment if necessary, counsel for him
35 or her regardless of his or her wishes. The person shall, if he or she
36 is financially able, bear the costs of such legal service; otherwise
37 such legal service shall be at public expense. The person whose
38 commitment is sought shall be informed of his or her right to be

1 examined by a licensed physician of his or her choice. If the person
2 is unable to obtain a licensed physician and requests examination by a
3 physician, the court shall appoint a reasonably available licensed
4 physician designated by the person.

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

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

18 NEW SECTION. **Sec. 212.** The prosecuting attorney of the county in
19 which an action under this chapter is taken must represent the
20 petitioner in judicial proceedings under this chapter for the
21 involuntary chemical dependency treatment of a person, including any
22 judicial proceeding where the person sought to be treated for chemical
23 dependency challenges the action.

24 NEW SECTION. **Sec. 213.** (1) Every person involuntarily detained or
25 committed under this chapter as a result of a mental disorder is
26 entitled to all the rights set forth in this chapter and in chapter
27 71.05 RCW, and retains all rights not denied him or her under this
28 chapter or chapter 71.05 RCW.

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

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

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

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

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

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

31 NEW SECTION. **Sec. 215.** The secretary may adopt rules to implement
32 this chapter.

33 NEW SECTION. **Sec. 216.** The provisions of RCW 71.05.550 apply to
34 this chapter.

1 NEW SECTION. **Sec. 217.** (1) The Washington state institute for
2 public policy shall evaluate the pilot programs and make a preliminary
3 report to appropriate committees of the legislature by December 1,
4 2007, and a final report by September 30, 2008.

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

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

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

9 (ii) Is cost-effective;

10 (iii) Results in better outcomes for persons involuntarily
11 detained;

12 (iv) Increased the effectiveness of the crisis response system in
13 the pilot catchment areas;

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

19 (3) The reports shall consider the impact of the pilot programs on
20 the existing mental health system and on the persons served by the
21 system.

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

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

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

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

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

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

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

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

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

26 (d) Reduce the number of criminal justice interventions including
27 arrests, violations of conditions of supervision, bookings, jail days,
28 prison sanction day for violations, court appearances, and prosecutor
29 and defense costs;

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

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

36 (g) Where appropriate and available, coordinate with primary care
37 and other programs operated through the federal government including

1 federally qualified health centers, Indian health programs, and
2 veterans' health programs for which the person is eligible to reduce
3 duplication of services and conflicts in case approach;

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

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

10 (j) Where a program participant is under supervision by the
11 department of corrections, collaborate with the department of
12 corrections to maximize treatment outcomes and reduce the likelihood of
13 reoffense.

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

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

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

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

29 (1) Number of members in independent, supported, or transitional
30 employment, the stability of that employment, and the income to members
31 as a result of employment;

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

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

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

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

3 **PART III**
4 **OMNIBUS INVOLUNTARY TREATMENT ACT**

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

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

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

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

25 (2) To adequately assess whether a person presents a likelihood of
26 serious harm or a grave disability due to his or her disorder,
27 including an assessment of any prior history or pattern of repeated
28 hospitalizations or law enforcement interventions due to decompensation
29 in his or her mental or substance abuse disorder. The consideration of
30 prior mental history is particularly relevant in determining whether
31 the person would receive, if released, such care as is essential for
32 his or her health or safety;

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

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

3 (5) To safeguard individual rights;

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

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

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

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

25 (10) To protect the public safety.

26 **Definitions**

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

29 (1) "Admission" or "admit" means a decision by a physician that a
30 person should be examined or treated as a patient in a hospital, an
31 evaluation and treatment facility, or other inpatient facility, or a
32 decision by a professional person in charge or his or her designee that
33 a person should be detained as a patient for evaluation and treatment
34 in a secure detoxification facility or other certified chemical
35 dependency provider.

- 1 (2) "Alcoholic" means a person who suffers from the disease of
2 alcoholism.
- 3 (3) "Alcoholism" means a disease, characterized by a dependency on
4 alcoholic beverages, loss of control over the amount and circumstances
5 of use, symptoms of tolerance, physiological or psychological
6 withdrawal, or both, if use is reduced or discontinued, and impairment
7 of health or disruption of social or economic functioning.
- 8 (4) "Antipsychotic medications" means that class of drugs primarily
9 used to treat serious manifestations of mental illness associated with
10 thought disorders, which includes but is not limited to atypical
11 antipsychotic medications.
- 12 (5) "Approved treatment program" means a discrete program of
13 chemical dependency treatment provided by a treatment program certified
14 by the department as meeting standards adopted under chapter 70.96A
15 RCW.
- 16 (6) "Attending staff" means any person on the staff of a public or
17 private agency having responsibility for the care and treatment of a
18 patient.
- 19 (7) "Certified facility" means a facility certified by the
20 department for detention or commitment under this chapter and includes,
21 but is not limited to, an evaluation and treatment center, a
22 psychiatric hospital, a secure detoxification facility, and an expanded
23 services facility that has been certified for detention or commitment.
- 24 (8) "Chemical dependency" means:
25 (a) Alcoholism;
26 (b) Drug addiction; or
27 (c) Dependence on alcohol and one or more other psychoactive
28 chemicals, as the context requires.
- 29 (9) "Chemical dependency professional" means a person certified as
30 a chemical dependency professional by the department of health under
31 chapter 18.205 RCW.
- 32 (10) "Chemical dependency program" means expenditures and
33 activities of the department designed and conducted to prevent or treat
34 alcoholism and other drug addiction, including reasonable
35 administration and overhead.
- 36 (11) "Commitment" means the determination by a court that a person
37 should be detained for a period of either evaluation or treatment, or
38 both, in an inpatient or a less restrictive setting.

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

3 (13) "Custody" means involuntary detention under either chapter
4 71.05 or 70.96A RCW or this chapter, uninterrupted by any period of
5 unconditional release from commitment from a facility providing
6 involuntary care and treatment.

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

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

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

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

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

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

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

30 (21) "Developmental disability" means that condition defined in RCW
31 71A.10.020.

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

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

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

3 (25) "Drug addiction" means a disease characterized by a dependency
4 on psychoactive chemicals, loss of control over the amount and
5 circumstances of use, symptoms of tolerance, physiological or
6 psychological withdrawal, or both, if use is reduced or discontinued,
7 and impairment of health or disruption of social or economic
8 functioning.

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

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

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

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

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

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

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

7 (31) "Incapacitated by alcohol or other psychoactive chemicals"
8 means that a person, as a result of the use of alcohol or other
9 psychoactive chemicals, is gravely disabled or presents a likelihood of
10 serious harm to himself or herself, to any other person, or to
11 property.

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

14 (33) "Individualized service plan" means a plan prepared by a
15 developmental disabilities professional with other professionals as a
16 team, for an individual with developmental disabilities, which shall
17 state:

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

20 (b) The conditions and strategies necessary to achieve the purposes
21 of habilitation;

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

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

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

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

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

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

36 (35) "Judicial commitment" means a commitment by a court under this
37 chapter.

1 (36) "Licensed physician" means a person licensed to practice
2 medicine or osteopathic medicine and surgery in the state of
3 Washington.

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

5 (a) A substantial risk that:

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

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

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

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

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

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

25 (39) "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 (40) "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 (41) "Minor" means a person less than eighteen years of age.

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

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

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

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

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

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

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

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

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

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

1 (52) "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 (53) "Release" means legal termination of the commitment under
7 chapter 70.96A or 71.05 RCW or this chapter.

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

10 (55) "Secretary" means the secretary of the department or the
11 secretary's designee.

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

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

21 (58) "Treatment" means the broad range of emergency,
22 detoxification, residential, inpatient and outpatient services and
23 care, including diagnostic evaluation, mental health or chemical
24 dependency education and counseling, medical, psychiatric,
25 psychological, and social service care, vocational rehabilitation and
26 career counseling, which may be extended to persons with mental and
27 substance abuse disorders, and their families.

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

31 (60) "Treatment records" include registration and all other records
32 concerning persons who are receiving or who at any time have received
33 services for mental illness, which are maintained by the department, by
34 regional support networks and their staffs, and by treatment
35 facilities. Treatment records do not include notes or records
36 maintained for personal use by a person providing treatment services
37 for the department, regional support networks, or a treatment facility
38 if the notes or records are not available to others.

1 (61) "Violent act" means behavior that resulted in homicide,
2 attempted suicide, nonfatal injuries, or substantial damage to
3 property.

4 **General Provisions**

5 NEW SECTION. **Sec. 304.** Persons suffering from a mental disorder,
6 chemical dependency disorder, or both may not be involuntarily
7 committed for treatment of such disorder except pursuant to provisions
8 of this chapter, or chapter 10.77 or 71.09 RCW, transfer pursuant to
9 RCW 72.68.031 through 72.68.037, or pursuant to court ordered
10 evaluation and treatment not to exceed ninety days pending a criminal
11 trial or sentencing.

12 NEW SECTION. **Sec. 305.** Persons who are developmentally disabled,
13 impaired by chronic alcoholism or drug abuse, or suffering from
14 dementia and who otherwise meet the criteria for detention or judicial
15 commitment are not ineligible for detention or commitment based on this
16 condition alone.

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

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

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

26 (1) Psychiatrist, psychologist, psychiatric nurse, or social
27 worker;

28 (2) Person with a master's degree or further advanced degree in
29 counseling or one of the social sciences from an accredited college or
30 university and, who have in addition, at least two years of experience
31 in direct treatment of persons with mental illness or emotional

1 disturbance, such experience gained under the direction of a mental
2 health professional;

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

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

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

11 NEW SECTION. **Sec. 309.** The prosecuting attorney of the county in
12 which an action under this chapter is taken must represent the
13 petitioner in judicial proceedings under this chapter for the
14 involuntary chemical dependency treatment of a person, including any
15 judicial proceeding where the person sought to be treated for chemical
16 dependency challenges the action.

17 **Department Responsibilities**

18 NEW SECTION. **Sec. 310.** The department shall have the
19 responsibility to determine whether all rights of persons recognized
20 and guaranteed by the provisions of this chapter and the Constitutions
21 of the state of Washington and the United States are, in fact,
22 protected and effectively secured. To this end, the department shall
23 assign appropriate staff who shall from time to time as may be
24 necessary have authority to examine records, inspect facilities, attend
25 proceedings, and do whatever is necessary to monitor, evaluate, and
26 assure adherence to such rights. Such persons shall also recommend
27 such additional safeguards or procedures as may be appropriate to
28 secure individual rights set forth in this chapter and as guaranteed by
29 the state and federal Constitutions.

30 NEW SECTION. **Sec. 311.** The department shall adopt such rules as
31 may be necessary to effectuate the intent and purposes of this chapter,
32 which shall include but not be limited to evaluation of the quality of
33 the program and facilities operating pursuant to this chapter,

1 evaluation of the effectiveness and cost effectiveness of such programs
2 and facilities, and procedures and standards for certification and
3 other action relevant to facilities.

4 NEW SECTION. **Sec. 312.** The provisions of chapter 420, Laws of
5 1989 shall apply equally to persons in the custody of the department on
6 May 13, 1989, who were found by a court to be not guilty by reason of
7 insanity or incompetent to stand trial, or who have been found to have
8 committed acts constituting a felony pursuant to RCW 71.05.280(3) and
9 present a substantial likelihood of repeating similar acts, and the
10 secretary shall cause such persons to be evaluated to ascertain if such
11 persons are developmentally disabled for placement in a program
12 specifically reserved for the treatment and training of persons with
13 developmental disabilities.

14 NEW SECTION. **Sec. 313.** By December 1, 2006, the department shall
15 provide the appropriate committees of the legislature with a report
16 identifying the types of facilities that will be certified for
17 detention or commitment under this chapter including the locations and
18 capacity of existing facilities and facilities under development, by
19 type of facility, in a manner that indicates the geographic
20 distribution of the available capacity.

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

27 **Initial Detention**

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

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

33 the designated responder may, after investigation and evaluation of the

1 specific facts alleged and of the reliability and credibility of any
2 person providing information to initiate detention, if satisfied that
3 the allegations are true and that the person will not voluntarily seek
4 appropriate treatment, file a petition for initial detention. Before
5 filing the petition, the designated responder must personally interview
6 the person, unless the person refuses an interview, and determine
7 whether the person will voluntarily receive appropriate evaluation and
8 treatment at a certified facility.

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

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

28 (c) The designated responder shall then serve or cause to be served
29 on such person, and his or her personal representative, guardian, or
30 conservator, if any, a copy of the order to appear together with a
31 notice of rights and a petition for initial detention. After service
32 on the person, the designated responder shall file the return of
33 service in court and provide copies of all papers in the court file to
34 the certified facility and the designated attorney. The designated
35 responder shall notify the court and the prosecuting attorney that a
36 probable cause hearing will be held within seventy-two hours of the
37 date and time of outpatient evaluation or admission to the certified
38 facility. The person shall be permitted to remain in his or her home

1 or other place of his or her choosing prior to the time of evaluation
2 and shall be permitted to be accompanied by one or more of his or her
3 relatives, friends, an attorney, a personal physician, or other
4 professional or religious advisor to the place of evaluation. An
5 attorney accompanying the person to the place of evaluation shall be
6 permitted to be present during the admission evaluation. Any other
7 person accompanying the person may be present during the admission
8 evaluation. The facility may exclude the person if his or her presence
9 would present a safety risk, delay the proceedings, or otherwise
10 interfere with the evaluation.

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

28 (2) When a designated responder receives information alleging that
29 a person, as the result of a mental disorder, chemical dependency
30 disorder, or both, presents an imminent likelihood of serious harm, or
31 is in imminent danger because of being gravely disabled, after
32 investigation and evaluation of the specific facts alleged and of the
33 reliability and credibility of the person or persons providing the
34 information if any, the designated responder may take the person or
35 cause, by oral or written order the person to be taken into emergency
36 custody in a certified facility for not more than seventy-two hours as
37 described in section 318 of this act.

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

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

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

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

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

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

32 If a person is involuntarily placed in a certified facility
33 pursuant to section 315 of this act, on the next judicial day following
34 the initial detention, the designated responder shall file with the
35 court and serve the designated attorney of the detained person the
36 petition or supplemental petition for initial detention, proof of
37 service of notice, and a copy of a notice of emergency detention.

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

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

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

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

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

32 NEW SECTION. **Sec. 321.** The legislature intends that, when
33 evaluating a person who is identified under RCW 72.09.370(7), the
34 professional person at the evaluation and treatment facility shall,

1 when appropriate after consideration of the person's mental condition
2 and relevant public safety concerns, file a petition for a ninety-day
3 less restrictive alternative in lieu of a petition for a fourteen-day
4 commitment.

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

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

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

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

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

34 NEW SECTION. **Sec. 323.** (1) If a person is referred to a
35 designated responder under RCW 10.77.090(1)(d)(iii)(A), the designated
36 responder shall examine the person within forty-eight hours. If the

1 designated responder determines it is not appropriate to detain the
2 person or petition for a ninety-day less restrictive alternative under
3 section 324(4) of this act, that decision shall be immediately
4 presented to the superior court for hearing. The court shall hold a
5 hearing to consider the decision of the designated responder not later
6 than the next judicial day. At the hearing the superior court shall
7 review the determination of the designated responder and determine
8 whether an order should be entered requiring the person to be evaluated
9 at a certified facility. No person referred to a certified facility
10 may be held at the facility longer than seventy-two hours.

11 (2) If a person is placed in an evaluation and treatment facility
12 under RCW 10.77.090(1)(d)(iii)(B), a professional person shall evaluate
13 the person for purposes of determining whether to file a ninety-day
14 inpatient or outpatient petition under this chapter. Before expiration
15 of the seventy-two hour evaluation period authorized under RCW
16 10.77.090(1)(d)(iii)(B), the professional person shall file a petition
17 or, if the recommendation of the professional person is to release the
18 person, present his or her recommendation to the superior court of the
19 county in which the criminal charge was dismissed. The superior court
20 shall review the recommendation not later than forty-eight hours,
21 excluding Saturdays, Sundays, and holidays, after the recommendation is
22 presented. If the court rejects the recommendation to unconditionally
23 release the person, the court may order the person detained at a
24 certified facility for not more than a seventy-two hour evaluation and
25 treatment period and direct the person to appear at a surety hearing
26 before that court within seventy-two hours, or the court may release
27 the person but direct the person to appear at a surety hearing set
28 before that court within eleven days, at which time the prosecutor may
29 file a petition under this chapter for ninety-day inpatient or
30 outpatient treatment. If a petition is filed by the prosecutor, the
31 court may order that the person named in the petition be detained at
32 the certified facility that performed the evaluation under this
33 subsection or order the respondent to be in outpatient treatment. If
34 a petition is filed but the person fails to appear in court for the
35 surety hearing, the court shall order that a mental health
36 professional, a chemical dependency professional, or peace officer
37 shall take such person or cause such person to be taken into custody
38 and placed in a certified facility to be brought before the court the

1 next judicial day after detention. Upon the person's first appearance
2 in court after a petition has been filed, proceedings under sections
3 330 and 331 of this act shall commence. For a person subject to this
4 subsection, the prosecutor or professional person may directly file a
5 petition for ninety-day inpatient or outpatient treatment and no
6 petition for initial detention or fourteen-day detention is required
7 before such a petition may be filed.

8 The court shall conduct the hearing on the petition filed under
9 this subsection within five judicial days of the date the petition is
10 filed. The court may continue the hearing upon the written request of
11 the person named in the petition or the person's attorney, for good
12 cause shown. Such a continuance shall not exceed five additional
13 judicial days. If the person named in the petition requests a jury
14 trial, the trial shall commence within ten judicial days of the date of
15 the filing of the petition. 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 detained and treated until released by order of the
22 court. If no order has been made within thirty days after the filing
23 of the petition, not including any extensions of time requested by the
24 detained person or his or her attorney, the detained person shall be
25 released.

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

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

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

35 NEW SECTION. **Sec. 324.** A person detained for seventy-two hour
36 evaluation and treatment may be detained for not more than fourteen

1 additional days of involuntary intensive treatment or ninety additional
2 days of a less restrictive alternative to involuntary intensive
3 treatment if the following conditions are met:

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

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

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

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

34 (5) A copy of the petition has been served on the detained person,
35 his or her attorney and his or her personal representative, guardian,
36 or conservator, if any, if the person is a minor, his or her parent,
37 and if the person is under the supervision of the department of

1 corrections, the department of corrections prior to the probable cause
2 hearing; and

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

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

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

15 (9) If the hospital or facility designated to provide outpatient
16 treatment is other than the facility providing involuntary treatment,
17 the outpatient facility so designated has agreed to assume such
18 responsibility.

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

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

1 court finds that the person, as the result of a mental disorder,
2 chemical dependency disorder, or both, presents a likelihood of serious
3 harm, or is gravely disabled, but that treatment in a less restrictive
4 setting than detention is in the best interest of such person or
5 others, the court shall order an appropriate less restrictive course of
6 treatment for not to exceed ninety days.

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

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

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

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

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

32 (1) Such person after having been taken into custody for evaluation
33 and treatment has threatened, attempted, or inflicted: (a) Physical
34 harm upon the person of another or himself or herself, or substantial

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

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

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

17 (4) Such person is gravely disabled.

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

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

35 (3) If a person has been determined to be incompetent pursuant to
36 RCW 10.77.090(4), then the professional person in charge of the
37 treatment facility or his or her professional designee or the

1 designated responder may directly file a petition for one hundred
2 eighty day treatment under section 327(3) of this act. No petition for
3 initial detention or fourteen day detention is required before such a
4 petition may be filed.

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

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

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

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

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

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

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

32 (b) If the committed person is developmentally disabled and has
33 been determined incompetent pursuant to RCW 10.77.090(4), and the best
34 interests of the person or others will not be served by a less-
35 restrictive treatment which is an alternative to detention, the court
36 shall remand him or her to the custody of the department or to a
37 facility certified by the department to provide treatment to persons

1 committed under this chapter. When appropriate and subject to
2 available funds, treatment and training of such persons must be
3 provided in a program specifically reserved for the treatment and
4 training of developmentally disabled persons. A person so committed
5 shall receive habilitation services pursuant to an individualized
6 service plan specifically developed to treat the behavior which was the
7 subject of the criminal proceedings. The treatment program shall be
8 administered by developmental disabilities professionals and others
9 trained specifically in the needs of developmentally disabled persons.

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

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

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

35 (2) The person shall be released from involuntary treatment at the
36 expiration of the period of commitment imposed under subsection (1) of
37 this section unless the superintendent or professional person in charge
38 of the facility in which he or she is confined, or in the event of a

1 less restrictive alternative, the designated mental health professional
2 or developmental disabilities professional, files a new petition for
3 involuntary treatment on the grounds that the committed person;

4 (a) During the current period of court ordered treatment: (i) Has
5 threatened, attempted, or inflicted physical harm upon the person of
6 another, or substantial damage upon the property of another, and (ii)
7 as a result of a mental disorder, chemical dependency disorder, or
8 both, or as the result of a developmental disability, presents a
9 likelihood of serious harm; or

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

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

20 (d) Continues to be gravely disabled.

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

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

1 permissible on the same grounds and pursuant to the same procedures as
2 the original one hundred eighty day commitment.

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (3) Prior determinations of incompetency or insanity under chapter
11 10.77 RCW; and

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

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

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

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

34 **Modifications and Reviews**

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

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

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

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

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

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

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

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

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

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

5 Upon notification by the hospital or facility designated to provide
6 outpatient care, or on his or her own motion, the designated responder
7 or the secretary may order that the conditionally released person be
8 apprehended and taken into custody and temporarily detained in a
9 certified facility in or near the county in which he or she is
10 receiving outpatient treatment.

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

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

28 (d) The court that originally ordered commitment shall be notified
29 within two judicial days of a person's detention under the provisions
30 of this section, and the designated responder or the secretary shall
31 file his or her petition and order of apprehension and detention with
32 the court and serve them upon the person detained, and if the person is
33 a minor, his or her parent, his or her attorney, personal
34 representative, guardian, or conservator, if any, and the department of
35 corrections, where the person is under its supervision, shall receive
36 a copy of such papers as soon as possible. Such person shall have the
37 same rights with respect to notice, hearing, and counsel as for an
38 involuntary treatment proceeding, except as specifically set forth in

1 this section and except that there shall be no right to jury trial.
2 The issues to be determined shall be: (i) Whether the conditionally
3 released person did or did not adhere to the terms and conditions of
4 his or her conditional release; (ii) that substantial deterioration in
5 the person's functioning has occurred; (iii) there is evidence of
6 substantial decompensation with a reasonable probability that the
7 decompensation can be reversed by further inpatient treatment; or (iv)
8 there is a likelihood of serious harm; and, if any of the conditions
9 listed in this subsection (3)(d) have occurred, whether the terms of
10 conditional release should be modified or the person should be returned
11 to the facility.

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

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

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

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

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

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

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

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

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

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

34 NEW SECTION. **Sec. 341.** No indigent patient shall be conditionally
35 released or discharged from involuntary treatment without suitable

1 clothing, and the superintendent of a state hospital shall furnish the
2 same, together with such sum of money as he or she deems necessary for
3 the immediate welfare of the patient. Such sum of money shall be the
4 same as the amount required by RCW 72.02.100 to be provided to persons
5 in need being released from correctional institutions. As funds are
6 available, the secretary may provide payment to indigent persons
7 conditionally released pursuant to this chapter consistent with the
8 optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules
9 and regulations to do so.

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

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

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

35 (b) The provisions of section 344(2) of this act apply to proposed

1 leaves, and either or both prosecuting attorneys receiving notice under
2 this subsection may petition the court under section 344(2) of this
3 act.

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

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

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

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

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

20 Whenever the superintendent or professional person in charge of a
21 hospital or facility providing involuntary treatment pursuant to this
22 chapter releases a person prior to the expiration of the period of
23 commitment, the superintendent or professional person in charge shall
24 in writing notify the court which committed the person for treatment.

25 (2) Before a person committed under grounds set forth in section
26 327(3) or 331(2)(c) of this act is released under this section, the
27 superintendent or professional person in charge shall in writing notify
28 the prosecuting attorney of the county in which the criminal charges
29 against the committed person were dismissed, of the release date.
30 Notice shall be provided at least thirty days before the release date.
31 Within twenty days after receiving notice, the prosecuting attorney may
32 petition the court in the county in which the person is being
33 involuntarily treated for a hearing to determine whether the person is
34 to be released. The prosecuting attorney shall provide a copy of the
35 petition to the superintendent or professional person in charge of the
36 hospital or facility providing involuntary treatment, the committed
37 person and his or her attorney, personal representative, guardian, or

1 conservator, if any, the department of corrections if the person is
2 under its supervision, and where the person is a minor, his or her
3 parent. The court shall conduct a hearing on the petition within ten
4 days of filing the petition. The committed person shall have the same
5 rights with respect to notice, hearing, and counsel as for an
6 involuntary treatment proceeding, except as set forth in this
7 subsection and except that there shall be no right to jury trial. The
8 issue to be determined at the hearing is whether or not the person may
9 be released without substantial danger to other persons, or substantial
10 likelihood of committing criminal acts jeopardizing public safety or
11 security. If the court disapproves of the release, it may do so only
12 on the basis of substantial evidence. Pursuant to the determination of
13 the court upon the hearing, the committed person shall be released or
14 shall be returned for involuntary treatment subject to release at the
15 end of the period for which he or she was committed, or otherwise in
16 accordance with the provisions of this chapter.

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

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

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

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

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

36 (i) The victim of the sex, violent, or felony harassment offense

1 that was dismissed pursuant to RCW 10.77.090(4) preceding commitment
2 under section 327(3) or 331(2)(c) of this act or the victim's next of
3 kin if the crime was a homicide;

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

6 (iii) Any person specified in writing by the prosecuting attorney.
7 Information regarding victims, next of kin, or witnesses requesting the
8 notice, information regarding any other person specified in writing by
9 the prosecuting attorney to receive the notice, and the notice are
10 confidential and shall not be available to the person committed under
11 this chapter.

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

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

17 (2) If a person committed under section 327(3) or 331(2)(c) of this
18 act following dismissal of a sex, violent, or felony harassment offense
19 pursuant to RCW 10.77.090(4) escapes, the superintendent shall
20 immediately notify, by the most reasonable and expedient means
21 available, the chief of police of the city, the sheriff of the county
22 in which the person resided immediately before the person's arrest, and
23 the department of corrections if the person is subject to its
24 supervision. If previously requested, the superintendent shall also
25 notify the witnesses and the victim of the sex, violent, or felony
26 harassment offense that was dismissed pursuant to RCW 10.77.090(4)
27 preceding commitment under section 327(3) or 331(2)(c) of this act or
28 the victim's next of kin if the crime was a homicide. In addition, the
29 secretary shall also notify appropriate parties pursuant to section
30 363(18) of this act. If the person is recaptured, the superintendent
31 shall send notice to the persons designated in this subsection as soon
32 as possible but in no event later than two working days after the
33 department learns of such recapture.

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

37 (4) The superintendent shall send the notices required by this

1 chapter to the last address provided to the department by the
2 requesting party. The requesting party shall furnish the department
3 with a current address.

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

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

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

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

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

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

18 **Attorneys and Courts**

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

21 (1) The person for whom an attorney is appointed shall, if he or she is
22 financially able pursuant to standards as to financial capability and
23 indigency set by the superior court of the county in which the
24 proceeding is held, bear the costs of such legal services; (2) if such
25 person is indigent pursuant to such standards, the costs of such
26 services shall be borne by the county in which the proceeding is held,
27 subject however to the responsibility for costs provided in section
28 331(2) of this act.

29 NEW SECTION. **Sec. 348.** In any judicial proceeding for involuntary
30 commitment or detention, or in any proceeding challenging such
31 commitment or detention, the prosecuting attorney for the county in
32 which the proceeding was initiated shall represent the persons or
33 agencies petitioning for commitment or detention and shall defend all
34 challenges to such commitment or detention: PROVIDED, That the

1 attorney general shall represent and provide legal services and advice
2 to state hospitals with regard to all provisions of and proceedings
3 under this chapter except in proceedings initiated by hospitals seeking
4 fourteen day detention.

5 NEW SECTION. **Sec. 349.** When any court orders a person to receive
6 treatment under this chapter, the order shall include a statement that
7 if the person is, or becomes, subject to supervision by the department
8 of corrections, the person must notify the treatment provider and the
9 person's mental health and chemical dependency treatment information
10 must be shared with the department of corrections for the duration of
11 the offender's incarceration and supervision, under RCW 71.05.445.
12 Upon a petition by a person who does not have a history of one or more
13 violent acts, the court may, for good cause, find that public safety
14 would not be enhanced by the sharing of this person's information.

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

19 (1) One or more attorneys to act as involuntary treatment
20 commissioners; and

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

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

34 NEW SECTION. **Sec. 351.** The judges of the superior court of the

1 county by majority vote may authorize involuntary treatment
2 commissioners, appointed pursuant to RCW 71.05.135, to perform any or
3 all of the following duties:

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

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

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

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

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

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

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

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

30 NEW SECTION. **Sec. 354.** In making a determination of whether there
31 is a likelihood of serious harm in a hearing conducted under section
32 325 or 331 of this act, the court shall give great weight to any
33 evidence before the court regarding whether the person has: (1) A
34 recent history of one or more violent acts; or (2) a recent history of
35 one or more commitments under this chapter or its equivalent provisions

1 under the laws of another state which were based on a likelihood of
2 serious harm. The existence of prior violent acts or commitments under
3 this chapter or its equivalent shall not be the sole basis for
4 determining whether a person presents a likelihood of serious harm.

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

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

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

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

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

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

1 **Individual Rights and Medications**

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

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

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

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

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

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

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

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

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

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

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

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

23 (6) When proceedings are initiated under section 315 (2), (3), or
24 (4)(b) of this act, no later than twelve hours after such person is
25 admitted to the certified facility the personnel of the certified
26 facility or the designated responder shall serve on such person and if
27 the person is a minor, the person's parent, a copy of the petition for
28 initial detention and the name, business address, and phone number of
29 the designated attorney and shall forthwith commence service of a copy
30 of the petition for initial detention on the designated attorney.

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

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

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

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

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

2 (d) To remain silent;

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

4 (9) The physician-patient privilege or the psychologist-client
5 privilege shall be deemed waived in proceedings under this chapter
6 relating to the administration of antipsychotic medications. As to
7 other proceedings under this chapter, the privileges shall be waived
8 when a court of competent jurisdiction in its discretion determines
9 that such waiver is necessary to protect either the detained person or
10 the public.

11 The waiver of a privilege under this section is limited to records
12 or testimony relevant to evaluation of the detained person for purposes
13 of a proceeding under this chapter. Upon motion by the detained person
14 or on its own motion, the court shall examine a record or testimony
15 sought by a petitioner to determine whether it is within the scope of
16 the waiver.

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

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

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

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

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

35 (d) To have visitors at reasonable times;

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

1 (f) To have ready access to letter writing materials, including
2 stamps, and to send and receive uncensored correspondence through the
3 mails;

4 (g) To discuss treatment plans and decisions with professional
5 persons;

6 (h) Not to consent to the administration of antipsychotic
7 medications beyond the hearing conducted pursuant to section 331 of
8 this act, or the performance of electroconvulsant therapy or surgery,
9 except emergency life-saving surgery, unless ordered by a court under
10 section 361 of this act;

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

13 (j) To dispose of property and sign contracts unless such person
14 has been adjudicated an incompetent in a court proceeding directed to
15 that particular issue.

16 (11) Every person involuntarily detained shall immediately be
17 informed, and if the person is a minor, his or her parent shall be
18 informed, of his or her right to a hearing to review the legality of
19 his or her detention and of his or her right to counsel, by the
20 professional person in charge of the facility providing evaluation and
21 treatment, or his or her designee, and, when appropriate, by the court.
22 If the person so elects, the court shall immediately appoint an
23 attorney to assist him or her.

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

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

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

37 (15) The court shall inform the person whose commitment or
38 recommitment is sought and, if the person is a minor, his or her

1 parent, of his or her right to contest the application, be represented
2 by counsel at every stage of any proceedings relating to his or her
3 commitment and recommitment, and have counsel appointed by the court or
4 provided by the court, if he or she wants the assistance of counsel and
5 is unable to obtain counsel. If the court believes that the person
6 needs the assistance of counsel, the court shall require, by
7 appointment if necessary, counsel for him or her regardless of his or
8 her wishes. The person shall, if he or she is financially able, bear
9 the costs of such legal service; otherwise such legal service shall be
10 at public expense. The person whose commitment or recommitment is
11 sought shall be informed of his or her right to be examined by a
12 licensed physician of his or her choice. If the person is unable to
13 obtain a licensed physician and requests examination by a physician,
14 the court shall employ a licensed physician.

15 NEW SECTION. **Sec. 360.** (1) A person who is gravely disabled or
16 presents a likelihood of serious harm as a result of a mental or
17 chemical dependency disorder or co-occurring mental and chemical
18 dependency disorders has a right to refuse antipsychotic medication
19 unless it is determined that the failure to medicate may result in a
20 likelihood of serious harm or substantial deterioration or
21 substantially prolong the length of involuntary commitment and there is
22 no less intrusive course of treatment than medication in the best
23 interest of that person.

24 (2) The physician must attempt to obtain the informed consent of an
25 involuntary committed person prior to administration of antipsychotic
26 medication and document the attempt to obtain consent in the person's
27 medical record with the reasons that antipsychotic medication is
28 necessary.

29 (3) When a person is detained pursuant to section 315(1)(d), (2),
30 or (4) of this act, the person may refuse antipsychotic medications
31 unless there is an additional concurring medical opinion that the
32 medications are necessary for the imminent prevention of harm to the
33 detained person or another person. Medications administered under this
34 subsection may not continue beyond the probable cause hearing held
35 pursuant to section 325 of this act and the petitioner shall notify the
36 court of administration of involuntary medications under this

1 subsection and provide the court with an opinion regarding whether
2 continued involuntary administration of antipsychotic medication is
3 medically necessary.

4 (4) Except as provided in subsection (3) of this section or in
5 section 361 of this act, if an involuntary committed person refuses
6 antipsychotic medications, the medications may not be administered
7 unless the person has first had a hearing by a panel composed of a
8 physician and two other persons. The two persons shall be selected
9 from among the following: A physician, advanced registered nurse
10 practitioner, psychologist, psychiatric nurse, physician's assistant,
11 and the medical director of the facility. Recognizing that some
12 facilities will not have three staff members of the required expertise
13 who are not directly involved in the person's treatment, the panel
14 shall be composed to the greatest extent possible of treatment
15 providers who are not directly involved in the person's treatment at
16 the time of the hearing.

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

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

37 (a) Following the second hearing, involuntary medication with
38 antipsychotic medication may be continued if the treating psychiatrist

1 certifies, not less than every fourteen days, that the medication
2 continues to be medically appropriate and failure to medicate may
3 result in a likelihood of serious harm or substantial deterioration or
4 substantially prolong the length of involuntary commitment, and that
5 there is no less intrusive course of treatment than medication in the
6 best interest of that person.

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

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

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

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

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

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

24 (b) Not to be medicated between the delivery of the notice and the
25 hearing;

26 (c) To attend the hearing;

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

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

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

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

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

35 NEW SECTION. **Sec. 361.** (1) A court of competent jurisdiction may
36 order that a person involuntarily detained, or committed for inpatient
37 treatment and evaluation or to treatment in a less restrictive

1 alternative pursuant to this chapter be administered antipsychotic
2 medications or the performance of electroconvulsant therapy or surgery
3 pursuant to the following standards and procedures:

4 (a) The administration of antipsychotic medication or
5 electroconvulsant therapy shall not be ordered by the court unless the
6 petitioning party proves by clear, cogent, and convincing evidence that
7 treatment with antipsychotic medications is medically appropriate, that
8 failure to medicate may result in a likelihood of serious harm or
9 substantial deterioration or substantially prolong the length of
10 involuntary commitment, and that there is no less intrusive course of
11 treatment than medication or electroconvulsive therapy in the best
12 interest of the person.

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

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

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

- 26 (i) To be represented by an attorney;
- 27 (ii) To present evidence;
- 28 (iii) To cross-examine witnesses;
- 29 (iv) To have the rules of evidence enforced;
- 30 (v) To remain silent;
- 31 (vi) To view and copy all petitions and reports in the court file;

32 and

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

35 (e) The court may appoint a psychiatrist, psychologist within their
36 scope of practice, or physician to examine and testify on behalf of
37 such person. The court shall appoint a psychiatrist, psychologist

1 within their scope of practice, or physician designated by such person
2 or the person's counsel to testify on behalf of the person in cases
3 where an order for electroconvulsant therapy is sought.

4 (f) An order for the administration of antipsychotic medications
5 entered following a hearing conducted pursuant to this section shall be
6 effective for the period of the current involuntary treatment order,
7 and any interim period during which the person is awaiting trial or
8 hearing on a new petition for involuntary treatment or involuntary
9 medication.

10 (2) Any person detained pursuant to RCW 71.05.320(2), who
11 subsequently refuses antipsychotic medication, shall be entitled to the
12 procedures set forth in subsection (1) of this section.

13 (3) Antipsychotic medication may be administered to a nonconsenting
14 person detained or committed pursuant to this chapter without a court
15 order:

16 (a) Pursuant to section 360 of this act; or

17 (b) Under the following circumstances:

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

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

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

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

33 (4) No court has the authority to order psychosurgery performed on
34 any person involuntarily detained, treated in a less restrictive
35 alternative course of treatment, or committed for treatment and
36 evaluation pursuant to this chapter under any circumstances.

1 **Financial Responsibility**

2 NEW SECTION. **Sec. 362.** (1)(a) In addition to the responsibility
3 provided for by RCW 43.20B.330, any person, or his or her estate, or
4 his or her spouse, or the parents of a minor person who is
5 involuntarily detained pursuant to this chapter for the purpose of
6 treatment and evaluation outside of a facility maintained and operated
7 by the department shall be responsible for the cost of such care and
8 treatment.

9 (b) In the event that a person is unable to pay for such treatment
10 or in the event payment would result in a substantial hardship upon the
11 person or his or her family, then the county of residence of such
12 person shall be responsible for such costs. If it is not possible to
13 determine the county of residence of the person, the cost shall be
14 borne by the county where the person was originally detained.

15 (c) The department shall, pursuant to chapter 34.05 RCW, adopt
16 standards as to:

- 17 (i) Inability to pay in whole or in part;
18 (ii) A definition of substantial hardship; and
19 (iii) Appropriate payment schedules. Such standards shall be
20 applicable to all county mental health administrative boards.

21 (d) Financial responsibility with respect to department services
22 and facilities shall continue to be as provided in RCW 43.20B.320
23 through 43.20B.360 and 43.20B.370.

24 (2) If the person has not paid or is unable to pay for treatment or
25 payment would result in a substantial hardship on the person or his or
26 her family, the program is entitled to any payment:

27 (a) Received by the person or to which he or she may be entitled
28 because of the services rendered; and

29 (b) From any public or private source available to the program
30 because of the treatment provided to the person.

31 (3) The department shall not refuse admission for diagnosis,
32 evaluation, guidance, or treatment to any applicant because it is
33 determined that the applicant is financially unable to contribute fully
34 or in part to the cost of any services.

35 (4)(a) The department may limit admissions of such applicants or
36 modify its programs in order to ensure that expenditures for services
37 or programs do not exceed amounts appropriated by the legislature and

1 are allocated by the department for such services or programs. The
2 department may establish admission priorities in the event that the
3 number of eligible applicants exceeds the limits set by the department.

4 (b) The department is authorized to allocate appropriated funds in
5 the manner that it determines best meets the purposes of this chapter.
6 Nothing in this chapter shall be construed to entitle any person to
7 services authorized in this chapter, or to require the department or
8 its contractors to reallocate funds in order to ensure that services
9 are available to any eligible person upon demand.

10 **Confidentiality**

11 NEW SECTION. **Sec. 363.** Except as provided in this section, RCW
12 71.05.445, 71.05.630, 70.96A.150, or pursuant to a valid release under
13 RCW 70.02.030, the fact of admission and all information and records
14 compiled, obtained, or maintained in the course of providing services
15 to either voluntary or involuntary recipients of services at public or
16 private agencies shall be confidential.

17 Information and records may be disclosed only:

18 (1) In communications between qualified professional persons to
19 meet the requirements of this chapter, in the provision of services or
20 appropriate referrals, or in the course of guardianship proceedings.
21 The consent of the person, or his or her guardian, or if the person is
22 a minor, his or her parent, shall be obtained before information or
23 records may be disclosed by a professional person employed by a
24 facility unless provided to a professional person:

25 (a) Employed by the facility;

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

27 (c) Who is a designated responder;

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

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

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

33 (2) When the communications regard the special needs of a patient
34 and the necessary circumstances giving rise to such needs and the
35 disclosure is made by a facility providing services to the operator of
36 a care facility in which the patient resides.

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

5 (b) A public or private agency shall release to a patient's next of
6 kin, attorney, personal representative, guardian, or conservator, if
7 any:

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

10 (ii) A statement evaluating the mental and physical condition of
11 the patient, and a statement of the probable duration of the patient's
12 confinement, if such information is requested by the next of kin,
13 attorney, personal representative, guardian, or conservator; and such
14 other information requested by the next of kin or attorney as may be
15 necessary to decide whether or not proceedings should be instituted to
16 appoint a guardian or conservator.

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

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

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

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

34 /s/"

35 (b) Nothing in this chapter shall be construed to prohibit the
36 compilation and publication of statistical data for use by government

1 or researchers under standards, including standards to assure
2 maintenance of confidentiality, set forth by the secretary of the
3 department of social and health services.

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

9 (b) To a court or its designee in which a motion under chapter
10 10.77 RCW has been made for involuntary medication of a defendant for
11 the purpose of competency restoration.

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

14 (7)(a) When a designated responder is requested by a representative
15 of a law enforcement agency, including a police officer, sheriff, a
16 municipal attorney, or prosecuting attorney to undertake an
17 investigation under section 315 of this act, the designated responder
18 shall, if requested to do so, advise the representative in writing of
19 the results of the investigation including a statement of reasons for
20 the decision to detain or release the person investigated. Such
21 written report shall be submitted within seventy-two hours of the
22 completion of the investigation or the request from the law enforcement
23 representative, whichever occurs later.

24 (b) To law enforcement officers, public health officers, or
25 personnel of the department of corrections or the indeterminate
26 sentence review board for persons who are the subject of the records
27 and who are committed to the custody or supervision of the department
28 of corrections or indeterminate sentence review board which information
29 or records are necessary to carry out the responsibilities of their
30 office. Except for dissemination of information released pursuant to
31 section 345 of this act and RCW 4.24.550, regarding persons committed
32 under this chapter under sections 327(3) and 331(2)(c) of this act
33 after dismissal of a sex offense as defined in RCW 9.94A.030, the
34 extent of information that may be released is limited as follows:

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

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

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

14 (iv) Information and records shall be disclosed to the department
15 of corrections pursuant to and in compliance with the provisions of RCW
16 71.05.445 for the purposes of completing presentence investigations or
17 risk assessment reports, supervision of an incarcerated offender or
18 offender under supervision in the community, planning for and provision
19 of supervision of an offender, or assessment of an offender's risk to
20 the community; and

21 (v) Disclosure under this subsection is mandatory for the purposes
22 of the health insurance portability and accountability act.

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

24 (9) To the prosecuting attorney as necessary to carry out the
25 responsibilities of the office under sections 335, 336(1)(b), and
26 344(2) of this act. The prosecutor shall be provided access to records
27 regarding the committed person's treatment and prognosis, medication,
28 behavior problems, and other records relevant to the issue of whether
29 treatment less restrictive than inpatient treatment is in the best
30 interest of the committed person or others. Information shall be
31 disclosed only after giving notice to the committed person and the
32 person's counsel.

33 (10) To appropriate law enforcement agencies and to a person, when
34 the identity of the person is known to the public or private agency,
35 whose health and safety has been threatened, or who is known to have
36 been repeatedly harassed, by the patient. The person may designate a
37 representative to receive the disclosure. The disclosure shall be made
38 by the professional person in charge of the public or private agency or

1 his or her designee and shall include the dates of commitment,
2 admission, discharge, or release, authorized or unauthorized absence
3 from the agency's facility, and only such other information that is
4 pertinent to the threat or harassment. The decision to disclose or not
5 shall not result in civil liability for the agency or its employees so
6 long as the decision was reached in good faith and without gross
7 negligence.

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

14 (12) To the persons designated in section 345 of this act for the
15 purposes described in that section.

16 (13) Civil liability and immunity for the release of information
17 about a particular person who is committed to the department under
18 sections 327(3) and 331(2)(c) of this act after dismissal of a sex
19 offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

20 (14) Upon the death of a patient, his or her parent if the patient
21 is a minor, his or her next of kin, personal representative, guardian,
22 or conservator, if any, shall be notified.

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

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

34 (16) To mark headstones or otherwise memorialize patients interred
35 at state hospital cemeteries. The department of social and health
36 services shall make available the name, date of birth, and date of
37 death of patients buried in state hospital cemeteries fifty years after
38 the death of a patient.

1 (17) Except as otherwise provided in this chapter, the uniform
2 health care information act, chapter 70.02 RCW, applies to all records
3 and information compiled, obtained, or maintained in the course of
4 providing services.

5 (18) When a person would otherwise be subject to the provisions of
6 this section and disclosure is necessary for the protection of the
7 person or others due to his or her unauthorized disappearance from the
8 facility, and his or her whereabouts is unknown, notice of such
9 disappearance, along with relevant information, may be made to
10 relatives and governmental law enforcement agencies designated by the
11 physician in charge of the person or the professional person in charge
12 of the facility, or his or her professional designee.

13 (19) The fact of admission, as well as all records, files,
14 evidence, findings, or orders made, prepared, collected, or maintained
15 pursuant to this chapter shall not be admissible as evidence in any
16 legal proceeding outside this chapter without the written consent of
17 the person who was the subject of the proceeding except in a subsequent
18 criminal prosecution of a person committed pursuant to sections 327(3)
19 and 331(2)(c) of this act on charges that were dismissed pursuant to
20 chapter 10.77 RCW due to incompetency to stand trial or in a civil
21 commitment proceeding pursuant to chapter 71.09 RCW. The records and
22 files maintained in any court proceeding pursuant to this chapter shall
23 be confidential and available subsequent to such proceedings only to
24 the person who was the subject of the proceeding or his or her
25 attorney. In addition, the court may order the subsequent release or
26 use of such records or files only upon good cause shown if the court
27 finds that appropriate safeguards for strict confidentiality are and
28 will be maintained.

29 NEW SECTION. **Sec. 364.** Except as provided in section 345 of this
30 act, when any disclosure of information or records is made as
31 authorized by sections 363 through 368 of this act, or pursuant to RCW
32 71.05.390 or 70.96A.150, the physician in charge of the patient or the
33 professional person in charge of the facility shall promptly cause to
34 be entered into the patient's medical record the date and circumstances
35 under which said disclosure was made, the names and relationships to
36 the patient, if any, of the persons or agencies to whom such disclosure
37 was made, and the information disclosed.

1 NEW SECTION. **Sec. 365.** The files and records of court proceedings
2 under this chapter, chapters 71.05, 70.96A, 71.34, and 70.-- (sections
3 202 through 216 of this act) RCW shall be closed but shall be
4 accessible to any person who is the subject of a petition and to the
5 person's attorney, guardian ad litem, resource management services, or
6 service providers authorized to receive such information by resource
7 management services.

8 NEW SECTION. **Sec. 366.** (1) Except as otherwise provided by law,
9 all treatment records shall remain confidential and may be released
10 only to the persons designated in this section, or to other persons
11 designated in an informed written consent of the patient.

12 (2) Treatment records of a person may be released without informed
13 written consent in the following circumstances:

14 (a) To a person, organization, or agency as necessary for
15 management or financial audits, or program monitoring and evaluation.
16 Information obtained under this subsection shall remain confidential
17 and may not be used in a manner that discloses the name or other
18 identifying information about the person whose records are being
19 released.

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

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

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

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

33 (f) Within the treatment facility where the patient is receiving
34 treatment, confidential information may be disclosed to persons
35 employed, serving in bona fide training programs, or participating in
36 supervised volunteer programs, at the facility when it is necessary to
37 perform their duties.

1 (g) Within the department as necessary to coordinate treatment for
2 mental illness, developmental disabilities, alcoholism, or drug abuse
3 of persons who are under the supervision of the department.

4 (h) To a licensed physician who has determined that the life or
5 health of the person is in danger and that treatment without the
6 information contained in the treatment records could be injurious to
7 the patient's health. Disclosure shall be limited to the portions of
8 the records necessary to meet the medical emergency.

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

18 (j) Notwithstanding the provisions of section 363(7) of this act,
19 to a correctional facility or a corrections officer who is responsible
20 for the supervision of a person who is receiving inpatient or
21 outpatient evaluation or treatment. Except as provided in RCW
22 71.05.445 and 71.34.225, release of records under this section is
23 limited to:

24 (i) An evaluation report provided pursuant to a written supervision
25 plan.

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

29 (iii) When a person is returned from a treatment facility to a
30 correctional facility, the information provided under (j)(iv) of this
31 subsection.

32 (iv) Any information necessary to establish or implement changes in
33 the person's treatment plan or the level or kind of supervision as
34 determined by resource management services. In cases involving a
35 person transferred back to a correctional facility, disclosure shall be
36 made to clinical staff only.

37 (k) To the person's counsel or guardian ad litem, without
38 modification, at any time in order to prepare for involuntary

1 commitment or recommitment proceedings, reexaminations, appeals, or
2 other actions relating to detention, admission, commitment, or
3 patient's rights under chapter 71.05 RCW.

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

22 (3) Whenever federal law or federal regulations restrict the
23 release of information contained in the treatment records of any
24 patient who receives treatment for chemical dependency, the department
25 may restrict the release of the information as necessary to comply with
26 federal law and regulations.

27 NEW SECTION. **Sec. 367.** (1) Procedures shall be established by
28 resource management services to provide reasonable and timely access to
29 individual treatment records. However, access may not be denied at any
30 time to records of all medications and somatic treatments received by
31 the person.

32 (2) Following discharge, the person shall have a right to a
33 complete record of all medications and somatic treatments prescribed
34 during evaluation, admission, or commitment and to a copy of the
35 discharge summary prepared at the time of his or her discharge. A
36 reasonable and uniform charge for reproduction may be assessed.

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

6 (4) At the time of discharge all persons shall be informed by
7 resource management services of their rights as provided in sections
8 363 through 368 of this act.

9 NEW SECTION. **Sec. 368.** Nothing in this chapter, chapter 70.96A,
10 71.05, 71.34, or 70.-- (sections 202 through 216 of this act) RCW shall
11 be construed to interfere with communications between physicians or
12 psychologists and patients and attorneys and clients.

13 **Liability**

14 NEW SECTION. **Sec. 369.** (1) Neither the state nor any officer of
15 a public or private agency; superintendent, professional person in
16 charge or his or her professional designee, or attending staff of any
17 such agency; public official performing functions necessary to the
18 administration of this chapter; peace officer; designated responder; a
19 unit of local government; or certified facility shall be civilly or
20 criminally liable for performing duties pursuant to this chapter with
21 regard to the decision of whether to admit, discharge, release,
22 administer antipsychotic medications, or detain a person for evaluation
23 and treatment: PROVIDED, That such duties were performed in good faith
24 and without gross negligence.

25 (2) This section does not relieve a person from giving the required
26 notices under this chapter or chapter 70.96A, 71.05, 71.34, or 70.--
27 (sections 202 through 216 of this act), or the duty to warn or to take
28 reasonable precautions to provide protection from violent behavior
29 where the patient has communicated an actual threat of physical
30 violence against a reasonably identifiable victim or victims. The duty
31 to warn or to take reasonable precautions to provide protection from
32 violent behavior is discharged if reasonable efforts are made to
33 communicate the threat to the victim or victims and to law enforcement
34 personnel.

1 NEW SECTION. **Sec. 370.** Except as provided in RCW 4.24.550, any
2 person may bring an action against a person who has willfully released
3 confidential information or records concerning him or her in violation
4 of the provisions of this chapter, for the greater of the following
5 amounts:

6 (1) One thousand dollars; or

7 (2) Three times the amount of actual damages sustained, if any. It
8 shall not be a prerequisite to recovery under this section that the
9 plaintiff shall have suffered or be threatened with special, as
10 contrasted with general, damages.

11 Any person may bring an action to enjoin the release of
12 confidential information or records concerning him or her or his or her
13 ward, in violation of the provisions of this chapter, and may in the
14 same action seek damages as provided in this section.

15 The court may award to the plaintiff, should he or she prevail in
16 an action authorized by this section, reasonable attorney fees in
17 addition to those otherwise provided by law.

18 NEW SECTION. **Sec. 371.** Any person making or filing an application
19 alleging that a person should be involuntarily detained, certified,
20 committed, treated, or evaluated pursuant to this chapter shall not be
21 rendered civilly or criminally liable where the making and filing of
22 such application was in good faith.

23 NEW SECTION. **Sec. 372.** Any person who knowingly, willfully, or
24 through gross negligence violates the provisions of this chapter by
25 detaining a person for more than the allowable number of days shall be
26 liable to the person detained in civil damages. It shall not be a
27 prerequisite to an action under this section that the plaintiff shall
28 have suffered or be threatened with special, as contrasted with general
29 damages.

30 NEW SECTION. **Sec. 373.** Any person who requests or obtains
31 confidential information pursuant to sections 363 through 368 of this
32 act under false pretenses shall be guilty of a gross misdemeanor.

33 NEW SECTION. **Sec. 374.** The provisions of RCW 71.05.025,
34 71.05.530, and 71.05.550 apply to this chapter.

PART IV
TREATMENT GAP

1
2
3 NEW SECTION. **Sec. 401.** A new section is added to chapter 70.96A
4 RCW to read as follows:

5 (1) The division of alcohol and substance abuse shall increase its
6 capacity to serve adults who meet chemical dependency treatment
7 criteria and who are enrolled in medicaid as follows:

8 (a) In fiscal year 2006, the division of alcohol and substance
9 abuse shall serve forty percent of the calculated need; and

10 (b) In fiscal year 2007, the division of alcohol and substance
11 abuse shall serve sixty percent of the calculated need.

12 (2) The division of alcohol and substance abuse shall increase its
13 capacity to serve minors who have passed their twelfth birthday and who
14 are not yet eighteen, who are under two hundred percent of the federal
15 poverty level as follows:

16 (a) In fiscal year 2006, the division of alcohol and substance
17 abuse shall serve forty percent of the calculated need; and

18 (b) In fiscal year 2007, the division of alcohol and substance
19 abuse shall serve sixty percent of the calculated need.

20 (3) For purposes of this section, "calculated need" means the
21 percentage of the population under two hundred percent of the federal
22 poverty level in need of chemical dependency services as determined in
23 the 2003 Washington state needs assessment study.

24 NEW SECTION. **Sec. 402.** A new section is added to chapter 70.96A
25 RCW to read as follows:

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

32 (2) Treatment providers contracted to provide treatment under this
33 chapter who fail to implement the integrated comprehensive screening
34 and assessment process for chemical dependency and mental disorders by
35 July 1, 2007, are subject to contractual penalties established under
36 section 701 of this act.

1 NEW SECTION. **Sec. 403.** A new section is added to chapter 13.34
2 RCW to read as follows:

3 The department of social and health services and the department of
4 health shall develop and expand comprehensive services for drug-
5 affected and alcohol-affected mothers and infants. Subject to funds
6 appropriated for this purpose, the expansion shall be in evidence-
7 based, research-based, or consensus-based practices, as those terms are
8 defined in section 703 of this act, and shall expand capacity in
9 underserved regions of the state.

10 NEW SECTION. **Sec. 404.** A new section is added to chapter 70.96A
11 RCW to read as follows:

12 (1) The secretary shall assess the availability and cost-
13 effectiveness of converting disused skilled nursing facilities to
14 inpatient or residential chemical dependency or mental health treatment
15 facilities.

16 (2) The assessment shall include:

17 (a) An assessment of the impact of the federal institutions of
18 mental disease exclusion for purposes of medicaid eligibility;

19 (b) The viability and cost-effectiveness of contracting with
20 private, nonprofit entities to operate state-owned facilities and the
21 difference in rates that would engender;

22 (c) The viability and cost-effectiveness of leasing state-owned
23 facilities at market rate to private, nonprofit entities;

24 (d) The estimated time to operation for these facilities.

25 (3) The department shall provide the appropriate committees of the
26 legislature with this assessment, not later than September 1, 2005.

27 (4) To the extent that the assessment demonstrates that conversion
28 of disused skilled nursing facilities is consistent with the purposes
29 of this section and capital funds are appropriated for this purpose,
30 the secretary may acquire and convert such facilities and enter
31 contracts with private, nonprofit entities to operate them, provided
32 that rates are set in such a manner that no private, nonprofit entity
33 receives an effectively higher rate than a comparable vendor that
34 leases or owns its own facility.

35 NEW SECTION. **Sec. 405.** A new section is added to chapter 70.96A
36 RCW to read as follows:

1 A petition for commitment under this chapter may be joined with a
2 petition for commitment under chapter 71.05 RCW.

3 NEW SECTION. **Sec. 406.** A new section is added to chapter 70.96A
4 RCW to read as follows:

5 (1) The department of social and health services shall contract for
6 chemical dependency specialist services at each division of children
7 and family services office to enhance the timeliness and quality of
8 child protective services assessments and to better connect families to
9 needed treatment services.

10 (2) The chemical dependency specialist's duties may include, but
11 are not limited to: Conducting on-site chemical dependency screening
12 and assessment, facilitating progress reports to department social
13 workers, in-service training of department social workers and staff on
14 substance abuse issues, referring clients from the department to
15 treatment providers, and providing consultation on cases to department
16 social workers.

17 (3) The department of social and health services shall provide
18 training in and ensure that each case-carrying social worker is trained
19 in uniform screening for mental health and chemical dependency.

20 **PART V**
21 **RESOURCES**

22 NEW SECTION. **Sec. 501.** Sections 502 through 525 of this act
23 constitute a new chapter in Title 70 RCW.

24 NEW SECTION. **Sec. 502.** The legislature finds that there are
25 persons with mental disorders, including organic or traumatic brain
26 disorders, and combinations of mental disorders with other medical
27 conditions or behavior histories that result in behavioral and security
28 issues that make these persons ineligible for, or unsuccessful in,
29 existing types of licensed facilities, including adult residential
30 rehabilitation centers, boarding homes, adult family homes, group
31 homes, and skilled nursing facilities. The legislature also finds that
32 many of these persons have been treated on repeated occasions in
33 inappropriate acute care facilities and released without an appropriate
34 placement or have been treated or detained for extended periods in

1 inappropriate settings including state hospitals and correctional
2 facilities. The legislature further finds that some of these persons
3 present complex safety and treatment issues that require security
4 measures that cannot be instituted under most facility licenses or
5 supported housing programs. These include the ability to detain
6 persons under involuntary treatment orders or administer court ordered
7 medications.

8 Consequently, the legislature intends to establish a new type of
9 facility licensed by the department of social and health services as an
10 enhanced services facility with standards that will provide a safe,
11 secure treatment environment for a limited population of persons who
12 are not appropriately served in other facilities or programs.

13 NEW SECTION. **Sec. 503.** The definitions in this section apply
14 throughout this chapter unless the context clearly requires otherwise.

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

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

22 (3) "Chemical dependency" means alcoholism, drug addiction, or
23 dependence on alcohol and one or more other psychoactive chemicals, as
24 the context requires and as those terms are defined in chapter 70.96A
25 RCW.

26 (4) "Chemical dependency professional" means a person certified as
27 a chemical dependency professional by the department of health under
28 chapter 18.205 RCW.

29 (5) "Commitment" means the determination by a court that an
30 individual should be detained for a period of either evaluation or
31 treatment, or both, in an inpatient or a less restrictive setting.

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

34 (7) "Custody" means involuntary detention under chapter 71.05,
35 70.96A, or 70.-- (sections 302 through 374 of this act) RCW,
36 uninterrupted by any period of unconditional release from commitment
37 from a facility providing involuntary care and treatment.

1 (8) "Department" means the department of social and health
2 services.

3 (9) "Designated responder" means a county designated mental health
4 professional, a designated chemical dependency specialist, or a
5 designated crisis responder as those terms are defined in chapter
6 70.96A, 71.05, 70.-- (sections 202 through 216 of this act), or 70.--
7 (sections 302 through 374 of this act) RCW.

8 (10) "Detention" or "detain" means the lawful confinement of an
9 individual under chapter 70.96A, 71.05, or 70.-- (sections 302 through
10 374 of this act) RCW.

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

14 (12) "Enhanced services facility" means a facility that provides
15 treatment and services to persons for whom acute inpatient treatment is
16 not medically necessary and who have been determined by the department
17 to be inappropriate for placement in other licensed facilities due to
18 the complex needs that result in behavioral and security issues.

19 (13) "Expanded community services program" means a nonsecure
20 program of enhanced behavioral and residential support provided to
21 long-term and residential care providers serving specifically eligible
22 clients who would otherwise be at risk for hospitalization at state
23 hospital geriatric units.

24 (14) "Facility" means an enhanced services facility.

25 (15) "Gravely disabled" means a condition in which an individual,
26 as a result of a mental disorder, as a result of the use of alcohol or
27 other psychoactive chemicals, or both:

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

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

34 (16) "History of one or more violent acts" refers to the period of
35 time ten years before the filing of a petition under this chapter, or
36 chapter 70.96A or 71.05 RCW, excluding any time spent, but not any
37 violent acts committed, in a mental health facility or a long-term

1 alcoholism or drug treatment facility, or in confinement as a result of
2 a criminal conviction.

3 (17) "Licensed physician" means a person licensed to practice
4 medicine or osteopathic medicine and surgery in the state of
5 Washington.

6 (18) "Likelihood of serious harm" means:

7 (a) A substantial risk that:

8 (i) Physical harm will be inflicted by an individual upon his or
9 her own person, as evidenced by threats or attempts to commit suicide
10 or inflict physical harm on oneself;

11 (ii) Physical harm will be inflicted by an individual upon another,
12 as evidenced by behavior that has caused such harm or that places
13 another person or persons in reasonable fear of sustaining such harm;
14 or

15 (iii) Physical harm will be inflicted by an individual upon the
16 property of others, as evidenced by behavior that has caused
17 substantial loss or damage to the property of others; or

18 (b) The individual has threatened the physical safety of another
19 and has a history of one or more violent acts.

20 (19) "Mental disorder" means any organic, mental, or emotional
21 impairment that has substantial adverse effects on an individual's
22 cognitive or volitional functions.

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

27 (21) "Professional person" means a mental health professional and
28 also means a physician, registered nurse, and such others as may be
29 defined in rules adopted by the secretary pursuant to the provisions of
30 this chapter.

31 (22) "Psychiatric nurse" means:

32 (a) A registered nurse who has a bachelor's degree from an
33 accredited college or university and who has had, in addition, at least
34 two years of experience in the direct treatment of mentally ill or
35 emotionally disturbed persons under the supervision of a mental health
36 professional; or

37 (b) Any other registered nurse who has three years of such
38 experience.

1 (23) "Psychiatrist" means a person having a license as a physician
2 and surgeon in this state who has in addition completed three years of
3 graduate training in psychiatry in a program approved by the American
4 medical association or the American osteopathic association and is
5 certified or eligible to be certified by the American board of
6 psychiatry and neurology.

7 (24) "Psychologist" means a person who has been licensed as a
8 psychologist under chapter 18.83 RCW.

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

14 (26) "Release" means legal termination of the commitment under
15 chapter 70.96A, 71.05, or 70.-- (sections 302 through 374 of this act)
16 RCW.

17 (27) "Resident" means a person admitted to an enhanced services
18 facility.

19 (28) "Secretary" means the secretary of the department or the
20 secretary's designee.

21 (29) "Significant change" means:

22 (a) A deterioration in a resident's physical, mental, or
23 psychosocial condition that has caused or is likely to cause clinical
24 complications or life-threatening conditions; or

25 (b) An improvement in the resident's physical, mental, or
26 psychosocial condition that may make the resident eligible for release
27 or for treatment in a less intensive or less secure setting.

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

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

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

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

12 NEW SECTION. **Sec. 504.** A facility shall honor a mental health
13 advance directive that was validly executed pursuant to chapter 71.32
14 RCW.

15 NEW SECTION. **Sec. 505.** (1) A person who is eligible for admission
16 to or residence in an adult residential rehabilitation center, a
17 boarding home, a group home, a skilled nursing facility, or a supported
18 housing program, including an expanded community services program or a
19 program for assertive community treatment is not eligible for residence
20 in an enhanced services facility unless his or her treatment needs
21 cannot adequately be addressed in the other facility or facilities for
22 which he or she is eligible.

23 (2) A person, eighteen years old or older, may be admitted to an
24 enhanced services facility if he or she meets the criteria in (a)
25 through (c) of this subsection:

26 (a) The person requires: (i) Daily care by or under the
27 supervision of a mental health professional, chemical dependency
28 professional, or nurse; or (ii) assistance with three or more
29 activities of daily living; and

30 (b) The person has: (i) A mental disorder, chemical dependency
31 disorder, or both; (ii) an organic or traumatic brain injury; or (iii)
32 a cognitive impairment that results in symptoms or behaviors requiring
33 supervision and facility services;

34 (c) The person has two or more of the following:

35 (i) Self-endangering behaviors that are frequent or difficult to
36 manage;

1 (ii) Aggressive, threatening, or assaultive behaviors that create
2 a risk to the health or safety of other residents or staff, or a
3 significant risk to property and these behaviors are frequent or
4 difficult to manage;

5 (iii) Intrusive behaviors that put residents or staff at risk;

6 (iv) Complex medication needs and those needs include psychotropic
7 medications;

8 (v) A history of or likelihood of unsuccessful placements in other
9 licensed facilities or a history of rejected applications for admission
10 to other licensed facilities based on the person's behaviors, history,
11 or security needs;

12 (vi) A history of frequent or protracted mental health
13 hospitalizations;

14 (vii) A history of offenses against a person or felony offenses
15 that created substantial damage to property;

16 (viii) A history of other problematic placements, as defined in
17 rules adopted by the department.

18 NEW SECTION. **Sec. 506.** (1)(a) Every person who is a resident of
19 an enhanced services facility or is involuntarily detained or committed
20 under the provisions of this chapter shall be entitled to all the
21 rights set forth in this chapter, or chapter 71.05, 70.96A, or 70.--
22 (sections 302 through 374 of this act) RCW and shall retain all rights
23 not denied him or her under these chapters.

24 (b) No person shall be presumed incompetent as a consequence of
25 receiving an evaluation or voluntary or involuntary treatment for a
26 mental disorder, chemical dependency disorder, or both, under this
27 chapter, chapter 71.05, 70.96A, or 70.-- (sections 302 through 374 of
28 this act) RCW, or any prior laws of this state dealing with mental
29 illness. Competency shall not be determined or withdrawn except under
30 the provisions of chapter 10.77 or 11.88 RCW.

31 (c) Every resident of an enhanced services facility shall be given
32 a written statement setting forth the substance of this section.

33 (2) Every resident of an enhanced services facility shall have the
34 right to adequate care and individualized treatment.

35 (3) The provisions of this chapter shall not be construed to deny
36 to any person treatment by spiritual means through prayer in accordance
37 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) The physician-patient privilege or the psychologist-client
5 privilege shall be deemed waived in proceedings under this chapter
6 relating to the administration of antipsychotic medications. As to
7 other proceedings under chapter 10.77, 70.96A, 71.05, or 70.--
8 (sections 302 through 374 of this act) RCW, the privileges shall be
9 waived when a court of competent jurisdiction in its discretion
10 determines that such waiver is necessary to protect either the detained
11 person or the public.

12 (6) Insofar as danger to the person or others is not created, each
13 resident of an enhanced services facility shall have, in addition to
14 other rights not specifically withheld by law, the following rights, a
15 list of which shall be prominently posted in all facilities,
16 institutions, and hospitals providing such services:

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

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

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

24 (d) To have visitors at reasonable times;

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

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

31 (g) Not to consent to the administration of antipsychotic
32 medications beyond the hearing conducted pursuant to section 108, 109,
33 360, or 361 of this act, or the performance of electroconvulsant
34 therapy, or surgery, except emergency life-saving surgery, unless
35 ordered by a court under section 109 or 361 of this act;

36 (h) To discuss treatment plans and decisions with professional
37 persons;

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

3 (j) To dispose of property and sign contracts unless such person
4 has been adjudicated an incompetent in a court proceeding directed to
5 that particular issue.

6 (7) Nothing contained in this chapter shall prohibit a resident
7 from petitioning by writ of habeas corpus for release.

8 (8) Nothing in this section permits any person to knowingly violate
9 a no-contact order or a condition of an active judgment and sentence or
10 active supervision by the department of corrections.

11 NEW SECTION. **Sec. 507.** A person who is gravely disabled or
12 presents a likelihood of serious harm as a result of a mental or
13 chemical dependency disorder or co-occurring mental and chemical
14 dependency disorders has a right to refuse antipsychotic medication.
15 Antipsychotic medication may be administered over the person's
16 objections only pursuant to RCW 71.05.215, 71.05.370 (as recodified by
17 this act), or section 360 or 361 of this act.

18 NEW SECTION. **Sec. 508.** (1)(a) The department shall not license an
19 enhanced services facility that serves any residents under sixty-five
20 years of age for a capacity to exceed sixteen residents.

21 (b) The department may contract for services for the operation of
22 enhanced services facilities only to the extent that funds are
23 specifically provided for that purpose.

24 (2) The facility shall provide an appropriate level of security for
25 the characteristics, behaviors, and legal status of the residents.

26 (3) An enhanced services facility may hold only one license but, to
27 the extent permitted under state and federal law and medicaid
28 requirements, a facility may be located in the same building as another
29 licensed facility, provided that:

30 (a) The enhanced services facility is in a location that is totally
31 separate and discrete from the other licensed facility; and

32 (b) The two facilities maintain separate staffing, unless an
33 exception to this is permitted by the department in rule.

34 (4) Enhanced services facilities must meet all applicable state and
35 local rules, regulations, permits, and code requirements. The

1 secretary may, by rule, establish a list of currently licensed
2 facilities that are deemed to meet the requirements of this subsection
3 by virtue of their existing license.

4 NEW SECTION. **Sec. 509.** (1) The enhanced services facility shall
5 complete a comprehensive assessment for each resident within fourteen
6 days of admission, and the assessments shall be repeated upon a
7 significant change in the resident's condition or, at a minimum, every
8 one hundred eighty days if there is no significant change in condition.

9 (2) The enhanced services facility shall develop an individualized
10 treatment plan for each resident based on the comprehensive assessment
11 and any other information in the person's record. The plan shall be
12 updated as necessary and shall include a plan for appropriate transfer
13 or discharge. Where the person is under the supervision of the
14 department of corrections, the facility shall collaborate with the
15 department of corrections to maximize treatment outcomes and reduce the
16 likelihood of reoffense.

17 (3) The plan shall maximize the opportunities for independence,
18 recovery, employment, the resident's participation in treatment
19 decisions, and collaboration with peer-supported services, and provide
20 for care and treatment in the least restrictive manner appropriate to
21 the individual resident, and, where relevant, to any court orders with
22 which the resident must comply.

23 NEW SECTION. **Sec. 510.** (1) An enhanced services facility must
24 have sufficient numbers of staff with the appropriate credentials and
25 training to provide residents with the appropriate care and treatment:

- 26 (a) Mental health and chemical dependency treatment;
- 27 (b) Medication services;
- 28 (c) Assistance with the activities of daily living;
- 29 (d) Medical or habilitative treatment;
- 30 (e) Dietary services; and
- 31 (f) Security.

32 (2) Where an enhanced services facility specializes in medically
33 fragile persons with mental disorders, the on-site staff must include
34 at least one licensed nurse twenty-four hours per day. The nurse must
35 be a registered nurse for at least sixteen hours per day. If the nurse

1 is not a registered nurse, a registered nurse or a doctor must be on-
2 call during the remaining eight hours.

3 NEW SECTION. **Sec. 511.** This chapter does not apply to the
4 following residential facilities:

- 5 (1) Nursing homes licensed under chapter 18.51 RCW;
- 6 (2) Boarding homes licensed under chapter 18.20 RCW;
- 7 (3) Adult family homes licensed under chapter 70.128 RCW;
- 8 (4) Facilities approved and certified under chapter 71A.22 RCW;
- 9 (5) Residential treatment facilities licensed under chapter 71.12
10 RCW; and
- 11 (6) Hospitals licensed under chapter 70.41 RCW.

12 NEW SECTION. **Sec. 512.** (1) The department shall establish
13 licensing provisions for enhanced services facilities to serve the
14 populations defined in this chapter.

15 (2) No person or public or private agency may operate or maintain
16 an enhanced services facility without a license, which must be renewed
17 annually.

18 (3) A licensee shall have the following readily accessible and
19 available for review by the department, residents, families of
20 residents, and the public:

21 (a) Its license to operate and a copy of the department's most
22 recent inspection report and any recent complaint investigation reports
23 issued by the department;

24 (b) Its written policies and procedures for all treatment, care,
25 and services provided directly or indirectly by the facility; and

26 (c) The department's toll-free complaint number, which shall also
27 be posted in a clearly visible place and manner.

28 (4) No facility shall discriminate or retaliate in any manner
29 against a resident or employee because the resident, employee, or any
30 other person made a complaint or provided information to the
31 department, the long-term care ombudsman, or a mental health ombuds
32 person.

33 NEW SECTION. **Sec. 513.** (1) In any case in which the department
34 finds that a licensee of a facility, or any partner, officer, director,
35 owner of five percent or more of the assets of the facility, or

1 managing employee failed or refused to comply with the requirements of
2 this chapter or the rules established under them, the department may
3 take any or all of the following actions:

- 4 (a) Suspend, revoke, or refuse to issue or renew a license;
- 5 (b) Order stop placement; or
- 6 (c) Assess civil monetary penalties.

7 (2) The department may suspend, revoke, or refuse to renew a
8 license, assess civil monetary penalties, or both, in any case in which
9 it finds that the licensee of a facility, or any partner, officer,
10 director, owner of five percent or more of the assets of the facility,
11 or managing employee:

12 (a) Operated a facility without a license or under a revoked or
13 suspended license;

14 (b) Knowingly or with reason to know made a false statement of a
15 material fact in the license application or any data attached thereto,
16 or in any matter under investigation by the department;

17 (c) Refused to allow representatives or agents of the department to
18 inspect all books, records, and files required to be maintained or any
19 portion of the premises of the facility;

20 (d) Willfully prevented, interfered with, or attempted to impede in
21 any way the work of any duly authorized representative of the
22 department and the lawful enforcement of any provision of this chapter;

23 (e) Willfully prevented or interfered with any representative of
24 the department in the preservation of evidence of any violation of any
25 of the provisions of this chapter or of the rules adopted under it; or

26 (f) Failed to pay any civil monetary penalty assessed by the
27 department under this chapter within ten days after the assessment
28 becomes final.

29 (3)(a) Civil penalties collected under this chapter shall be
30 deposited into a special fund administered by the department.

31 (b) Civil monetary penalties, if imposed, may be assessed and
32 collected, with interest, for each day the facility is or was out of
33 compliance. Civil monetary penalties shall not exceed three thousand
34 dollars per day. Each day upon which the same or a substantially
35 similar action occurs is a separate violation subject to the assessment
36 of a separate penalty.

37 (4) The department, through the director of residential care

1 services, may use the civil penalty monetary fund for the protection of
2 the health or property of residents of facilities found to be deficient
3 including:

4 (a) Payment for the cost of relocation of residents to other
5 facilities;

6 (b) Payment to maintain operation of a facility pending correction
7 of deficiencies or closure; and

8 (c) Reimbursement of a resident for personal funds or property
9 loss.

10 (5)(a) The department may issue a stop placement order on a
11 facility, effective upon oral or written notice, when the department
12 determines:

13 (i) The facility no longer substantially meets the requirements of
14 this chapter; and

15 (ii) The deficiency or deficiencies in the facility:

16 (A) Jeopardizes the health and safety of the residents; or

17 (B) Seriously limits the facility's capacity to provide adequate
18 care.

19 (b) When the department has ordered a stop placement, the
20 department may approve a readmission to the facility from a hospital,
21 residential treatment facility, or crisis intervention facility when
22 the department determines the readmission would be in the best interest
23 of the individual seeking readmission.

24 (6) If the department determines that an emergency exists and
25 resident health and safety is immediately jeopardized as a result of a
26 facility's failure or refusal to comply with this chapter, the
27 department may summarily suspend the facility's license and order the
28 immediate closure of the facility, or the immediate transfer of
29 residents, or both.

30 (7) If the department determines that the health or safety of the
31 residents is immediately jeopardized as a result of a facility's
32 failure or refusal to comply with requirements of this chapter, the
33 department may appoint temporary management to:

34 (a) Oversee the operation of the facility; and

35 (b) Ensure the health and safety of the facility's residents while:

36 (i) Orderly closure of the facility occurs; or

37 (ii) The deficiencies necessitating temporary management are
38 corrected.

1 NEW SECTION. **Sec. 514.** (1) All orders of the department denying,
2 suspending, or revoking the license or assessing a monetary penalty
3 shall become final twenty days after the same has been served upon the
4 applicant or licensee unless a hearing is requested.

5 (2) All orders of the department imposing stop placement, temporary
6 management, emergency closure, emergency transfer, or summary license
7 suspension shall be effective immediately upon notice, pending any
8 hearing.

9 (3) Subject to the requirements of subsection (2) of this section,
10 all hearings under this chapter and judicial review of such
11 determinations shall be in accordance with the administrative procedure
12 act, chapter 34.05 RCW.

13 NEW SECTION. **Sec. 515.** Operation of a facility without a license
14 in violation of this chapter and discrimination against medicaid
15 recipients are unfair or deceptive acts in trade or commerce and an
16 unfair method of competition for the purpose of applying the consumer
17 protection act, chapter 19.86 RCW.

18 NEW SECTION. **Sec. 516.** A person operating or maintaining a
19 facility without a license under this chapter is guilty of a
20 misdemeanor and each day of a continuing violation after conviction
21 shall be considered a separate offense.

22 NEW SECTION. **Sec. 517.** Notwithstanding the existence or use of
23 any other remedy, the department may, in the manner provided by law,
24 maintain an action in the name of the state for an injunction, civil
25 penalty, or other process against a person to restrain or prevent the
26 operation or maintenance of a facility without a license issued under
27 this chapter.

28 NEW SECTION. **Sec. 518.** (1) The department shall make or cause to
29 be made at least one inspection of each facility prior to licensure and
30 an unannounced full inspection of facilities at least once every
31 eighteen months. The statewide average interval between full facility
32 inspections must be fifteen months.

33 (2) Any duly authorized officer, employee, or agent of the
34 department may enter and inspect any facility at any time to determine

1 that the facility is in compliance with this chapter and applicable
2 rules, and to enforce any provision of this chapter. Complaint
3 inspections shall be unannounced and conducted in such a manner as to
4 ensure maximum effectiveness. No advance notice shall be given of any
5 inspection unless authorized or required by federal law.

6 (3) During inspections, the facility must give the department
7 access to areas, materials, and equipment used to provide care or
8 support to residents, including resident and staff records, accounts,
9 and the physical premises, including the buildings, grounds, and
10 equipment. The department has the authority to privately interview the
11 provider, staff, residents, and other individuals familiar with
12 resident care and treatment.

13 (4) Any public employee giving advance notice of an inspection in
14 violation of this section shall be suspended from all duties without
15 pay for a period of not less than five nor more than fifteen days.

16 (5) The department shall prepare a written report describing the
17 violations found during an inspection, and shall provide a copy of the
18 inspection report to the facility.

19 (6) The facility shall develop a written plan of correction for any
20 violations identified by the department and provide a plan of
21 correction to the department within ten working days from the receipt
22 of the inspection report.

23 NEW SECTION. **Sec. 519.** The facility shall only admit individuals:

24 (1) Who are over the age of eighteen;

25 (2) Who meet the resident eligibility requirements described in
26 section 505 of this act; and

27 (3) Whose needs the facility can safely and appropriately meet
28 through qualified and trained staff, services, equipment, security, and
29 building design.

30 NEW SECTION. **Sec. 520.** If the facility does not employ a
31 qualified professional able to furnish needed services, the facility
32 must have a written contract with a qualified professional or agency
33 outside the facility to furnish the needed services.

34 NEW SECTION. **Sec. 521.** At least sixty days before the effective
35 date of any change of ownership, or change of management of a facility,

1 the current operating entity must provide written notification about
2 the proposed change separately and in writing, to the department, each
3 resident of the facility, or the resident's guardian or representative.

4 NEW SECTION. **Sec. 522.** The facility shall:

5 (1) Maintain adequate resident records to enable the provision of
6 necessary treatment, care, and services and to respond appropriately in
7 emergency situations;

8 (2) Comply with all state and federal requirements related to
9 documentation, confidentiality, and information sharing, including
10 chapters 10.77, 70.02, 70.24, 70.96A, 71.05, and 70.-- (sections 302
11 through 374 of this act) RCW; and

12 (3) Where possible, obtain signed releases of information
13 designating the department, the facility, and the department of
14 corrections where the person is under its supervision, as recipients of
15 health care information.

16 NEW SECTION. **Sec. 523.** (1) Standards for fire protection and the
17 enforcement thereof, with respect to all facilities licensed under this
18 chapter, are the responsibility of the chief of the Washington state
19 patrol, through the director of fire protection, who must adopt
20 recognized standards as applicable to facilities for the protection of
21 life against the cause and spread of fire and fire hazards. If the
22 facility to be licensed meets with the approval of the chief of the
23 Washington state patrol, through the director of fire protection, the
24 director of fire protection must submit to the department a written
25 report approving the facility with respect to fire protection before a
26 full license can be issued. The chief of the Washington state patrol,
27 through the director of fire protection, shall conduct an unannounced
28 full inspection of facilities at least once every eighteen months. The
29 statewide average interval between full facility inspections must be
30 fifteen months.

31 (2) Inspections of facilities by local authorities must be
32 consistent with the requirements adopted by the chief of the Washington
33 state patrol, through the director of fire protection. Findings of a
34 serious nature must be coordinated with the department and the chief of
35 the Washington state patrol, through the director of fire protection,
36 for determination of appropriate actions to ensure a safe environment

1 for residents. The chief of the Washington state patrol, through the
2 director of fire protection, has exclusive authority to determine
3 appropriate corrective action under this section.

4 NEW SECTION. **Sec. 524.** No facility providing care and treatment
5 for individuals placed in a facility, acting in the course of its
6 duties, shall be civilly or criminally liable for performing its duties
7 under this chapter, provided that such duties were performed in good
8 faith and without gross negligence.

9 NEW SECTION. **Sec. 525.** The secretary shall adopt rules to
10 implement this chapter.

11 **PART VI**
12 **FORENSIC AND CORRECTIONAL**
13 **Drug and Mental Health Courts**

14 NEW SECTION. **Sec. 601.** A new section is added to chapter 2.28 RCW
15 to read as follows:

- 16 (1) Counties may establish and operate mental health courts.
- 17 (2) For the purposes of this section, "mental health court" means
18 a court that has special calendars or dockets designed to achieve a
19 reduction in recidivism and symptoms of mental illness among
20 nonviolent, mentally ill felony and nonfelony offenders by increasing
21 their likelihood for successful rehabilitation through early,
22 continuous, and intense judicially supervised treatment including drug
23 treatment for persons with co-occurring disorders; mandatory periodic
24 reviews, including drug testing if indicated; and the use of
25 appropriate sanctions and other rehabilitation services.
- 26 (3)(a) Any jurisdiction that seeks a state appropriation to fund a
27 mental health court program must first:
- 28 (i) Exhaust all federal funding that is available to support the
29 operations of its mental health court and associated services; and
30 (ii) Match, on a dollar-for-dollar basis, state moneys allocated
31 for mental health court programs with local cash or in-kind resources.
32 Moneys allocated by the state must be used to supplement, not supplant,

1 other federal, state, and local funds for mental health court
2 operations and associated services.

3 (b) Any county that establishes a mental health court pursuant to
4 this section shall establish minimum requirements for the participation
5 of offenders in the program. The mental health court may adopt local
6 requirements that are more stringent than the minimum. The minimum
7 requirements are:

- 8 (i) The offender would benefit from psychiatric treatment;
- 9 (ii) The offender has not previously been convicted of a serious
10 violent offense or sex offense as defined in RCW 9.94A.030; and
- 11 (iii) Without regard to whether proof of any of these elements is
12 required to convict, the offender is not currently charged with or
13 convicted of an offense:
 - 14 (A) That is a sex offense;
 - 15 (B) That is a serious violent offense;
 - 16 (C) During which the defendant used a firearm; or
 - 17 (D) During which the defendant caused substantial or great bodily
18 harm or death to another person.

19 NEW SECTION. **Sec. 602.** A new section is added to chapter 2.28 RCW
20 to read as follows:

21 Any county that has established a drug court and a mental health
22 court under this chapter may combine the functions of both courts into
23 a single therapeutic court.

24 NEW SECTION. **Sec. 603.** A new section is added to chapter 26.12
25 RCW to read as follows:

26 (1) Every county that authorizes the tax provided in section 903 of
27 this act shall, and every county may, establish and operate a
28 therapeutic court component for dependency proceedings designed to be
29 effective for the court's size, location, and resources. A county with
30 a drug court for criminal cases or with a mental health court may
31 include a therapeutic court for dependency proceedings as a component
32 of its existing program.

33 (2) For the purposes of this section, "therapeutic court" means a
34 court that has special calendars or dockets designed for the intense
35 judicial supervision, coordination, and oversight of treatment provided

1 to parents and families who have substance abuse or mental health
2 problems and who are involved in the dependency and is designed to
3 achieve a reduction in:

- 4 (a) Child abuse and neglect;
- 5 (b) Out-of-home placement of children;
- 6 (c) Termination of parental rights; and
- 7 (d) Substance abuse or mental health symptoms among parents or
8 guardians and their children.

9 (3) To the extent possible, the therapeutic court shall provide
10 services for parents and families co-located with the court or as near
11 to the court as practicable.

12 (4) The department of social and health services shall furnish
13 services to the therapeutic court unless a court contracts with
14 providers outside of the department.

15 (5) Any jurisdiction that receives a state appropriation to fund a
16 therapeutic court must first exhaust all federal funding available for
17 the development and operation of the therapeutic court and associated
18 services.

19 (6) Moneys allocated by the state for a therapeutic court must be
20 used to supplement, not supplant, other federal, state, local, and
21 private funding for court operations and associated services under this
22 section.

23 (7) Any county that establishes a therapeutic court or receives
24 funds for an existing court under this section shall:

25 (a) Establish minimum requirements for the participation in the
26 program; and

27 (b) Develop an evaluation component of the court, including
28 tracking the success rates in graduating from treatment, reunifying
29 parents with their children, and the costs and benefits of the court.

30 **Sec. 604.** RCW 2.28.170 and 2002 c 290 s 13 are each amended to
31 read as follows:

32 (1) Counties may establish and operate drug courts.

33 (2) For the purposes of this section, "drug court" means a court
34 that has special calendars or dockets designed to achieve a reduction
35 in recidivism and substance abuse among nonviolent, substance abusing
36 felony and nonfelony offenders by increasing their likelihood for

1 successful rehabilitation through early, continuous, and intense
2 judicially supervised treatment; mandatory periodic drug testing; and
3 the use of appropriate sanctions and other rehabilitation services.

4 (3)(a) Any jurisdiction that seeks a state appropriation to fund a
5 drug court program must first:

6 (i) Exhaust all federal funding (~~received from the office of~~
7 ~~national drug control policy~~) that is available to support the
8 operations of its drug court and associated services; and

9 (ii) Match, on a dollar-for-dollar basis, state moneys allocated
10 for drug court programs with local cash or in-kind resources. Moneys
11 allocated by the state must be used to supplement, not supplant, other
12 federal, state, and local funds for drug court operations and
13 associated services.

14 (b) Any county that establishes a drug court pursuant to this
15 section shall establish minimum requirements for the participation of
16 offenders in the program. The drug court may adopt local requirements
17 that are more stringent than the minimum. The minimum requirements
18 are:

19 (i) The offender would benefit from substance abuse treatment;

20 (ii) The offender has not previously been convicted of a serious
21 violent offense or sex offense as defined in RCW 9.94A.030; and

22 (iii) Without regard to whether proof of any of these elements is
23 required to convict, the offender is not currently charged with or
24 convicted of an offense:

25 (A) That is a sex offense;

26 (B) That is a serious violent offense;

27 (C) During which the defendant used a firearm; or

28 (D) During which the defendant caused substantial or great bodily
29 harm or death to another person.

30 **Medical Benefits**

31 **Sec. 605.** RCW 74.09.010 and 1990 c 296 s 6 are each amended to
32 read as follows:

33 As used in this chapter:

34 (1) "Children's health program" means the health care services
35 program provided to children under eighteen years of age and in
36 households with incomes at or below the federal poverty level as

1 annually defined by the federal department of health and human services
2 as adjusted for family size, and who are not otherwise eligible for
3 medical assistance or the limited casualty program for the medically
4 needy.

5 ~~(2) ("Committee" means the children's health services committee
6 created in section 3 of this act.~~

7 ~~(3))~~ "Community services office" means the county or local office
8 defined in RCW 74.04.005.

9 (3) "Confined" or "confinement" means incarcerated in a
10 correctional institution or admitted to an institution for mental
11 diseases.

12 (4) "Correctional institution" means a correctional institution
13 defined in RCW 9.94.049.

14 (5) "County" means the board of county commissioners, county
15 council, county executive, or tribal jurisdiction, or its designee. A
16 combination of two or more county authorities or tribal jurisdictions
17 may enter into joint agreements to fulfill the requirements of RCW
18 74.09.415 through 74.09.435.

19 ~~((4))~~ (6) "Department" means the department of social and health
20 services.

21 ~~((5))~~ (7) "Department of health" means the Washington state
22 department of health created pursuant to RCW 43.70.020.

23 ~~((6))~~ (8) "Institution for mental diseases" has the meaning
24 defined in 42 C.F.R., part 435, Sec. 1009.

25 (9) "Internal management" means the administration of medical
26 assistance, medical care services, the children's health program, and
27 the limited casualty program.

28 ~~((7))~~ (10) "Likely to be eligible" means that a person:

29 (a) Was enrolled in medicaid or supplemental security income or
30 general assistance immediately before he or she was confined and his or
31 her enrollment was terminated during his or her confinement; or

32 (b) Was enrolled in medicaid or supplemental security income or
33 general assistance at any time during the five years before his or her
34 confinement, and medical or psychiatric examinations during the
35 person's confinement indicate that the person continues to be disabled
36 and the disability is likely to last at least twelve months following
37 release.

1 (11) "Limited casualty program" means the medical care program
2 provided to medically needy persons as defined under Title XIX of the
3 federal social security act, and to medically indigent persons who are
4 without income or resources sufficient to secure necessary medical
5 services.

6 ~~((+8))~~ (12) "Medicaid eligibility category" refers to all existing
7 eligibility categories established in the state medicaid plan,
8 including enrollment in medicaid by virtue of eligibility to receive
9 cash payments under the supplemental security income program of the
10 social security administration.

11 (13) "Medical assistance" means the federal aid medical care
12 program provided to categorically needy persons as defined under Title
13 XIX of the federal social security act.

14 ~~((+9))~~ (14) "Medical care services" means the limited scope of
15 care financed by state funds and provided to general assistance
16 recipients, and recipients of alcohol and drug addiction services
17 provided under chapter 74.50 RCW.

18 ~~((+10))~~ (15) "Nursing home" means nursing home as defined in RCW
19 18.51.010.

20 ~~((+11))~~ (16) "Parent" means a parent, guardian, or legal
21 custodian.

22 (17) "Poverty" means the federal poverty level determined annually
23 by the United States department of health and human services, or
24 successor agency.

25 ~~((+12))~~ (18) "Secretary" means the secretary of social and health
26 services.

27 NEW SECTION. Sec. 606. A new section is added to chapter 74.09
28 RCW to read as follows:

29 (1) The economic services administration shall adopt standardized
30 statewide screening and application practices and forms. These
31 practices and forms shall be implemented in every local office not
32 later than January 1, 2006.

33 (2) The forms shall be structured to facilitate completion by
34 persons with disabilities, including those with mental disorders.

35 (3) Neither the department nor any local office may exclude a
36 person from application or screen that person as ineligible for

1 medicaid based solely on a determination that the person is using or
2 addicted to alcohol or other psychoactive substances, as defined in
3 chapter 70.96A RCW.

4 (4) Neither the department nor any local office may remove a
5 confined person from an active medicaid caseload sooner than required
6 by federal law.

7 (5) Subject to available funds, the department shall provide
8 persons with assistance in preparing applications and maintaining
9 eligibility for medicaid.

10 NEW SECTION. **Sec. 607.** A new section is added to chapter 74.09
11 RCW to read as follows:

12 The secretary shall negotiate with the social security
13 administration in good faith to establish a prerelease agreement or
14 agreements under which the department will work collaboratively with
15 the social security administration, correctional institutions,
16 institutions for mental diseases, and the department of corrections to
17 ensure that applications on behalf of confined persons who are likely
18 to be eligible for supplemental security income or social security
19 disability income are accepted, whenever possible, at the earliest
20 possible date prior to release from confinement and are speedily
21 handled by the social security administration to maximize the
22 opportunity for confined persons to have an eligibility determination
23 and enrollment in place on the day of release from confinement.

24 NEW SECTION. **Sec. 608.** A new section is added to chapter 74.09
25 RCW to read as follows:

26 (1) The department and each of its community services offices shall
27 enter interlocal agreements with correctional institutions, the
28 regional support networks, the department of corrections, and
29 institutions for mental diseases to expedite medical assistance
30 eligibility determinations for persons likely to be eligible for
31 services under this chapter, upon release from confinement.

32 (2) The interlocal agreements shall establish procedures to
33 facilitate eligibility determinations, and enrollment on the day of
34 release from confinement whenever possible.

35 (3) The interlocal agreements shall define the responsibilities of

1 each party, and the procedures through which those responsibilities
2 will be fulfilled. At a minimum, the agreements shall provide that:

3 (a) If a person is likely to be eligible, as defined in this
4 chapter, the correctional institution, department of corrections, or
5 institution for mental diseases shall notify the designated community
6 services office of the person's anticipated release date at the
7 earliest practicable time prior to release from confinement. If a
8 correctional institution does not know the anticipated release date, or
9 a person is ordered to be immediately released, the correctional
10 institution shall notify the community services office at the earliest
11 opportunity;

12 (b) The community services office shall find the person
13 presumptively eligible for medical assistance under this chapter, to
14 the maximum extent allowable under federal law, and shall facilitate
15 prompt completion of a final eligibility determination;

16 (c) Where medical or psychiatric examinations during a person's
17 confinement indicate that the person is disabled, the correctional
18 institution, department of corrections, or institution for mental
19 diseases shall provide that information to the department and the
20 department shall, to the maximum extent permitted by federal law, use
21 the examination in making its determination whether the person is
22 disabled and eligible for medical assistance.

23 NEW SECTION. **Sec. 609.** A new section is added to chapter 71.24
24 RCW to read as follows:

25 The secretary shall require the regional support networks to
26 develop interlocal agreements pursuant to section 608 of this act. To
27 this end, the regional support networks shall accept referrals for
28 enrollment on behalf of a confined person, prior to the person's
29 release.

30 NEW SECTION. **Sec. 610.** A new section is added to chapter 72.09
31 RCW to read as follows:

32 The secretary shall negotiate with the department of social and
33 health services and the regional support networks to reach an agreement
34 under section 608 of this act.

- 1 NEW SECTION. **Sec. 611.** A new section is added to chapter 71.05
2 RCW to read as follows:
3 The department shall report to the appropriate committees of the
4 legislature by September 30, 2005, and annually thereafter:
5 (1) The number of agreements developed under sections 607 through
6 610 of this act;
7 (2) The number of persons with mental disorders and co-occurring
8 mental and chemical dependency disorders leaving confinement with
9 established or restored medical assistance enrollment;
10 (3) The number of persons enrolled in the regional support networks
11 upon release; and
12 (4) The number of persons denied eligibility or enrollment.

13 **Regional Jails**

- 14 NEW SECTION. **Sec. 612.** (1) The joint legislative audit and review
15 committee shall investigate and assess whether there are existing
16 facilities in the state that could be converted to use as a regional
17 jail for offenders who have mental or chemical dependency disorders, or
18 both, that need specialized housing and treatment arrangements.
19 (2) The joint legislative audit and review committee shall consider
20 the feasibility of using at least the following facilities or types of
21 facilities:
22 (a) Green Hill School;
23 (b) Existing or renovated facilities at the former Northern State
24 Hospital;
25 (c) Closed wards at Western State Hospital;
26 (d) Fircrest School; and
27 (e) Closed or abandoned nursing homes.
28 (3) The analysis shall include an assessment of when such
29 facilities could be available for use as a regional jail and the
30 potential costs, costs avoided, and benefits of at least the following
31 considerations:
32 (a) Any impact on existing offenders or residents;
33 (b) The conversion of the facilities;
34 (c) Infrastructure tied to the facilities;
35 (d) Whether the facility is, or can be, sized proportionately to
36 the available pool of offenders;

1 (e) Changes in criminal justice costs, including transport, access
2 to legal assistance, and access to courts;

3 (f) Reductions in jail populations; and

4 (g) Changes in treatment costs for these offenders.

5 (4) The joint legislative audit and review committee shall report
6 its findings and recommendations to the appropriate committees of the
7 legislature not later than December 15, 2005.

8 **Competency and Criminal Insanity**

9 NEW SECTION. **Sec. 613.** By January 1, 2006, the department of
10 social and health services shall:

11 (1) Reduce the waiting times for competency evaluation and
12 restoration to the maximum extent possible using funds appropriated for
13 this purpose; and

14 (2) Report to the legislature with an analysis of several
15 alternative strategies for addressing increases in forensic population
16 and minimizing waiting periods for competency evaluation and
17 restoration. The report shall discuss, at a minimum, the costs and
18 advantages of, and barriers to co-locating professional persons in
19 jails, performing restoration treatment in less restrictive
20 alternatives than the state hospitals, and the use of regional jail
21 facilities to accomplish competency evaluation and restoration.

22 **ESSB 6358 Implementation Issues**

23 **Sec. 614.** RCW 71.05.157 and 2004 c 166 s 16 are each amended to
24 read as follows:

25 (1) When a county designated mental health professional is notified
26 by a jail that a defendant or offender who was subject to a discharge
27 review under RCW 71.05.232 is to be released to the community, the
28 county designated mental health professional shall evaluate the person
29 within seventy-two hours of release.

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

1 county designated mental health professional and the department of
2 corrections of the violation and request an evaluation for purposes of
3 revocation of the less restrictive alternative.

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

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

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

23 NEW SECTION. **Sec. 615.** A new section is added to chapter 70.96A
24 RCW to read as follows:

25 (1) Treatment providers shall inquire of each person seeking
26 treatment, at intake, whether the person is subject to court ordered
27 mental health or chemical dependency treatment, whether civil or
28 criminal, and document the person's response in his or her record. If
29 the person is in treatment on the effective date of this section, and
30 the treatment provider has not inquired whether the person is subject
31 to court ordered mental health or chemical dependency treatment, the
32 treatment provider shall inquire on the person's next treatment session
33 and document the person's response in his or her record.

34 (2) Treatment providers shall inquire of each person seeking
35 treatment, at intake, whether the person is subject to supervision of
36 any kind by the department of corrections and document the person's
37 response in his or her record. If the person is in treatment on the

1 effective date of this section, and the treatment provider has not
2 inquired whether the person is subject to supervision of any kind by
3 the department of corrections, the treatment provider shall inquire on
4 the person's next treatment session and document the person's response
5 in his or her record.

6 (3) For all persons who are subject to both court ordered mental
7 health or chemical dependency treatment and supervision by the
8 department of corrections, the treatment provider shall request an
9 authorization to release records and notify the person that, unless
10 expressly excluded by the court order the law requires treatment
11 providers to share information with the department of corrections and
12 the person's mental health treatment provider.

13 (4) If the treatment provider has reason to believe that a person
14 is subject to supervision by the department of corrections but the
15 person's record does not indicate that he or she is, the treatment
16 provider may call any department of corrections office and provide the
17 person's name and birth date. If the person is subject to supervision,
18 the treatment provider shall request, and the department of corrections
19 shall provide, the name and contact information for the person's
20 community corrections officer.

21 **PART VII**

22 **BEST PRACTICES AND COLLABORATION**

23 NEW SECTION. **Sec. 701.** (1) The department of social and health
24 services shall adopt, not later than January 1, 2006, an integrated and
25 comprehensive screening and assessment process for chemical dependency
26 and mental disorders and co-occurring chemical dependency and mental
27 disorders.

28 (a) The process adopted shall include, at a minimum:

29 (i) An initial screening tool that can be used by intake personnel
30 system-wide and which will identify the most common types of co-
31 occurring disorders;

32 (ii) An assessment process for those cases in which assessment is
33 indicated that provides an appropriate degree of assessment for most
34 situations, which can be expanded for complex situations;

35 (iii) Identification of triggers in the screening that indicate the
36 need to begin an assessment;

1 (iv) Identification of triggers after or outside the screening that
2 indicate a need to begin or resume an assessment;

3 (v) The components of an assessment process and a protocol for
4 determining whether part or all of the assessment is necessary, and at
5 what point; and

6 (vi) Emphasis that the process adopted under this section is to
7 replace and not to duplicate existing intake, screening, and assessment
8 tools and processes.

9 (b) The department shall consider existing models, including those
10 already adopted by other states, and to the extent possible, adopt an
11 established, proven model.

12 (c) The integrated, comprehensive screening and assessment process
13 shall be implemented statewide by all chemical dependency and mental
14 health treatment providers as well as all county designated mental
15 health professionals, county designated chemical dependency
16 specialists, and county designated crisis responders not later than
17 January 1, 2007.

18 (2) The department shall provide adequate training to effect
19 statewide implementation by the dates designated in this section and
20 shall report the rates of co-occurring disorders and the stage of
21 screening or assessment at which the co-occurring disorder was
22 identified to the caseload forecast council.

23 (3) The department shall establish contractual penalties to
24 contracted treatment providers, the regional support networks, and
25 their contracted providers for failure to implement the integrated
26 screening and assessment process by July 1, 2007.

27 NEW SECTION. **Sec. 702.** The department of corrections shall, to
28 the extent that resources are available for this purpose, utilize the
29 integrated, comprehensive screening and assessment process for chemical
30 dependency and mental disorders developed under section 701 of this
31 act.

32 NEW SECTION. **Sec. 703.** A new section is added to chapter 71.02
33 RCW to read as follows:

34 (1) By June 30, 2006, the department shall develop and implement a
35 matrix or set of matrices for providing services based on the following
36 principles:

1 (a) Maximizing evidence-based practices where these practices
2 exist; where no evidence-based practice exists, the use of research-
3 based practices, including but not limited to, the adaptation of
4 evidence-based practices to new situations; where no evidence-based or
5 research-based practices exist the use of consensus-based practices;
6 and, to the extent that funds are available, the use of promising
7 practices;

8 (b) Maximizing the person's independence, recovery, and employment
9 by consideration of the person's strengths and supports in the
10 community;

11 (c) Maximizing the person's participation in treatment decisions
12 including, where possible, the person's awareness of, and technical
13 assistance in preparing, mental health advance directives; and

14 (d) Collaboration with consumer-based support programs.

15 (2) The matrix or set of matrices shall include both adults and
16 children and persons with co-occurring mental and substance abuse
17 disorders and shall build on the service intensity quadrant models that
18 have been developed in this state.

19 (3)(a) The matrix or set of matrices shall be developed in
20 collaboration with experts in evidence-based practices for mental
21 disorders, chemical dependency disorders, and co-occurring mental and
22 chemical dependency disorders at the University of Washington, and in
23 consultation with representatives of the regional support networks,
24 community mental health providers, county chemical dependency
25 coordinators, chemical dependency providers, consumers, family
26 advocates, and community inpatient providers.

27 (b) The matrix or set of matrices shall, to the extent possible,
28 adopt or utilize materials already prepared by the department or by
29 other states.

30 (4)(a) The department shall require, by contract with the regional
31 support networks, that providers maximize the use of evidence-based,
32 research-based, and consensus-based practices and document the
33 percentage of clients enrolled in evidence-based, research-based, and
34 consensus-based programs by program type.

35 (b) The department shall establish a schedule by which regional
36 support networks and providers must adopt the matrix or set of matrices
37 and a schedule of penalties for failure to adopt and implement the
38 matrices. The department may act against the regional support networks

1 or providers or both to enforce the provisions of this section and
2 shall provide the appropriate committees of the legislature with the
3 schedules adopted under this subsection by June 30, 2006.

4 (5) The following definitions apply to this section:

5 (a) "Evidence-based" means a program or practice that has had
6 multiple site random controlled trials across heterogeneous populations
7 demonstrating that the program or practice is effective for the
8 population.

9 (b) "Research-based" means a program or practice that has some
10 research demonstrating effectiveness, but that does not yet meet the
11 standard of evidence-based practices.

12 (c) "Consensus-based" means a program or practice that has general
13 support among treatment providers and experts, based on experience or
14 professional literature, and may have anecdotal or case study support,
15 or that is agreed but not possible to perform studies with random
16 assignment and controlled groups.

17 (d) "Promising practice" means a practice that presents, based on
18 preliminary information, potential for becoming a research-based or
19 consensus-based practice.

20 NEW SECTION. **Sec. 704.** A new section is added to chapter 71.02
21 RCW to read as follows:

22 (1) The department of social and health services shall collaborate
23 with community providers of mental health services, early learning and
24 child care providers, child serving agencies, and child-placing
25 agencies to identify and utilize federal, state, and local services and
26 providers for children in out-of-home care and other populations of
27 vulnerable children who are in need of an evaluation and treatment for
28 mental health services and do not qualify for medicaid or treatment
29 services through the regional support networks.

30 (2) If no appropriate mental health services are available through
31 federal, state, or local services and providers for a child described
32 in subsection (1) of this section, the regional support network must
33 provide a child, at a minimum, with a mental health evaluation
34 consistent with chapter 71.24 RCW.

35 (3) The department, in collaboration with the office of the
36 superintendent of public instruction, local providers, local school
37 districts, and the regional support networks, shall identify and review

1 existing programs and services as well as the unmet need for programs
2 and services serving birth to five and school-aged children who exhibit
3 early signs of behavioral or mental health disorders and who are not
4 otherwise eligible for services through the regional support networks.
5 The review of programs and services shall include, but not be limited
6 to, the utilization and effectiveness of early intervention or
7 prevention services and the primary intervention programs.

8 The department of social and health services shall provide a
9 briefing on the collaboration's findings and recommendations to the
10 appropriate committee of the legislature by December 31, 2005.

11 NEW SECTION. **Sec. 705.** The Washington state institute for public
12 policy shall assess the long-term and intergenerational cost-
13 effectiveness of investing in the treatment of chemical dependency
14 disorders, mental disorders, and co-occurring mental and substance
15 abuse disorders. The assessment shall use, to the extent possible,
16 existing governmental data bases and research and determine the net
17 present value of costs avoided or minimized. These costs include, but
18 are not limited to, primary care, jail or prison, competency
19 evaluations and restorations, child protective services interventions,
20 dependencies, foster care, emergency service interventions, and
21 prosecutorial, defense, and court costs. If possible, the institute
22 shall indicate whether prevention and early intervention programs
23 differ from acute and chronic treatment programs in long-term cost-
24 effectiveness.

25 **PART VIII**

26 **REPEALERS AND CROSS-REFERENCE CORRECTIONS**

27 NEW SECTION. **Sec. 801.** The following acts or parts of acts are
28 each repealed on the effective date of section 107 of this act:

29 (1) RCW 71.05.060 (Rights of persons complained against) and 1973
30 1st ex.s. c 142 s 11;

31 (2) RCW 71.05.070 (Prayer treatment) and 1973 1st ex.s. c 142 s 12;

32 (3) RCW 71.05.090 (Choice of physicians) and 1973 2nd ex.s. c 24 s
33 3 & 1973 1st ex.s. c 142 s 14;

34 (4) RCW 71.05.200 (Notice and statement of rights--Probable cause

1 hearing) and 1998 c 297 s 11, 1997 c 112 s 14, 1989 c 120 s 5, 1974
2 ex.s. c 145 s 13, & 1973 1st ex.s. c 142 s 25;

3 (5) RCW 71.05.250 (Probable cause hearing--Detained person's
4 rights--Waiver of privilege--Limitation--Records as evidence) and 1989
5 c 120 s 7, 1987 c 439 s 6, 1974 ex.s. c 145 s 17, & 1973 1st ex.s. c
6 142 s 30;

7 (6) RCW 71.05.450 (Competency--Effect--Statement of Washington law)
8 and 1994 sp.s. c 7 s 440 & 1973 1st ex.s. c 142 s 50;

9 (7) RCW 71.05.460 (Right to counsel) and 1997 c 112 s 33 & 1973 1st
10 ex.s. c 142 s 51;

11 (8) RCW 71.05.470 (Right to examination) and 1997 c 112 s 34 & 1973
12 1st ex.s. c 142 s 52;

13 (9) RCW 71.05.480 (Petitioning for release--Writ of habeas corpus)
14 and 1974 ex.s. c 145 s 29 & 1973 1st ex.s. c 142 s 53; and

15 (10) RCW 71.05.490 (Rights of persons committed before January 1,
16 1974) and 1997 c 112 s 35 & 1973 1st ex.s. c 142 s 54.

17 NEW SECTION. **Sec. 802.** The following acts or parts of acts are
18 each repealed on the effective date of section 111 of this act:

19 (1) RCW 71.05.155 (Request to mental health professional by law
20 enforcement agency for investigation under RCW 71.05.150--Advisory
21 report of results) and 1997 c 112 s 9 & 1979 ex.s. c 215 s 10;

22 (2) RCW 71.05.395 (Application of uniform health care information
23 act, chapter 70.02 RCW) and 1993 c 448 s 8;

24 (3) RCW 71.05.400 (Release of information to patient's next of kin,
25 attorney, guardian, conservator--Notification of patient's death) and
26 1993 c 448 s 7, 1974 ex.s. c 115 s 1, 1973 2nd ex.s. c 24 s 6, & 1973
27 1st ex.s. c 142 s 45;

28 (4) RCW 71.05.410 (Notice of disappearance of patient) and 1997 c
29 112 s 32, 1973 2nd ex.s. c 24 s 7, & 1973 1st ex.s. c 142 s 46; and

30 (5) RCW 71.05.430 (Statistical data) and 1973 1st ex.s. c 142 s 48.

31 NEW SECTION. **Sec. 803.** RCW 71.05.610 (Treatment records--
32 Definitions) and 1989 c 205 s 11 are each repealed on the effective
33 date of sections 104 through 106 of this act.

34 NEW SECTION. **Sec. 804.** The following acts or parts of acts are
35 each repealed:

1 (1) RCW 71.05.650 (Treatment records--Notation of and access to
2 released data) and 1989 c 205 s 15; and

3 (2) RCW 71.05.670 (Treatment records--Violations--Civil action) and
4 1999 c 13 s 10.

5 **Sec. 805.** RCW 5.60.060 and 2001 c 286 s 2 are each amended to read
6 as follows:

7 (1) A husband shall not be examined for or against his wife,
8 without the consent of the wife, nor a wife for or against her husband
9 without the consent of the husband; nor can either during marriage or
10 afterward, be without the consent of the other, examined as to any
11 communication made by one to the other during marriage. But this
12 exception shall not apply to a civil action or proceeding by one
13 against the other, nor to a criminal action or proceeding for a crime
14 committed by one against the other, nor to a criminal action or
15 proceeding against a spouse if the marriage occurred subsequent to the
16 filing of formal charges against the defendant, nor to a criminal
17 action or proceeding for a crime committed by said husband or wife
18 against any child of whom said husband or wife is the parent or
19 guardian, nor to a proceeding under chapter 70.96A, 70.-- (sections 202
20 through 216 of this act), 70.-- (sections 302 through 374 of this act),
21 71.05, or 71.09 RCW: PROVIDED, That the spouse of a person sought to
22 be detained under chapter 70.96A, 70.-- (sections 202 through 216 of
23 this act), 70.-- (sections 302 through 374 of this act), 71.05, or
24 71.09 RCW may not be compelled to testify and shall be so informed by
25 the court prior to being called as a witness.

26 (2)(a) An attorney or counselor shall not, without the consent of
27 his or her client, be examined as to any communication made by the
28 client to him or her, or his or her advice given thereon in the course
29 of professional employment.

30 (b) A parent or guardian of a minor child arrested on a criminal
31 charge may not be examined as to a communication between the child and
32 his or her attorney if the communication was made in the presence of
33 the parent or guardian. This privilege does not extend to
34 communications made prior to the arrest.

35 (3) A member of the clergy or a priest shall not, without the
36 consent of a person making the confession, be examined as to any

1 confession made to him or her in his or her professional character, in
2 the course of discipline enjoined by the church to which he or she
3 belongs.

4 (4) Subject to the limitations under RCW 70.96A.140 or
5 (~~71.05.250~~) 71.05.360 (8) and (9), a physician or surgeon or
6 osteopathic physician or surgeon or podiatric physician or surgeon
7 shall not, without the consent of his or her patient, be examined in a
8 civil action as to any information acquired in attending such patient,
9 which was necessary to enable him or her to prescribe or act for the
10 patient, except as follows:

11 (a) In any judicial proceedings regarding a child's injury,
12 neglect, or sexual abuse or the cause thereof; and

13 (b) Ninety days after filing an action for personal injuries or
14 wrongful death, the claimant shall be deemed to waive the physician-
15 patient privilege. Waiver of the physician-patient privilege for any
16 one physician or condition constitutes a waiver of the privilege as to
17 all physicians or conditions, subject to such limitations as a court
18 may impose pursuant to court rules.

19 (5) A public officer shall not be examined as a witness as to
20 communications made to him or her in official confidence, when the
21 public interest would suffer by the disclosure.

22 (6)(a) A peer support group counselor shall not, without consent of
23 the law enforcement officer making the communication, be compelled to
24 testify about any communication made to the counselor by the officer
25 while receiving counseling. The counselor must be designated as such
26 by the sheriff, police chief, or chief of the Washington state patrol,
27 prior to the incident that results in counseling. The privilege only
28 applies when the communication was made to the counselor while acting
29 in his or her capacity as a peer support group counselor. The
30 privilege does not apply if the counselor was an initial responding
31 officer, a witness, or a party to the incident which prompted the
32 delivery of peer support group counseling services to the law
33 enforcement officer.

34 (b) For purposes of this section, "peer support group counselor"
35 means a:

36 (i) Law enforcement officer, or civilian employee of a law
37 enforcement agency, who has received training to provide emotional and

1 moral support and counseling to an officer who needs those services as
2 a result of an incident in which the officer was involved while acting
3 in his or her official capacity; or

4 (ii) Nonemployee counselor who has been designated by the sheriff,
5 police chief, or chief of the Washington state patrol to provide
6 emotional and moral support and counseling to an officer who needs
7 those services as a result of an incident in which the officer was
8 involved while acting in his or her official capacity.

9 (7) A sexual assault advocate may not, without the consent of the
10 victim, be examined as to any communication made by the victim to the
11 sexual assault advocate.

12 (a) For purposes of this section, "sexual assault advocate" means
13 the employee or volunteer from a rape crisis center, victim assistance
14 unit, program, or association, that provides information, medical or
15 legal advocacy, counseling, or support to victims of sexual assault,
16 who is designated by the victim to accompany the victim to the hospital
17 or other health care facility and to proceedings concerning the alleged
18 assault, including police and prosecution interviews and court
19 proceedings.

20 (b) A sexual assault advocate may disclose a confidential
21 communication without the consent of the victim if failure to disclose
22 is likely to result in a clear, imminent risk of serious physical
23 injury or death of the victim or another person. Any sexual assault
24 advocate participating in good faith in the disclosing of records and
25 communications under this section shall have immunity from any
26 liability, civil, criminal, or otherwise, that might result from the
27 action. In any proceeding, civil or criminal, arising out of a
28 disclosure under this section, the good faith of the sexual assault
29 advocate who disclosed the confidential communication shall be
30 presumed.

31 **Sec. 806.** RCW 18.83.110 and 1989 c 271 s 303 are each amended to
32 read as follows:

33 Confidential communications between a client and a psychologist
34 shall be privileged against compulsory disclosure to the same extent
35 and subject to the same conditions as confidential communications
36 between attorney and client, but this exception is subject to the

1 limitations under RCW 70.96A.140 and (~~71.05.250~~) 71.05.360 (8) and
2 (9).

3 **Sec. 807.** RCW 18.225.105 and 2003 c 204 s 1 are each amended to
4 read as follows:

5 A person licensed under this chapter shall not disclose the written
6 acknowledgment of the disclosure statement pursuant to RCW 18.225.100,
7 nor any information acquired from persons consulting the individual in
8 a professional capacity when the information was necessary to enable
9 the individual to render professional services to those persons except:

10 (1) With the written authorization of that person or, in the case
11 of death or disability, the person's personal representative;

12 (2) If the person waives the privilege by bringing charges against
13 the person licensed under this chapter;

14 (3) In response to a subpoena from the secretary. The secretary
15 may subpoena only records related to a complaint or report under RCW
16 18.130.050;

17 (4) As required under chapter 26.44 or 74.34 RCW or RCW
18 (~~71.05.250~~) 71.05.360 (8) and (9); or

19 (5) To any individual if the person licensed under this chapter
20 reasonably believes that disclosure will avoid or minimize an imminent
21 danger to the health or safety of the individual or any other
22 individual; however, there is no obligation on the part of the provider
23 to so disclose.

24 **Sec. 808.** RCW 71.05.235 and 2000 c 74 s 6 are each amended to read
25 as follows:

26 (1) If an individual is referred to a county designated mental
27 health professional under RCW 10.77.090(1)(d)(iii)(A), the county
28 designated mental health professional shall examine the individual
29 within forty-eight hours. If the county designated mental health
30 professional determines it is not appropriate to detain the individual
31 or petition for a ninety-day less restrictive alternative under RCW
32 71.05.230(4), that decision shall be immediately presented to the
33 superior court for hearing. The court shall hold a hearing to consider
34 the decision of the county designated mental health professional not
35 later than the next judicial day. At the hearing the superior court
36 shall review the determination of the county designated mental health

1 professional and determine whether an order should be entered requiring
2 the person to be evaluated at an evaluation and treatment facility. No
3 person referred to an evaluation and treatment facility may be held at
4 the facility longer than seventy-two hours.

5 (2) If an individual is placed in an evaluation and treatment
6 facility under RCW 10.77.090(1)(d)(iii)(B), a professional person shall
7 evaluate the individual for purposes of determining whether to file a
8 ninety-day inpatient or outpatient petition under chapter 71.05 RCW.
9 Before expiration of the seventy-two hour evaluation period authorized
10 under RCW 10.77.090(1)(d)(iii)(B), the professional person shall file
11 a petition or, if the recommendation of the professional person is to
12 release the individual, present his or her recommendation to the
13 superior court of the county in which the criminal charge was
14 dismissed. The superior court shall review the recommendation not
15 later than forty-eight hours, excluding Saturdays, Sundays, and
16 holidays, after the recommendation is presented. If the court rejects
17 the recommendation to unconditionally release the individual, the court
18 may order the individual detained at a designated evaluation and
19 treatment facility for not more than a seventy-two hour evaluation and
20 treatment period and direct the individual to appear at a surety
21 hearing before that court within seventy-two hours, or the court may
22 release the individual but direct the individual to appear at a surety
23 hearing set before that court within eleven days, at which time the
24 prosecutor may file a petition under this chapter for ninety-day
25 inpatient or outpatient treatment. If a petition is filed by the
26 prosecutor, the court may order that the person named in the petition
27 be detained at the evaluation and treatment facility that performed the
28 evaluation under this subsection or order the respondent to be in
29 outpatient treatment. If a petition is filed but the individual fails
30 to appear in court for the surety hearing, the court shall order that
31 a mental health professional or peace officer shall take such person or
32 cause such person to be taken into custody and placed in an evaluation
33 and treatment facility to be brought before the court the next judicial
34 day after detention. Upon the individual's first appearance in court
35 after a petition has been filed, proceedings under RCW 71.05.310 and
36 71.05.320 shall commence. For an individual subject to this
37 subsection, the prosecutor or professional person may directly file a

1 petition for ninety-day inpatient or outpatient treatment and no
2 petition for initial detention or fourteen-day detention is required
3 before such a petition may be filed.

4 The court shall conduct the hearing on the petition filed under
5 this subsection within five judicial days of the date the petition is
6 filed. The court may continue the hearing upon the written request of
7 the person named in the petition or the person's attorney, for good
8 cause shown, which continuance shall not exceed five additional
9 judicial days. If the person named in the petition requests a jury
10 trial, the trial shall commence within ten judicial days of the date of
11 the filing of the petition. The burden of proof shall be by clear,
12 cogent, and convincing evidence and shall be upon the petitioner. The
13 person shall be present at such proceeding, which shall in all respects
14 accord with the constitutional guarantees of due process of law and the
15 rules of evidence pursuant to RCW (~~(71.05.250)~~) 71.05.360 (8) and (9).

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

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

28 (4) The individual shall have the rights specified in RCW
29 (~~(71.05.250)~~) 71.05.360 (8) and (9).

30 **Sec. 809.** RCW 71.05.310 and 1987 c 439 s 9 are each amended to
31 read as follows:

32 The court shall conduct a hearing on the petition for ninety day
33 treatment within five judicial days of the first court appearance after
34 the probable cause hearing. The court may continue the hearing upon
35 the written request of the person named in the petition or the person's
36 attorney, for good cause shown, which continuance shall not exceed five
37 additional judicial days. If the person named in the petition requests

1 a jury trial, the trial shall commence within ten judicial days of the
2 first court appearance after the probable cause hearing. The burden of
3 proof shall be by clear, cogent, and convincing evidence and shall be
4 upon the petitioner. The person shall be present at such proceeding,
5 which shall in all respects accord with the constitutional guarantees
6 of due process of law and the rules of evidence pursuant to RCW
7 (~~71.05.250~~) 71.05.360 (8) and (9).

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

13 **Sec. 810.** RCW 71.05.425 and 2000 c 94 s 10 are each amended to
14 read as follows:

15 (1)(a) Except as provided in subsection (2) of this section, at the
16 earliest possible date, and in no event later than thirty days before
17 conditional release, final release, authorized leave under RCW
18 71.05.325(2), or transfer to a facility other than a state mental
19 hospital, the superintendent shall send written notice of conditional
20 release, release, authorized leave, or transfer of a person committed
21 under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex,
22 violent, or felony harassment offense pursuant to RCW 10.77.090(4) to
23 the following:

24 (i) The chief of police of the city, if any, in which the person
25 will reside; and

26 (ii) The sheriff of the county in which the person will reside.

27 (b) The same notice as required by (a) of this subsection shall be
28 sent to the following, if such notice has been requested in writing
29 about a specific person committed under RCW 71.05.280(3) or
30 71.05.320(2)(c) following dismissal of a sex, violent, or felony
31 harassment offense pursuant to RCW 10.77.090(4):

32 (i) The victim of the sex, violent, or felony harassment offense
33 that was dismissed pursuant to RCW 10.77.090(4) preceding commitment
34 under RCW 71.05.280(3) or 71.05.320(2)(c) or the victim's next of kin
35 if the crime was a homicide;

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

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

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

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

12 (2) If a person committed under RCW 71.05.280(3) or 71.05.320(2)(c)
13 following dismissal of a sex, violent, or felony harassment offense
14 pursuant to RCW 10.77.090(4) escapes, the superintendent shall
15 immediately notify, by the most reasonable and expedient means
16 available, the chief of police of the city and the sheriff of the
17 county in which the person resided immediately before the person's
18 arrest. If previously requested, the superintendent shall also notify
19 the witnesses and the victim of the sex, violent, or felony harassment
20 offense that was dismissed pursuant to RCW 10.77.090(4) preceding
21 commitment under RCW 71.05.280(3) or 71.05.320(2) or the victim's next
22 of kin if the crime was a homicide. In addition, the secretary shall
23 also notify appropriate parties pursuant to RCW ~~((71.05.410))~~
24 71.05.390(18). If the person is recaptured, the superintendent shall
25 send notice to the persons designated in this subsection as soon as
26 possible but in no event later than two working days after the
27 department learns of such recapture.

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

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

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

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

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

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

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

5 **Sec. 811.** RCW 71.05.445 and 2004 c 166 s 4 are each amended to
6 read as follows:

7 (1) The definitions in this subsection apply throughout this
8 section unless the context clearly requires otherwise.

9 (a) "Information related to mental health services" means all
10 information and records compiled, obtained, or maintained in the course
11 of providing services to either voluntary or involuntary recipients of
12 services by a mental health service provider. This may include
13 documents of legal proceedings under this chapter or chapter 71.34 or
14 10.77 RCW, or somatic health care information.

15 (b) "Mental health service provider" means a public or private
16 agency that provides services to persons with mental disorders as
17 defined under RCW 71.05.020 and receives funding from public sources.
18 This includes evaluation and treatment facilities as defined in RCW
19 71.05.020, community mental health service delivery systems, or
20 community mental health programs as defined in RCW 71.24.025, and
21 facilities conducting competency evaluations and restoration under
22 chapter 10.77 RCW.

23 (2)(a) Information related to mental health services delivered to
24 a person subject to chapter 9.94A or 9.95 RCW shall be released, upon
25 request, by a mental health service provider to department of
26 corrections personnel for whom the information is necessary to carry
27 out the responsibilities of their office. The information must be
28 provided only for the purposes of completing presentence investigations
29 or risk assessment reports, supervision of an incarcerated offender or
30 offender under supervision in the community, planning for and provision
31 of supervision of an offender, or assessment of an offender's risk to
32 the community. The request shall be in writing and shall not require
33 the consent of the subject of the records.

34 (b) If an offender subject to chapter 9.94A or 9.95 RCW has failed
35 to report for department of corrections supervision or in the event of
36 an emergent situation that poses a significant risk to the public or
37 the offender, information related to mental health services delivered

1 to the offender and, if known, information regarding where the offender
2 is likely to be found shall be released by the mental health services
3 provider to the department of corrections upon request. The initial
4 request may be written or oral. All oral requests must be subsequently
5 confirmed in writing. Information released in response to an oral
6 request is limited to a statement as to whether the offender is or is
7 not being treated by the mental health services provider and the
8 address or information about the location or whereabouts of the
9 offender. Information released in response to a written request may
10 include information identified by rule as provided in subsections (4)
11 and (5) of this section. For purposes of this subsection a written
12 request includes requests made by e-mail or facsimile so long as the
13 requesting person at the department of corrections is clearly
14 identified. The request must specify the information being requested.
15 Disclosure of the information requested does not require the consent of
16 the subject of the records unless the offender has received relief from
17 disclosure under RCW 9.94A.562, 70.96A.155, or 71.05.132.

18 (3)(a) When a mental health service provider conducts its initial
19 assessment for a person receiving court-ordered treatment, the service
20 provider shall inquire and shall be told by the offender whether he or
21 she is subject to supervision by the department of corrections.

22 (b) When a person receiving court-ordered treatment or treatment
23 ordered by the department of corrections discloses to his or her mental
24 health service provider that he or she is subject to supervision by the
25 department of corrections, the mental health services provider shall
26 notify the department of corrections that he or she is treating the
27 offender and shall notify the offender that his or her community
28 corrections officer will be notified of the treatment, provided that if
29 the offender has received relief from disclosure pursuant to RCW
30 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the
31 mental health services provider with a copy of the order granting
32 relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or
33 71.05.132, the mental health services provider is not required to
34 notify the department of corrections that the mental health services
35 provider is treating the offender. The notification may be written or
36 oral and shall not require the consent of the offender. If an oral
37 notification is made, it must be confirmed by a written notification.

1 For purposes of this section, a written notification includes
2 notification by e-mail or facsimile, so long as the notifying mental
3 health service provider is clearly identified.

4 (4) The information to be released to the department of corrections
5 shall include all relevant records and reports, as defined by rule,
6 necessary for the department of corrections to carry out its duties,
7 including those records and reports identified in subsection (2) of
8 this section.

9 (5) The department and the department of corrections, in
10 consultation with regional support networks, mental health service
11 providers as defined in subsection (1) of this section, mental health
12 consumers, and advocates for persons with mental illness, shall adopt
13 rules to implement the provisions of this section related to the type
14 and scope of information to be released. These rules shall:

15 (a) Enhance and facilitate the ability of the department of
16 corrections to carry out its responsibility of planning and ensuring
17 community protection with respect to persons subject to sentencing
18 under chapter 9.94A or 9.95 RCW, including accessing and releasing or
19 disclosing information of persons who received mental health services
20 as a minor; and

21 (b) Establish requirements for the notification of persons under
22 the supervision of the department of corrections regarding the
23 provisions of this section.

24 (6) The information received by the department of corrections under
25 this section shall remain confidential and subject to the limitations
26 on disclosure outlined in chapter 71.05 RCW, except as provided in RCW
27 72.09.585.

28 (7) No mental health service provider or individual employed by a
29 mental health service provider shall be held responsible for
30 information released to or used by the department of corrections under
31 the provisions of this section or rules adopted under this section
32 except under RCW (~~(71.05.670 and)~~) 71.05.440.

33 (8) Whenever federal law or federal regulations restrict the
34 release of information contained in the treatment records of any
35 patient who receives treatment for alcoholism or drug dependency, the
36 release of the information may be restricted as necessary to comply
37 with federal law and regulations.

1 (9) This section does not modify the terms and conditions of
2 disclosure of information related to sexually transmitted diseases
3 under chapter 70.24 RCW.

4 (10) The department shall, subject to available resources,
5 electronically, or by the most cost-effective means available, provide
6 the department of corrections with the names, last dates of services,
7 and addresses of specific regional support networks and mental health
8 service providers that delivered mental health services to a person
9 subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between
10 the departments.

11 **Sec. 812.** RCW 71.05.640 and 2000 c 94 s 11 are each amended to
12 read as follows:

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

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

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

27 (4) At the time of discharge all individuals shall be informed by
28 resource management services of their rights as provided in RCW
29 (~~(71.05.610)~~) 71.05.620 through 71.05.690.

30 **Sec. 813.** RCW 71.05.680 and 1999 c 13 s 11 are each amended to
31 read as follows:

32 Any person who requests or obtains confidential information
33 pursuant to RCW (~~(71.05.610)~~) 71.05.620 through 71.05.690 under false
34 pretenses shall be guilty of a gross misdemeanor.

1 **Sec. 814.** RCW 71.05.690 and 1999 c 13 s 12 are each amended to
2 read as follows:

3 The department shall adopt rules to implement RCW (~~(71.05.610)~~)
4 71.05.620 through 71.05.680.

5 **Sec. 815.** RCW 71.24.035 and 2001 c 334 s 7 and 2001 c 323 s 10 are
6 each reenacted and amended to read as follows:

7 (1) The department is designated as the state mental health
8 authority.

9 (2) The secretary shall provide for public, client, and licensed
10 service provider participation in developing the state mental health
11 program, developing contracts with regional support networks, and any
12 waiver request to the federal government under medicaid.

13 (3) The secretary shall provide for participation in developing the
14 state mental health program for children and other underserved
15 populations, by including representatives on any committee established
16 to provide oversight to the state mental health program.

17 (4) The secretary shall be designated as the county authority if a
18 county fails to meet state minimum standards or refuses to exercise
19 responsibilities under RCW 71.24.045.

20 (5) The secretary shall:

21 (a) Develop a biennial state mental health program that
22 incorporates county biennial needs assessments and county mental health
23 service plans and state services for mentally ill adults and children.
24 The secretary may also develop a six-year state mental health plan;

25 (b) Assure that any regional or county community mental health
26 program provides access to treatment for the county's residents in the
27 following order of priority: (i) The acutely mentally ill; (ii)
28 chronically mentally ill adults and severely emotionally disturbed
29 children; and (iii) the seriously disturbed. Such programs shall
30 provide:

31 (A) Outpatient services;

32 (B) Emergency care services for twenty-four hours per day;

33 (C) Day treatment for mentally ill persons which includes training
34 in basic living and social skills, supported work, vocational
35 rehabilitation, and day activities. Such services may include
36 therapeutic treatment. In the case of a child, day treatment includes

1 age-appropriate basic living and social skills, educational and
2 prevocational services, day activities, and therapeutic treatment;

3 (D) Screening for patients being considered for admission to state
4 mental health facilities to determine the appropriateness of admission;

5 (E) Employment services, which may include supported employment,
6 transitional work, placement in competitive employment, and other work-
7 related services, that result in mentally ill persons becoming engaged
8 in meaningful and gainful full or part-time work. Other sources of
9 funding such as the division of vocational rehabilitation may be
10 utilized by the secretary to maximize federal funding and provide for
11 integration of services;

12 (F) Consultation and education services; and

13 (G) Community support services;

14 (c) Develop and adopt rules establishing state minimum standards
15 for the delivery of mental health services pursuant to RCW 71.24.037
16 including, but not limited to:

17 (i) Licensed service providers. The secretary shall provide for
18 deeming of compliance with state minimum standards for those entities
19 accredited by recognized behavioral health accrediting bodies
20 recognized and having a current agreement with the department;

21 (ii) Regional support networks; and

22 (iii) Inpatient services, evaluation and treatment services and
23 facilities under chapter 71.05 RCW, resource management services, and
24 community support services;

25 (d) Assure that the special needs of minorities, the elderly,
26 disabled, children, and low-income persons are met within the
27 priorities established in this section;

28 (e) Establish a standard contract or contracts, consistent with
29 state minimum standards, which shall be used in contracting with
30 regional support networks or counties. The standard contract shall
31 include a maximum fund balance, which shall not exceed ten percent;

32 (f) Establish, to the extent possible, a standardized auditing
33 procedure which minimizes paperwork requirements of county authorities
34 and licensed service providers. The audit procedure shall focus on the
35 outcomes of service and not the processes for accomplishing them;

36 (g) Develop and maintain an information system to be used by the
37 state, counties, and regional support networks that includes a tracking
38 method which allows the department and regional support networks to

1 identify mental health clients' participation in any mental health
2 service or public program on an immediate basis. The information
3 system shall not include individual patient's case history files.
4 Confidentiality of client information and records shall be maintained
5 as provided in this chapter and in RCW 71.05.390, (~~71.05.400,~~
6 ~~71.05.410,~~) 71.05.420, (~~71.05.430,~~) and 71.05.440. The design of
7 the system and the data elements to be collected shall be reviewed by
8 the work group appointed by the secretary under section 5(1) of this
9 act and representing the department, regional support networks, service
10 providers, consumers, and advocates. The data elements shall be
11 designed to provide information that is needed to measure performance
12 and achieve the service outcomes (~~identified in section 5 of this~~
13 ~~act~~);

14 (h) License service providers who meet state minimum standards;

15 (i) Certify regional support networks that meet state minimum
16 standards;

17 (j) Periodically monitor the compliance of certified regional
18 support networks and their network of licensed service providers for
19 compliance with the contract between the department, the regional
20 support network, and federal and state rules at reasonable times and in
21 a reasonable manner;

22 (k) Fix fees to be paid by evaluation and treatment centers to the
23 secretary for the required inspections;

24 (l) Monitor and audit counties, regional support networks, and
25 licensed service providers as needed to assure compliance with
26 contractual agreements authorized by this chapter; and

27 (m) Adopt such rules as are necessary to implement the department's
28 responsibilities under this chapter.

29 (6) The secretary shall use available resources only for regional
30 support networks.

31 (7) Each certified regional support network and licensed service
32 provider shall file with the secretary, on request, such data,
33 statistics, schedules, and information as the secretary reasonably
34 requires. A certified regional support network or licensed service
35 provider which, without good cause, fails to furnish any data,
36 statistics, schedules, or information as requested, or files fraudulent
37 reports thereof, may have its certification or license revoked or
38 suspended.

1 (8) The secretary may suspend, revoke, limit, or restrict a
2 certification or license, or refuse to grant a certification or license
3 for failure to conform to: (a) The law; (b) applicable rules and
4 regulations; (c) applicable standards; or (d) state minimum standards.

5 (9) The superior court may restrain any regional support network or
6 service provider from operating without certification or a license or
7 any other violation of this section. The court may also review,
8 pursuant to procedures contained in chapter 34.05 RCW, any denial,
9 suspension, limitation, restriction, or revocation of certification or
10 license, and grant other relief required to enforce the provisions of
11 this chapter.

12 (10) Upon petition by the secretary, and after hearing held upon
13 reasonable notice to the facility, the superior court may issue a
14 warrant to an officer or employee of the secretary authorizing him or
15 her to enter at reasonable times, and examine the records, books, and
16 accounts of any regional support network or service provider refusing
17 to consent to inspection or examination by the authority.

18 (11) Notwithstanding the existence or pursuit of any other remedy,
19 the secretary may file an action for an injunction or other process
20 against any person or governmental unit to restrain or prevent the
21 establishment, conduct, or operation of a regional support network or
22 service provider without certification or a license under this chapter.

23 (12) The standards for certification of evaluation and treatment
24 facilities shall include standards relating to maintenance of good
25 physical and mental health and other services to be afforded persons
26 pursuant to this chapter and chapters 71.05 and 71.34 RCW, and shall
27 otherwise assure the effectuation of the purposes of these chapters.

28 (13)(a) The department, in consultation with affected parties,
29 shall establish a distribution formula that reflects county needs
30 assessments based on the number of persons who are acutely mentally
31 ill, chronically mentally ill, severely emotionally disturbed children,
32 and seriously disturbed. The formula shall take into consideration the
33 impact on counties of demographic factors in counties which result in
34 concentrations of priority populations as set forth in subsection
35 (5)(b) of this section. These factors shall include the population
36 concentrations resulting from commitments under chapters 71.05 and
37 71.34 RCW to state psychiatric hospitals, as well as concentration in

1 urban areas, at border crossings at state boundaries, and other
2 significant demographic and workload factors.

3 (b) The formula shall also include a projection of the funding
4 allocations that will result for each county, which specifies
5 allocations according to priority populations, including the allocation
6 for services to children and other underserved populations.

7 (c) After July 1, 2003, the department may allocate up to two
8 percent of total funds to be distributed to the regional support
9 networks for incentive payments to reward the achievement of superior
10 outcomes, or significantly improved outcomes, as measured by a
11 statewide performance measurement system consistent with the framework
12 recommended in the joint legislative audit and review committee's
13 performance audit of the mental health system. The department shall
14 annually report to the legislature on its criteria and allocation of
15 the incentives provided under this subsection.

16 (14) The secretary shall assume all duties assigned to the
17 nonparticipating counties under chapters 71.05, 71.34, and 71.24 RCW.
18 Such responsibilities shall include those which would have been
19 assigned to the nonparticipating counties under regional support
20 networks.

21 The regional support networks, or the secretary's assumption of all
22 responsibilities under chapters 71.05, 71.34, and 71.24 RCW, shall be
23 included in all state and federal plans affecting the state mental
24 health program including at least those required by this chapter, the
25 medicaid program, and P.L. 99-660. Nothing in these plans shall be
26 inconsistent with the intent and requirements of this chapter.

27 (15) The secretary shall:

28 (a) Disburse funds for the regional support networks within sixty
29 days of approval of the biennial contract. The department must either
30 approve or reject the biennial contract within sixty days of receipt.

31 (b) Enter into biennial contracts with regional support networks.
32 The contracts shall be consistent with available resources. No
33 contract shall be approved that does not include progress toward
34 meeting the goals of this chapter by taking responsibility for: (i)
35 Short-term commitments; (ii) residential care; and (iii) emergency
36 response systems.

37 (c) Allocate one hundred percent of available resources to the

1 regional support networks in accordance with subsection (13) of this
2 section. Incentive payments authorized under subsection (13) of this
3 section may be allocated separately from other available resources.

4 (d) Notify regional support networks of their allocation of
5 available resources at least sixty days prior to the start of a new
6 biennial contract period.

7 (e) Deny funding allocations to regional support networks based
8 solely upon formal findings of noncompliance with the terms of the
9 regional support network's contract with the department. Written
10 notice and at least thirty days for corrective action must precede any
11 such action. In such cases, regional support networks shall have full
12 rights to appeal under chapter 34.05 RCW.

13 (16) The department, in cooperation with the state congressional
14 delegation, shall actively seek waivers of federal requirements and
15 such modifications of federal regulations as are necessary to allow
16 federal medicaid reimbursement for services provided by free-standing
17 evaluation and treatment facilities certified under chapter 71.05 RCW.
18 The department shall periodically report its efforts to the appropriate
19 committees of the senate and the house of representatives.

20 **PART IX**

21 **MISCELLANEOUS PROVISIONS**

22 NEW SECTION. **Sec. 901.** RCW 71.05.035 is recodified as a new
23 section in chapter 71A.12 RCW.

24 NEW SECTION. **Sec. 902.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 903.** A new section is added to chapter 82.14
29 RCW to read as follows:

30 (1) A county legislative authority may authorize, fix, and impose
31 a sales and use tax in accordance with the terms of this chapter.

32 (2) The tax authorized in this section shall be in addition to any
33 other taxes authorized by law and shall be collected from those persons
34 who are taxable by the state under chapters 82.08 and 82.12 RCW upon

1 the occurrence of any taxable event within the county. The rate of tax
2 shall equal one-tenth of one percent of the selling price in the case
3 of a sales tax, or value of the article used, in the case of a use tax.

4 (3) Moneys collected under this section shall be used solely for
5 the purpose of providing new or expanded chemical dependency or mental
6 health treatment services and for the operation of new or expanded
7 therapeutic court programs. Moneys collected under this section shall
8 not be used to supplant existing funding for these purposes.

9 NEW SECTION. **Sec. 904.** This act shall be so applied and construed
10 as to effectuate its general purpose to make uniform the law with
11 respect to the subject of this act among those states which enact it.

12 NEW SECTION. **Sec. 905.** Captions and part headings used in this
13 act are not part of the law.

14 NEW SECTION. **Sec. 906.** (1) If specific funding for the purposes
15 of sections 203, 217, 220, 221, 401, 406, 612, 701, and 705 of this
16 act, referencing the section by section number and by bill or chapter
17 number, is not provided by June 30, 2005, each section not referenced
18 is null and void.

19 (2) If specific funding for the purposes of sections 302 through
20 374 of this act, referencing these sections by section numbers and by
21 bill or chapter number, or by RCW citation, is not provided by June 30,
22 2009, sections 302 through 374 of this act are null and void.

23 NEW SECTION. **Sec. 907.** The code reviser shall alphabetize and
24 renumber the definitions, and correct any internal references affected
25 by this act.

26 NEW SECTION. **Sec. 908.** The code reviser shall, not later than
27 January 1, 2009, report to the appropriate policy committees of the
28 legislature which sections, or portions thereof, should be repealed on
29 the effective date of sections 302 through 374 of this act. The report
30 shall include draft legislation.

31 NEW SECTION. **Sec. 909.** (1) The secretary of the department of

1 social and health services may adopt rules as necessary to implement
2 the provisions of this act.

3 (2) The secretary of corrections may adopt rules as necessary to
4 implement the provisions of this act.

5 NEW SECTION. **Sec. 910.** (1) Except for sections 302 through 374
6 and 603 of this act, this act is necessary for the immediate
7 preservation of the public peace, health, or safety, or support of the
8 state government and its existing public institutions, and takes effect
9 July 1, 2005.

10 (2) Section 603 of this act takes effect July 1, 2006.

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

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