

SHB 1300 - S AMD 378

By Senators Hargrove, Stevens

ADOPTED 04/15/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 71.05.020 and 2008 c 156 s 1 are each amended to read
4 as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

7 (1) "Admission" or "admit" means a decision by a physician or
8 psychiatric advanced registered nurse practitioner that a person should
9 be examined or treated as a patient in a hospital;

10 (2) "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 (3) "Attending staff" means any person on the staff of a public or
15 private agency having responsibility for the care and treatment of a
16 patient;

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

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

22 (6) "Crisis stabilization unit" means a short-term facility or a
23 portion of a facility licensed by the department of health and
24 certified by the department of social and health services under RCW
25 71.24.035, such as an evaluation and treatment facility or a hospital,
26 which has been designed to assess, diagnose, and treat individuals
27 experiencing an acute crisis without the use of long-term
28 hospitalization;

29 (7) "Custody" means involuntary detention under the provisions of

1 this chapter or chapter 10.77 RCW, uninterrupted by any period of
2 unconditional release from commitment from a facility providing
3 involuntary care and treatment;

4 (8) "Department" means the department of social and health
5 services;

6 (9) "Designated chemical dependency specialist" means a person
7 designated by the county alcoholism and other drug addiction program
8 coordinator designated under RCW 70.96A.310 to perform the commitment
9 duties described in chapters 70.96A and 70.96B RCW;

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

13 (11) "Designated mental health professional" means a mental health
14 professional designated by the county or other authority authorized in
15 rule to perform the duties specified in this chapter;

16 (12) "Detention" or "detain" means the lawful confinement of a
17 person, under the provisions of this chapter;

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

25 (14) "Developmental disability" means that condition defined in RCW
26 71A.10.020(3);

27 (15) "Discharge" means the termination of hospital medical
28 authority. The commitment may remain in place, be terminated, or be
29 amended by court order;

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

1 will not require certification. No correctional institution or
2 facility, or jail, shall be an evaluation and treatment facility within
3 the meaning of this chapter;

4 (17) "Gravely disabled" means a condition in which a person, as a
5 result of a mental disorder: (a) Is in danger of serious physical harm
6 resulting from a failure to provide for his or her essential human
7 needs of health or safety; or (b) manifests severe deterioration in
8 routine functioning evidenced by repeated and escalating loss of
9 cognitive or volitional control over his or her actions and is not
10 receiving such care as is essential for his or her health or safety;

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

19 (19) "History of one or more violent acts" refers to the period of
20 time ten years prior to the filing of a petition under this chapter,
21 excluding any time spent, but not any violent acts committed, in a
22 mental health facility or in confinement as a result of a criminal
23 conviction;

24 (20) "Imminent" means the state or condition of being likely to
25 occur at any moment or near at hand, rather than distant or remote;

26 (21) "Individualized service plan" means a plan prepared by a
27 developmental disabilities professional with other professionals as a
28 team, for a person with developmental disabilities, which shall state:

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

31 (b) The conditions and strategies necessary to achieve the purposes
32 of habilitation;

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

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

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

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

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

7 (22) "Information related to mental health services" means all
8 information and records compiled, obtained, or maintained in the course
9 of providing services to either voluntary or involuntary recipients of
10 services by a mental health service provider. This may include
11 documents of legal proceedings under this chapter or chapter 71.34 or
12 10.77 RCW, or somatic health care information;

13 (23) "Judicial commitment" means a commitment by a court pursuant
14 to the provisions of this chapter;

15 ((+23+)) (24) "Legal counsel" means attorneys and staff employed by
16 county prosecutor offices or the state attorney general acting in their
17 capacity as legal representatives of public mental health service
18 providers under RCW 71.05.130;

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

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

29 (b) The person has threatened the physical safety of another and
30 has a history of one or more violent acts;

31 ((+24+)) (26) "Mental disorder" means any organic, mental, or
32 emotional impairment which has substantial adverse effects on a
33 person's cognitive or volitional functions;

34 ((+25+)) (27) "Mental health professional" means a psychiatrist,
35 psychologist, psychiatric nurse, or social worker, and such other
36 mental health professionals as may be defined by rules adopted by the
37 secretary pursuant to the provisions of this chapter;

1 ~~((+26+))~~ (28) "Mental health service provider" means a public or
2 private agency that provides mental health services to persons with
3 mental disorders as defined under this section and receives funding
4 from public sources. This includes, but is not limited to, hospitals
5 licensed under chapter 70.41 RCW, evaluation and treatment facilities
6 as defined in this section, community mental health service delivery
7 systems or community mental health programs as defined in RCW
8 71.24.025, facilities conducting competency evaluations and restoration
9 under chapter 10.77 RCW, and correctional facilities operated by state
10 and local governments;

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

15 ~~((+27+))~~ (30) "Private agency" means any person, partnership,
16 corporation, or association that is not a public agency, whether or not
17 financed in whole or in part by public funds, which constitutes an
18 evaluation and treatment facility or private institution, or hospital,
19 which is conducted for, or includes a department or ward conducted for,
20 the care and treatment of persons who are mentally ill;

21 ~~((+28+))~~ (31) "Professional person" means a mental health
22 professional and shall also mean a physician, psychiatric advanced
23 registered nurse practitioner, registered nurse, and such others as may
24 be defined by rules adopted by the secretary pursuant to the provisions
25 of this chapter;

26 ~~((+29+))~~ (32) "Psychiatric advanced registered nurse practitioner"
27 means a person who is licensed as an advanced registered nurse
28 practitioner pursuant to chapter 18.79 RCW; and who is board certified
29 in advanced practice psychiatric and mental health nursing;

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

36 ~~((+31+))~~ (34) "Psychologist" means a person who has been licensed
37 as a psychologist pursuant to chapter 18.83 RCW;

1 ~~((+32+))~~ (35) "Public agency" means any evaluation and treatment
2 facility or institution, or hospital which is conducted for, or
3 includes a department or ward conducted for, the care and treatment of
4 persons with mental illness, if the agency is operated directly by,
5 federal, state, county, or municipal government, or a combination of
6 such governments;

7 ~~((+33+))~~ (36) "Registration records" include all the records of the
8 department, regional support networks, treatment facilities, and other
9 persons providing services to the department, county departments, or
10 facilities which identify persons who are receiving or who at any time
11 have received services for mental illness;

12 ~~((+34+))~~ (37) "Release" means legal termination of the commitment
13 under the provisions of this chapter;

14 ~~((+35+))~~ (38) "Resource management services" has the meaning given
15 in chapter 71.24 RCW;

16 ~~((+36+))~~ (39) "Secretary" means the secretary of the department of
17 social and health services, or his or her designee;

18 ~~((+37+))~~ (40) "Serious violent offense" has the same meaning as
19 provided in RCW 9.94A.030;

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

23 ~~((+38+))~~ (42) "Therapeutic court personnel" means the staff of a
24 mental health court or other therapeutic court which has jurisdiction
25 over defendants who are dually diagnosed with mental disorders,
26 including court personnel, probation officers, a court monitor,
27 prosecuting attorney, or defense counsel acting within the scope of
28 therapeutic court duties;

29 (43) "Treatment records" include registration and all other records
30 concerning persons who are receiving or who at any time have received
31 services for mental illness, which are maintained by the department, by
32 regional support networks and their staffs, and by treatment
33 facilities. Treatment records include mental health information
34 contained in a medical bill including but not limited to mental health
35 drugs, a mental health diagnosis, provider name, and dates of service
36 stemming from a medical service. Treatment records do not include
37 notes or records maintained for personal use by a person providing

1 treatment services for the department, regional support networks, or a
2 treatment facility if the notes or records are not available to others;
3 ~~((+39+))~~ (44) "Violent act" means behavior that resulted in
4 homicide, attempted suicide, nonfatal injuries, or substantial damage
5 to property.

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

8 (1) A mental health service provider shall release to the persons
9 authorized under subsection (2) of this section, upon request:

10 (a) The fact, place, and date of an involuntary commitment, the
11 fact and date of discharge or release, and the last known address of a
12 person who has been committed under this chapter.

13 (b) Information related to mental health services, in the format
14 determined under subsection (9) of this section, concerning a person
15 who:

16 (i) Is currently committed to the custody or supervision of the
17 department of corrections or the indeterminate sentence review board
18 under chapter 9.94A or 9.95 RCW;

19 (ii) Has been convicted or found not guilty by reason of insanity
20 of a serious violent offense; or

21 (iii) Was charged with a serious violent offense and such charges
22 were dismissed under RCW 10.77.086.

23 Legal counsel may release such information to the persons
24 authorized under subsection (2) of this section on behalf of the mental
25 health service provider, provided that nothing in this subsection shall
26 require the disclosure of attorney work product or attorney-client
27 privileged information.

28 (2) The information subject to release under subsection (1) of this
29 section shall be released to law enforcement officers, personnel of a
30 county or city jail, designated mental health professionals, public
31 health officers, therapeutic court personnel, personnel of the
32 department of corrections, or personnel of the indeterminate sentence
33 review board, when such information is requested during the course of
34 business and for the purpose of carrying out the responsibilities of
35 the requesting person's office. No mental health service provider or
36 person employed by a mental health service provider, or its legal

1 counsel, shall be liable for information released to or used under the
2 provisions of this section or rules adopted under this section except
3 under RCW 71.05.440.

4 (3) A person who requests information under subsection (1)(b) of
5 this section must comply with the following restrictions:

6 (a) Information must be requested only for the purposes permitted
7 by this subsection and for the purpose of carrying out the
8 responsibilities of the requesting person's office. Appropriate
9 purposes for requesting information under this section include:

10 (i) Completing presentence investigations or risk assessment
11 reports;

12 (ii) Assessing a person's risk to the community;

13 (iii) Assessing a person's risk of harm to self or others when
14 confined in a city or county jail;

15 (iv) Planning for and provision of supervision of an offender,
16 including decisions related to sanctions for violations of conditions
17 of community supervision; and

18 (v) Responding to an offender's failure to report for department of
19 corrections supervision.

20 (b) Information shall not be requested under this section unless
21 the requesting person has reasonable suspicion that the individual who
22 is the subject of the information:

23 (i) Has engaged in activity indicating that a crime or a violation
24 of community custody or parole has been committed or, based upon his or
25 her current or recent past behavior, is likely to be committed in the
26 near future; or

27 (ii) Is exhibiting signs of a deterioration in mental functioning
28 which may make the individual appropriate for civil commitment under
29 this chapter.

30 (c) Any information received under this section shall be held
31 confidential and subject to the limitations on disclosure outlined in
32 this chapter, except:

33 (i) Such information may be shared with other persons who have the
34 right to request similar information under subsection (2) of this
35 section, solely for the purpose of coordinating activities related to
36 the individual who is the subject of the information in a manner
37 consistent with the official responsibilities of the persons involved;

1 (ii) Such information may be shared with a prosecuting attorney
2 acting in an advisory capacity for a person who receives information
3 under this section. A prosecuting attorney under this subsection
4 shall be subject to the same restrictions and confidentiality
5 limitations as the person who requested the information; and

6 (iii) As provided in RCW 72.09.585.

7 (4) A request for information related to mental health services
8 under this section shall not require the consent of the subject of the
9 records. Such request shall be provided in writing, except to the
10 extent authorized in subsection (5) of this section. A written request
11 may include requests made by e-mail or facsimile so long as the
12 requesting person is clearly identified. The request must specify the
13 information being requested.

14 (5) In the event of an emergency situation that poses a significant
15 risk to the public or the offender, a mental health service provider,
16 or its legal counsel, shall release information related to mental
17 health services delivered to the offender and, if known, information
18 regarding where the offender is likely to be found to the department of
19 corrections or law enforcement upon request. The initial request may
20 be written or oral. All oral requests must be subsequently confirmed
21 in writing. Information released in response to an oral request is
22 limited to a statement as to whether the offender is or is not being
23 treated by the mental health service provider and the address or
24 information about the location or whereabouts of the offender.

25 (6) Disclosure under this section to state or local law enforcement
26 authorities is mandatory for the purposes of the health insurance
27 portability and accountability act.

28 (7) Whenever federal law or federal regulations restrict the
29 release of information contained in the treatment records of any
30 patient who receives treatment for alcoholism or drug dependency, the
31 release of the information may be restricted as necessary to comply
32 with federal law and regulations.

33 (8) This section does not modify the terms and conditions of
34 disclosure of information related to sexually transmitted diseases
35 under chapter 70.24 RCW.

36 (9) In collaboration with interested organizations, the department
37 shall develop a standard form for requests for information related to
38 mental health services made under this section and a standard format

1 for information provided in response to such requests. Consistent with
2 the goals of the health information privacy provisions of the federal
3 health insurance portability and accountability act, in developing the
4 standard form for responsive information, the department shall design
5 the form in such a way that the information disclosed is limited to the
6 minimum necessary to serve the purpose for which the information is
7 requested.

8 **Sec. 3.** RCW 71.05.390 and 2007 c 375 s 15 are each amended to read
9 as follows:

10 Except as provided in this section, RCW 71.05.445, 71.05.630,
11 70.96A.150, section 2 of this act, or pursuant to a valid release under
12 RCW 70.02.030, the fact of admission and all information and records
13 compiled, obtained, or maintained in the course of providing services
14 to either voluntary or involuntary recipients of services at public or
15 private agencies shall be confidential.

16 Information and records may be disclosed only:

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

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

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

36 (3)(a) When the person receiving services, or his or her guardian,

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

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

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

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

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

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

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

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

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

33 /s/"

34 (b) Nothing in this chapter shall be construed to prohibit the

1 compilation and publication of statistical data for use by government
2 or researchers under standards, including standards to assure
3 maintenance of confidentiality, set forth by the secretary.

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

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

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

14 (7)(a) When a mental health professional is requested by a
15 representative of a law enforcement or corrections agency, including a
16 police officer, sheriff, community corrections officer, a municipal
17 attorney, or prosecuting attorney to undertake an investigation or
18 provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the
19 mental health professional shall, if requested to do so, advise the
20 representative in writing of the results of the investigation including
21 a statement of reasons for the decision to detain or release the person
22 investigated. Such written report shall be submitted within seventy-
23 two hours of the completion of the investigation or the request from
24 the law enforcement or corrections representative, whichever occurs
25 later.

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

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

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

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

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

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

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

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

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

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

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

10 (b) Disclosure under this subsection is mandatory for the purposes
11 of the health insurance portability and accountability act.

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

18 (b) Disclosure under this subsection is mandatory for the purposes
19 of the health insurance portability and accountability act.

20 (12) To the persons designated in RCW 71.05.425 and section 2 of
21 this act for the purposes described in (~~that~~) those sections.

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

26 (14) Upon the death of a person, his or her next of kin, personal
27 representative, guardian, or conservator, if any, shall be notified.

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

34 (15) To the department of health for the purposes of determining
35 compliance with state or federal licensure, certification, or
36 registration rules or laws. However, the information and records
37 obtained under this subsection are exempt from public inspection and
38 copying pursuant to chapter 42.56 RCW.

1 (16) To mark headstones or otherwise memorialize patients interred
2 at state hospital cemeteries. The department of social and health
3 services shall make available the name, date of birth, and date of
4 death of patients buried in state hospital cemeteries fifty years after
5 the death of a patient.

6 (17) To law enforcement officers and to prosecuting attorneys as
7 are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of
8 information that may be released is limited as follows:

9 (a) Only the fact, place, and date of involuntary commitment, an
10 official copy of any order or orders of commitment, and an official
11 copy of any written or oral notice of ineligibility to possess a
12 firearm that was provided to the person pursuant to RCW 9.41.047(1),
13 shall be disclosed upon request;

14 (b) The law enforcement and prosecuting attorneys may only release
15 the information obtained to the person's attorney as required by court
16 rule and to a jury or judge, if a jury is waived, that presides over
17 any trial at which the person is charged with violating RCW
18 9.41.040(2)(a)(ii);

19 (c) Disclosure under this subsection is mandatory for the purposes
20 of the health insurance portability and accountability act.

21 (18) When a patient would otherwise be subject to the provisions of
22 (~~RCW 71.05.390~~) this section and disclosure is necessary for the
23 protection of the patient or others due to his or her unauthorized
24 disappearance from the facility, and his or her whereabouts is unknown,
25 notice of such disappearance, along with relevant information, may be
26 made to relatives, the department of corrections when the person is
27 under the supervision of the department, and governmental law
28 enforcement agencies designated by the physician in charge of the
29 patient or the professional person in charge of the facility, or his or
30 her professional designee.

31 Except as otherwise provided in this chapter, the uniform health
32 care information act, chapter 70.02 RCW, applies to all records and
33 information compiled, obtained, or maintained in the course of
34 providing services.

35 (19) The fact of admission, as well as all records, files,
36 evidence, findings, or orders made, prepared, collected, or maintained
37 pursuant to this chapter shall not be admissible as evidence in any
38 legal proceeding outside this chapter without the written consent of

1 the person who was the subject of the proceeding except as provided in
2 section 2 of this act, in a subsequent criminal prosecution of a person
3 committed pursuant to RCW 71.05.280(3) or 71.05.320(3)(c) on charges
4 that were dismissed pursuant to chapter 10.77 RCW due to incompetency
5 to stand trial, in a civil commitment proceeding pursuant to chapter
6 71.09 RCW, or, in the case of a minor, a guardianship or dependency
7 proceeding. The records and files maintained in any court proceeding
8 pursuant to this chapter shall be confidential and available subsequent
9 to such proceedings only to the person who was the subject of the
10 proceeding or his or her attorney. In addition, the court may order
11 the subsequent release or use of such records or files only upon good
12 cause shown if the court finds that appropriate safeguards for strict
13 confidentiality are and will be maintained.

14 **Sec. 4.** RCW 71.05.445 and 2005 c 504 s 711 are each amended to
15 read as follows:

16 (1) ~~((The definitions in this subsection apply throughout this~~
17 ~~section unless the context clearly requires otherwise.~~

18 ~~(a) "Information related to mental health services" means all~~
19 ~~information and records compiled, obtained, or maintained in the course~~
20 ~~of providing services to either voluntary or involuntary recipients of~~
21 ~~services by a mental health service provider. This may include~~
22 ~~documents of legal proceedings under this chapter or chapter 71.34 or~~
23 ~~10.77 RCW, or somatic health care information.~~

24 ~~(b) "Mental health service provider" means a public or private~~
25 ~~agency that provides services to persons with mental disorders as~~
26 ~~defined under RCW 71.05.020 and receives funding from public sources.~~
27 ~~This includes evaluation and treatment facilities as defined in RCW~~
28 ~~71.05.020, community mental health service delivery systems, or~~
29 ~~community mental health programs as defined in RCW 71.24.025, and~~
30 ~~facilities conducting competency evaluations and restoration under~~
31 ~~chapter 10.77 RCW.~~

32 ~~(2)(a) Information related to mental health services delivered to~~
33 ~~a person subject to chapter 9.94A or 9.95 RCW shall be released, upon~~
34 ~~request, by a mental health service provider to department of~~
35 ~~corrections personnel for whom the information is necessary to carry~~
36 ~~out the responsibilities of their office. The information must be~~
37 ~~provided only for the purposes of completing presentence investigations~~

1 ~~or risk assessment reports, supervision of an incarcerated offender or~~
2 ~~offender under supervision in the community, planning for and provision~~
3 ~~of supervision of an offender, or assessment of an offender's risk to~~
4 ~~the community. The request shall be in writing and shall not require~~
5 ~~the consent of the subject of the records.~~

6 ~~(b) If an offender subject to chapter 9.94A or 9.95 RCW has failed~~
7 ~~to report for department of corrections supervision or in the event of~~
8 ~~an emergent situation that poses a significant risk to the public or~~
9 ~~the offender, information related to mental health services delivered~~
10 ~~to the offender and, if known, information regarding where the offender~~
11 ~~is likely to be found shall be released by the mental health services~~
12 ~~provider to the department of corrections upon request. The initial~~
13 ~~request may be written or oral. All oral requests must be subsequently~~
14 ~~confirmed in writing. Information released in response to an oral~~
15 ~~request is limited to a statement as to whether the offender is or is~~
16 ~~not being treated by the mental health services provider and the~~
17 ~~address or information about the location or whereabouts of the~~
18 ~~offender. Information released in response to a written request may~~
19 ~~include information identified by rule as provided in subsections (4)~~
20 ~~and (5) of this section. For purposes of this subsection a written~~
21 ~~request includes requests made by e-mail or facsimile so long as the~~
22 ~~requesting person at the department of corrections is clearly~~
23 ~~identified. The request must specify the information being requested.~~
24 ~~Disclosure of the information requested does not require the consent of~~
25 ~~the subject of the records unless the offender has received relief from~~
26 ~~disclosure under RCW 9.94A.562, 70.96A.155, or 71.05.132.~~

27 ~~(3))~~(a) When a mental health service provider conducts its initial
28 assessment for a person receiving court-ordered treatment, the service
29 provider shall inquire and shall be told by the offender whether he or
30 she is subject to supervision by the department of corrections.

31 (b) When a person receiving court-ordered treatment or treatment
32 ordered by the department of corrections discloses to his or her mental
33 health service provider that he or she is subject to supervision by the
34 department of corrections, the mental health service((s)) provider
35 shall notify the department of corrections that he or she is treating
36 the offender and shall notify the offender that his or her community
37 corrections officer will be notified of the treatment, provided that if
38 the offender has received relief from disclosure pursuant to RCW

1 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the
2 mental health service((s)) provider with a copy of the order granting
3 relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or
4 71.05.132, the mental health service((s)) provider is not required to
5 notify the department of corrections that the mental health
6 service((s)) provider is treating the offender. The notification may
7 be written or oral and shall not require the consent of the offender.
8 If an oral notification is made, it must be confirmed by a written
9 notification. For purposes of this section, a written notification
10 includes notification by e-mail or facsimile, so long as the notifying
11 mental health service provider is clearly identified.

12 ((+4)) (2) The information to be released to the department of
13 corrections shall include all relevant records and reports, as defined
14 by rule, necessary for the department of corrections to carry out its
15 duties(~~(, including those records and reports identified in subsection~~
16 ~~(2) of this section)~~).

17 ((+5)) (3) The department and the department of corrections, in
18 consultation with regional support networks, mental health service
19 providers as defined in (~~subsection (1) of this section~~) RCW
20 71.05.020, mental health consumers, and advocates for persons with
21 mental illness, shall adopt rules to implement the provisions of this
22 section related to the type and scope of information to be released.
23 These rules shall:

24 (a) Enhance and facilitate the ability of the department of
25 corrections to carry out its responsibility of planning and ensuring
26 community protection with respect to persons subject to sentencing
27 under chapter 9.94A or 9.95 RCW, including accessing and releasing or
28 disclosing information of persons who received mental health services
29 as a minor; and

30 (b) Establish requirements for the notification of persons under
31 the supervision of the department of corrections regarding the
32 provisions of this section.

33 ((+6)) (4) The information received by the department of
34 corrections under this section shall remain confidential and subject to
35 the limitations on disclosure outlined in chapter 71.05 RCW, except as
36 provided in RCW 72.09.585.

37 ((+7)) (5) No mental health service provider or individual
38 employed by a mental health service provider shall be held responsible

1 for information released to or used by the department of corrections
2 under the provisions of this section or rules adopted under this
3 section except under RCW 71.05.440.

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

9 ~~((+9))~~ (7) This section does not modify the terms and conditions
10 of disclosure of information related to sexually transmitted diseases
11 under chapter 70.24 RCW.

12 ~~((+10))~~ (8) The department shall, subject to available resources,
13 electronically, or by the most cost-effective means available, provide
14 the department of corrections with the names, last dates of services,
15 and addresses of specific regional support networks and mental health
16 service providers that delivered mental health services to a person
17 subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between
18 the departments.

19 **Sec. 5.** RCW 71.05.630 and 2007 c 191 s 1 are each amended to read
20 as follows:

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

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

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

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

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

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

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

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

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

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

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

31 ~~(j) ((Notwithstanding the provisions of RCW 71.05.390(7), to a~~
32 ~~correctional facility or a corrections officer who is responsible for~~
33 ~~the supervision of a person who is receiving inpatient or outpatient~~
34 ~~evaluation or treatment. Except as provided in RCW 71.05.445 and~~
35 ~~71.34.345, release of records under this section is limited to:~~

36 ~~(i) An evaluation report provided pursuant to a written supervision~~
37 ~~plan.~~

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

4 ~~(iii) When a person is returned from a treatment facility to a~~
5 ~~correctional facility, the information provided under (j)(iv) of this~~
6 ~~subsection.~~

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

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

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

35 ~~((+m))~~ (l) For purposes of coordinating health care, the
36 department may release without informed written consent of the patient,
37 information acquired for billing and collection purposes as described
38 in (b) of this subsection to all current treating providers of the

1 patient with prescriptive authority who have written a prescription for
2 the patient within the last twelve months. The department shall notify
3 the patient that billing and collection information has been released
4 to named providers, and provide the substance of the information
5 released and the dates of such release. The department shall not
6 release counseling, inpatient psychiatric hospitalization, or drug and
7 alcohol treatment information without a signed written release from the
8 client.

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

14 NEW SECTION. **Sec. 6.** If any part of this act is found to be in
15 conflict with federal requirements that are a prescribed condition to
16 the allocation of federal funds to the state, the conflicting part of
17 this act is inoperative solely to the extent of the conflict and with
18 respect to the agencies directly affected, and this finding does not
19 affect the operation of the remainder of this act in its application to
20 the agencies concerned. Rules adopted under this act must meet federal
21 requirements that are a necessary condition to the receipt of federal
22 funds by the state."

SHB 1300 - S AMD
By Senators Hargrove, Stevens

ADOPTED 04/15/2009

23 On page 1, line 4 of the title, after "felony;" strike the
24 remainder of the title and insert "amending RCW 71.05.020, 71.05.390,
25 71.05.445, and 71.05.630; adding a new section to chapter 71.05 RCW;
26 and creating a new section."

EFFECT: Mental health treatment information may be requested if

the requestor has reasonable suspicion that the offender will commit a crime of violation of community custody or parole in the near future, based on his or her current or recent past behavior.

--- END ---