
SENATE BILL 5763

State of Washington

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By Senators Hargrove, Stevens, Regala, Brandland, Thibaudeau, Carrell, Brown, Keiser, Fairley, McAuliffe, Rasmussen, Kline, Kohl-Welles and Franklin

Read first time 02/04/2005. Referred to Committee on Human Services & Corrections.

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, 74.09.010, and 71.05.157;
5 reenacting and amending RCW 71.05.390 and 9.94A.505; adding new
6 sections to chapter 71.05 RCW; adding new sections to chapter 70.96A
7 RCW; adding new sections to chapter 2.28 RCW; adding a new section to
8 chapter 26.12 RCW; adding a new section to chapter 9.94A RCW; adding
9 new sections to chapter 74.09 RCW; adding a new section to chapter
10 72.23 RCW; adding new sections to chapter 71.02 RCW; adding a new
11 section to chapter 13.34 RCW; adding a new section to chapter 71A.12
12 RCW; adding a new section to chapter 82.14 RCW; adding new chapters to
13 Title 70 RCW; creating new sections; recodifying RCW 71.05.370 and
14 71.05.035; repealing RCW 71.05.060, 71.05.070, 71.05.090, 71.05.200,
15 71.05.250, 71.05.450, 71.05.460, 71.05.470, 71.05.480, 71.05.490,
16 71.05.050, 71.05.395, 71.05.400, 71.05.410, 71.05.430, 71.05.610,
17 71.05.650, and 71.05.670; prescribing penalties; making an
18 appropriation; providing effective dates; providing an expiration date;
19 and declaring an emergency.

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

2 **PART I**

3 **GENERAL PROVISIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (a) The optional clinic provisions;

32 (b) Children's mental health treatment or co-occurring disorders
33 treatment under the EPSDT 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 July 1, 2006, all persons providing treatment
19 under this chapter shall use the integrated comprehensive screening
20 process for chemical dependency and mental disorders adopted pursuant
21 to section 701 of this act and shall document the numbers of clients
22 with co-occurring mental and substance abuse disorders based on a
23 quadrant system of low and high needs.

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

30 (3) Treatment providers and regional support networks who fail to
31 implement the integrated comprehensive screening and assessment process
32 for chemical dependency and mental disorders by July 1, 2007, shall be
33 subject to contractual penalties established under section 701 of this
34 act.

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

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

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

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

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

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

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

19 (6) "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 specified in this chapter;

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

26 (8) "Department" means the department of social and health
27 services;

28 (9) "Designated chemical dependency specialist" means a person
29 designated by the county alcoholism and other drug addiction program
30 coordinator designated under RCW 70.96A.310 to perform the commitment
31 duties described in chapter 70.96A RCW and sections 202 through 216 of
32 this act;

33 (10) "Designated crisis responder" means a mental health
34 professional appointed by the county or the regional support network to
35 perform the duties specified in this chapter;

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

1 ~~((10))~~ (12) "Developmental disabilities professional" means a
2 person who has specialized training and three years of experience in
3 directly treating or working with persons with developmental
4 disabilities and is a psychiatrist, psychologist, or social worker, and
5 such other developmental disabilities professionals as may be defined
6 by rules adopted by the secretary;

7 ~~((11))~~ (13) "Developmental disability" means that condition
8 defined in RCW 71A.10.020(3);

9 ~~((12))~~ (14) "Discharge" means the termination of hospital medical
10 authority. The commitment may remain in place, be terminated, or be
11 amended by court order;

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

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

31 ~~((15))~~ (17) "Habilitative services" means those services provided
32 by program personnel to assist persons in acquiring and maintaining
33 life skills and in raising their levels of physical, mental, social,
34 and 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 individual being assisted as manifested by prior
38 charged criminal conduct;

1 (~~(16)~~) (18) "History of one or more violent acts" refers to the
2 period of time ten years prior to the filing of a petition under this
3 chapter, excluding any time spent, but not any violent acts committed,
4 in a mental health facility or in confinement as a result of a criminal
5 conviction;

6 (~~(17)~~) (19) "Individualized service plan" means a plan prepared
7 by a developmental disabilities professional with other professionals
8 as a team, for an individual with developmental disabilities, which
9 shall state:

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

12 (b) The conditions and strategies necessary to achieve the purposes
13 of habilitation;

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

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

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

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

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

25 (~~(18)~~) (20) "Judicial commitment" means a commitment by a court
26 pursuant to the provisions of this chapter;

27 (~~(19)~~) (21) "Likelihood of serious harm" means:

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

37 (b) The individual has threatened the physical safety of another
38 and has a history of one or more violent acts;

1 ~~((+20+))~~ (22) "Mental disorder" means any organic, mental, or
2 emotional impairment which has substantial adverse effects on an
3 individual's cognitive or volitional functions;

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

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

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

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

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

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

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

36 ~~((+28+))~~ (30) "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 individuals who are receiving or who at any
3 time have received services for mental illness.

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

6 ~~((29))~~ (32) "Resource management services" has the meaning given
7 in chapter 71.24 RCW;

8 ~~((30))~~ (33) "Secretary" means the secretary of the department of
9 social and health services, or his or her designee;

10 ~~((31))~~ (34) "Social worker" means a person with a master's or
11 further advanced degree from an accredited school of social work or a
12 degree deemed equivalent under rules adopted by the secretary;

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

21 (36) "Violent act" means behavior that resulted in homicide,
22 attempted suicide, nonfatal injuries, or substantial damage to
23 property.

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

26 Unless the context clearly requires otherwise, the definitions in
27 this section apply throughout this chapter.

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

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

32 (b) Being gravely disabled as defined in RCW 71.05.020 or, in the
33 case of a child, a gravely disabled minor as defined in RCW 71.34.020;
34 or

35 (c) Presenting a likelihood of serious harm as defined in RCW
36 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

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

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

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

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

16 (b) Has experienced a continuous psychiatric hospitalization or
17 residential treatment exceeding six months' duration within the
18 preceding year; or

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

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

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

30 (7) "Community support services" means services authorized,
31 planned, and coordinated through resource management services
32 including, at a minimum, assessment, diagnosis, emergency crisis
33 intervention available twenty-four hours, seven days a week,
34 prescreening determinations for mentally ill persons being considered
35 for placement in nursing homes as required by federal law, screening
36 for patients being considered for admission to residential services,
37 diagnosis and treatment for acutely mentally ill and severely
38 emotionally disturbed children discovered under screening through the

1 federal Title XIX early and periodic screening, diagnosis, and
2 treatment program, investigation, legal, and other nonresidential
3 services under chapter 71.05 RCW, case management services, psychiatric
4 treatment including medication supervision, counseling, psychotherapy,
5 assuring transfer of relevant patient information between service
6 providers, and other services determined by regional support networks.

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

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

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

22 (11) "Mental health services" means all services provided by
23 regional support networks and other services provided by the state for
24 the mentally ill.

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

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

32 (14) "Registration records" include 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 individuals who are receiving or who at any
36 time have received services for mental illness.

37 (15) "Residential services" means a complete range of residences
38 and supports authorized by resource management services and which may

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

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

29 ~~((+16+))~~ (17) "Secretary" means the secretary of social and health
30 services.

31 ~~((+17+))~~ (18) "Seriously disturbed person" means a person who:

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

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

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

3 (d) Exhibits suicidal preoccupation or attempts; or

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

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

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

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

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

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

24 (i) Chronic family dysfunction involving a mentally ill or
25 inadequate caretaker;

26 (ii) Changes in custodial adult;

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

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

32 (v) Drug or alcohol abuse; or

33 (vi) Homelessness.

34 ~~((19))~~ (20) "State minimum standards" means minimum requirements
35 established by rules adopted by the secretary and necessary to
36 implement this chapter for: (a) Delivery of mental health services;
37 (b) licensed service providers for the provision of mental health

1 services; (c) residential services; and (d) community support services
2 and resource management services.

3 ~~((+20))~~ (21) "Treatment records" include registration and all
4 other records concerning individuals who are receiving or who at any
5 time have received services for mental illness, which are maintained by
6 the department, by regional support networks and their staffs, and by
7 treatment facilities. Treatment records do not include notes or
8 records maintained for personal use by an individual providing
9 treatment services for the department, regional support networks, or a
10 treatment facility if the notes or records are not available to others.

11 (22) "Tribal authority," for the purposes of this section and RCW
12 71.24.300 only, means: The federally recognized Indian tribes and the
13 major Indian organizations recognized by the secretary insofar as these
14 organizations do not have a financial relationship with any regional
15 support network that would present a conflict of interest.

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

18 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (16) "Individualized service plan" means a plan prepared by a
2 developmental disabilities professional with other professionals as a
3 team, for an individual with developmental disabilities, which shall
4 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 release, and
17 a projected possible date for release; and

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

20 (17) "Professional person" means:

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

27 (b) A psychologist licensed as a psychologist pursuant to chapter
28 18.83 RCW; or

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

32 (18) "Registration records" include 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 individuals who are receiving or who at any
36 time have received services for mental illness.

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

1 ~~((19))~~ (20) "Secretary" means the secretary of the department of
2 social and health services or his or her designee.

3 ~~((20))~~ (21) "Treatment" means any currently standardized medical
4 or mental health procedure including medication.

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

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

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

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

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

36 (c) Any person who leaves a public or private agency following

1 evaluation or treatment for mental disorder shall be given a written
2 statement setting forth the substance of this section.

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

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

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

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

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

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

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

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

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

4 (6) When proceedings are initiated under section 323 (2), (3), or
5 (4)(b) of this act, no later than twelve hours after such person is
6 admitted to the evaluation and treatment facility the personnel of the
7 evaluation and treatment facility or the county designated mental
8 health professional shall serve on such person a copy of the petition
9 for initial detention and the name, business address, and phone number
10 of the designated attorney and shall forthwith commence service of a
11 copy of the petition for initial detention on the designated attorney.

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

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

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

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

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

21 (d) To remain silent;

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

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

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

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

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

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

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

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

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

18 (d) To have visitors at reasonable times;

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

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

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

29 (h) Not to consent to the performance of electroconvulsant therapy
30 or surgery, except emergency life-saving surgery, unless ordered under
31 RCW 71.05.370;

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

35 (j) Not to have psychosurgery performed on him or her under any
36 circumstances.

37 (11) Every person involuntarily detained shall immediately be
38 informed of his or her right to a hearing to review the legality of his

1 or her detention and of his or her right to counsel, by the
2 professional person in charge of the facility providing evaluation and
3 treatment, or his or her designee, and, when appropriate, by the court.
4 If the person so elects, the court shall immediately appoint an
5 attorney to assist him or her.

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

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

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

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

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

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

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

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

36 ~~(c) For continued treatment beyond thirty days through the hearing~~

1 on any petition filed under RCW 71.05.370(7), the right to periodic
2 review of the decision to medicate by the medical director or designee.

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

11 ~~(e) Documentation in the medical record of the physician's attempt
12 to obtain informed consent and the reasons why antipsychotic medication
13 is being administered over the person's objection or lack of consent.)~~
14 The physician must attempt to obtain the informed consent of an
15 involuntary committed person prior to administration of antipsychotic
16 medication and document the attempt to obtain consent in the person's
17 medical record with the reasons that antipsychotic medication is
18 necessary.

19 (3) If an involuntary committed person refuses antipsychotic
20 medications, the medications may not be administered unless the person
21 has first had a hearing by a panel composed of a psychologist,
22 psychiatrist, and the medical director of the facility, none of whom
23 may be involved in the person's treatment at the time of the hearing.

24 (4) If a majority of the panel determines that there is clear,
25 cogent, and convincing evidence demonstrating that treatment with
26 antipsychotic medications is medically appropriate, that failure to
27 medicate may result in a likelihood of serious harm or substantial
28 deterioration or substantially prolong the length of involuntary
29 commitment, and that there is no less intrusive course of treatment
30 than medication in the best interest of that person, the person may be
31 medicated, subject to the provisions of subsections (5) through (7) of
32 this section.

33 (5) Medication ordered pursuant to a decision of the panel may only
34 be continued on an involuntary basis if the panel conducts a second
35 hearing on the written record and a majority of the panel determines
36 that there continues to be clear, cogent, and convincing evidence
37 demonstrating that treatment with antipsychotic medications continues
38 to be medically appropriate, that failure to medicate may result in a

1 likelihood of serious harm or substantial deterioration or
2 substantially prolong the length of involuntary commitment, and that
3 there is no less intrusive course of treatment than medication in the
4 best interest of that person.

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

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

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

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

22 (8) Minutes of the hearing shall be kept and a copy shall be
23 provided to the committed person.

24 (9) With regard to the involuntary medication hearing, the
25 committed person has the right:

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

30 (b) Not to be medicated between the delivery of the notice and the
31 hearing;

32 (c) To attend the hearing;

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

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

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

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

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

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

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

29 and

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

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

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

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

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

14 (a) Pursuant to RCW 71.05.215(2); or

15 (b) Under the following circumstances:

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

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

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

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

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

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

1 NEW SECTION. **Sec. 110.** RCW 71.05.370 is recodified as a new
2 section in chapter 71.05 RCW to be codified in proximity to RCW
3 71.05.215.

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

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

12 Information and records may be disclosed only:

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

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

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

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

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

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

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

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

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

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

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

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

27
28 /s/

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

33 (6)(a) To the courts as necessary to the administration of this
34 chapter or to a court ordering an evaluation or treatment under chapter

1 10.77 RCW solely for the purpose of preventing the entry of any
2 evaluation or treatment order that is inconsistent with any order
3 entered under this chapter.

4 (b) To a court or its designee in which a motion under chapter
5 10.77 RCW has been made for involuntary medication of a defendant for
6 the purpose of competency restoration.

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

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

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

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

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

37 ~~((c))~~ (iii) Additional information shall be disclosed only after
38 giving notice to said person and his or her counsel and upon a showing

1 of clear, cogent, and convincing evidence that such information is
2 necessary and that appropriate safeguards for strict confidentiality
3 are and will be maintained. However, in the event the said person has
4 escaped from custody, said notice prior to disclosure is not necessary
5 and that the facility from which the person escaped shall include an
6 evaluation as to whether the person is of danger to persons or property
7 and has a propensity toward violence;

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

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

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

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

27 (10) To appropriate law enforcement agencies and to a person, when
28 the identity of the person is known to the public or private agency,
29 whose health and safety has been threatened, or who is known to have
30 been repeatedly harassed, by the patient. The person may designate a
31 representative to receive the disclosure. The disclosure shall be made
32 by the professional person in charge of the public or private agency or
33 his or her designee and shall include the dates of commitment,
34 admission, discharge, or release, authorized or unauthorized absence
35 from the agency's facility, and only such other information that is
36 pertinent to the threat or harassment. The decision to disclose or not
37 shall not result in civil liability for the agency or its employees so

1 long as the decision was reached in good faith and without gross
2 negligence.

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

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

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

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

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

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

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

35 (17) When a patient would otherwise be subject to the provisions of
36 RCW 71.05.390 and disclosure is necessary for the protection of the
37 patient or others due to his or her unauthorized disappearance from the
38 facility, and his or her whereabouts is unknown, notice of such

1 disappearance, along with relevant information, may be made to
2 relatives and governmental law enforcement agencies designated by the
3 physician in charge of the patient or the professional person in charge
4 of the facility, or his or her professional designee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (2) Treatment records of an individual may be released without
27 informed written consent in the following circumstances:

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

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

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

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

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

10 (f) Within the treatment facility where the patient is receiving
11 treatment, confidential information may be disclosed to individuals
12 employed, serving in bona fide training programs, or participating in
13 supervised volunteer programs, at the facility when it is necessary to
14 perform their duties.

15 (g) Within the department as necessary to coordinate treatment for
16 mental illness, developmental disabilities, alcoholism, or drug abuse
17 of individuals who are under the supervision of the department.

18 (h) To a licensed physician who has determined that the life or
19 health of the individual is in danger and that treatment without the
20 information contained in the treatment records could be injurious to
21 the patient's health. Disclosure shall be limited to the portions of
22 the records necessary to meet the medical emergency.

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

32 (j) Notwithstanding the provisions of RCW 71.05.390(7), to a
33 correctional facility or a corrections officer who is responsible for
34 the supervision of an individual who is receiving inpatient or
35 outpatient evaluation or treatment. Except as provided in RCW
36 71.05.445 and 71.34.225, release of records under this section is
37 limited to:

1 (i) An evaluation report provided pursuant to a written supervision
2 plan.

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

6 (iii) When an individual is returned from a treatment facility to
7 a correctional facility, the information provided under (j)(iv) of this
8 subsection.

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

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

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

37 (3) Whenever federal law or federal regulations restrict the
38 release of information contained in the treatment records of any

1 patient who receives treatment for (~~alcoholism or drug~~) chemical
2 dependency, the department may restrict the release of the information
3 as necessary to comply with federal law and regulations.

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

6 (1) Procedures shall be established by resource management services
7 to provide reasonable and timely access to individual treatment
8 records. However, access may not be denied at any time to records of
9 all medications and somatic treatments received by the individual.

10 (2) Following discharge, the individual shall have a right to a
11 complete record of all medications and somatic treatments prescribed
12 during evaluation, admission, or commitment and to a copy of the
13 discharge summary prepared at the time of his or her discharge. A
14 reasonable and uniform charge for reproduction may be assessed.

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

20 (4) At the time of discharge all individuals shall be informed by
21 resource management services of their rights as provided in RCW
22 (~~71.05.610~~) 71.05.390 and 71.05.620 through 71.05.690.

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

25 Nothing in this chapter (~~205, Laws of 1989~~) or chapter 70.96A,
26 71.05, or 70.-- (sections 202 through 216 of this act) RCW shall be
27 construed to interfere with communications between physicians or
28 psychologists and patients and attorneys and clients.

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

31 A petition for commitment under this chapter may be joined with a
32 petition for commitment under chapter 70.96A RCW.

33 **PART II**

1 **PILOT PROGRAMS**

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

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

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

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

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

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

24 (5) "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 (6) "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 (7) "Commitment" means the determination by a court that an
33 individual should be detained for a period of either evaluation or
34 treatment, or both, in an inpatient or a less restrictive setting.

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

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

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

7 (11) "Custody" means involuntary detention under either chapter
8 71.05 or 70.96A RCW or this chapter, uninterrupted by any period of
9 unconditional release from commitment from a facility providing
10 involuntary care and treatment.

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

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

19 (14) "Detention" or "detain" means the lawful confinement of an
20 individual under this chapter, or chapter 70.96A or 71.05 RCW.

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

27 (16) "Developmental disability" means that condition defined in RCW
28 71A.10.020.

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

32 (18) "Evaluation and treatment facility" means any facility that
33 can provide directly, or by direct arrangement with other public or
34 private agencies, emergency evaluation and treatment, outpatient care,
35 and timely and appropriate inpatient care to individuals suffering from
36 a mental disorder, and that is certified as such by the department. A
37 physically separate and separately operated portion of a state hospital
38 may be designated as an evaluation and treatment facility. A facility

1 that is part of, or operated by, the department or any federal agency
2 does not require certification. No correctional institution or
3 facility, or jail, may be an evaluation and treatment facility within
4 the meaning of this chapter.

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

7 (20) "Gravely disabled" means a condition in which an individual,
8 as a result of a mental disorder, or as a result of the use of alcohol
9 or other psychoactive chemicals:

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

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

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

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

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

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

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

31 (a) A substantial risk that:

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

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

38 or

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

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

6 (26) "Mental disorder" means any organic, mental, or emotional
7 impairment that has substantial adverse effects on an individual's
8 cognitive or volitional functions.

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

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

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

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

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

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

37 (33) "Public agency" means any evaluation and treatment facility or
38 institution, hospital, or sanitarium, or approved treatment program

1 that is conducted for, or includes a department or ward conducted for,
2 the care and treatment of individuals who are mentally ill and/or
3 chemically dependent, if the agency is operated directly by federal,
4 state, county, or municipal government, or a combination of such
5 governments.

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

8 (35) "Secretary" means the secretary of the department or the
9 secretary's designee.

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

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

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

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

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

35 (a) Combine the crisis responder functions of a county-designated
36 mental health professional under chapter 71.05 RCW and a county-
37 designated chemical dependency specialist under chapter 70.96A RCW by

1 establishing a new county-designated crisis responder who is authorized
2 to conduct investigations and detain individuals up to seventy-two
3 hours to the proper facility;

4 (b) Provide training to the crisis responders as required by the
5 department;

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

9 (d) Provide the administrative and court-related staff, resources,
10 and processes necessary to facilitate the legal requirements of the
11 initial detention and the commitment hearings for individuals with a
12 chemical dependency;

13 (e) Participate in the evaluation and report to assess the outcomes
14 of the pilot programs including providing data and information as
15 requested;

16 (f) Provide the other services necessary to the implementation of
17 the pilot programs, consistent with this chapter as determined by the
18 secretary in contract.

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

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

24 (1) Psychiatrist, psychologist, psychiatric nurse, or social worker
25 as defined in chapters 71.05 and 71.34 RCW;

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

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

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

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

4 NEW SECTION. **Sec. 205.** In addition to the provisions of this
5 chapter, a designated crisis responder has all the powers and duties of
6 a county-designated mental health professional as well as the powers
7 and duties of a designated chemical dependency specialist under RCW
8 70.96A.120.

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

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

33 (B) Whenever it appears, by petition for initial detention, to the
34 satisfaction of a judge of the superior court, district court, or other
35 court permitted by court rule, that a person presents as a result of a
36 chemical dependency, a likelihood of serious harm, or is gravely

1 disabled, and that the person has refused or failed to accept
2 appropriate evaluation and treatment voluntarily, the judge may issue
3 an order requiring the person to appear within twenty-four hours after
4 service of the order at a secure detoxification facility or other
5 certified chemical dependency provider for not more than a seventy-two
6 hour evaluation and treatment period.

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

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

1 permitted to be present during the admission evaluation. Any other
2 individual accompanying the person may be present during the admission
3 evaluation. The facility may exclude the individual if his or her
4 presence would present a safety risk, delay the proceedings, or
5 otherwise interfere with the evaluation.

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

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

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

37 (b) Chemical dependency, presents an imminent likelihood of serious
38 harm, or is in imminent danger because of being gravely disabled, after

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

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

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

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

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

36 (2) This section does not relieve a person from giving the required
37 notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the duty to warn

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

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

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

17 NEW SECTION. **Sec. 210.** (1) An individual detained for seventy-two
18 hour evaluation and treatment under section 207 of this act or RCW
19 70.96A.120 may be detained for not more than fourteen additional days
20 of involuntary chemical dependency treatment if there are beds
21 available at the secure detoxification facility and the following
22 conditions are met:

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

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

34 (c) The professional person in charge of the agency or facility or
35 the person's designee has filed a petition for fourteen-day involuntary

1 detention with the superior court, district court, or other court
2 permitted by court rule. The petition must be signed by the chemical
3 dependency professional who has examined the individual.

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

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

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

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

37 (b) At the conclusion of the probable cause hearing, if the court
38 finds by a preponderance of the evidence that the person, as the result

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

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

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

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

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

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

33 (2) When an offender is under court-ordered treatment in the
34 community and the supervision of the department of corrections, and the

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

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

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

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

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

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

28 NEW SECTION. **Sec. 217.** (1) The Washington state institute for
29 public policy shall evaluate the pilot programs and make a preliminary
30 report to appropriate committees of the legislature by December 1,
31 2007, and a final report by September 30, 2008.

32 (2) The evaluation of the pilot programs shall include:
33 (a) Whether the county designated crisis responder pilot program:
34 (i) Has increased efficiency of evaluation and treatment of persons
35 involuntarily detained for seventy-two hours;

1 (ii) Is cost-effective;
2 (iii) Results in better outcomes for persons involuntarily
3 detained;
4 (iv) Increased the effectiveness of the crisis response system in
5 the pilot catchment areas;
6 (b) The effectiveness of providing a single chapter in the Revised
7 Code of Washington to address initial detention of individuals with
8 mental disorders or chemical dependency, in crisis response situations
9 and the likelihood of effectiveness of providing a single,
10 comprehensive involuntary treatment act.
11 (3) The reports shall consider the impact of the pilot programs on
12 the existing mental health system and on the individuals served by the
13 system.

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

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

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

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

32 (1) The secretary shall select and contract with regional support
33 networks or counties to provide intensive case management for
34 chemically dependent persons with histories of high utilization of

1 crisis services at two sites, which shall be in the regional support
2 networks or counties contracted for the pilot program established in
3 chapter 70.-- RCW (sections 202 through 216 of this act).

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

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

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

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

18 (d) Reduce the number of criminal justice interventions including
19 arrests, bookings, jail days, court appearances, and prosecutor and
20 defense costs;

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

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

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

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

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

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

3 **PART III**

4 **OMNIBUS INVOLUNTARY TREATMENT ACT**

5 NEW SECTION. **Sec. 301.** (1) Sections 302 through 387 of this act
6 constitute a new chapter in Title 70 RCW.

7 (2) Sections 302 through 387 of this act take effect July 1, 2009.

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

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

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

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

34 (3) To prevent inappropriate, indefinite commitment of mentally

1 disordered and chemically dependent persons and to eliminate legal
2 disabilities that arise from such commitment where possible;

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

5 (5) To safeguard individual rights;

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

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

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

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

27 (10) To protect the public safety.

28 Definitions

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

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

1 treatment in a secure detoxification facility or other certified
2 chemical dependency provider.

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

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

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

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

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

21 (7) "Chemical dependency" means:
22 (a) Alcoholism;
23 (b) Drug addiction; or
24 (c) Dependence on alcohol and one or more other psychoactive
25 chemicals, as the context requires.

26 (8) "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 (9) "Chemical dependency program" means expenditures and activities
30 of the department designed and conducted to prevent or treat alcoholism
31 and other drug addiction, including reasonable administration and
32 overhead.

33 (10) "Commitment" means the determination by a court that an
34 individual should be detained for a period of either evaluation or
35 treatment, or both, in an inpatient or a less restrictive setting.

36 (11) "Conditional release" means a modification of a commitment
37 that may be revoked upon violation of any of its terms.

1 (12) "Custody" means involuntary detention under either chapter
2 71.05 or 70.96A RCW or this chapter, uninterrupted by any period of
3 unconditional release from commitment from a facility providing
4 involuntary care and treatment.

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

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

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

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

18 (17) "Detention" or "detain" means the lawful confinement of an
19 individual under this chapter, or chapter 70.96A or 71.05 RCW.

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

26 (19) "Developmental disability" means that condition defined in RCW
27 71A.10.020.

28 (20) "Director" means the person administering the division of
29 alcohol and substance abuse or the mental health division within the
30 department.

31 (21) "Discharge" means the termination of facility authority. The
32 commitment may remain in place, be terminated, or be amended by court
33 order.

34 (22) "Drug addict" means a person who suffers from the disease of
35 drug addiction.

36 (23) "Drug addiction" means a disease characterized by a dependency
37 on psychoactive chemicals, loss of control over the amount and
38 circumstances of use, symptoms of tolerance, physiological or

1 psychological withdrawal, or both, if use is reduced or discontinued,
2 and impairment of health or disruption of social or economic
3 functioning.

4 (24) "Emergency service patrol" means a patrol established under
5 RCW 70.96A.170.

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

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

19 (27) "Gravely disabled" means a condition in which an individual,
20 as a result of a mental disorder, as a result of the use of alcohol or
21 other psychoactive chemicals, or both:

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

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

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

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

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

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

9 (31) "Incompetent person" means a person who has been adjudged
10 incompetent by the superior court.

11 (32) "Individualized service plan" means a plan prepared by a
12 developmental disabilities professional with other professionals as a
13 team, for an individual with developmental disabilities, which shall
14 state:

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

17 (b) The conditions and strategies necessary to achieve the purposes
18 of habilitation;

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

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

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

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

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

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

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

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

38 (36) "Likelihood of serious harm" means:

1 (a) A substantial risk that:
2 (i) Physical harm will be inflicted by an individual upon his or
3 her own person, as evidenced by threats or attempts to commit suicide
4 or inflict physical harm on oneself;
5 (ii) Physical harm will be inflicted by an individual upon another,
6 as evidenced by behavior that has caused such harm or that places
7 another person or persons in reasonable fear of sustaining such harm;
8 or
9 (iii) Physical harm will be inflicted by an individual upon the
10 property of others, as evidenced by behavior that has caused
11 substantial loss or damage to the property of others; or
12 (b) The individual has threatened the physical safety of another
13 and has a history of one or more violent acts.
14 (37) "Medical necessity" for inpatient care of a minor means a
15 requested certified inpatient service that is reasonably calculated to:
16 (a) Diagnose, arrest, or alleviate a chemical dependency; or (b)
17 prevent the worsening of chemical dependency conditions that endanger
18 life or cause suffering and pain, or result in illness or infirmity or
19 threaten to cause or aggravate a handicap, or cause physical deformity
20 or malfunction, and there is no adequate less restrictive alternative
21 available.
22 (38) "Mental disorder" means any organic, mental, or emotional
23 impairment that has substantial adverse effects on an individual's
24 cognitive or volitional functions.
25 (39) "Mental health professional" means a psychiatrist,
26 psychologist, psychiatric nurse, or social worker, and such other
27 mental health professionals as may be defined by rules adopted by the
28 secretary under the authority of chapter 71.05 RCW.
29 (40) "Minor" means a person less than eighteen years of age.
30 (41) "Parent" means the parent or parents who have the legal right
31 to custody of the child. Parent includes custodian or guardian.
32 (42) "Peace officer" means a law enforcement official of a public
33 agency or governmental unit, and includes persons specifically given
34 peace officer powers by any state law, local ordinance, or judicial
35 order of appointment.
36 (43) "Person" means an individual, including a minor.
37 (44) "Person in charge" means a physician or chemical dependency
38 counselor as defined in rule by the department, who is empowered by a

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

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

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

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

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

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

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

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

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

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

3 (54) "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 individuals and
7 includes security measures sufficient to protect the patients, staff,
8 and community.

9 (55) "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 (56) "Treatment" means the broad range of emergency,
13 detoxification, residential, inpatient and outpatient services and
14 care, including diagnostic evaluation, mental health or chemical
15 dependency education and counseling, medical, psychiatric,
16 psychological, and social service care, vocational rehabilitation and
17 career counseling, which may be extended to persons with mental and
18 substance abuse disorders, and their families.

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

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

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

33 **General Provisions**

34 NEW SECTION. **Sec. 304.** The legislature intends that the
35 procedures and services authorized in this chapter be integrated with
36 those in chapters 70.96A, 71.05, 71.24, and 71.34 RCW to the maximum

1 extent necessary to assure a continuum of treatment to persons who are
2 under detention or involuntary treatment orders under this chapter. To
3 this end, regional support networks established in accordance with
4 chapter 71.24 RCW shall institute procedures which require timely
5 consultation with resource management services and county drug and
6 alcohol program coordinators, as appropriate, by a designated mental
7 health professional, designated chemical dependency specialist, or
8 designated crisis responder, and evaluation and treatment facilities to
9 assure that determinations to admit, detain, commit, treat, discharge,
10 or release persons with mental disorders, chemical dependency
11 disorders, or co-occurring mental and chemical dependency disorders
12 under this chapter are made only after appropriate information
13 regarding such person's treatment history and current treatment plan
14 has been sought from resource management services and the county drug
15 and alcohol program, as appropriate.

16 NEW SECTION. **Sec. 305.** Persons suffering from a mental disorder,
17 chemical dependency disorder, or both may not be involuntarily
18 committed for treatment of such disorder except pursuant to provisions
19 of this chapter, chapter 10.77 RCW, chapter 71.06 RCW, chapter 71.34
20 RCW, transfer pursuant to RCW 72.68.031 through 72.68.037, or pursuant
21 to court ordered evaluation and treatment not to exceed ninety days
22 pending a criminal trial or sentencing.

23 NEW SECTION. **Sec. 306.** Persons who are developmentally disabled,
24 impaired by chronic alcoholism or drug abuse, or suffering from
25 dementia and who otherwise meet the criteria for detention or judicial
26 commitment are not ineligible for detention or commitment based on this
27 condition alone.

28 NEW SECTION. **Sec. 307.** Pursuant to the interlocal cooperation
29 act, chapter 39.34 RCW, the department may enter into agreements to
30 accomplish the purposes of this chapter.

31 NEW SECTION. **Sec. 308.** All facilities, plans, or programs
32 receiving financial assistance under RCW 70.96A.040 are subject to the
33 provisions of RCW 70.96A.045 and 70.96A.047.

1 NEW SECTION. **Sec. 309.** To qualify as a designated crisis
2 responder, a person must have received chemical dependency training as
3 determined by the department and be a:

4 (1) Psychiatrist, psychologist, psychiatric nurse, or social worker
5 as defined in chapters 71.05 and 71.34 RCW;

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

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

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

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

20 NEW SECTION. **Sec. 310.** (1)(a) When a designated mental health
21 professional, designated crisis responder, or designated chemical
22 dependency specialist receives information alleging that a person, as
23 a result of a mental disorder, chemical dependency disorder, or both,
24 presents a likelihood of serious harm or is gravely disabled, the
25 designated mental health professional, designated crisis responder, or
26 designated chemical dependency specialist may, after investigation and
27 evaluation of the specific facts alleged and of the reliability and
28 credibility of any person providing information to initiate detention,
29 if satisfied that the allegations are true and that the person will not
30 voluntarily seek appropriate treatment, file a petition for initial
31 detention. Before filing the petition, the designated mental health
32 professional, designated crisis responder, or designated chemical
33 dependency specialist must personally interview the person, unless the
34 person refuses an interview, and determine whether the person will
35 voluntarily receive appropriate evaluation and treatment at either an
36 evaluation and treatment facility, a detoxification facility, or other
37 certified chemical dependency provider.

1 (b)(i)(A) Whenever it appears, by petition for initial detention,
2 to the satisfaction of a judge of the superior court that a person
3 presents as a result of a mental disorder, chemical dependency
4 disorder, or both, a likelihood of serious harm, or is gravely
5 disabled, and that the person has refused or failed to accept
6 appropriate evaluation and treatment voluntarily, the judge may issue
7 an order requiring the person to appear within twenty-four hours after
8 service of the order at a designated evaluation and treatment facility
9 for not more than a seventy-two hour evaluation and treatment period;
10 or

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

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

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

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

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

1 (2) If a designated crisis responder receives information alleging
2 that a person, as the result of a mental disorder, chemical dependency
3 disorder, or both, presents an imminent likelihood of serious harm, or
4 is in imminent danger because of being gravely disabled, after
5 investigation and evaluation of the specific facts alleged and of the
6 reliability and credibility of the person or persons providing the
7 information if any, the designated crisis responder may take the
8 person, or cause by oral or written order the person to be taken into
9 emergency custody in an evaluation and treatment facility, secure
10 detoxification facility, or other certified facility, for not more than
11 seventy-two hours as described in this chapter.

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

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

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

36 NEW SECTION. **Sec. 311.** If the evaluation and treatment facility,
37 secure detoxification facility, or other certified chemical dependency

1 provider admits the person, it may detain the person for evaluation and
2 treatment for a period not to exceed seventy-two hours from the time of
3 acceptance. The computation of the seventy-two hour period excludes
4 Saturdays, Sundays, and holidays.

5 NEW SECTION. **Sec. 312.** (1) An individual detained for a
6 seventy-two hour evaluation and treatment under section 207 of this act
7 or RCW 70.96A.120 may be detained for not more than fourteen additional
8 days of involuntary chemical dependency treatment if there are beds
9 available at the secure detoxification facility and the following
10 conditions are met:

11 (a) The professional person in charge of the agency or facility or
12 the person's designee providing evaluation and treatment services in a
13 secure detoxification facility has assessed the person's condition and
14 finds that the condition is caused by chemical dependency and either
15 results in a likelihood of serious harm or in the detained person being
16 gravely disabled, and the professional person or his or her designee is
17 prepared to testify those conditions are met;

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

22 (c) The professional person in charge of the agency or facility or
23 the person's designee has filed a petition for fourteen-day involuntary
24 detention with the superior court, district court, or other court
25 permitted by court rule. The petition must be signed by the chemical
26 dependency professional who has examined the individual.

27 (2) The petition under subsection (1)(c) of this section shall be
28 accompanied by a certificate of a licensed physician who has examined
29 the individual, unless the individual whose commitment is sought has
30 refused to submit to a medical examination, in which case the fact of
31 refusal shall be alleged in the petition. The certificate shall set
32 forth the licensed physician's findings in support of the allegations
33 of the petition. A physician employed by the petitioning program or
34 the department is eligible to be the certifying physician.

35 (3) The petition shall state facts that support the finding that
36 the person, as a result of chemical dependency, presents a likelihood
37 of serious harm or is gravely disabled, and that there are no less

1 restrictive alternatives to detention in the best interest of the
2 person or others. The petition shall state specifically that less
3 restrictive alternative treatment was considered and specify why
4 treatment less restrictive than detention is not appropriate.

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

8 (5)(a) The court shall inform the person whose commitment is sought
9 of his or her right to contest the petition, be represented by counsel
10 at every stage of any proceedings relating to his or her commitment,
11 and have counsel appointed by the court or provided by the court, if he
12 or she wants the assistance of counsel and is unable to obtain counsel.
13 If the court believes that the person needs the assistance of counsel,
14 the court shall require, by appointment if necessary, counsel for him
15 or her regardless of his or her wishes. The person shall, if he or she
16 is financially able, bear the costs of such legal service; otherwise
17 such legal service shall be at public expense. The person whose
18 commitment is sought shall be informed of his or her right to be
19 examined by a licensed physician of his or her choice. If the person
20 is unable to obtain a licensed physician and requests examination by a
21 physician, the court shall appoint a reasonably available licensed
22 physician designated by the person.

23 (b) At the conclusion of the probable cause hearing, if the court
24 finds by a preponderance of the evidence that the person, as the result
25 of chemical dependency, presents a likelihood of serious harm or is
26 gravely disabled and, after considering less restrictive alternatives
27 to involuntary detention and treatment, finds that no such alternatives
28 are in the best interest of such person or others, the court shall
29 order that the person be detained for involuntary chemical dependency
30 treatment not to exceed fourteen days in a secure detoxification
31 facility.

32 NEW SECTION. **Sec. 313.** If an individual is detained for
33 additional treatment beyond fourteen days under section 329 of this
34 act, the professional staff of the agency or facility may petition for
35 additional treatment under RCW 70.96A.140.

1 chapter and shall consider needs, if any, for additional community
2 mental health services and facilities and reduction in commitments to
3 state hospitals for the mentally ill accomplished by individual
4 counties, in planning and providing such funding. The state shall
5 provide financial assistance to the counties to enable the counties to
6 meet all increased costs, if any, to the counties resulting from their
7 administration of the provisions of chapter 142, Laws of 1973 1st ex.
8 sess.

9 NEW SECTION. **Sec. 319.** The department shall adopt such rules as
10 may be necessary to effectuate the intent and purposes of this chapter,
11 which shall include but not be limited to evaluation of the quality of
12 the program and facilities operating pursuant to this chapter,
13 evaluation of the effectiveness and cost effectiveness of such programs
14 and facilities, and procedures and standards for certification and
15 other action relevant to evaluation and treatment facilities.

16 NEW SECTION. **Sec. 320.** The provisions of chapter 420, Laws of
17 1989 shall apply equally to persons in the custody of the department on
18 May 13, 1989, who were found by a court to be not guilty by reason of
19 insanity or incompetent to stand trial, or who have been found to have
20 committed acts constituting a felony pursuant to RCW 71.05.280(3) and
21 present a substantial likelihood of repeating similar acts, and the
22 secretary shall cause such persons to be evaluated to ascertain if such
23 persons are developmentally disabled for placement in a program
24 specifically reserved for the treatment and training of persons with
25 developmental disabilities.

26 NEW SECTION. **Sec. 321.** (1) The state and counties, cities, and
27 other municipalities may establish or contract for emergency service
28 patrols which are to be under the administration of the appropriate
29 jurisdiction. A patrol consists of persons trained to give assistance
30 in the streets and in other public places to persons who are
31 intoxicated. Members of an emergency service patrol shall be capable
32 of providing first aid in emergency situations and may transport
33 intoxicated persons to their homes and to and from treatment programs.

34 (2) The secretary shall adopt rules pursuant to chapter 34.05 RCW

1 for the establishment, training, and conduct of emergency service
2 patrols.

3 NEW SECTION. **Sec. 322.** The department shall ensure that the
4 provisions of this chapter are applied by the counties in a consistent
5 and uniform manner. The department shall also ensure that, to the
6 extent possible within available funds, the designated chemical
7 dependency specialists are specifically trained in adolescent chemical
8 dependency issues, the chemical dependency commitment laws, and the
9 criteria for commitment.

10 **Initial Detention**

11 NEW SECTION. **Sec. 323.** (1)(a) When a designated mental health
12 professional, designated chemical dependency specialist, or designated
13 crisis responder receives information alleging that a person, as a
14 result of a mental disorder, chemical dependency disorder, or both:
15 (i) Presents a likelihood of serious harm; or (ii) is gravely disabled;
16 the designated mental health professional, designated chemical
17 dependency specialist, or designated crisis responder may, after
18 investigation and evaluation of the specific facts alleged and of the
19 reliability and credibility of any person providing information to
20 initiate detention, if satisfied that the allegations are true and that
21 the person will not voluntarily seek appropriate treatment, file a
22 petition for initial detention. Before filing the petition, the
23 designated mental health professional, designated chemical dependency
24 specialist, or designated crisis responder must personally interview
25 the person, unless the person refuses an interview, and determine
26 whether the person will voluntarily receive appropriate evaluation and
27 treatment at an evaluation and treatment facility.

28 (b) Whenever it appears, by petition for initial detention, to the
29 satisfaction of a judge of the superior court that a person presents,
30 as a result of a mental disorder, chemical dependency disorder, or
31 both, a likelihood of serious harm, or is gravely disabled, and that
32 the person has refused or failed to accept appropriate evaluation and
33 treatment voluntarily, the judge may issue an order requiring the
34 person to appear within twenty-four hours after service of the order at
35 a designated evaluation and treatment facility for not more than a

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

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

37 (d) If the person ordered to appear does appear on or before the
38 date and time specified, the evaluation and treatment facility may

1 admit such person as required by RCW 71.05.170 or may provide treatment
2 on an outpatient basis. If the person ordered to appear fails to
3 appear on or before the date and time specified, the evaluation and
4 treatment facility shall immediately notify the designated mental
5 health professional, designated chemical dependency specialist, or
6 designated crisis responder who may notify a peace officer to take such
7 person or cause such person to be taken into custody and placed in an
8 evaluation and treatment facility. Should the designated mental health
9 professional, designated chemical dependency specialist, or designated
10 crisis responder notify a peace officer authorizing him or her to take
11 a person into custody under the provisions of this subsection, he or
12 she shall file with the court a copy of such authorization and a notice
13 of detention. At the time such person is taken into custody there
14 shall commence to be served on such person, his or her guardian, and
15 conservator, if any, a copy of the original order together with a
16 notice of detention, a notice of rights, and a petition for initial
17 detention.

18 (2) When a designated mental health professional, designated
19 chemical dependency specialist, or designated crisis responder receives
20 information alleging that a person, as the result of a mental disorder,
21 chemical dependency disorder, or both, presents an imminent likelihood
22 of serious harm, or is in imminent danger because of being gravely
23 disabled, after investigation and evaluation of the specific facts
24 alleged and of the reliability and credibility of the person or persons
25 providing the information if any, the designated mental health
26 professional, designated chemical dependency specialist, or designated
27 crisis responder may take such person, or cause by oral or written
28 order such person to be taken into emergency custody in an evaluation
29 and treatment facility for not more than seventy-two hours as described
30 in RCW 71.05.180.

31 (3) A peace officer may take such person or cause such person to be
32 taken into custody and placed in an evaluation and treatment facility
33 pursuant to subsection (1)(d) of this section.

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

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

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

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

15 NEW SECTION. **Sec. 324.** Any facility receiving a person pursuant
16 to RCW 71.05.150 shall require a petition for initial detention stating
17 the circumstances under which the person's condition was made known and
18 stating that such officer or person has evidence, as a result of his or
19 her personal observation or investigation, that the actions of the
20 person for which application is made constitute a likelihood of serious
21 harm, or that he or she is gravely disabled, and stating the specific
22 facts known to him or her as a result of his or her personal
23 observation or investigation, upon which he or she bases the belief
24 that such person should be detained for the purposes and under the
25 authority of this chapter.

26 If a person is involuntarily placed in an evaluation and treatment
27 facility pursuant to RCW 71.05.150, on the next judicial day following
28 the initial detention, the designated mental health professional,
29 designated chemical dependency specialist, or designated crisis
30 responder shall file with the court and serve the designated attorney
31 of the detained person the petition or supplemental petition for
32 initial detention, proof of service of notice, and a copy of a notice
33 of emergency detention.

34 NEW SECTION. **Sec. 325.** Whenever the designated mental health
35 professional, designated chemical dependency specialist, or designated
36 crisis responder petitions for detention of a person whose actions

1 constitute a likelihood of serious harm, or who is gravely disabled,
2 the facility providing seventy-two hour evaluation and treatment must
3 immediately accept on a provisional basis the petition and the person.
4 The facility shall then evaluate the person's condition and admit,
5 detain, transfer, or discharge such person in accordance with RCW
6 71.05.210. The facility shall notify in writing the court and the
7 designated mental health professional, designated chemical dependency
8 specialist, or designated crisis responder of the date and time of the
9 initial detention of each person involuntarily detained in order that
10 a probable cause hearing shall be held no later than seventy-two hours
11 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. 326.** If the evaluation and treatment facility
15 admits the person, it may detain him or her for evaluation and
16 treatment for a period not to exceed seventy-two hours from the time of
17 acceptance as set forth in section 325 of this act. The computation of
18 such seventy-two hour period shall exclude Saturdays, Sundays and
19 holidays.

20 NEW SECTION. **Sec. 327.** If the person is not approved for
21 admission by a facility providing seventy-two hour evaluation and
22 treatment, and the individual has not been arrested, the facility shall
23 furnish transportation, if not otherwise available, for the person to
24 his or her place of residence or other appropriate place. If the
25 individual has been arrested, the evaluation and treatment facility
26 shall detain the individual for not more than eight hours at the
27 request of the peace officer in order to enable a peace officer to
28 return to the facility and take the individual back into custody.

29 NEW SECTION. **Sec. 328.** At the expiration of the fourteen-day
30 period of intensive treatment, a person may be confined for further
31 treatment pursuant to RCW 71.05.320 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. 329. (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 mental health professional, designated chemical dependency
22 specialist, or designated crisis responder may petition the superior
23 court for an order requiring such person to undergo an additional
24 period of treatment. Such petition must be based on one or more of the
25 grounds set forth in RCW 71.05.280.

26 (2) The petition shall summarize the facts which support the need
27 for further confinement and shall be supported by affidavits signed by
28 two examining physicians, or by one examining physician and examining
29 mental health professional. The affidavits shall describe in detail
30 the behavior of the detained person which supports the petition and
31 shall explain what, if any, less restrictive treatments which are
32 alternatives to detention are available to such person, and shall state
33 the willingness of the affiant to testify to such facts in subsequent
34 judicial proceedings 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 mental health professional, designated chemical dependency
2 specialist, or designated crisis responder may directly file a petition
3 for one hundred eighty day treatment under RCW 71.05.280(3). No
4 petition for initial detention or fourteen day detention is required
5 before such a petition may be filed.

6 NEW SECTION. **Sec. 330.** The legislature intends that, when
7 evaluating a person who is identified under RCW 72.09.370(7), the
8 professional person at the evaluation and treatment facility shall,
9 when appropriate after consideration of the person's mental condition
10 and relevant public safety concerns, file a petition for a ninety-day
11 less restrictive alternative in lieu of a petition for a fourteen-day
12 commitment.

13 NEW SECTION. **Sec. 331.** (1) When a designated mental health
14 professional, designated chemical dependency specialist, or designated
15 crisis responder is notified by a jail that a defendant or offender who
16 was subject to a discharge review under RCW 71.05.232 is to be released
17 to the community, the designated mental health professional, designated
18 chemical dependency specialist, or designated crisis responder shall
19 evaluate the person within seventy-two hours of release.

20 (2) When an offender is under court-ordered treatment in the
21 community and the supervision of the department of corrections, and the
22 treatment provider becomes aware that the person is in violation of the
23 terms of the court order, the treatment provider shall notify the
24 designated mental health professional, designated chemical dependency
25 specialist, or designated crisis responder of the violation and request
26 an evaluation for purposes of revocation of the less restrictive
27 alternative.

28 (3) When a designated mental health professional, designated
29 chemical dependency specialist, or designated crisis responder becomes
30 aware that an offender who is under court-ordered treatment in the
31 community and the supervision of the department of corrections is in
32 violation of a treatment order or a condition of supervision that
33 relates to public safety, or the designated mental health professional,
34 designated chemical dependency specialist, or designated crisis
35 responder detains a person under this chapter, the designated mental

1 health professional, designated chemical dependency specialist, or
2 designated crisis responder shall notify the person's treatment
3 provider and the department of corrections.

4 (4) When an offender who is confined in a state correctional
5 facility or is under supervision of the department of corrections in
6 the community is subject to a petition for involuntary treatment under
7 this chapter, the petitioner shall notify the department of corrections
8 and the department of corrections shall provide documentation of its
9 risk assessment or other concerns to the petitioner and the court if
10 the department of corrections classified the offender as a high risk or
11 high needs offender.

12 (5) Nothing in this section creates a duty on any treatment
13 provider or designated mental health professional, designated chemical
14 dependency specialist, or designated crisis responder to provide
15 offender supervision.

16 NEW SECTION. **Sec. 332.** (1) If an individual is referred to a
17 designated mental health professional, designated chemical dependency
18 specialist, or designated crisis responder under RCW
19 10.77.090(1)(d)(iii)(A), the designated mental health professional,
20 designated chemical dependency specialist, or designated crisis
21 responder shall examine the individual within forty-eight hours. If
22 the designated mental health professional, designated chemical
23 dependency specialist, or designated crisis responder determines it is
24 not appropriate to detain the individual or petition for a ninety-day
25 less restrictive alternative under RCW 71.05.230(4), that decision
26 shall be immediately presented to the superior court for hearing. The
27 court shall hold a hearing to consider the decision of the designated
28 mental health professional, designated chemical dependency specialist,
29 or designated crisis responder not later than the next judicial day.
30 At the hearing the superior court shall review the determination of the
31 designated mental health professional, designated chemical dependency
32 specialist, or designated crisis responder and determine whether an
33 order should be entered requiring the person to be evaluated at an
34 evaluation and treatment facility. No person referred to an evaluation
35 and treatment facility may be held at the facility longer than seventy-
36 two hours.

1 (2) If an individual is placed in an evaluation and treatment
2 facility under RCW 10.77.090(1)(d)(iii)(B), a professional person shall
3 evaluate the individual for purposes of determining whether to file a
4 ninety-day inpatient or outpatient petition under chapter 71.05 RCW.
5 Before expiration of the seventy-two hour evaluation period authorized
6 under RCW 10.77.090(1)(d)(iii)(B), the professional person shall file
7 a petition or, if the recommendation of the professional person is to
8 release the individual, present his or her recommendation to the
9 superior court of the county in which the criminal charge was
10 dismissed. The superior court shall review the recommendation not
11 later than forty-eight hours, excluding Saturdays, Sundays, and
12 holidays, after the recommendation is presented. If the court rejects
13 the recommendation to unconditionally release the individual, the court
14 may order the individual detained at a designated evaluation and
15 treatment facility for not more than a seventy-two hour evaluation and
16 treatment period and direct the individual to appear at a surety
17 hearing before that court within seventy-two hours, or the court may
18 release the individual but direct the individual to appear at a surety
19 hearing set before that court within eleven days, at which time the
20 prosecutor may file a petition under this chapter for ninety-day
21 inpatient or outpatient treatment. If a petition is filed by the
22 prosecutor, the court may order that the person named in the petition
23 be detained at the evaluation and treatment facility that performed the
24 evaluation under this subsection or order the respondent to be in
25 outpatient treatment. If a petition is filed but the individual fails
26 to appear in court for the surety hearing, the court shall order that
27 a mental health professional or peace officer shall take such person or
28 cause such person to be taken into custody and placed in an evaluation
29 and treatment facility to be brought before the court the next judicial
30 day after detention. Upon the individual's first appearance in court
31 after a petition has been filed, proceedings under RCW 71.05.310 and
32 71.05.320 shall commence. For an individual subject to this
33 subsection, the prosecutor or professional person may directly file a
34 petition for ninety-day inpatient or outpatient treatment and no
35 petition for initial detention or fourteen-day detention is required
36 before such a petition may be filed.

37 The court shall conduct the hearing on the petition filed under
38 this subsection within five judicial days of the date the petition is

1 filed. The court may continue the hearing upon the written request of
2 the person named in the petition or the person's attorney, for good
3 cause shown, which continuance shall not exceed five additional
4 judicial days. If the person named in the petition requests a jury
5 trial, the trial shall commence within ten judicial days of the date of
6 the filing of the petition. The burden of proof shall be by clear,
7 cogent, and convincing evidence and shall be upon the petitioner. The
8 person shall be present at such proceeding, which shall in all respects
9 accord with the constitutional guarantees of due process of law and the
10 rules of evidence pursuant to RCW 71.05.250.

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

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

24 (4) The individual shall have the rights specified in RCW
25 71.05.250.

26 NEW SECTION. **Sec. 333.** (1) An intoxicated person may come
27 voluntarily to an approved treatment program for treatment. A person
28 who appears to be intoxicated in a public place and to be in need of
29 help, if he or she consents to the proffered help, may be assisted to
30 his or her home, an approved treatment program or other health
31 facility.

32 (2) Except for a person who may be apprehended for possible
33 violation of laws not relating to alcoholism, drug addiction, or
34 intoxication and except for a person who may be apprehended for
35 possible violation of laws relating to driving or being in physical
36 control of a vehicle while under the influence of intoxicating liquor
37 or any drug and except for a person who may wish to avail himself or

1 herself of the provisions of RCW 46.20.308, a person who appears to be
2 incapacitated or gravely disabled by alcohol or other drugs and who is
3 in a public place or who has threatened, attempted, or inflicted
4 physical harm on himself, herself, or another, shall be taken into
5 protective custody by a peace officer or staff designated by the county
6 and as soon as practicable, but in no event beyond eight hours brought
7 to an approved treatment program for treatment. If no approved
8 treatment program is readily available he or she shall be taken to an
9 emergency medical service customarily used for incapacitated persons.
10 The peace officer or staff designated by the county, in detaining the
11 person and in taking him or her to an approved treatment program, is
12 taking him or her into protective custody and shall make every
13 reasonable effort to protect his or her health and safety. In taking
14 the person into protective custody, the detaining peace officer or
15 staff designated by the county may take reasonable steps including
16 reasonable force if necessary to protect himself or herself or effect
17 the custody. A taking into protective custody under this section is
18 not an arrest. No entry or other record shall be made to indicate that
19 the person has been arrested or charged with a crime.

20 (3) A person who comes voluntarily or is brought to an approved
21 treatment program shall be examined by a qualified person. He or she
22 may then be admitted as a patient or referred to another health
23 facility, which provides emergency medical treatment, where it appears
24 that such treatment may be necessary. The referring approved treatment
25 program shall arrange for his or her transportation.

26 (4) A person who is found to be incapacitated or gravely disabled
27 by alcohol or other drugs at the time of his or her admission or to
28 have become incapacitated or gravely disabled at any time after his or
29 her admission, may not be detained at the program for more than
30 seventy-two hours after admission as a patient, unless a petition is
31 filed under RCW 70.96A.140, as now or hereafter amended: PROVIDED,
32 That the treatment personnel at an approved treatment program are
33 authorized to use such reasonable physical restraint as may be
34 necessary to retain an incapacitated or gravely disabled person for up
35 to seventy-two hours from the time of admission. The seventy-two hour
36 periods specified in this section shall be computed by excluding
37 Saturdays, Sundays, and holidays. A person may consent to remain in
38 the program as long as the physician in charge believes appropriate.

1 (5) A person who is not admitted to an approved treatment program,
2 is not referred to another health facility, and has no funds, may be
3 taken to his or her home, if any. If he or she has no home, the
4 approved treatment program shall provide him or her with information
5 and assistance to access available community shelter resources.

6 (6) If a patient is admitted to an approved treatment program, his
7 or her family or next of kin shall be notified as promptly as possible
8 by the treatment program. If an adult patient who is not incapacitated
9 requests that there be no notification, his or her request shall be
10 respected.

11 (7) The peace officer, staff designated by the county, or treatment
12 facility personnel, who act in compliance with this chapter and are
13 performing in the course of their official duty are not criminally or
14 civilly liable therefor.

15 (8) If the person in charge of the approved treatment program
16 determines that appropriate treatment is available, the patient shall
17 be encouraged to agree to further diagnosis and appropriate voluntary
18 treatment.

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

20 NEW SECTION. **Sec. 334.** A person detained for seventy-two hour
21 evaluation and treatment may be detained for not more than fourteen
22 additional days of involuntary intensive treatment or ninety additional
23 days of a less restrictive alternative to involuntary intensive
24 treatment if the following conditions are met:

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

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

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

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

21 (5) A copy of the petition has been served on the detained person,
22 his or her attorney and his or her guardian or conservator, if any,
23 prior to the probable cause hearing; and

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

27 (7) The court has ordered a fourteen day involuntary intensive
28 treatment or a ninety day less restrictive alternative treatment after
29 a probable cause hearing has been held pursuant to RCW 71.05.240; and

30 (8) At the conclusion of the initial commitment period, the
31 professional staff of the agency or facility or the designated mental
32 health professional, designated chemical dependency specialist, or
33 designated crisis responder may petition for an additional period of
34 either ninety days of less restrictive alternative treatment or ninety
35 days of involuntary intensive treatment as provided in RCW 71.05.290;
36 and

37 (9) If the hospital or facility designated to provide outpatient

1 treatment is other than the facility providing involuntary treatment,
2 the outpatient facility so designated has agreed to assume such
3 responsibility.

4 NEW SECTION. **Sec. 335.** If a petition is filed for fourteen day
5 involuntary treatment or ninety days of less restrictive alternative
6 treatment, the court shall hold a probable cause hearing within
7 seventy-two hours of the initial detention of such person as determined
8 in RCW 71.05.180. If requested by the detained person or his or her
9 attorney, the hearing may be postponed for a period not to exceed
10 forty-eight hours. The hearing may also be continued subject to the
11 conditions set forth in RCW 71.05.210 or subject to the petitioner's
12 showing of good cause for a period not to exceed twenty-four hours.

13 At the conclusion of the probable cause hearing, if the court finds
14 by a preponderance of the evidence that such person, as the result of
15 a mental disorder, chemical dependency disorder, or both, presents a
16 likelihood of serious harm, or is gravely disabled, and, after
17 considering less restrictive alternatives to involuntary detention and
18 treatment, finds that no such alternatives are in the best interests of
19 such person or others, the court shall order that such person be
20 detained for involuntary treatment not to exceed fourteen days in a
21 facility certified to provide treatment by the department. If the
22 court finds that such person, as the result of a mental disorder,
23 chemical dependency disorder, or both, presents a likelihood of serious
24 harm, or is gravely disabled, but that treatment in a less restrictive
25 setting than detention is in the best interest of such person or
26 others, the court shall order an appropriate less restrictive course of
27 treatment for not to exceed ninety days.

28 The court shall specifically state to such person and give such
29 person notice in writing that if involuntary treatment beyond the
30 fourteen day period or beyond the ninety days of less restrictive
31 treatment is to be sought, such person will have the right to a full
32 hearing or jury trial as required by RCW 71.05.310. The court shall
33 also provide written notice that the person is barred from the
34 possession of firearms.

35 NEW SECTION. **Sec. 336.** (1) Involuntary intensive treatment
36 ordered at the time of the probable cause hearing shall be for no more

1 than fourteen days, and shall terminate sooner when, in the opinion of
2 the professional person in charge of the facility or his or her
3 professional designee, (a) the person no longer constitutes a
4 likelihood of serious harm, or (b) no longer is gravely disabled, or
5 (c) is prepared to accept voluntary treatment upon referral, or (d) is
6 to remain in the facility providing intensive treatment on a voluntary
7 basis.

8 (2) A person who has been detained for fourteen days of intensive
9 treatment shall be released at the end of the fourteen days unless one
10 of the following applies: (a) Such person agrees to receive further
11 treatment on a voluntary basis; or (b) such person is a patient to whom
12 RCW 71.05.280 is applicable.

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

14 NEW SECTION. **Sec. 337.** The petition for ninety day treatment
15 shall be filed with the clerk of the superior court at least three days
16 before expiration of the fourteen-day period of intensive treatment.
17 At the time of filing such petition, the clerk shall set a time for the
18 person to come before the court on the next judicial day after the day
19 of filing unless such appearance is waived by the person's attorney,
20 and the clerk shall notify the designated mental health professional,
21 designated chemical dependency specialist, or designated crisis
22 responder. The designated mental health professional, designated
23 chemical dependency specialist, or designated crisis responder shall
24 immediately notify the person detained, his or her attorney, if any,
25 and his or her guardian or conservator, if any, and the prosecuting
26 attorney, and provide a copy of the petition to such persons as soon as
27 possible.

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

1 psychiatrist, designated by the detained person to examine and testify
2 on behalf of the detained person.

3 The court may, if requested, also appoint a professional person as
4 defined in RCW 71.05.020 to seek less restrictive alternative courses
5 of treatment and to testify on behalf of the detained person. In the
6 case of a developmentally disabled person who has been determined to be
7 incompetent pursuant to RCW 10.77.090(4), then the appointed
8 professional person under this section shall be a developmental
9 disabilities professional.

10 The court shall also set a date for a full hearing on the petition
11 as provided in RCW 71.05.310.

12 NEW SECTION. **Sec. 338.** The court shall conduct a hearing on the
13 petition for ninety day treatment within five judicial days of the
14 first court appearance after the probable cause hearing. The court may
15 continue the hearing upon the written request of the person named in
16 the petition or the person's attorney, for good cause shown, which
17 continuance shall not exceed five additional judicial days. If the
18 person named in the petition requests a jury trial, the trial shall
19 commence within ten judicial days of the first court appearance after
20 the probable cause hearing. The burden of proof shall be by clear,
21 cogent, and convincing evidence and shall be upon the petitioner. The
22 person shall be present at such proceeding, which shall in all respects
23 accord with the constitutional guarantees of due process of law and the
24 rules of evidence pursuant to RCW 71.05.250.

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

30 NEW SECTION. **Sec. 339.** (1) If the court or jury finds that
31 grounds set forth in RCW 71.05.280 have been proven and that the best
32 interests of the person or others will not be served by a less
33 restrictive treatment which is an alternative to detention, the court
34 shall remand him or her to the custody of the department or to a
35 facility certified for ninety day treatment by the department for a
36 further period of intensive treatment not to exceed ninety days from

1 the date of judgment: PROVIDED, That if the grounds set forth in RCW
2 71.05.280(3) are the basis of commitment, then the period of treatment
3 may be up to but not exceed one hundred eighty days from the date of
4 judgment in a facility certified for one hundred eighty day treatment
5 by the department. If the committed person is developmentally disabled
6 and has been determined incompetent pursuant to RCW 10.77.090(4), and
7 the best interests of the person or others will not be served by a
8 less-restrictive treatment which is an alternative to detention, the
9 court shall remand him or her to the custody of the department or to a
10 facility certified for one hundred eighty-day treatment by the
11 department. When appropriate and subject to available funds, treatment
12 and training of such persons must be provided in a program specifically
13 reserved for the treatment and training of developmentally disabled
14 persons. A person so committed shall receive habilitation services
15 pursuant to an individualized service plan specifically developed to
16 treat the behavior which was the subject of the criminal proceedings.
17 The treatment program shall be administered by developmental
18 disabilities professionals and others trained specifically in the needs
19 of developmentally disabled persons. The department may limit
20 admissions to this specialized program in order to ensure that
21 expenditures for services do not exceed amounts appropriated by the
22 legislature and allocated by the department for such services. The
23 department may establish admission priorities in the event that the
24 number of eligible persons exceeds the limits set by the department.
25 An order for treatment less restrictive than involuntary detention may
26 include conditions, and if such conditions are not adhered to, the
27 designated mental health professional or developmental disabilities
28 professional may order the person apprehended under the terms and
29 conditions of RCW 71.05.340.

30 If the court or jury finds that grounds set forth in RCW 71.05.280
31 have been proven, but finds that treatment less restrictive than
32 detention will be in the best interest of the person or others, then
33 the court shall remand him or her to the custody of the department or
34 to a facility certified for ninety day treatment by the department or
35 to a less restrictive alternative for a further period of less
36 restrictive treatment not to exceed ninety days from the date of
37 judgment: PROVIDED, That if the grounds set forth in RCW 71.05.280(3)

1 are the basis of commitment, then the period of treatment may be up to
2 but not exceed one hundred eighty days from the date of judgment.

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

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

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

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

26 (d) Continues to be gravely disabled.

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

35 The hearing shall be held as provided in RCW 71.05.310, and if the
36 court or jury finds that the grounds for additional confinement as set
37 forth in this subsection are present, the court may order the committed
38 person returned for an additional period of treatment not to exceed one

1 hundred eighty days from the date of judgment. At the end of the one
2 hundred eighty day period of commitment, the committed person shall be
3 released unless a petition for another one hundred eighty day period of
4 continued treatment is filed and heard in the same manner as provided
5 in this subsection. Successive one hundred eighty day commitments are
6 permissible on the same grounds and pursuant to the same procedures as
7 the original one hundred eighty day commitment.

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

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

12 NEW SECTION. **Sec. 340.** Whenever a designated mental health
13 professional, designated chemical dependency specialist, or designated
14 crisis responder or professional person is conducting an evaluation
15 under this chapter, consideration shall include all reasonably
16 available information and records regarding: (1) Prior recommendations
17 for evaluation of the need for civil commitments when the
18 recommendation is made pursuant to an evaluation conducted under
19 chapter 10.77 RCW; (2) history of one or more violent acts; (3) prior
20 determinations of incompetency or insanity under chapter 10.77 RCW; and
21 (4) prior commitments under this chapter.

22 In addition, when conducting an evaluation for offenders identified
23 under RCW 72.09.370, the designated mental health professional,
24 designated chemical dependency specialist, or designated crisis
25 responder or professional person shall consider an offender's history
26 of judicially required or administratively ordered antipsychotic
27 medication while in confinement.

28 NEW SECTION. **Sec. 341.** The department shall develop statewide
29 protocols to be utilized by professional persons, designated mental
30 health professionals, designated chemical dependency specialists, or
31 designated crisis responders in administration of this chapter and
32 chapter 10.77 RCW. The protocols shall be updated at least every three
33 years. The protocols shall provide uniform development and application
34 of criteria in evaluation and commitment recommendations, of persons

1 who have, or are alleged to have, a mental disorder, chemical
2 dependency disorder, or both, and are subject to this chapter.

3 The initial protocols shall be developed not later than September
4 1, 1999. The department shall develop and update the protocols in
5 consultation with representatives of designated mental health
6 professionals, designated chemical dependency specialists, or
7 designated crisis responders, local government, law enforcement, county
8 and city prosecutors, public defenders, and groups concerned with
9 mental illness. The protocols shall be submitted to the governor and
10 legislature upon adoption by the department.

11 NEW SECTION. **Sec. 342.** (1) When a designated chemical dependency
12 specialist is notified by a jail that a defendant or offender who was
13 subject to a discharge review under RCW 71.05.232 is to be released to
14 the community, the designated chemical dependency specialist shall
15 evaluate the person within seventy-two hours of release, if the
16 person's treatment information indicates that he or she may need
17 chemical dependency treatment.

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

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

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

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

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

7 **Modifications and Reviews**

8 NEW SECTION. **Sec. 343.** In any proceeding under this chapter to
9 modify a commitment order of a person committed to inpatient treatment
10 under grounds set forth in RCW 71.05.280(3) or 71.05.320(2)(c) in which
11 the requested relief includes treatment less restrictive than
12 detention, the prosecuting attorney shall be entitled to intervene.
13 The party initiating the motion to modify the commitment order shall
14 serve the prosecuting attorney of the county in which the criminal
15 charges against the committed person were dismissed with written notice
16 and copies of the initiating papers.

17 NEW SECTION. **Sec. 344.** (1)(a) When, in the opinion of the
18 superintendent or the professional person in charge of the hospital or
19 facility providing involuntary treatment, the committed person can be
20 appropriately served by outpatient treatment prior to or at the
21 expiration of the period of commitment, then such outpatient care may
22 be required as a term of conditional release for a period which, when
23 added to the inpatient treatment period, shall not exceed the period of
24 commitment. If the hospital or facility designated to provide
25 outpatient treatment is other than the facility providing involuntary
26 treatment, the outpatient facility so designated must agree in writing
27 to assume such responsibility. A copy of the terms of conditional
28 release shall be given to the patient, the designated mental health
29 professional, designated chemical dependency specialist, or designated
30 crisis responder in the county in which the patient is to receive
31 outpatient treatment, and to the court of original commitment.

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

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

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

1 (3)(a) If the hospital or facility designated to provide outpatient
2 care, the designated mental health professional, designated chemical
3 dependency specialist, or designated crisis responder, or the secretary
4 determines that:

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

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

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

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

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

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

32 (c) A person detained under this subsection (3) shall be held until
33 such time, not exceeding five days, as a hearing can be scheduled to
34 determine whether or not the person should be returned to the hospital
35 or facility from which he or she had been conditionally released. The
36 designated mental health professional, designated chemical dependency
37 specialist, or designated crisis responder or the secretary may modify

1 or rescind such order at any time prior to commencement of the court
2 hearing.

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

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

36 (4) The proceedings set forth in subsection (3) of this section may
37 be initiated by the designated mental health professional, designated
38 chemical dependency specialist, or designated crisis responder or the

1 secretary on the same basis set forth therein without requiring or
2 ordering the apprehension and detention of the conditionally released
3 person, in which case the court hearing shall take place in not less
4 than five days from the date of service of the petition upon the
5 conditionally released person.

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

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

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

15 NEW SECTION. **Sec. 345.** (1) A person committed to the custody of
16 a program for treatment shall be discharged at any time before the end
17 of the period for which he or she has been committed and he or she
18 shall be discharged by order of the court if either of the following
19 conditions are met:

20 (a) In case of a chemically dependent person committed on the
21 grounds of likelihood of infliction of physical harm upon himself,
22 herself, or another, the likelihood no longer exists; or further
23 treatment will not be likely to bring about significant improvement in
24 the person's condition, or treatment is no longer adequate or
25 appropriate.

26 (b) In case of a chemically dependent person committed on the
27 grounds of the need of treatment and incapacity, that the incapacity no
28 longer exists.

29 (2) When in the opinion of the professional person in charge of the
30 program providing involuntary treatment under this chapter, the
31 committed patient can be appropriately served by less restrictive
32 treatment before expiration of the period of commitment, then the less
33 restrictive care may be required as a condition for early release for
34 a period which, when added to the initial treatment period, does not
35 exceed the period of commitment. If the program designated to provide
36 the less restrictive treatment is other than the program providing the
37 initial involuntary treatment, the program so designated must agree in

1 writing to assume such responsibility. A copy of the conditions for
2 early release shall be given to the patient, the designated chemical
3 dependency specialist of original commitment, and the court of original
4 commitment. The program designated to provide less restrictive care
5 may modify the conditions for continued release when the modifications
6 are in the best interests of the patient. If the program providing
7 less restrictive care and the designated chemical dependency specialist
8 determine that a conditionally released patient is failing to adhere to
9 the terms and conditions of his or her release, or that substantial
10 deterioration in the patient's functioning has occurred, then the
11 designated chemical dependency specialist shall notify the court of
12 original commitment and request a hearing to be held no less than two
13 and no more than seven days after the date of the request to determine
14 whether or not the person should be returned to more restrictive care.
15 The designated chemical dependency specialist shall file a petition
16 with the court stating the facts substantiating the need for the
17 hearing along with the treatment recommendations. The patient shall
18 have the same rights with respect to notice, hearing, and counsel as
19 for the original involuntary treatment proceedings. The issues to be
20 determined at the hearing are whether the conditionally released
21 patient did or did not adhere to the terms and conditions of his or her
22 release to less restrictive care or that substantial deterioration of
23 the patient's functioning has occurred and whether the conditions of
24 release should be modified or the person should be returned to a more
25 restrictive program. The hearing may be waived by the patient and his
26 or her counsel and his or her guardian or conservator, if any, but may
27 not be waived unless all such persons agree to the waiver. Upon
28 waiver, the person may be returned for involuntary treatment or
29 continued on conditional release on the same or modified conditions.

30 **Treatment Provider Responsibilities**

31 NEW SECTION. **Sec. 346.** Each person involuntarily detained and
32 accepted or admitted at an evaluation and treatment facility shall,
33 within twenty-four hours of his or her admission or acceptance at the
34 facility, be examined and evaluated by a licensed physician who may be
35 assisted by a physician assistant according to chapter 18.71A RCW or an
36 advanced registered nurse practitioner according to chapter 18.79 RCW

1 and a mental health professional, and shall receive such treatment and
2 care as his or her condition requires including treatment on an
3 outpatient basis for the period that he or she is detained, except
4 that, beginning twenty-four hours prior to a trial or hearing pursuant
5 to RCW 71.05.215, 71.05.240, 71.05.310, 71.05.320, 71.05.340, or
6 71.05.370, the individual may refuse psychiatric medications, but may
7 not refuse: (1) Any other medication previously prescribed by a person
8 licensed under Title 18 RCW; or (2) emergency lifesaving treatment, and
9 the individual shall be informed at an appropriate time of his or her
10 right of such refusal. The person shall be detained up to seventy-two
11 hours, if, in the opinion of the professional person in charge of the
12 facility, or his or her professional designee, the person presents a
13 likelihood of serious harm, or is gravely disabled. A person who has
14 been detained for seventy-two hours shall no later than the end of such
15 period be released, unless referred for further care on a voluntary
16 basis, or detained pursuant to court order for further treatment as
17 provided in this chapter.

18 If, after examination and evaluation, the licensed physician and
19 mental health professional determine that the initial needs of the
20 person would be better served by placement in a chemical dependency
21 treatment facility, then the person shall be referred to an approved
22 treatment program defined under RCW 70.96A.020.

23 An evaluation and treatment center admitting or accepting any
24 person pursuant to this chapter whose physical condition reveals the
25 need for hospitalization shall assure that such person is transferred
26 to an appropriate hospital for evaluation or admission for treatment.
27 Notice of such fact shall be given to the court, the designated
28 attorney, and the designated mental health professional, designated
29 chemical dependency specialist, or designated crisis responder and the
30 court shall order such continuance in proceedings under this chapter as
31 may be necessary, but in no event may this continuance be more than
32 fourteen days.

33 NEW SECTION. **Sec. 347.** At the time a person is involuntarily
34 admitted to an evaluation and treatment facility, the professional
35 person in charge or his or her designee shall take reasonable
36 precautions to inventory and safeguard the personal property of the
37 person detained. A copy of the inventory, signed by the staff member

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

9 NEW SECTION. **Sec. 348.** (1) When a state hospital admits a person
10 for evaluation or treatment under this chapter who has a history of one
11 or more violent acts and:

12 (a) Has been transferred from a correctional facility; or

13 (b) Is or has been under the authority of the department of
14 corrections or the indeterminate sentence review board,
15 the state hospital shall consult with the appropriate corrections and
16 chemical dependency personnel and the appropriate forensic staff at the
17 state hospital to conduct a discharge review to determine whether the
18 person presents a likelihood of serious harm and whether the person is
19 appropriate for release to a less restrictive alternative.

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

24 NEW SECTION. **Sec. 349.** Nothing in this chapter shall prohibit the
25 professional person in charge of a treatment facility, or his or her
26 professional designee, from permitting a person detained for intensive
27 treatment to leave the facility for prescribed periods during the term
28 of the person's detention, under such conditions as may be appropriate.

29 NEW SECTION. **Sec. 350.** No indigent patient shall be conditionally
30 released or discharged from involuntary treatment without suitable
31 clothing, and the superintendent of a state hospital shall furnish the
32 same, together with such sum of money as he or she deems necessary for
33 the immediate welfare of the patient. Such sum of money shall be the
34 same as the amount required by RCW 72.02.100 to be provided to persons
35 in need being released from correctional institutions. As funds are

1 available, the secretary may provide payment to indigent persons
2 conditionally released pursuant to this chapter consistent with the
3 optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules
4 and regulations to do so.

5 NEW SECTION. **Sec. 351.** (1) A person who comes voluntarily or is
6 brought to an approved treatment program shall be examined by a
7 qualified person. He or she may then be admitted as a patient or
8 referred to another health facility, which provides emergency medical
9 treatment, where it appears that such treatment may be necessary. The
10 referring approved treatment program shall arrange for his or her
11 transportation.

12 (2) A person who is not admitted to an approved treatment program,
13 is not referred to another health facility, and has no funds, may be
14 taken to his or her home, if any. If he or she has no home, the
15 approved treatment program shall provide him or her with information
16 and assistance to access available community shelter resources.

17 (3) If the person in charge of the approved treatment program
18 determines that appropriate treatment is available, the patient shall
19 be encouraged to agree to further diagnosis and appropriate voluntary
20 treatment.

21 NEW SECTION. **Sec. 352.** The approved treatment program shall
22 provide for adequate and appropriate treatment of a person committed to
23 its custody. A person committed under this section may be transferred
24 from one approved public treatment program to another if transfer is
25 medically advisable.

26 NEW SECTION. **Sec. 353.** At the time a person is involuntarily
27 admitted to an evaluation and treatment facility, the professional
28 person in charge or his or her designee shall take reasonable
29 precautions to inventory and safeguard the personal property of the
30 person detained. A copy of the inventory, signed by the staff member
31 making it, shall be given to the person detained and shall, in
32 addition, be open to inspection to any responsible relative, subject to
33 limitations, if any, specifically imposed by the detained person. For
34 purposes of this section, "responsible relative" includes the guardian,
35 conservator, attorney, spouse, parent, adult child, or adult brother or

1 sister of the person. The facility shall not disclose the contents of
2 the inventory to any other person without the consent of the patient or
3 order of the court.

4 NEW SECTION. **Sec. 354.** (1) Before a person committed under
5 grounds set forth in RCW 71.05.280(3) is released because a new
6 petition for involuntary treatment has not been filed under RCW
7 71.05.320(2), the superintendent, professional person, or designated
8 mental health professional responsible for the decision whether to file
9 a new petition shall in writing notify the prosecuting attorney of the
10 county in which the criminal charges against the committed person were
11 dismissed, of the decision not to file a new petition for involuntary
12 treatment. Notice shall be provided at least forty-five days before
13 the period of commitment expires.

14 (2)(a) Before a person committed under grounds set forth in RCW
15 71.05.280(3) is permitted temporarily to leave a treatment facility
16 pursuant to RCW 71.05.270 for any period of time without constant
17 accompaniment by facility staff, the superintendent, professional
18 person in charge of a treatment facility, or his or her professional
19 designee shall in writing notify the prosecuting attorney of any county
20 of the person's destination and the prosecuting attorney of the county
21 in which the criminal charges against the committed person were
22 dismissed. The notice shall be provided at least forty-five days
23 before the anticipated leave and shall describe the conditions under
24 which the leave is to occur.

25 (b) The provisions of RCW 71.05.330(2) apply to proposed leaves,
26 and either or both prosecuting attorneys receiving notice under this
27 subsection may petition the court under RCW 71.05.330(2).

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

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

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

35 (6) The notice provisions of this section are in addition to those
36 provided in RCW 71.05.425.

1 NEW SECTION. **Sec. 355.** (1) Nothing in this chapter shall prohibit
2 the superintendent or professional person in charge of the hospital or
3 facility in which the person is being involuntarily treated from
4 releasing him or her prior to the expiration of the commitment period
5 when, in the opinion of the superintendent or professional person in
6 charge, the person being involuntarily treated no longer presents a
7 likelihood of serious harm.

8 Whenever the superintendent or professional person in charge of a
9 hospital or facility providing involuntary treatment pursuant to this
10 chapter releases a person prior to the expiration of the period of
11 commitment, the superintendent or professional person in charge shall
12 in writing notify the court which committed the person for treatment.

13 (2) Before a person committed under grounds set forth in RCW
14 71.05.280(3) or 71.05.320(2)(c) is released under this section, the
15 superintendent or professional person in charge shall in writing notify
16 the prosecuting attorney of the county in which the criminal charges
17 against the committed person were dismissed, of the release date.
18 Notice shall be provided at least thirty days before the release date.
19 Within twenty days after receiving notice, the prosecuting attorney may
20 petition the court in the county in which the person is being
21 involuntarily treated for a hearing to determine whether the person is
22 to be released. The prosecuting attorney shall provide a copy of the
23 petition to the superintendent or professional person in charge of the
24 hospital or facility providing involuntary treatment, the attorney, if
25 any, and the guardian or conservator of the committed person. The
26 court shall conduct a hearing on the petition within ten days of filing
27 the petition. The committed person shall have the same rights with
28 respect to notice, hearing, and counsel as for an involuntary treatment
29 proceeding, except as set forth in this subsection and except that
30 there shall be no right to jury trial. The issue to be determined at
31 the hearing is whether or not the person may be released without
32 substantial danger to other persons, or substantial likelihood of
33 committing criminal acts jeopardizing public safety or security. If
34 the court disapproves of the release, it may do so only on the basis of
35 substantial evidence. Pursuant to the determination of the court upon
36 the hearing, the committed person shall be released or shall be
37 returned for involuntary treatment subject to release at the end of the

1 period for which he or she was committed, or otherwise in accordance
2 with the provisions of this chapter.

3 NEW SECTION. **Sec. 356.** (1)(a) Except as provided in subsection
4 (2) of this section, at the earliest possible date, and in no event
5 later than thirty days before conditional release, final release,
6 authorized leave under RCW 71.05.325(2), or transfer to a facility
7 other than a state mental hospital, the superintendent shall send
8 written notice of conditional release, release, authorized leave, or
9 transfer of a person committed under RCW 71.05.280(3) or
10 71.05.320(2)(c) following dismissal of a sex, violent, or felony
11 harassment offense pursuant to RCW 10.77.090(4) to the following:

12 (i) The chief of police of the city, if any, in which the person
13 will reside; and

14 (ii) The sheriff of the county in which the person will reside.

15 (b) The same notice as required by (a) of this subsection shall be
16 sent to the following, if such notice has been requested in writing
17 about a specific person committed under RCW 71.05.280(3) or
18 71.05.320(2)(c) following dismissal of a sex, violent, or felony
19 harassment offense pursuant to RCW 10.77.090(4):

20 (i) The victim of the sex, violent, or felony harassment offense
21 that was dismissed pursuant to RCW 10.77.090(4) preceding commitment
22 under RCW 71.05.280(3) or 71.05.320(2)(c) or the victim's next of kin
23 if the crime was a homicide;

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

26 (iii) Any person specified in writing by the prosecuting attorney.
27 Information regarding victims, next of kin, or witnesses requesting the
28 notice, information regarding any other person specified in writing by
29 the prosecuting attorney to receive the notice, and the notice are
30 confidential and shall not be available to the person committed under
31 this chapter.

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

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

1 (2) If a person committed under RCW 71.05.280(3) or 71.05.320(2)(c)
2 following dismissal of a sex, violent, or felony harassment offense
3 pursuant to RCW 10.77.090(4) escapes, the superintendent shall
4 immediately notify, by the most reasonable and expedient means
5 available, the chief of police of the city and the sheriff of the
6 county in which the person resided immediately before the person's
7 arrest. If previously requested, the superintendent shall also notify
8 the witnesses and the victim of the sex, violent, or felony harassment
9 offense that was dismissed pursuant to RCW 10.77.090(4) preceding
10 commitment under RCW 71.05.280(3) or 71.05.320(2) or the victim's next
11 of kin if the crime was a homicide. In addition, the secretary shall
12 also notify appropriate parties pursuant to RCW 71.05.410. If the
13 person is recaptured, the superintendent shall send notice to the
14 persons designated in this subsection as soon as possible but in no
15 event later than two working days after the department learns of such
16 recapture.

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

20 (4) The superintendent shall send the notices required by this
21 chapter to the last address provided to the department by the
22 requesting party. The requesting party shall furnish the department
23 with a current address.

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

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

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

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

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

32 NEW SECTION. **Sec. 357.** In addition to any other information
33 required to be released under this chapter, the department is
34 authorized, pursuant to RCW 4.24.550, to release relevant information
35 that is necessary to protect the public, concerning a specific person
36 committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal
37 of a sex offense as defined in RCW 9.94A.030.

1 to state hospitals or institutions with regard to all provisions of and
2 proceedings under this chapter except in proceedings initiated by such
3 hospitals and institutions seeking fourteen day detention.

4 NEW SECTION. **Sec. 362.** When any court orders a person to receive
5 treatment under this chapter, the order shall include a statement that
6 if the person is, or becomes, subject to supervision by the department
7 of corrections, the person must notify the treatment provider and the
8 person's mental health treatment information must be shared with the
9 department of corrections for the duration of the offender's
10 incarceration and supervision, under RCW 71.05.445. Upon a petition by
11 a person who does not have a history of one or more violent acts, the
12 court may, for good cause, find that public safety would not be
13 enhanced by the sharing of this person's information.

14 NEW SECTION. **Sec. 363.** In each county the superior court may
15 appoint the following persons to assist the superior court in disposing
16 of its business: PROVIDED, That such positions may not be created
17 without prior consent of the county legislative authority:

18 (1) One or more attorneys to act as mental health commissioners;
19 and

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

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

33 NEW SECTION. **Sec. 364.** The judges of the superior court of the
34 county by majority vote may authorize mental health commissioners,

1 appointed pursuant to RCW 71.05.135, to perform any or all of the
2 following duties:

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

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

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

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

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

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

19 NEW SECTION. **Sec. 365.** A record of all applications, petitions,
20 and proceedings under this chapter shall be maintained by the county
21 clerk in which the application, petition, or proceeding was initiated.

22 NEW SECTION. **Sec. 366.** In any judicial proceeding in which a
23 professional person has made a recommendation regarding whether an
24 individual should be committed for treatment under this chapter, and
25 the court does not follow the recommendation, the court shall enter
26 findings that state with particularity its reasoning, including a
27 finding whether the state met its burden of proof in showing whether
28 the person presents a likelihood of serious harm.

29 NEW SECTION. **Sec. 367.** In making a determination of whether there
30 is a likelihood of serious harm in a hearing conducted under RCW
31 71.05.240 or 71.05.320, the court shall give great weight to any
32 evidence before the court regarding whether the person has: (1) A
33 recent history of one or more violent acts; or (2) a recent history of
34 one or more commitments under this chapter or its equivalent provisions
35 under the laws of another state which were based on a likelihood of

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

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

6 NEW SECTION. **Sec. 368.** In determining whether an inpatient or
7 less restrictive alternative commitment under the process provided in
8 RCW 71.05.280 and 71.05.320(2) is appropriate, great weight shall be
9 given to evidence of a prior history or pattern of decompensation and
10 discontinuation of treatment resulting in: (1) Repeated
11 hospitalizations; or (2) repeated peace officer interventions resulting
12 in juvenile offenses, criminal charges, diversion programs, or jail
13 admissions. Such evidence may be used to provide a factual basis for
14 concluding that the individual would not receive, if released, such
15 care as is essential for his or her health or safety.

16 NEW SECTION. **Sec. 369.** The supreme court of the state of
17 Washington shall adopt such rules as it shall deem necessary with
18 respect to the court procedures and proceedings provided for by this
19 chapter.

20 NEW SECTION. **Sec. 370.** (1) When making a decision under this
21 chapter whether to require a less restrictive alternative treatment,
22 the court shall consider whether it is appropriate to include or
23 exclude time spent in confinement when determining whether the person
24 has committed a recent overt act.

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

30 NEW SECTION. **Sec. 371.** The venue for proceedings under this
31 section is the county in which person to be committed resides or is
32 present.

1 **Individual Rights and Medications**

2 NEW SECTION. **Sec. 372.** (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 and shall retain all rights
5 not denied him or her under this chapter except as chapter 9.41 RCW may
6 limit the right of a person to purchase or possess a firearm or to
7 qualify for a concealed pistol license.

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

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

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

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

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

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

36 (a) That a judicial hearing in a superior court, either by a judge
37 or court commissioner thereof, shall be held not more than seventy-two
38 hours after the initial detention to determine whether there is

1 probable cause to detain the person after the seventy-two hours have
2 expired for up to an additional fourteen days without further automatic
3 hearing for the reason that the person is a mentally ill person whose
4 mental disorder, chemical dependency disorder, or both, presents a
5 likelihood of serious harm or that the person is gravely disabled;

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

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

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

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

19 (6) When proceedings are initiated under section 323 (2), (3), or
20 (4)(b) of this act, no later than twelve hours after such person is
21 admitted to the evaluation and treatment facility the personnel of the
22 evaluation and treatment facility or the designated mental health
23 professional, designated chemical dependency specialist, or designated
24 crisis responder shall serve on such person a copy of the petition for
25 initial detention and the name, business address, and phone number of
26 the designated attorney and shall forthwith commence service of a copy
27 of the petition for initial detention on the designated attorney.

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

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

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

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

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

37 (d) To remain silent;

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

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

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

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

20 (10) Insofar as danger to the individual or others is not created,
21 each person involuntarily detained, treated in a less restrictive
22 alternative course of treatment, or committed for treatment and
23 evaluation pursuant to this chapter shall have, in addition to other
24 rights not specifically withheld by law, the following rights, a list
25 of which shall be prominently posted in all facilities, institutions,
26 and hospitals providing such services:

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

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

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

34 (d) To have visitors at reasonable times;

35 (e) To have reasonable access to a telephone, both to make and
36 receive confidential calls, consistent with an effective treatment
37 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) Not to consent to the administration of antipsychotic
5 medications beyond the hearing conducted pursuant to section 339 of
6 this act, or the performance of electroconvulsant therapy or surgery,
7 except emergency life-saving surgery, unless ordered under section
8 . . . of this act;

9 (h) To dispose of property and sign contracts unless such person
10 has been adjudicated an incompetent in a court proceeding directed to
11 that particular issue;

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

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

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

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

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

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

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

11 NEW SECTION. **Sec. 373.** (1) 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 unless it is determined that the failure to medicate may result in a
16 likelihood of serious harm or substantial deterioration or
17 substantially prolong the length of involuntary commitment and there is
18 no less intrusive course of treatment than medication in the best
19 interest of that person.

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

25 (3) If an involuntary committed person refuses antipsychotic
26 medications, the medications may not be administered unless the person
27 has first had a hearing by a panel composed of a psychologist,
28 psychiatrist, and the medical director of the facility, none of whom
29 may be involved in the person's treatment at the time of the hearing.

30 (4) If a majority of the panel determines that there is clear,
31 cogent, and convincing evidence demonstrating that treatment with
32 antipsychotic medications is 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, the person may be

1 medicated, subject to the provisions of subsections (5) through (7) of
2 this section.

3 (5) Medication ordered pursuant to a decision of the panel may only
4 be continued on an involuntary basis if the panel conducts a second
5 hearing on the written record and a majority of the panel determines
6 that there continues to be clear, cogent, and convincing evidence
7 demonstrating that treatment with antipsychotic medications continues
8 to be medically appropriate, that failure to medicate may result in a
9 likelihood of serious harm or substantial deterioration or
10 substantially prolong the length of involuntary commitment, and that
11 there is no less intrusive course of treatment than medication in the
12 best interest of that person.

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

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

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

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

30 (8) Minutes of the hearing shall be kept and a copy shall be
31 provided to the committed person.

32 (9) With regard to the involuntary medication hearing, the
33 committed person has the right:

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

1 (b) Not to be medicated between the delivery of the notice and the
2 hearing;

3 (c) To attend the hearing;

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

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

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

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

10 (10) If the person presents an imminent likelihood of serious harm,
11 and medically acceptable alternatives to administration of
12 antipsychotic medications are not available or are unlikely to be
13 successful, and in the opinion of the physician, the person's condition
14 constitutes an emergency requiring the treatment be instituted prior to
15 obtaining a second medical opinion, antipsychotic medications may be
16 administered and the panel must review the decision within twenty-four
17 hours.

18 NEW SECTION. **Sec. 374.** (1) A court of competent jurisdiction may
19 order that a person involuntarily detained, treated in a less
20 restrictive alternative course of treatment, or committed for treatment
21 and evaluation pursuant to this chapter be administered antipsychotic
22 medications or the performance of electroconvulsant therapy or surgery
23 pursuant to the following standards and procedures:

24 (a) The administration of antipsychotic medication or
25 electroconvulsant therapy shall not be ordered by the court unless the
26 petitioning party proves by clear, cogent, and convincing evidence that
27 treatment with antipsychotic medications is medically appropriate, that
28 failure to medicate may result in a likelihood of serious harm or
29 substantial deterioration or substantially prolong the length of
30 involuntary commitment, and that there is no less intrusive course of
31 treatment than medication or electroconvulsive therapy in the best
32 interest of the person.

33 (b) The court shall make specific findings of fact concerning: (i)
34 The existence of the likelihood of serious harm or substantial
35 deterioration or substantially prolonging the length of involuntary
36 commitment; (ii) the necessity and effectiveness of the treatment;
37 (iii) the person's desires regarding the proposed treatment; and (iv)

1 the best interests of the person. If the person is unable to make a
2 rational and informed decision about consenting to or refusing the
3 proposed electroconvulsive therapy, the court shall make a substituted
4 judgment for the patient as if he or she were competent to make such a
5 determination.

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

- 9 (i) To be represented by an attorney;
- 10 (ii) To present evidence;
- 11 (iii) To cross-examine witnesses;
- 12 (iv) To have the rules of evidence enforced;
- 13 (v) To remain silent;
- 14 (vi) To view and copy all petitions and reports in the court file;

15 and

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

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

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

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

33 (3)(a) Antipsychotic medication may be administered to a
34 nonconsenting person detained or committed pursuant to this chapter
35 without a court order:

- 36 (i) Pursuant to RCW 71.05.215; or
- 37 (ii) Under the following circumstances:
 - 38 (A) A person presents an imminent likelihood of serious harm;

1 (B) Medically acceptable alternatives to administration of
2 antipsychotic medications are not available, have not been successful,
3 or are not likely to be effective; and

4 (C) In the opinion of the physician with responsibility for
5 treatment of the person, or his or her designee, the person's condition
6 constitutes an emergency requiring the treatment be instituted before
7 a judicial hearing as authorized pursuant to this section can be held.

8 (b) If antipsychotic medications are administered over a person's
9 lack of consent pursuant to (a)(ii) of this subsection, a petition for
10 an order authorizing the administration of antipsychotic medications
11 shall be filed on the next judicial day. The hearing shall be held
12 within two judicial days. If deemed necessary by the physician with
13 responsibility for the treatment of the person, administration of
14 antipsychotic medications may continue until the hearing is held.

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

19 **Financial Responsibility**

20 NEW SECTION. **Sec. 375.** (1)(a) In addition to the responsibility
21 provided for by RCW 43.20B.330, any person, or his or her estate, or
22 his or her spouse, or the parents of a minor person who is
23 involuntarily detained pursuant to this chapter for the purpose of
24 treatment and evaluation outside of a facility maintained and operated
25 by the department shall be responsible for the cost of such care and
26 treatment.

27 (b) In the event that an individual is unable to pay for such
28 treatment or in the event payment would result in a substantial
29 hardship upon the individual or his or her family, then the county of
30 residence of such person shall be responsible for such costs. If it is
31 not possible to determine the county of residence of the person, the
32 cost shall be borne by the county where the person was originally
33 detained.

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

36 (i) Inability to pay in whole or in part;

1 (ii) A definition of substantial hardship; and
2 (iii) Appropriate payment schedules. Such standards shall be
3 applicable to all county mental health administrative boards.

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

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

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

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

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

18 (4)(a) The department may limit admissions of such applicants or
19 modify its programs in order to ensure that expenditures for services
20 or programs do not exceed amounts appropriated by the legislature and
21 are allocated by the department for such services or programs. The
22 department may establish admission priorities in the event that the
23 number of eligible applicants exceeds the limits set by the department.

24 (b) The department is authorized to allocate appropriated funds in
25 the manner that it determines best meets the purposes of this chapter.
26 Nothing in this chapter shall be construed to entitle any individual to
27 services authorized in this chapter, or to require the department or
28 its contractors to reallocate funds in order to ensure that services
29 are available to any eligible person upon demand.

30 **Confidentiality**

31 NEW SECTION. **Sec. 376.** Except as provided in this section, RCW
32 71.05.445, 71.05.630, 70.96A.150, or pursuant to a valid release under
33 RCW 70.02.030, the fact of admission and all information and records
34 compiled, obtained, or maintained in the course of providing services
35 to either voluntary or involuntary recipients of services at public or
36 private agencies shall be confidential.

1 Information and records may be disclosed only:

2 (1) In communications between qualified professional persons to
3 meet the requirements of this chapter, in the provision of services or
4 appropriate referrals, or in the course of guardianship proceedings.
5 The consent of the patient, or his or her guardian, shall be obtained
6 before information or records may be disclosed by a professional person
7 employed by a facility unless provided to a professional person:

8 (a) Employed by the facility;

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

10 (c) Who is a designated mental health professional, designated
11 chemical dependency specialist, or designated crisis responder;

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

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

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

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

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

25 (b) A public or private agency shall release to a patient's next of
26 kin, attorney, guardian, or conservator, if any:

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

29 (ii) A statement evaluating the mental and physical condition of
30 the patient, and a statement of the probable duration of the patient's
31 confinement, if such information is requested by the next of kin,
32 attorney, guardian, or conservator; and such other information
33 requested by the next of kin or attorney as may be necessary to decide
34 whether or not proceedings should be instituted to appoint a guardian
35 or conservator.

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

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

6 "As a condition of conducting evaluation or research concerning
7 persons who have received services from (fill in the facility, agency,
8 or person) I,, agree not to divulge, publish, or
9 otherwise make known to unauthorized persons or the public any
10 information obtained in the course of such evaluation or research
11 regarding persons who have received services such that the person who
12 received such services is identifiable.

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

15 /s/"

16 (b) Nothing in this chapter shall be construed to prohibit the
17 compilation and publication of statistical data for use by government
18 or researchers under standards, including standards to assure
19 maintenance of confidentiality, set forth by the secretary of the
20 department of social and health services.

21 (6)(a) To the courts as necessary to the administration of this
22 chapter or to a court ordering an evaluation or treatment under chapter
23 10.77 RCW solely for the purpose of preventing the entry of any
24 evaluation or treatment order that is inconsistent with any order
25 entered under this chapter.

26 (b) To a court or its designee in which a motion under chapter
27 10.77 RCW has been made for involuntary medication of a defendant for
28 the purpose of competency restoration.

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

31 (7)(a) When a mental health professional is requested by a
32 representative of a law enforcement agency, including a police officer,
33 sheriff, a municipal attorney, or prosecuting attorney to undertake an
34 investigation under RCW 71.05.150, the mental health professional
35 shall, if requested to do so, advise the representative in writing of
36 the results of the investigation including a statement of reasons for

1 the decision to detain or release the person investigated. Such
2 written report shall be submitted within seventy-two hours of the
3 completion of the investigation or the request from the law enforcement
4 representative, whichever occurs later.

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

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

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

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

32 (iv) Information and records shall be disclosed to the department
33 of corrections pursuant to and in compliance with the provisions of RCW
34 71.05.445 for the purposes of completing presentence investigations or
35 risk assessment reports, supervision of an incarcerated offender or
36 offender under supervision in the community, planning for and provision
37 of supervision of an offender, or assessment of an offender's risk to
38 the community; and

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

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

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

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

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

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

34 (13) Civil liability and immunity for the release of information
35 about a particular person who is committed to the department under RCW
36 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
37 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

1 (14) Upon the death of a patient, his or her next of kin, guardian,
2 or conservator, if any, shall be notified.

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

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

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

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

23 (18) When a patient would otherwise be subject to the provisions of
24 RCW 71.05.390 and disclosure is necessary for the protection of the
25 patient or others due to his or her unauthorized disappearance from the
26 facility, and his or her whereabouts is unknown, notice of such
27 disappearance, along with relevant information, may be made to
28 relatives and governmental law enforcement agencies designated by the
29 physician in charge of the patient or the professional person in charge
30 of the facility, or his or her professional designee.

31 (19) The fact of admission, as well as all records, files,
32 evidence, findings, or orders made, prepared, collected, or maintained
33 pursuant to this chapter shall not be admissible as evidence in any
34 legal proceeding outside this chapter without the written consent of
35 the person who was the subject of the proceeding except in a subsequent
36 criminal prosecution of a person committed pursuant to RCW 71.05.280(3)
37 or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter
38 10.77 RCW due to incompetency to stand trial or in a civil commitment

1 proceeding pursuant to chapter 71.09 RCW. The records and files
2 maintained in any court proceeding pursuant to this chapter shall be
3 confidential and available subsequent to such proceedings only to the
4 person who was the subject of the proceeding or his or her attorney.
5 In addition, the court may order the subsequent release or use of such
6 records or files only upon good cause shown if the court finds that
7 appropriate safeguards for strict confidentiality are and will be
8 maintained.

9 NEW SECTION. **Sec. 377.** Except as provided in RCW 71.05.425, when
10 any disclosure of information or records is made as authorized by
11 sections . . . through . . . of this act, or pursuant to RCW 71.05.390
12 or 70.96A.150, the physician in charge of the patient or the
13 professional person in charge of the facility shall promptly cause to
14 be entered into the patient's medical record the date and circumstances
15 under which said disclosure was made, the names and relationships to
16 the patient, if any, of the persons or agencies to whom such disclosure
17 was made, and the information disclosed.

18 NEW SECTION. **Sec. 378.** The files and records of court proceedings
19 under this chapter, chapters 71.05, 70.96A, and 70.-- (sections 202
20 through 216 of this act) RCW shall be closed but shall be accessible to
21 any individual who is the subject of a petition and to the individual's
22 attorney, guardian ad litem, resource management services, or service
23 providers authorized to receive such information by resource management
24 services.

25 NEW SECTION. **Sec. 379.** (1) Except as otherwise provided by law,
26 all treatment records shall remain confidential and may be released
27 only to the persons designated in this section, or to other persons
28 designated in an informed written consent of the patient.

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

31 (a) To an individual, organization, or agency as necessary for
32 management or financial audits, or program monitoring and evaluation.
33 Information obtained under this subsection shall remain confidential
34 and may not be used in a manner that discloses the name or other

1 identifying information about the individual whose records are being
2 released.

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

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

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

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

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

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

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

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

1 (j) Notwithstanding the provisions of RCW 71.05.390(7), to a
2 correctional facility or a corrections officer who is responsible for
3 the supervision of an individual who is receiving inpatient or
4 outpatient evaluation or treatment. Except as provided in RCW
5 71.05.445 and 71.34.225, release of records under this section is
6 limited to:

7 (i) An evaluation report provided pursuant to a written supervision
8 plan.

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

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

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

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

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

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

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

10 NEW SECTION. **Sec. 380.** (1) Procedures shall be established by
11 resource management services to provide reasonable and timely access to
12 individual treatment records. However, access may not be denied at any
13 time to records of all medications and somatic treatments received by
14 the individual.

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

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

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

28 NEW SECTION. **Sec. 381.** Nothing in this chapter, chapter 70.96A,
29 71.05, or 70.-- (sections 202 through 216 of this act) RCW shall be
30 construed to interfere with communications between physicians or
31 psychologists and patients and attorneys and clients.

32 **Liability**

33 NEW SECTION. **Sec. 382.** (1) Neither the state nor any officer of
34 a public or private agency; superintendent, professional person in

1 charge or his or her professional designee, or attending staff of any
2 such agency; public official performing functions necessary to the
3 administration of this chapter; peace officer; designated mental health
4 professional, designated chemical dependency specialist, or designated
5 crisis responder; a unit of local government; or evaluation and
6 treatment facility shall be civilly or criminally liable for performing
7 duties pursuant to this chapter with regard to the decision of whether
8 to admit, discharge, release, administer antipsychotic medications, or
9 detain a person for evaluation and treatment: PROVIDED, That such
10 duties were performed in good faith and without gross negligence.

11 (2) This section does not relieve a person from giving the required
12 notices under this chapter or chapter 70.96A, 71.05, or 70.-- (sections
13 202 through 216 of this act), or the duty to warn or to take reasonable
14 precautions to provide protection from violent behavior where the
15 patient has communicated an actual threat of physical violence against
16 a reasonably identifiable victim or victims. The duty to warn or to
17 take reasonable precautions to provide protection from violent behavior
18 is discharged if reasonable efforts are made to communicate the threat
19 to the victim or victims and to law enforcement personnel.

20 NEW SECTION. **Sec. 383.** Except as provided in RCW 4.24.550, any
21 person may bring an action against an individual who has willfully
22 released confidential information or records concerning him or her in
23 violation of the provisions of this chapter, for the greater of the
24 following amounts:

25 (1) One thousand dollars; or

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

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

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

1 NEW SECTION. **Sec. 384.** Any person making or filing an application
2 alleging that a person should be involuntarily detained, certified,
3 committed, treated, or evaluated pursuant to this chapter shall not be
4 rendered civilly or criminally liable where the making and filing of
5 such application was in good faith.

6 NEW SECTION. **Sec. 385.** Any individual who knowingly, wilfully or
7 through gross negligence violates the provisions of this chapter by
8 detaining a person for more than the allowable number of days shall be
9 liable to the person detained in civil damages. It shall not be a
10 prerequisite to an action under this section that the plaintiff shall
11 have suffered or be threatened with special, as contrasted with general
12 damages.

13 NEW SECTION. **Sec. 386.** Any person who requests or obtains
14 confidential information pursuant to RCW 71.05.610 through 71.05.690
15 under false pretenses shall be guilty of a gross misdemeanor.

16 NEW SECTION. **Sec. 387.** The provisions of RCW 71.05.550 apply to
17 this chapter.

18 **PART IV**
19 **TREATMENT GAP**

20 NEW SECTION. **Sec. 401.** A new section is added to chapter 70.96A
21 RCW to read as follows:

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

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

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

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

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

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

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

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

11 (1) Not later than July 1, 2006, all persons providing treatment
12 under this chapter shall use the integrated comprehensive screening
13 process for chemical dependency and mental disorders adopted pursuant
14 to section 701 of this act and shall document the numbers of clients
15 with co-occurring mental and substance abuse disorders based on a
16 quadrant system of low and high needs.

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

23 (3) Treatment providers contracted to provide treatment under this
24 chapter who fail to implement the integrated comprehensive screening
25 and assessment process for chemical dependency and mental disorders by
26 July 1, 2007, are subject to contractual penalties established under
27 section 701 of this act.

28 NEW SECTION. **Sec. 403.** A new section is added to chapter 70.96A
29 RCW to read as follows:

30 (1) The director of the division of alcohol and substance abuse
31 shall assess the availability and cost-effectiveness of converting
32 disused skilled nursing facilities to inpatient or residential chemical
33 dependency treatment facilities.

34 (2) The assessment shall include:

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

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

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

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

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

9 (4) To the extent that the assessment demonstrates that conversion
10 of disused skilled nursing facilities is consistent with the purposes
11 of section . . . of this act and capital funds are appropriated for
12 this purpose, the secretary may acquire and convert such facilities and
13 enter contracts with private, nonprofit entities to operate them,
14 provided that rates are set in such a manner that no private, nonprofit
15 entity receives an effectively higher rate than a comparable vendor
16 that leases or owns its own facility.

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

19 A petition for commitment under this chapter may be joined with a
20 petition for commitment under chapter 71.05 RCW.

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

23 (1) The department of social and health services shall contract for
24 a chemical dependency specialist on site at each division of children
25 and family services office throughout the state to enhance the
26 timeliness and quality of child protective services assessments and to
27 better connect families to needed treatment services.

28 (2) The chemical dependency specialist's duties may include, but
29 are not limited to: Conducting on-site chemical dependency screening
30 and assessment, facilitating progress reports to department social
31 workers, in-service training of department social workers and staff on
32 substance abuse issues, referring clients from the department to
33 treatment providers, and providing consultation on cases to department
34 social workers.

35 (3) The department of social and health services shall provide
36 training in and ensure that each social worker is trained in uniform

1 assessment for mental health and chemical dependency. This subsection
2 shall apply to social workers performing risk assessments for the
3 department's child protective services or child welfare services
4 clients.

5 **PART V**
6 **RESOURCES**

7 NEW SECTION. **Sec. 501.** Sections 502 through 533 of this act
8 constitute a new chapter in Title 70 RCW.

9 NEW SECTION. **Sec. 502.** (1) The legislature finds that:

10 (a) There are individuals having medical and mental health
11 disorders, organic brain disease, traumatic brain injury, or dementia
12 that result in behavioral and safety issues that make them unsuccessful
13 in other licensed long-term care settings, such as nursing homes,
14 boarding homes, adult family homes, or group homes;

15 (b) Many of these individuals have been served for an extended
16 period in inappropriate settings such as state mental hospitals,
17 correctional facilities, and institutions for mental disorders;

18 (c) Some of the safety and care issues raised by these individuals
19 are directly related to impulse control issues and may require
20 additional security; and

21 (d) A new long-term care licensed facility is needed to meet the
22 complex long-term and nonemergent short-term care needs of this
23 population.

24 (2) Therefore the legislature intends to:

25 (a) Create a new long-term care licensed entity known as an
26 enhanced services facility;

27 (b) Encourage the establishment and maintenance of enhanced
28 services facilities in communities around the state;

29 (c) Divert certain individuals from inappropriate placements;

30 (d) Establish standards for the enhanced services facilities that
31 provide a humane, safe, and secure environment that adequately serves
32 and protects residents; and

33 (e) Establish standards for licensing and enforcement authority.

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

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

5 (2) "Enhanced services facility" means a facility that provides
6 treatment and services to individuals who have been determined by the
7 department to be inappropriate for placement in other long-term care
8 settings due to complex medical, cognitive, and functional needs that
9 result in behavioral and safety issues.

10 (3) "Facility" means an enhanced services facility.

11 (4) "Physical restraint" means a manual method, obstacle, or
12 physical or mechanical device, material, or equipment attached or
13 adjacent to the resident's body that restricts freedom of movement or
14 access to his or her body, is used for discipline or convenience, and
15 not required to treat the resident's medical symptoms.

16 (5) "Resident" means an individual residing in an enhanced services
17 facility.

18 (6) "Restraint" means but is not limited to:

19 (a) Seclusion through placement of a resident alone in an area from
20 which the resident cannot leave at will;

21 (b) Chemical restraint through the use of a psychopharmacologic
22 drug that is used for discipline or convenience and not required to
23 treat the resident's medical symptoms;

24 (c) Physical restraint.

25 (7) "Significant change" means a deterioration in health, mental,
26 or psychosocial status that has caused or may cause either clinical
27 complications or life-threatening conditions or a significant
28 improvement that may affect a resident's eligibility.

29 NEW SECTION. **Sec. 504.** This chapter does not apply to the
30 following residential facilities:

31 (1) Nursing homes licensed under chapter 18.51 RCW;

32 (2) Boarding homes licensed under chapter 18.20 RCW;

33 (3) Adult family homes licensed under chapter 70.128 RCW;

34 (4) Facilities approved and certified under chapter 71A.22 RCW;

35 (5) Residential treatment facilities licensed under chapter 71.12
36 RCW; and

37 (6) Hospitals licensed under chapter 70.41 RCW.

1 NEW SECTION. **Sec. 505.** (1) In the interest of public health,
2 safety, and welfare, the department shall adopt facility rules
3 necessary to accomplish the purposes of this chapter.

4 (2) Such rules shall:

5 (a) Promote safe treatment and adequate care of individuals
6 residing in the facility and provide for safe, comfortable, and clean
7 conditions;

8 (b) Establish payment rates for facility services; and

9 (c) Establish license fees.

10 NEW SECTION. **Sec. 506.** (1) The standards in this chapter are the
11 minimum standards for facilities licensed under this chapter.

12 (2) An application for a license must be made to the department
13 upon forms provided by the department and must contain such information
14 as the department reasonably requires.

15 (3) The license fee shall be submitted with the application.

16 (4) The department shall provide the applicant with a copy of the
17 decision granting or denying an application for a license.

18 (5) The department shall not issue a license to a facility if the
19 department finds that the facility or any partner, officer, director,
20 managerial employee, or owner of five percent or more of the assets of
21 the facility has a history of significant noncompliance with federal or
22 state laws or regulations related to the provision of care or services
23 to vulnerable adults or children.

24 (6) An applicant or facility operator shall demonstrate financial
25 solvency and have the ability and relevant experience necessary to meet
26 other relevant safety, health, and operating standards.

27 NEW SECTION. **Sec. 507.** (1) No person may operate or maintain a
28 facility in this state without a license under this chapter.

29 (2) The licensee shall renew the license annually and pay the
30 annual license fee prior to renewal.

31 (3) A licensee shall have readily accessible and available for
32 review by the department, residents, and the public its license to
33 operate and a copy of the most recent inspection report and recent
34 complaint investigation reports issued by the department.

1 NEW SECTION. **Sec. 508.** (1) In any case in which the department
2 finds that a licensee of a facility, or any partner, officer, director,
3 owner of five percent or more of the assets of the facility, or
4 managing employee failed or refused to comply with the requirements of
5 this chapter or the rules established under them, the department may
6 take any or all of the following actions:

- 7 (a) Suspend, revoke, or refuse to renew a license;
- 8 (b) Order stop placement; or
- 9 (c) Assess civil monetary penalties.

10 (2) The department may suspend, revoke, or refuse to renew a
11 license, assess civil monetary penalties, or both, in any case in which
12 it finds that the licensee of a facility, or any partner, officer,
13 director, owner of five percent or more of the assets of the facility,
14 or managing employee:

15 (a) Operated a facility without a license or under a revoked or
16 suspended license;

17 (b) Knowingly or with reason to know made a false statement of a
18 material fact in the license application or any data attached thereto,
19 or in any matter under investigation by the department;

20 (c) Refused to allow representatives or agents of the department to
21 inspect all books, records, and files required to be maintained or any
22 portion of the premises of the facility;

23 (d) Willfully prevented, interfered with, or attempted to impede in
24 any way the work of any duly authorized representative of the
25 department and the lawful enforcement of any provision of this chapter;

26 (e) Willfully prevented or interfered with any representative of
27 the department in the preservation of evidence of any violation of any
28 of the provisions of this chapter or of the rules adopted under it; or

29 (f) Failed to pay any civil monetary penalty assessed by the
30 department under this chapter within ten days after the assessment
31 becomes final.

32 (3)(a) Civil penalties collected under this chapter shall be
33 deposited into a special fund administered by the department.

34 (b) Civil monetary penalties, if imposed, may be assessed and
35 collected, with interest, for each day the facility is or was out of
36 compliance. Civil monetary penalties shall not exceed three thousand
37 dollars per day. Each day upon which the same or a substantially

1 similar action occurs is a separate violation subject to the assessment
2 of a separate penalty.

3 (4) The department, through the director of residential care
4 services, may use the civil penalty monetary fund for the protection of
5 the health or property of residents of facilities found to be deficient
6 including:

7 (a) Payment for the cost of relocation of residents to other
8 facilities;

9 (b) Payment to maintain operation of a facility pending correction
10 of deficiencies or closure; and

11 (c) Reimbursement of a resident for personal funds or property
12 loss.

13 (5)(a) The department may issue a stop placement order on a
14 facility, effective upon oral or written notice, when the department
15 determines:

16 (i) The facility no longer substantially meets the requirements of
17 this chapter; and

18 (ii) The deficiency or deficiencies in the facility:

19 (A) Jeopardizes the health and safety of the residents; or

20 (B) Seriously limits the facility's capacity to provide adequate
21 care.

22 (b) When the department has ordered a stop placement, the
23 department may approve a readmission to the facility from a hospital,
24 residential treatment facility, or crisis intervention facility when
25 the department determines the readmission would be in the best interest
26 of the individual seeking readmission.

27 (6) If the department determines that an emergency exists and
28 resident health and safety is immediately jeopardized as a result of a
29 facility's failure or refusal to comply with this chapter, the
30 department may summarily suspend the facility's license and order the
31 immediate closure of the facility, or the immediate transfer of
32 residents, or both.

33 (7) If the department determines that the health or safety of the
34 residents is immediately jeopardized as a result of a facility's
35 failure or refusal to comply with requirements of this chapter, the
36 department may appoint temporary management to:

37 (a) Oversee the operation of the facility; and

38 (b) Ensure the health and safety of the facility's residents while:

- 1 (i) Orderly closure of the facility occurs; or
- 2 (ii) The deficiencies necessitating temporary management are
- 3 corrected.

4 NEW SECTION. **Sec. 509.** (1) All orders of the department denying,
5 suspending, or revoking the license or assessing a monetary penalty
6 shall become final twenty days after the same has been served upon the
7 applicant or licensee unless a hearing is requested.

8 (2) All orders of the department imposing stop placement, temporary
9 management, emergency closure, emergency transfer, or summary license
10 suspension shall be effective immediately upon notice, pending any
11 hearing.

12 (3) Subject to the requirements of subsection (2) of this section,
13 all hearings under this chapter and judicial review of such
14 determinations shall be in accordance with the administrative procedure
15 act, chapter 34.05 RCW.

16 NEW SECTION. **Sec. 510.** Operation of a facility without a license
17 in violation of this chapter and discrimination against medicaid
18 recipients are unfair or deceptive acts in trade or commerce and an
19 unfair method of competition for the purpose of applying the consumer
20 protection act, chapter 19.86 RCW.

21 NEW SECTION. **Sec. 511.** A person operating or maintaining a
22 facility without a license under this chapter is guilty of a
23 misdemeanor and each day of a continuing violation after conviction
24 shall be considered a separate offense.

25 NEW SECTION. **Sec. 512.** Notwithstanding the existence or use of
26 any other remedy, the department may, in the manner provided by law,
27 maintain an action in the name of the state for an injunction, civil
28 penalty, or other process against a person to restrain or prevent the
29 operation or maintenance of a facility without a license issued under
30 this chapter.

31 NEW SECTION. **Sec. 513.** (1) The department shall make or cause to
32 be made at least one inspection of each facility prior to licensure and

1 an unannounced full inspection of facilities at least once every
2 eighteen months. The statewide average interval between full facility
3 inspections must be fifteen months.

4 (2) Any duly authorized officer, employee, or agent of the
5 department may enter and inspect any facility at any time to determine
6 that the facility is in compliance with this chapter and applicable
7 rules, and to enforce any provision of this chapter. Complaint
8 inspections shall be unannounced and conducted in such a manner as to
9 ensure maximum effectiveness. No advance notice shall be given of any
10 inspection unless authorized or required by federal law.

11 (3) During inspections, the facility must give the department
12 access to areas, materials, and equipment used to provide care or
13 support to residents, including resident and staff records, accounts,
14 and the physical premises, including the buildings, grounds, and
15 equipment. The department has the authority to privately interview the
16 provider, staff, residents, and other individuals familiar with
17 resident care and treatment.

18 (4) Any public employee giving advance notice of an inspection in
19 violation of this section shall be suspended from all duties without
20 pay for a period of not less than five nor more than fifteen days.

21 (5) The department shall prepare a written report describing the
22 violations found during an inspection, and shall provide a copy of the
23 inspection report to the facility.

24 (6) The facility shall develop a written plan of correction for any
25 violations identified by the department and provide a plan of
26 correction to the department within ten working days from the receipt
27 of the inspection report.

28 NEW SECTION. **Sec. 514.** The facility shall only admit individuals:

29 (1) Who are over the age of eighteen;

30 (2) Who meet the resident eligibility requirements described in
31 section 516 of this act; and

32 (3) Whose needs the facility can safely and appropriately meet
33 through qualified and trained staff, services, equipment, and building
34 design.

35 NEW SECTION. **Sec. 515.** A facility shall respect a validly

1 executed advance directive including a mental health advance directive
2 under chapter 71.32 RCW pursuant to other provisions of law.

3 NEW SECTION. **Sec. 516.** (1) Prior to finding an individual
4 eligible for placement in a facility, the department shall make a
5 placement determination evaluation of the individual, unless the
6 individual is placed in the facility on an emergency basis. If the
7 resident is placed in the facility on an emergency basis, the placement
8 determination evaluation shall be completed within twenty-four hours of
9 placement.

10 (2) Individuals will be determined to be eligible for placement in
11 a facility only if all other long-term care options were attempted and
12 unsuccessful.

13 (3) The individual will only meet the eligibility requirements if
14 the following three categories are met:

15 (a) The individual must have at least one care need that requires:

16 (i) Daily care by or under the supervision of a registered nurse,
17 licensed practical nurse, certified or licensed treatment provider, or
18 mental health or behavioral health specialist; or

19 (ii) Minimal, substantial, or total assistance with three or more
20 activities of daily living; and

21 (b) The individual has traumatic or organic brain injury or other
22 cognitive impairment, mental illness, or mental disorder that results
23 in intractable psychiatric symptoms or behaviors requiring ongoing
24 supervision and facility services and two or more of the following
25 characteristics:

26 (i) Frequent or difficult-to-manage self-endangering behaviors;

27 (ii) Frequent or difficult-to-manage aggressive behaviors that
28 create a risk of safety, health, or significant property damage to
29 others;

30 (iii) Intrusive behaviors that put individuals or others at risk;

31 (iv) Complex medication needs which include psychotropic
32 medications; or

33 (v) Other symptoms identified by the department in rule; and

34 (c) The individual has two or more of the following placement
35 histories:

36 (i) The individual has been unsuccessful, or is likely to be

1 unsuccessful, in other licensed long-term care facilities, or certified
2 care settings;

3 (ii) The individual has a history of other problematic placements
4 as defined by the department;

5 (iii) Frequent or protracted mental health hospitalizations; or

6 (iv) Frequent incarcerations due to offenses against another
7 person.

8 NEW SECTION. **Sec. 517.** (1) The facility shall ensure that each
9 resident is afforded the basic civil and legal rights under federal and
10 state laws including the right to be treated with dignity and respect.

11 (2) Any person committed or admitted to a facility has the right to
12 adequate care and individualized treatment, including a department
13 placement evaluation before placement and ongoing resident care
14 planning.

15 (3) Residents have the right to the least restrictive treatment
16 appropriate to their individual condition.

17 (4) Nothing in this section prohibits a person committed to a
18 facility from exercising the rights available to them to obtain release
19 from confinement.

20 (5) Residents have the right to execute advance directives
21 regarding their care.

22 (6) Residents admitted to the facility under a court order shall
23 have the rights established in subsections (1) through (4) of this
24 section unless those rights are explicitly limited by applicable court
25 orders.

26 NEW SECTION. **Sec. 518.** (1) The total licensed capacity for a
27 facility shall not exceed sixteen residents.

28 (2) The facility shall provide an appropriate level of security
29 based upon the residents' behaviors and the need to protect residents
30 and the public.

31 (3) A facility may only hold one license; however, a facility may
32 be located in the same building as a licensed nursing home or boarding
33 home provided that:

34 (a) The facility is in an area totally separate and discrete from
35 the other licensed facility; and

1 (b) The two facilities maintain separate staffing unless limited
2 shared staffing is specifically authorized by rule.

3 (4) Nursing homes under chapter 18.51 RCW, boarding homes under
4 chapter 18.20 RCW, or adult family homes under chapter 70.128 RCW, that
5 become licensed as facilities under this chapter shall be deemed to
6 meet the applicable state and local rules, regulations, permits, and
7 code requirements. All other facilities are required to meet all
8 applicable state and local rules, regulations, permits, and code
9 requirements.

10 NEW SECTION. **Sec. 519.** The facility shall complete a
11 comprehensive assessment for each resident within fourteen days of
12 admission, at a minimum of every six months, and as needed based upon
13 the changing condition of each resident, including a significant change
14 of condition or a significant improvement in condition.

15 NEW SECTION. **Sec. 520.** The facility shall develop and implement
16 for each resident a plan of care based upon the resident assessment,
17 including plans for transfer or discharge and shall revise and update
18 the plan of care as needed.

19 NEW SECTION. **Sec. 521.** (1) The facility shall provide all
20 resident care and services in the least restrictive manner appropriate
21 for each resident's needs and abilities.

22 (2) The facility shall provide each resident with the medical,
23 personal, health or behavioral support, and mental health services
24 needed including:

- 25 (a) Assistance with activities of daily living;
- 26 (b) Medical or habilitative treatment;
- 27 (c) Medication services; and
- 28 (d) Dietary services.

29 (3) In the event that an individual is court ordered to reside in
30 the facility, the facility shall comply with the provisions of the
31 court order.

32 NEW SECTION. **Sec. 522.** (1) The facility shall transfer or
33 discharge a resident only for medical reasons, the resident's welfare,
34 the welfare of other residents, or nonpayment.

1 (2) The facility shall notify the appropriate placement entity to
2 obtain an evaluation of the resident immediately when there is a
3 significant change in the resident's behavior or mental condition that
4 might impact the resident's continued need for placement in the
5 facility.

6 NEW SECTION. **Sec. 523.** (1) The facility shall have staff on duty
7 on-site, sufficient in number, qualifications, and training to meet the
8 needs of the residents, and to carry out the provisions of this
9 chapter.

10 (2) At a minimum, the staffing must include a licensed nurse on-
11 site twenty-four hours per day. A registered nurse shall be on duty
12 on-site at least sixteen hours per day, and readily available to the
13 facility for the remaining eight hours.

14 NEW SECTION. **Sec. 524.** (1) Each facility administrator must have
15 the following minimum qualifications:

- 16 (a) Be twenty-one years of age or older;
- 17 (b) Be of good moral and responsible character and reputation;
- 18 (c) Have a baccalaureate degree from a recognized institution of
19 higher learning;
- 20 (d) Have direct caregiving experience, obtained after age eighteen,
21 to vulnerable adults in a licensed or contracted setting before
22 appointment;
- 23 (e) Have management and administrative ability to carry out the
24 requirements of this chapter;
- 25 (f) Have sufficient training and experience as described in rule by
26 the department; and
- 27 (g) Have successfully completed a criminal background check through
28 the Washington state patrol criminal identification system and not been
29 convicted of any crime listed in RCW 43.43.830 or 43.43.842, or subject
30 to protective proceedings under chapter 74.34 RCW.

31 (2) The following individuals are deemed to meet facility
32 administrator requirements. An individual who:

- 33 (a) Successfully completes a background check, under subsection
34 (1)(g) of this section, before appointment as an administrator of a
35 facility; and
- 36 (b) Is currently licensed as a nursing home administrator; or

1 (c) Meets current boarding home administrator requirements.

2 NEW SECTION. **Sec. 525.** The health care of each resident must be
3 under the continuing supervision of a physician.

4 NEW SECTION. **Sec. 526.** (1) The facility shall develop and
5 implement written policies and procedures for all care and services
6 provided directly or indirectly by the facility.

7 (2) The written policies and procedures shall be made available to
8 staff, residents, members of residents' families, and the public.

9 NEW SECTION. **Sec. 527.** (1) A facility shall post in a place and
10 manner clearly visible to residents and visitors the toll-free
11 complaint telephone number maintained by the department.

12 (2) No facility shall discriminate or retaliate in any manner
13 against a resident or employee because the resident, employee, or any
14 other person made a complaint or provided information to the department
15 or the long-term care ombudsman.

16 NEW SECTION. **Sec. 528.** If the facility does not employ a
17 qualified professional able to furnish needed services, the facility
18 must have a written contract with a qualified professional or agency
19 outside the facility to furnish the needed services.

20 NEW SECTION. **Sec. 529.** At least sixty days before the effective
21 date of any change of ownership, or change of management of a facility,
22 the current operating entity must provide written notification about
23 the proposed change separately and in writing, to the department, each
24 resident of the facility, or the resident's guardian or representative.

25 NEW SECTION. **Sec. 530.** The facility shall:

26 (1) Maintain adequate resident records to enable the provision of
27 the care and services each resident requires and to respond
28 appropriately in emergency situations;

29 (2) Comply with the requirements of chapter 70.02 RCW regarding
30 medical records - health care information, access, and disclosure;

31 (3) Comply with all applicable state and federal requirements

1 related to documentation and confidentiality, including chapters 10.77,
2 10.97, 70.24, 70.96A, and 71.05 RCW; and

3 (4) If possible, obtain a signed release of information,
4 designating the department and the licensed facility as recipients of
5 health and treatment information.

6 NEW SECTION. **Sec. 531.** Standards for fire protection and the
7 enforcement thereof, with respect to all facilities licensed under this
8 chapter, are the responsibility of the chief of the Washington state
9 patrol, through the director of fire protection, who must adopt
10 recognized standards as applicable to facilities for the protection of
11 life against the cause and spread of fire and fire hazards. If the
12 facility to be licensed meets with the approval of the chief of the
13 Washington state patrol, through the director of fire protection, the
14 director of fire protection must submit to the department a written
15 report approving the facility with respect to fire protection before a
16 full license can be issued. The chief of the Washington state patrol,
17 through the director of fire protection, shall conduct an unannounced
18 full inspection of facilities at least once every eighteen months. The
19 statewide average interval between full facility inspections must be
20 fifteen months.

21 NEW SECTION. **Sec. 532.** Inspections of facilities by local
22 authorities must be consistent with the requirements adopted by the
23 chief of the Washington state patrol, through the director of fire
24 protection. Findings of a serious nature must be coordinated with the
25 department and the chief of the Washington state patrol, through the
26 director of fire protection, for determination of appropriate actions
27 to ensure a safe environment for residents. The chief of the
28 Washington state patrol, through the director of fire protection, has
29 exclusive authority to determine appropriate corrective action under
30 this section.

31 NEW SECTION. **Sec. 533.** No facility providing care and treatment
32 for individuals placed in a facility, acting in the course of its
33 duties, shall be civilly or criminally liable for performing its duties
34 under this chapter, provided that such duties were performed in good
35 faith and without gross negligence.

- 1 (C) During which the defendant used a firearm; or
- 2 (D) During which the defendant caused substantial or great bodily
- 3 harm or death to another person.

4 NEW SECTION. **Sec. 602.** A new section is added to chapter 2.28 RCW
5 to read as follows:

6 Any county that has established a drug court and a mental health
7 court under this chapter may combine the functions of both courts into
8 a single therapeutic court.

9 NEW SECTION. **Sec. 603.** A new section is added to chapter 26.12
10 RCW to read as follows:

11 (1) Every county with a juvenile or family court shall establish
12 and operate a family therapeutic court component designed to be
13 effective for the court's size, location, and resources. A county with
14 a drug court for criminal cases or with a mental health court may
15 include a family therapeutic court as a component of its existing
16 program.

17 (2) For the purposes of this section, "family therapeutic court"
18 means a court that has special calendars or dockets designed for the
19 intense judicial supervision, coordination, and oversight of treatment
20 provided to parents and families who have substance abuse or mental
21 health problems and who are involved in the dependency or family law
22 system and is designed to achieve a reduction in:

- 23 (a) Child abuse and neglect;
- 24 (b) Out-of-home placement of children;
- 25 (c) Termination of parental rights; and
- 26 (d) Substance abuse or mental health symptoms among parents or
- 27 guardians and their children.

28 (3) To the extent possible, the family therapeutic court shall
29 provide services for parents and families co-located with the court or
30 as near to the court as practicable.

31 (4) The department of social and health services shall furnish
32 services to the family therapeutic court unless a court contracts with
33 providers outside of the department.

34 (5) Any jurisdiction that receives a state appropriation to fund a
35 family therapeutic court must first exhaust all federal funding
36 available for the development and operation of the family therapeutic

1 court including but not limited to funding from the office of national
2 drug control policy that is available to support the operations of drug
3 court and associated services.

4 (6) Moneys allocated by the state for a family therapeutic court
5 must be used to supplement, not supplant, other federal, state, local,
6 and private funding for court operations and associated services under
7 this section.

8 (7) Any county that establishes a family therapeutic court or
9 receives funds for an existing court under this section shall:

10 (a) Establish minimum requirements for the participation in the
11 program; and

12 (b) Develop an evaluation component of the court, including
13 tracking the success rates in graduating from treatment, reunifying
14 parents with their children, and the costs and benefits of the court.

15 NEW SECTION. **Sec. 604.** A new section is added to chapter 9.94A
16 RCW to read as follows:

17 The court may refer any defendant who will benefit from substance
18 abuse or mental health treatment, or both, to a drug court or mental
19 health court established under chapter 2.28 RCW if the defendant has
20 not previously been convicted of a serious violent offense or sex
21 offense, and is not currently charged with an offense:

- 22 (1) That is a sex offense;
23 (2) That is a serious violent offense;
24 (3) During which the defendant used a firearm; or
25 (4) During which the defendant caused substantial or great bodily
26 harm or death to another person.

27 **Sec. 605.** RCW 9.94A.505 and 2002 c 290 s 17, 2002 c 289 s 6, and
28 2002 c 175 s 6 are each reenacted and amended to read as follows:

29 (1) When a person is convicted of a felony, the court shall impose
30 punishment as provided in this chapter.

31 (2)(a) The court shall impose a sentence as provided in the
32 following sections and as applicable in the case:

33 (i) Unless another term of confinement applies, the court shall
34 impose a sentence within the standard sentence range established in RCW
35 9.94A.510 or 9.94A.517;

36 (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

- 1 (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;
2 (iv) RCW 9.94A.545, relating to community custody for offenders
3 whose term of confinement is one year or less;
4 (v) RCW 9.94A.570, relating to persistent offenders;
5 (vi) RCW 9.94A.540, relating to mandatory minimum terms;
6 (vii) RCW 9.94A.650, relating to the first-time offender waiver;
7 (viii) RCW 9.94A.660, relating to the drug offender sentencing
8 alternative;
9 (ix) RCW 9.94A.670, relating to the special sex offender sentencing
10 alternative;
11 (x) RCW 9.94A.712, relating to certain sex offenses;
12 (xi) RCW 9.94A.535, relating to exceptional sentences;
13 (xii) RCW 9.94A.589, relating to consecutive and concurrent
14 sentences.

15 (b) If a standard sentence range has not been established for the
16 offender's crime, the court shall impose a determinate sentence which
17 may include not more than one year of confinement; community
18 restitution work; until July 1, 2000, a term of community supervision
19 not to exceed one year and on and after July 1, 2000, a term of
20 community custody not to exceed one year, subject to conditions and
21 sanctions as authorized in RCW 9.94A.710 (2) and (3); and/or other
22 legal financial obligations. The court may impose a sentence which
23 provides more than one year of confinement if the court finds reasons
24 justifying an exceptional sentence as provided in RCW 9.94A.535.

25 (3) Before a defendant is convicted, a court may refer the
26 defendant to a drug court or mental health court as provided in section
27 604 of this act.

28 (4) If the court imposes a sentence requiring confinement of thirty
29 days or less, the court may, in its discretion, specify that the
30 sentence be served on consecutive or intermittent days. A sentence
31 requiring more than thirty days of confinement shall be served on
32 consecutive days. Local jail administrators may schedule court-ordered
33 intermittent sentences as space permits.

34 ((+4)) (5) If a sentence imposed includes payment of a legal
35 financial obligation, it shall be imposed as provided in RCW 9.94A.750,
36 9.94A.753, 9.94A.760, and 43.43.7541.

37 ((+5)) (6) Except as provided under RCW 9.94A.750(4) and
38 9.94A.753(4), a court may not impose a sentence providing for a term of

1 confinement or community supervision, community placement, or community
2 custody which exceeds the statutory maximum for the crime as provided
3 in chapter 9A.20 RCW.

4 ~~((+6))~~ (7) The sentencing court shall give the offender credit for
5 all confinement time served before the sentencing if that confinement
6 was solely in regard to the offense for which the offender is being
7 sentenced.

8 ~~((+7))~~ (8) The court shall order restitution as provided in RCW
9 9.94A.750 and 9.94A.753.

10 ~~((+8))~~ (9) As a part of any sentence, the court may impose and
11 enforce crime-related prohibitions and affirmative conditions as
12 provided in this chapter.

13 ~~((+9))~~ (10) The court may order an offender whose sentence
14 includes community placement or community supervision to undergo a
15 mental status evaluation and to participate in available outpatient
16 mental health treatment, if the court finds that reasonable grounds
17 exist to believe that the offender is a mentally ill person as defined
18 in RCW 71.24.025, and that this condition is likely to have influenced
19 the offense. An order requiring mental status evaluation or treatment
20 must be based on a presentence report and, if applicable, mental status
21 evaluations that have been filed with the court to determine the
22 offender's competency or eligibility for a defense of insanity. The
23 court may order additional evaluations at a later date if deemed
24 appropriate.

25 ~~((+10))~~ (11) In any sentence of partial confinement, the court may
26 require the offender to serve the partial confinement in work release,
27 in a program of home detention, on work crew, or in a combined program
28 of work crew and home detention.

29 ~~((+11))~~ (12) In sentencing an offender convicted of a crime of
30 domestic violence, as defined in RCW 10.99.020, if the offender has a
31 minor child, or if the victim of the offense for which the offender was
32 convicted has a minor child, the court may, as part of any term of
33 community supervision, community placement, or community custody, order
34 the offender to participate in a domestic violence perpetrator program
35 approved under RCW 26.50.150.

36 **Suspension of Medicaid Benefits**

1 **Sec. 606.** RCW 74.09.010 and 1990 c 296 s 6 are each amended to
2 read as follows:

3 As used in this chapter:

4 (1) "Children's health program" means the health care services
5 program provided to children under eighteen years of age and in
6 households with incomes at or below the federal poverty level as
7 annually defined by the federal department of health and human services
8 as adjusted for family size, and who are not otherwise eligible for
9 medical assistance or the limited casualty program for the medically
10 needy.

11 ~~(2) ("Committee" means the children's health services committee~~
12 ~~created in section 3 of this act.~~

13 ~~(3))~~ "Community services office" means the county or local office
14 defined in RCW 74.04.005.

15 (3) "Confined" means incarcerated in a correctional institution or
16 admitted to an institute of mental disease.

17 (4) "Correctional institution" means a correctional institution
18 defined in RCW 9.94.049.

19 (5) "County" means the board of county commissioners, county
20 council, county executive, or tribal jurisdiction, or its designee. A
21 combination of two or more county authorities or tribal jurisdictions
22 may enter into joint agreements to fulfill the requirements of RCW
23 74.09.415 through 74.09.435.

24 ~~((4))~~ (6) "Department" means the department of social and health
25 services.

26 ~~((5))~~ (7) "Department of health" means the Washington state
27 department of health created pursuant to RCW 43.70.020.

28 ~~((6))~~ (8) "Institute of mental disease" has the meaning defined
29 in 42 C.F.R., part 435, Sec. 1009.

30 (9) "Internal management" means the administration of medical
31 assistance, medical care services, the children's health program, and
32 the limited casualty program.

33 ~~((7))~~ (10) "Likely to be eligible" means that a person:

34 (a) Was enrolled in the medicaid, supplemental security income, or
35 social security disability income programs before he or she was
36 confined and his or her enrollment was terminated during his or her
37 confinement;

1 (b) Was enrolled in the medicaid, supplemental security income, or
2 social security disability income programs at any time during the five
3 years before his or her confinement; or

4 (c) Was not previously enrolled in a medicaid, supplemental
5 security income, or social security disability income program but is
6 likely to meet eligibility criteria upon his or her release from
7 confinement.

8 (11) "Limited casualty program" means the medical care program
9 provided to medically needy persons as defined under Title XIX of the
10 federal social security act, and to medically indigent persons who are
11 without income or resources sufficient to secure necessary medical
12 services.

13 ~~((+8))~~ (12) "Medicaid eligibility category" refers to all existing
14 eligibility categories established in the state medicaid plan,
15 including enrollment in medicaid by virtue of eligibility to receive
16 cash payments under the supplemental security income or social security
17 disability income programs of the social security administration.

18 (13) "Medical assistance" means the federal aid medical care
19 program provided to categorically needy persons as defined under Title
20 XIX of the federal social security act.

21 ~~((+9))~~ (14) "Medical care services" means the limited scope of
22 care financed by state funds and provided to general assistance
23 recipients, and recipients of alcohol and drug addiction services
24 provided under chapter 74.50 RCW.

25 ~~((+10))~~ (15) "Nursing home" means nursing home as defined in RCW
26 18.51.010.

27 ~~((+11))~~ (16) "Parent" means a parent, guardian, or legal
28 custodian.

29 (17) "Poverty" means the federal poverty level determined annually
30 by the United States department of health and human services, or
31 successor agency.

32 ~~((+12))~~ (18) "Prerelease agreement" means a formal agreement with
33 the social security administration under which a correctional agency,
34 institution for mental diseases, or community services office will work
35 collaboratively to ensure that applications for supplemental security
36 income or social security disability income are speedily handled by the
37 social security administration.

38 (19) "Secretary" means the secretary of social and health services.

1 (20) "Suspend" means to place a person's medicaid eligibility on an
2 inactive status in a manner that the person remains eligible for
3 medicaid and continues on the state medicaid rolls but medicaid
4 benefits are not payable for services furnished.

5 NEW SECTION. Sec. 607. A new section is added to chapter 74.09
6 RCW to read as follows:

7 (1) The economic services administration shall adopt standardized
8 statewide screening and application practices and forms. These
9 practices and forms shall be implemented in every local office not
10 later than January 1, 2006.

11 (2) The forms shall be structured to facilitate completion by
12 persons with disabilities, including those with mental disorders.

13 (3) Neither the department nor any local office may exclude a
14 person from application or screen that person as ineligible for
15 medicaid based solely on a determination that the person is using or
16 addicted to alcohol or other psychoactive substances, as defined in
17 chapter 70.96A RCW.

18 (4) Neither the department nor any local office may remove a
19 confined person from an active medicaid caseload sooner than required
20 by federal law.

21 (5) Subject to available funds, the department shall provide
22 persons with technical assistance in preparing applications and
23 maintaining eligibility for medicaid. The department shall seek public
24 or private funding to establish technical assistance programs including
25 bilingual supports and peer support networks.

26 NEW SECTION. Sec. 608. A new section is added to chapter 74.09
27 RCW to read as follows:

28 The department shall adopt rules and policies providing that when
29 a person with a mental disorder is confined:

30 (1) The person's eligibility for medicaid will be suspended rather
31 than terminated for as long as is permitted by federal law;

32 (2) The person shall not be terminated from medicaid unless the
33 department determines that, excluding ineligibility based solely on the
34 person's confinement, the person:

35 (a) No longer meets the medicaid eligibility criteria under which
36 he or she had qualified; and

1 (b) Is not eligible for medicaid under any other medicaid
2 eligibility criteria; and

3 (3) The confined person's medicaid eligibility will be fully
4 restored on the day of release unless and until the department
5 determines that the individual is no longer eligible for medicaid.

6 NEW SECTION. **Sec. 609.** A new section is added to chapter 74.09
7 RCW to read as follows:

8 (1) The secretary shall require community services offices to enter
9 agreements with correctional institutions and institutes for mental
10 disease to establish practices for the speedy restoration and the
11 speedy enrollment of persons who are likely to be eligible for medicaid
12 while confined or upon release for confinement.

13 (2) At a minimum, the practices shall:

14 (a) Identify confined persons with mental disorders:

15 (i) Whose supplemental security income or social security
16 disability insurance was suspended during confinement;

17 (ii) Who are likely to be eligible for medicaid while confined or
18 upon release from confinement; or

19 (iii) Who are likely to be eligible for supplemental security
20 income or social security disability insurance upon release from
21 confinement;

22 (b) Ensure that, at the earliest possible time, prior to release
23 when a release date is known, applications for:

24 (i) Reinstatement of supplemental security income or social
25 security disability insurance upon release are filed on the person's
26 behalf;

27 (ii) Medicaid, supplemental security income, and social security
28 disability insurance, as appropriate, are filed, to the extent
29 practicable, well in advance of release and, where possible, at least
30 ninety days before release;

31 (c) Assist confined persons with mental disorders who do not have
32 valid photo identification to acquire the necessary identification to
33 receive benefits; and

34 (d) Ensure that when the confined person is able to give informed
35 consent under chapter 7.70 RCW and refuses to file an application under
36 this chapter, applications under (b) of this subsection are not
37 required.

1 (3)(a) The community services office shall provide all applicants
2 with a copy of the application.

3 (b) For those persons who are able to give informed consent under
4 chapter 7.70 RCW and refuse to file an application under subsection (2)
5 of this section:

6 (i) The refusal must be in writing, signed by the person;

7 (ii) The refusal shall be documented in the person's file by the
8 community services office and the correctional institution or institute
9 for mental disease; and

10 (iii) The community services office shall provide the person with
11 a copy of the signed refusal.

12 NEW SECTION. **Sec. 610.** A new section is added to chapter 74.09
13 RCW to read as follows:

14 (1) The department shall:

15 (a) Establish procedures for receiving medicaid applications on
16 behalf of confined persons in anticipation of their release from
17 confinement;

18 (b) Expeditiously review applications filed on behalf of confined
19 persons and, to the extent practicable, complete the review before the
20 person is released. All reviews shall be completed within fourteen
21 days of receiving the application.

22 (2) The process shall assess whether the person is presently
23 eligible to be enrolled in medicaid or likely to be eligible upon
24 release from confinement.

25 (a) If the person is eligible to be enrolled while incarcerated,
26 the person shall be enrolled but placed on suspended status. The
27 person shall be provided a medicaid card entitling him or her to
28 receive benefits effective upon his or her release. If the person is
29 confined in a correctional institution the medicaid card shall be kept
30 with his or her personal effects and provided to the person upon
31 release.

32 (b) If the person is not eligible to be enrolled in medicaid while
33 confined, but is likely to be eligible for medicaid upon release, the
34 person shall be enrolled in the temporary medicaid eligibility program
35 described in section . . . of this act, and placed on suspended status
36 pending release from confinement. The person shall be provided a
37 medicaid card entitling him or her to receive benefits under the

1 temporary medicaid eligibility program effective upon his or her
2 release. If the person is confined in a correctional institution the
3 medicaid card shall be kept with his or her personal effects and
4 provided to the person upon release.

5 NEW SECTION. **Sec. 611.** A new section is added to chapter 74.09
6 RCW to read as follows:

7 The department shall accept a disability determination made by a
8 physician or any other health care professional permitted under federal
9 law after an examination of the confined person.

10 **Regional Jails**

11 NEW SECTION. **Sec. 612.** (1) The joint legislative audit and review
12 committee shall investigate and assess whether there are existing
13 facilities in the state that could be converted to use as a regional
14 jail for offenders who have mental or chemical dependency disorders, or
15 both, that need specialized housing and treatment arrangements.

16 (2) The joint legislative audit and review committee shall consider
17 the feasibility of using at least the following facilities or types of
18 facilities:

19 (a) Green Hill School;

20 (b) Existing or renovated facilities at the former Northern State
21 Hospital;

22 (c) Closed wards at Western State Hospital;

23 (d) Fircrest School; and

24 (e) Closed or abandoned nursing homes.

25 (3) The analysis shall include an assessment of when such
26 facilities could be available for use as a regional jail and the
27 potential costs, costs avoided, and benefits of at least the following
28 considerations:

29 (a) Any impact on existing offenders or residents;

30 (b) The conversion of the facilities;

31 (c) Infrastructure tied to the facilities;

32 (d) Whether the facility is, or can be, sized proportionately to
33 the available pool of offenders;

34 (e) Changes in criminal justice costs, including transport, access
35 to legal assistance, and access to courts;

- 1 (f) Reductions in jail populations; and
2 (g) Changes in treatment costs for these offenders.
3 (4) The joint legislative audit and review committee shall report
4 its findings and recommendations to the appropriate committees of the
5 legislature not later than December 15, 2005.

6 **Competency and Criminal Insanity**

7 NEW SECTION. **Sec. 613.** (1) By January 1, 2006, the department of
8 social and health services shall reduce the waiting times for
9 competency evaluation and restoration as follows:

10 (a) Not longer than seven days for outpatient competency
11 evaluation;

12 (b) Not longer than ten days for inpatient competency evaluation;
13 and

14 (c) Not longer than seven days for inpatient competency
15 restoration.

16 (2) The department of social and health services shall report to
17 the legislature with an analysis of several alternative strategies for
18 addressing increases in forensic population and minimizing waiting
19 periods for competency evaluation and restoration. The report shall
20 discuss, at a minimum, the costs and advantages of, and barriers to co-
21 locating professional persons in jails, performing restoration
22 treatment in less restrictive alternatives than the state hospitals,
23 and the use of regional jail facilities to accomplish competency
24 evaluation and restoration.

25 **ESSB 6358 Implementation Issues**

26 **Sec. 614.** RCW 71.05.157 and 2004 c 166 s 16 are each amended to
27 read as follows:

28 (1) When a county designated mental health professional is notified
29 by a jail that a defendant or offender who was subject to a discharge
30 review under RCW 71.05.232 is to be released to the community, the
31 county designated mental health professional shall evaluate the person
32 within seventy-two hours of release.

33 (2) When an offender is under court-ordered treatment in the
34 community and the supervision of the department of corrections, and the

1 treatment provider becomes aware that the person is in violation of the
2 terms of the court order, the treatment provider shall notify the
3 county designated mental health professional of the violation and
4 request an evaluation for purposes of revocation of the less
5 restrictive alternative.

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

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

22 (5) Nothing in this section creates a duty on any treatment
23 provider or county designated mental health professional to provide
24 offender supervision.

25 NEW SECTION. **Sec. 615.** A new section is added to chapter 70.96A
26 RCW to read as follows:

27 (1) Treatment providers shall inquire of each person seeking
28 treatment, at intake, whether the person is subject to court ordered
29 mental health or chemical dependency treatment, whether civil or
30 criminal, and document the person's response in his or her record. If
31 the person is in treatment on the effective date of this section, and
32 the treatment provider has not inquired whether the person is subject
33 to court ordered mental health or chemical dependency treatment, the
34 treatment provider shall inquire on the person's next treatment session
35 and document the person's response in his or her record.

36 (2) Treatment providers shall inquire of each person seeking
37 treatment, at intake, whether the person is subject to supervision of

1 any kind by the department of corrections and document the person's
2 response in his or her record. If the person is in treatment on the
3 effective date of this section, and the treatment provider has not
4 inquired whether the person is subject to supervision of any kind by
5 the department of corrections, the treatment provider shall inquire on
6 the person's next treatment session and document the person's response
7 in his or her record.

8 (3) For all persons who are subject to both court ordered mental
9 health or chemical dependency treatment and supervision by the
10 department of corrections, the treatment provider shall request an
11 authorization to release records and notify the person that, unless
12 expressly excluded by the court order the law requires treatment
13 providers to share information with the department of corrections and
14 the person's mental health treatment provider.

15 (4) If the treatment provider has reason to believe that a person
16 is subject to supervision by the department of corrections but the
17 person's record does not indicate that he or she is, the treatment
18 provider may call any department of corrections office and provide the
19 person's name and birth date. If the person is subject to supervision,
20 the treatment provider shall request, and the department of corrections
21 shall provide, the name and contact information for the person's
22 community corrections officer.

23 **PART VII**
24 **BEST PRACTICES**

25 NEW SECTION. **Sec. 701.** (1) The department of social and health
26 services shall adopt, not later than January 1, 2006, an integrated and
27 comprehensive screening and assessment process for chemical dependency
28 and mental disorders. The integrated screening process shall be
29 implemented statewide by all chemical dependency and mental health
30 treatment providers as well as all county designated mental health
31 professionals, county designated chemical dependency specialists, and
32 county designated crisis responders not later than July 1, 2006. The
33 integrated, comprehensive assessment process shall be implemented
34 statewide by all chemical dependency and mental health treatment
35 providers as well as all county designated mental health professionals,

1 county designated chemical dependency specialists, and county
2 designated crisis responders not later than January 1, 2007.

3 (2) The department shall provide adequate training to effect
4 statewide implementation by the dates designated in this section and
5 shall report the rates of co-occurring disorders and the stage of
6 screening or assessment at which the co-occurring disorder was
7 identified to the caseload forecast council.

8 (3) The department shall establish contractual penalties to
9 contracted treatment providers, the regional support networks, and
10 their contracted providers for failure to implement the integrated
11 screening and assessment process by July 1, 2007.

12 NEW SECTION. **Sec. 702.** A new section is added to chapter 72.23
13 RCW to read as follows:

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

18 (2) The department may not reduce the capacity of either state
19 hospital until at least an equal number of skilled nursing,
20 residential, expanded services facility, or supported housing
21 placements are available in the community to the persons displaced by
22 the capacity reduction. The department shall retain sufficient
23 capacity at the state hospital to address the cyclical need for
24 hospitalization for persons moved to the community under a bed
25 reduction program. For purposes of this section, "sufficient" means
26 not less than one hospital bed for every ten beds created in the
27 community unless the department can demonstrate conclusively to the
28 legislature that a lesser ratio is sufficient.

29 **PART VIII**
30 **COLLABORATION**

31 NEW SECTION. **Sec. 801.** A new section is added to chapter 71.02
32 RCW to read as follows:

33 (1) By June 30, 2006, the department shall develop and implement a
34 matrix or set of matrices for providing services based on the following
35 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 and, where funds are
7 available, the use of promising 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 department shall require, by contract with the regional
20 support networks, that providers maximize the use of evidence-based,
21 research-based, and consensus-based practices and document the
22 percentage of clients enrolled in evidence-based, research-based, and
23 consensus-based programs by program type.

24 (b) The department shall establish a schedule of penalties for
25 regional support networks and providers who, by July 1, 2007, are not
26 using evidence-based, research-based, and consensus-based programs to
27 provide at least forty percent, and by July 1, 2008, at least sixty
28 percent, of all services rendered. The regional support network shall
29 pay the penalties to the department and may require the penalties to be
30 repaid by the providers.

31 (4) The following definitions apply to this section:

32 (a) "Evidence-based" means a program or practice that has had
33 multiple site random controlled trials across heterogeneous populations
34 demonstrating that the program or practice is effective for the
35 population.

36 (b) "Research-based" means a program or practice that has some
37 research demonstrating effectiveness, but that does not yet meet the
38 standard of evidence-based practices.

1 (c) "Consensus-based" means a program or practice that has general
2 support among treatment providers and experts, based on experience or
3 professional literature, and may have anecdotal or case study support,
4 or that is agreed but not possible to perform studies with random
5 assignment and controlled groups.

6 (d) "Promising practice" means a practice that presents, based on
7 preliminary information, potential for becoming a research-based or
8 consensus-based practice.

9 NEW SECTION. **Sec. 802.** A new section is added to chapter 13.34
10 RCW to read as follows:

11 The department of social and health services and the department of
12 health shall develop and expand comprehensive services for the drug-
13 affected and alcohol-affected infants model project, developed pursuant
14 to RCW 13.34.800. The expansion shall be in evidence-based, research-
15 based, or consensus-based practices, as those terms are defined in
16 section 801 of this act, and shall expand capacity in underserved
17 regions of the state.

18 NEW SECTION. **Sec. 803.** A new section is added to chapter 71.02
19 RCW to read as follows:

20 (1) The department of social and health services shall collaborate
21 with community providers of mental health services to identify and
22 utilize federally qualified health centers for children in out-of-home
23 care and other populations of vulnerable children who are in need of an
24 evaluation and treatment for mental health services and do not qualify
25 for medicaid or treatment services through the regional support
26 networks.

27 (2) If no appropriate mental health services are available at a
28 federally qualified health center for a child described in subsection
29 (1) of this section, the regional support network must provide a child,
30 at a minimum, with a mental health evaluation and out-patient mental
31 health treatment where appropriate.

32 (3) Where appropriate and available, the department shall refer a
33 child described in subsection (1) of this section to a primary
34 intervention program.

- 1 (1) RCW 71.05.060 (Rights of persons complained against) and 1973
2 1st ex.s. c 142 s 11;
- 3 (2) RCW 71.05.070 (Prayer treatment) and 1973 1st ex.s. c 142 s 12;
- 4 (3) RCW 71.05.090 (Choice of physicians) and 1973 2nd ex.s. c 24 s
5 3 & 1973 1st ex.s. c 142 s 14;
- 6 (4) RCW 71.05.200 (Notice and statement of rights--Probable cause
7 hearing) and 1998 c 297 s 11, 1997 c 112 s 14, 1989 c 120 s 5, 1974
8 ex.s. c 145 s 13, & 1973 1st ex.s. c 142 s 25;
- 9 (5) RCW 71.05.250 (Probable cause hearing--Detained person's
10 rights--Waiver of privilege--Limitation--Records as evidence) and 1989
11 c 120 s 7, 1987 c 439 s 6, 1974 ex.s. c 145 s 17, & 1973 1st ex.s. c
12 142 s 30;
- 13 (6) RCW 71.05.450 (Competency--Effect--Statement of Washington law)
14 and 1994 sp.s. c 7 s 440 & 1973 1st ex.s. c 142 s 50;
- 15 (7) RCW 71.05.460 (Right to counsel) and 1997 c 112 s 33 & 1973 1st
16 ex.s. c 142 s 51;
- 17 (8) RCW 71.05.470 (Right to examination) and 1997 c 112 s 34 & 1973
18 1st ex.s. c 142 s 52;
- 19 (9) RCW 71.05.480 (Petitioning for release--Writ of habeas corpus)
20 and 1974 ex.s. c 145 s 29 & 1973 1st ex.s. c 142 s 53; and
- 21 (10) RCW 71.05.490 (Rights of persons committed before January 1,
22 1974) and 1997 c 112 s 35 & 1973 1st ex.s. c 142 s 54.

23 NEW SECTION. **Sec. 905.** The following acts or parts of acts are
24 each repealed:

- 25 (1) RCW 71.05.050 (Voluntary application for mental health
26 services--Rights--Review of condition and status--Detention--Person
27 refusing voluntary admission, temporary detention) and 2000 c 94 s 3,
28 1998 c 297 s 6, 1997 c 112 s 5, 1979 ex.s. c 215 s 6, 1975 1st ex.s. c
29 199 s 2, 1974 ex.s. c 145 s 6, & 1973 1st ex.s. c 142 s 10;
- 30 (2) RCW 71.05.395 (Application of uniform health care information
31 act, chapter 70.02 RCW) and 1993 c 448 s 8;
- 32 (3) RCW 71.05.400 (Release of information to patient's next of kin,
33 attorney, guardian, conservator--Notification of patient's death) and
34 1993 c 448 s 7, 1974 ex.s. c 115 s 1, 1973 2nd ex.s. c 24 s 6, & 1973
35 1st ex.s. c 142 s 45;
- 36 (4) RCW 71.05.410 (Notice of disappearance of patient) and 1997 c
37 112 s 32, 1973 2nd ex.s. c 24 s 7, & 1973 1st ex.s. c 142 s 46; and

1 (5) RCW 71.05.430 (Statistical data) and 1973 1st ex.s. c 142 s 48.

2 NEW SECTION. **Sec. 906.** RCW 71.05.610 (Treatment records--
3 Definitions) and 1989 c 205 s 11 are each repealed.

4 NEW SECTION. **Sec. 907.** The following acts or parts of acts are
5 each repealed:

6 (1) RCW 71.05.650 (Treatment records--Notation of and access to
7 released data) and 1989 c 205 s 15; and

8 (2) RCW 71.05.670 (Treatment records--Violations--Civil action) and
9 1999 c 13 s 10.

10 NEW SECTION. **Sec. 908.** A new section is added to chapter 82.14
11 RCW to read as follows:

12 (1) A county legislative authority may authorize, fix, and impose
13 a sales and use tax in accordance with the terms of this chapter.

14 (2) The tax authorized in this section shall be in addition to any
15 other taxes authorized by law and shall be collected from those persons
16 who are taxable by the state under chapters 82.08 and 82.12 RCW upon
17 the occurrence of any taxable event within the county. The rate of tax
18 shall equal one-tenth of one percent of the selling price in the case
19 of a sales tax, or value of the article used, in the case of a use tax.

20 (3) Moneys collected under this section shall be used solely for
21 the purpose of providing new or expanded chemical dependency or mental
22 health treatment services. Moneys collected under this section shall
23 not be used to supplant existing funding for these purposes.

24 NEW SECTION. **Sec. 909.** This act shall be so applied and construed
25 as to effectuate its general purpose to make uniform the law with
26 respect to the subject of this act among those states which enact it.

27 NEW SECTION. **Sec. 910.** Captions and part headings used in this
28 chapter are not part of the law.

29 NEW SECTION. **Sec. 911.** (1) If specific funding for the purposes
30 of this act, with the exception of sections 301 through 387 of this
31 act, referencing this act by bill or chapter number, is not provided by
32 June 30, 2005, this act is null and void.

1 (2) If specific funding for the purposes of sections 301 through
2 387 of this act, referencing these sections by bill or chapter number,
3 or by RCW citation, is not provided by June 30, 2009, sections 301
4 through 387 of this act are null and void.

5 NEW SECTION. **Sec. 912.** The code reviser shall alphabetize and
6 renumber the definitions, and correct any internal references affected
7 by this act.

8 NEW SECTION. **Sec. 913.** This act is necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and takes effect
11 July 1, 2005, except for sections 302 through 387 of this act, which
12 take effect July 1, 2009.

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