
SUBSTITUTE HOUSE BILL 1300

State of Washington

61st Legislature

2009 Regular Session

By House Human Services (originally sponsored by Representatives Hurst, Dickerson, Pearson, Klippert, O'Brien, and Smith)

READ FIRST TIME 02/10/09.

1 AN ACT Relating to access to information on mental health services
2 received by persons who have been committed for custody or supervision
3 or who have been civilly committed after being found incompetent to
4 stand trial for a felony; amending RCW 71.05.020, 71.05.390, 71.05.445,
5 and 71.05.630; adding a new section to chapter 71.05 RCW; and creating
6 a new section.

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

8 **Sec. 1.** RCW 71.05.020 and 2008 c 156 s 1 are each amended to read
9 as follows:

10 The definitions in this section apply throughout this chapter
11 unless the context clearly requires otherwise.

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

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

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

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

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

9 (6) "Crisis stabilization unit" means a short-term facility or a
10 portion of a facility licensed by the department of health and
11 certified by the department of social and health services under RCW
12 71.24.035, such as an evaluation and treatment facility or a hospital,
13 which has been designed to assess, diagnose, and treat individuals
14 experiencing an acute crisis without the use of long-term
15 hospitalization;

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

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

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

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

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

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

34 (13) "Developmental disabilities professional" means a person who
35 has specialized training and three years of experience in directly
36 treating or working with persons with developmental disabilities and is
37 a psychiatrist, psychologist, psychiatric advanced registered nurse

1 practitioner, or social worker, and such other developmental
2 disabilities professionals as may be defined by rules adopted by the
3 secretary;

4 (14) "Developmental disability" means that condition defined in RCW
5 71A.10.020(3);

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

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

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

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

35 (19) "History of one or more violent acts" refers to the period of
36 time ten years prior to the filing of a petition under this chapter,
37 excluding any time spent, but not any violent acts committed, in a

1 mental health facility or in confinement as a result of a criminal
2 conviction;

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

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

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

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

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

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

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

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

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

23 (22) "Information related to mental health services" means all
24 information and records compiled, obtained, or maintained in the course
25 of providing services to either voluntary or involuntary recipients of
26 services by a mental health service provider. This may include
27 documents of legal proceedings under this chapter or chapter 71.34 or
28 10.77 RCW, or somatic health care information;

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

31 ((+23+)) (24) "Legal counsel" means attorneys and staff employed by
32 county prosecutor offices or the state attorney general acting in their
33 capacity as legal representatives of public mental health service
34 providers under RCW 71.05.130;

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

36 (a) A substantial risk that: (i) Physical harm will be inflicted
37 by a person upon his or her own person, as evidenced by threats or
38 attempts to commit suicide or inflict physical harm on oneself; (ii)

1 physical harm will be inflicted by a person upon another, as evidenced
2 by behavior which has caused such harm or which places another person
3 or persons in reasonable fear of sustaining such harm; or (iii)
4 physical harm will be inflicted by a person upon the property of
5 others, as evidenced by behavior which has caused substantial loss or
6 damage to the property of others; or

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

9 ~~((+24+))~~ (26) "Mental disorder" means any organic, mental, or
10 emotional impairment which has substantial adverse effects on a
11 person's cognitive or volitional functions;

12 ~~((+25+))~~ (27) "Mental health professional" means a psychiatrist,
13 psychologist, psychiatric nurse, or social worker, and such other
14 mental health professionals as may be defined by rules adopted by the
15 secretary pursuant to the provisions of this chapter;

16 ~~((+26+))~~ (28) "Mental health service provider" means a public or
17 private agency that provides services to persons with mental disorders
18 as defined under this section and receives funding from public sources.
19 This includes, but is not limited to, hospitals licensed under chapter
20 70.41 RCW, evaluation and treatment facilities as defined in this
21 section, community mental health service delivery systems or community
22 mental health programs as defined in RCW 71.24.025, facilities
23 conducting competency evaluations and restoration under chapter 10.77
24 RCW, and correctional facilities operated by state and local
25 governments;

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

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

36 ~~((+28+))~~ (31) "Professional person" means a mental health
37 professional and shall also mean a physician, psychiatric advanced

1 registered nurse practitioner, registered nurse, and such others as may
2 be defined by rules adopted by the secretary pursuant to the provisions
3 of this chapter;

4 ~~((+29+))~~ (32) "Psychiatric advanced registered nurse practitioner"
5 means a person who is licensed as an advanced registered nurse
6 practitioner pursuant to chapter 18.79 RCW; and who is board certified
7 in advanced practice psychiatric and mental health nursing;

8 ~~((+30+))~~ (33) "Psychiatrist" means a person having a license as a
9 physician and surgeon in this state who has in addition completed three
10 years of graduate training in psychiatry in a program approved by the
11 American medical association or the American osteopathic association
12 and is certified or eligible to be certified by the American board of
13 psychiatry and neurology;

14 ~~((+31+))~~ (34) "Psychologist" means a person who has been licensed
15 as a psychologist pursuant to chapter 18.83 RCW;

16 ~~((+32+))~~ (35) "Public agency" means any evaluation and treatment
17 facility or institution, or hospital which is conducted for, or
18 includes a department or ward conducted for, the care and treatment of
19 persons with mental illness, if the agency is operated directly by,
20 federal, state, county, or municipal government, or a combination of
21 such governments;

22 ~~((+33+))~~ (36) "Registration records" include all the records of the
23 department, regional support networks, treatment facilities, and other
24 persons providing services to the department, county departments, or
25 facilities which identify persons who are receiving or who at any time
26 have received services for mental illness;

27 ~~((+34+))~~ (37) "Release" means legal termination of the commitment
28 under the provisions of this chapter;

29 ~~((+35+))~~ (38) "Resource management services" has the meaning given
30 in chapter 71.24 RCW;

31 ~~((+36+))~~ (39) "Secretary" means the secretary of the department of
32 social and health services, or his or her designee;

33 ~~((+37+))~~ (40) "Serious violent offense" has the same meaning as
34 provided in RCW 9.94A.030;

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

1 (~~(38)~~) (42) "Treatment records" include registration and all
2 other records concerning persons who are receiving or who at any time
3 have received services for mental illness, which are maintained by the
4 department, by regional support networks and their staffs, and by
5 treatment facilities. Treatment records include mental health
6 information contained in a medical bill including but not limited to
7 mental health drugs, a mental health diagnosis, provider name, and
8 dates of service stemming from a medical service. Treatment records do
9 not include notes or records maintained for personal use by a person
10 providing treatment services for the department, regional support
11 networks, or a treatment facility if the notes or records are not
12 available to others;

13 (~~(39)~~) (43) "Violent act" means behavior that resulted in
14 homicide, attempted suicide, nonfatal injuries, or substantial damage
15 to property.

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

18 (1) A mental health service provider shall release to the persons
19 authorized under subsection (2) of this section, upon request,
20 information related to mental health services delivered to a person
21 who:

22 (a) Is currently committed to the custody or supervision of the
23 department of corrections or the indeterminate sentence review board
24 under chapter 9.94A or 9.95 RCW;

25 (b) Has been convicted of a serious violent offense;

26 (c) Has been found not guilty by reason of insanity or incompetent
27 to stand trial for a serious violent offense pursuant to chapter 10.77
28 RCW; or

29 (d) Has been civilly committed pursuant to RCW 10.77.086(4).

30 (2) Except to the extent provided otherwise in subsection (4) of
31 this section related to a prosecutor's initiation of criminal
32 proceedings, the information subject to release under subsection (1) of
33 this section must be released to law enforcement officers, personnel of
34 a county or city jail, public health officers, personnel of the
35 department of corrections or the indeterminate sentence review board,
36 prosecuting attorneys, attorneys retained to represent the person who
37 is the subject of the information request under this section, or the

1 court when such information is requested during the course of business
2 and for the purpose of carrying out the responsibilities of the
3 requesting party's office.

4 (3) Appropriate purposes for requesting information related to
5 mental health services include but are not limited to:

6 (a) Completing presentence investigations or risk assessment
7 reports;

8 (b) Assessing an offender's risk to the community;

9 (c) Planning for and provision of supervision of an offender,
10 including decisions related to sanctions for violations of conditions
11 of community supervision; and

12 (d) Responding to an offender's failure to report for department of
13 corrections supervision.

14 (4)(a) A prosecuting attorney may request information related to
15 mental health services in connection with potentially initiating a
16 criminal prosecution if the person about whom the information is
17 requested:

18 (i) Is a person about whom information can be released under
19 subsection (1) of this section;

20 (ii) Has a prior conviction for an offense that involved a violent
21 act;

22 (iii) Was previously charged with an offense that involved a
23 violent act and charges were dismissed pursuant to chapter 10.77 RCW
24 due to incompetency to stand trial; or

25 (iv) Was previously found not guilty of an offense that involved a
26 violent act by reason of insanity under chapter 10.77 RCW.

27 (b) Information related to mental health services obtained under
28 this subsection may be used by prosecutors or the court only to
29 determine what criminal charges to file, if any, an appropriate bail
30 amount, or whether to release a person who is the subject of the
31 request of the information. Any information provided to the court in
32 this section must be filed under seal with the court, and a copy shall
33 be provided to the defendant's attorney. Any hearing on a matter under
34 this subsection involving the use of information related to mental
35 health services shall be closed to the public.

36 (5) A request for information related to mental health services
37 under this section shall not require the consent of the subject of the
38 records and shall be provided in writing, except to the extent

1 authorized in subsection (7) of this section. A written request
2 includes requests made by e-mail or facsimile so long as the requesting
3 person is clearly identified. The request must specify the information
4 being requested.

5 (6) Legal counsel may, but are not required to, release information
6 related to mental health services requested under this section on
7 behalf of a mental health service provider that they represent.

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

19 (8) The information received under this section shall remain
20 confidential and subject to the limitations on disclosure outlined in
21 this chapter, except as provided in RCW 72.09.585.

22 (9) Disclosure under this section to state or local law enforcement
23 authorities is mandatory for the purposes of the health insurance
24 portability and accountability act.

25 (10) No mental health service provider or individual employed by a
26 mental health service provider, or its legal counsel, shall be held
27 responsible for information released to or used under the provisions of
28 this section or rules adopted under this section except under RCW
29 71.05.440.

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

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

1 (13) In collaboration with interested organizations, the department
2 shall develop a standard form for requests for information related to
3 mental health services made under this section and a standard format
4 for information provided in response to such requests. Consistent with
5 the goals of the health information privacy provisions of the federal
6 health insurance portability and accountability act, in developing the
7 standard form for responsive information, the department shall attempt
8 to design the form in such a way that the information disclosed is
9 limited to the minimum necessary to serve the purpose for which the
10 information is requested.

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

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

19 Information and records may be disclosed only:

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

27 (a) Employed by the facility;

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

29 (c) Who is a designated mental health professional;

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

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

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

35 (2) When the communications regard the special needs of a patient
36 and the necessary circumstances giving rise to such needs and the

1 disclosure is made by a facility providing services to the operator of
2 a facility in which the patient resides or will reside.

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

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

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

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

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

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

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

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

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

/s/"

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

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

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

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

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

~~((b) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody or supervision of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this~~

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (13) Civil liability and immunity for the release of information
27 about a particular person who is committed to the department under RCW
28 71.05.280(3) and 71.05.320(3)(c) after dismissal of a sex offense as
29 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

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

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

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

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

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

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

19 (b) The law enforcement and prosecuting attorneys may only release
20 the information obtained to the person's attorney as required by court
21 rule and to a jury or judge, if a jury is waived, that presides over
22 any trial at which the person is charged with violating RCW
23 9.41.040(2)(a)(ii);

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

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

36 Except as otherwise provided in this chapter, the uniform health
37 care information act, chapter 70.02 RCW, applies to all records and

1 information compiled, obtained, or maintained in the course of
2 providing services.

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

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

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

24 ~~(a) "Information related to mental health services" means all~~
25 ~~information and records compiled, obtained, or maintained in the course~~
26 ~~of providing services to either voluntary or involuntary recipients of~~
27 ~~services by a mental health service provider. This may include~~
28 ~~documents of legal proceedings under this chapter or chapter 71.34 or~~
29 ~~10.77 RCW, or somatic health care information.~~

30 ~~(b) "Mental health service provider" means a public or private~~
31 ~~agency that provides services to persons with mental disorders as~~
32 ~~defined under RCW 71.05.020 and receives funding from public sources.~~
33 ~~This includes evaluation and treatment facilities as defined in RCW~~
34 ~~71.05.020, community mental health service delivery systems, or~~
35 ~~community mental health programs as defined in RCW 71.24.025, and~~
36 ~~facilities conducting competency evaluations and restoration under~~
37 ~~chapter 10.77 RCW.~~

1 ~~(2)(a) Information related to mental health services delivered to~~
2 ~~a person subject to chapter 9.94A or 9.95 RCW shall be released, upon~~
3 ~~request, by a mental health service provider to department of~~
4 ~~corrections personnel for whom the information is necessary to carry~~
5 ~~out the responsibilities of their office. The information must be~~
6 ~~provided only for the purposes of completing presentence investigations~~
7 ~~or risk assessment reports, supervision of an incarcerated offender or~~
8 ~~offender under supervision in the community, planning for and provision~~
9 ~~of supervision of an offender, or assessment of an offender's risk to~~
10 ~~the community. The request shall be in writing and shall not require~~
11 ~~the consent of the subject of the records.~~

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

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

37 (b) When a person receiving court-ordered treatment or treatment
38 ordered by the department of corrections discloses to his or her mental

1 health service provider that he or she is subject to supervision by the
2 department of corrections, the mental health services provider shall
3 notify the department of corrections that he or she is treating the
4 offender and shall notify the offender that his or her community
5 corrections officer will be notified of the treatment, provided that if
6 the offender has received relief from disclosure pursuant to RCW
7 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the
8 mental health services provider with a copy of the order granting
9 relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or
10 71.05.132, the mental health services provider is not required to
11 notify the department of corrections that the mental health services
12 provider is treating the offender. The notification may be written or
13 oral and shall not require the consent of the offender. If an oral
14 notification is made, it must be confirmed by a written notification.
15 For purposes of this section, a written notification includes
16 notification by e-mail or facsimile, so long as the notifying mental
17 health service provider is clearly identified.

18 ~~((+4))~~ (2) The information to be released to the department of
19 corrections shall include all relevant records and reports, as defined
20 by rule, necessary for the department of corrections to carry out its
21 duties ~~((, including those records and reports identified in subsection~~
22 ~~(2) of this section))~~.

23 ~~((+5))~~ (3) The department and the department of corrections, in
24 consultation with regional support networks, mental health service
25 providers as defined in ~~((subsection (1) of this section))~~ RCW
26 71.05.020, mental health consumers, and advocates for persons with
27 mental illness, shall adopt rules to implement the provisions of this
28 section related to the type and scope of information to be released.
29 These rules shall:

30 (a) Enhance and facilitate the ability of the department of
31 corrections to carry out its responsibility of planning and ensuring
32 community protection with respect to persons subject to sentencing
33 under chapter 9.94A or 9.95 RCW, including accessing and releasing or
34 disclosing information of persons who received mental health services
35 as a minor; and

36 (b) Establish requirements for the notification of persons under
37 the supervision of the department of corrections regarding the
38 provisions of this section.

1 (~~(6)~~) (4) The information received by the department of
2 corrections under this section shall remain confidential and subject to
3 the limitations on disclosure outlined in chapter 71.05 RCW, except as
4 provided in RCW 72.09.585.

5 (~~(7)~~) (5) No mental health service provider or individual
6 employed by a mental health service provider shall be held responsible
7 for information released to or used by the department of corrections
8 under the provisions of this section or rules adopted under this
9 section except under RCW 71.05.440.

10 (~~(8)~~) (6) Whenever federal law or federal regulations restrict
11 the release of information contained in the treatment records of any
12 patient who receives treatment for alcoholism or drug dependency, the
13 release of the information may be restricted as necessary to comply
14 with federal law and regulations.

15 (~~(9)~~) (7) This section does not modify the terms and conditions
16 of disclosure of information related to sexually transmitted diseases
17 under chapter 70.24 RCW.

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

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

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

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

33 (a) To a person, organization, or agency as necessary for
34 management or financial audits, or program monitoring and evaluation.
35 Information obtained under this subsection shall remain confidential
36 and may not be used in a manner that discloses the name or other

1 identifying information about the person 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 persons
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 persons 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 person 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 a person who is involuntarily
30 committed under chapter 71.05 RCW, or upon transfer of the person from
31 one treatment facility to another. The release of records under this
32 subsection shall be limited to the treatment records required by law,
33 a record or summary of all somatic treatments, and a discharge summary.
34 The discharge summary may include a statement of the patient's problem,
35 the treatment goals, the type of treatment which has been provided, and
36 recommendation for future treatment, but may not include the patient's
37 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 a person who is receiving inpatient or outpatient~~
4 ~~evaluation or treatment. Except as provided in RCW 71.05.445 and~~
5 ~~71.34.345, release of records under this section is limited to:~~

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

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

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

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

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

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

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

4 ~~((m))~~ (1) For purposes of coordinating health care, the
5 department may release without informed written consent of the patient,
6 information acquired for billing and collection purposes as described
7 in (b) of this subsection to all current treating providers of the
8 patient with prescriptive authority who have written a prescription for
9 the patient within the last twelve months. The department shall notify
10 the patient that billing and collection information has been released
11 to named providers, and provide the substance of the information
12 released and the dates of such release. The department shall not
13 release counseling, inpatient psychiatric hospitalization, or drug and
14 alcohol treatment information without a signed written release from the
15 client.

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

21 NEW SECTION. **Sec. 6.** If any part of this act is found to be in
22 conflict with federal requirements that are a prescribed condition to
23 the allocation of federal funds to the state, the conflicting part of
24 this act is inoperative solely to the extent of the conflict and with
25 respect to the agencies directly affected, and this finding does not
26 affect the operation of the remainder of this act in its application to
27 the agencies concerned. Rules adopted under this act must meet federal
28 requirements that are a necessary condition to the receipt of federal
29 funds by the state.

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