
SUBSTITUTE SENATE BILL 5056

State of Washington

62nd Legislature

2011 Regular Session

By Senate Judiciary (originally sponsored by Senators Kline, Carrell, Hargrove, Pflug, Nelson, Harper, Kohl-Welles, Regala, and Roach)

READ FIRST TIME 02/14/11.

1 AN ACT Relating to bail and pretrial release practices; amending
2 RCW 2.56.030, 10.19.090, 10.19.100, 10.19.160, 18.185.010, 18.185.020,
3 18.185.070, 18.185.100, 18.185.110, and 71.05.385; reenacting and
4 amending RCW 42.56.360; adding a new section to chapter 2.56 RCW;
5 adding a new section to chapter 10.16 RCW; adding new sections to
6 chapter 10.19 RCW; adding a new section to chapter 18.185 RCW; adding
7 a new section to chapter 48.19 RCW; and creating new sections.

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

9 **Sec. 1.** RCW 2.56.030 and 2009 c 479 s 2 are each amended to read
10 as follows:

11 The administrator for the courts shall, under the supervision and
12 direction of the chief justice:

13 (1) Examine the administrative methods and systems employed in the
14 offices of the judges, clerks, stenographers, and employees of the
15 courts and make recommendations, through the chief justice, for the
16 improvement of the same;

17 (2) Examine the state of the dockets of the courts and determine
18 the need for assistance by any court;

1 (3) Make recommendations to the chief justice relating to the
2 assignment of judges where courts are in need of assistance and carry
3 out the direction of the chief justice as to the assignments of judges
4 to counties and districts where the courts are in need of assistance;

5 (4) Collect and compile statistical and other data and make reports
6 of the business transacted by the courts and transmit the same to the
7 chief justice to the end that proper action may be taken in respect
8 thereto;

9 (5) Prepare and submit budget estimates of state appropriations
10 necessary for the maintenance and operation of the judicial system and
11 make recommendations in respect thereto;

12 (6) Collect statistical and other data and make reports relating to
13 the expenditure of public moneys, state and local, for the maintenance
14 and operation of the judicial system and the offices connected
15 therewith;

16 (7) Obtain reports from clerks of courts in accordance with law or
17 rules adopted by the supreme court of this state on cases and other
18 judicial business in which action has been delayed beyond periods of
19 time specified by law or rules of court and make report thereof to
20 supreme court of this state;

21 (8) Act as secretary of the judicial conference referred to in RCW
22 2.56.060;

23 (9) Submit annually, as of February 1st, to the chief justice, a
24 report of the activities of the administrator's office for the
25 preceding calendar year including activities related to courthouse
26 security;

27 (10) Administer programs and standards for the training and
28 education of judicial personnel;

29 (11) Examine the need for new superior court and district court
30 judge positions under an objective workload analysis. The results of
31 the objective workload analysis shall be reviewed by the board for
32 judicial administration which shall make recommendations to the
33 legislature. It is the intent of the legislature that an objective
34 workload analysis become the basis for creating additional district and
35 superior court positions, and recommendations should address that
36 objective;

37 (12) Provide staff to the judicial retirement account plan under
38 chapter 2.14 RCW;

1 (13) Attend to such other matters as may be assigned by the supreme
2 court of this state;

3 (14) Within available funds, develop a curriculum for a general
4 understanding of child development, placement, and treatment resources,
5 as well as specific legal skills and knowledge of relevant statutes
6 including chapters 13.32A, 13.34, and 13.40 RCW, cases, court rules,
7 interviewing skills, and special needs of the abused or neglected
8 child. This curriculum shall be completed and made available to all
9 juvenile court judges, court personnel, and service providers and be
10 updated yearly to reflect changes in statutes, court rules, or case
11 law;

12 (15) Develop, in consultation with the entities set forth in RCW
13 2.56.150(3), a comprehensive statewide curriculum for persons who act
14 as guardians ad litem under Title 13 or 26 RCW. The curriculum shall
15 be made available July 1, 2008, and include specialty sections on child
16 development, child sexual abuse, child physical abuse, child neglect,
17 domestic violence, clinical and forensic investigative and interviewing
18 techniques, family reconciliation and mediation services, and relevant
19 statutory and legal requirements. The curriculum shall be made
20 available to all superior court judges, court personnel, and all
21 persons who act as guardians ad litem;

22 (16) Develop a curriculum for a general understanding of crimes of
23 malicious harassment, as well as specific legal skills and knowledge of
24 RCW 9A.36.080, relevant cases, court rules, and the special needs of
25 malicious harassment victims. This curriculum shall be made available
26 to all superior court and court of appeals judges and to all justices
27 of the supreme court;

28 (17) Develop, in consultation with the criminal justice training
29 commission and the commissions established under chapters 43.113,
30 43.115, and 43.117 RCW, a curriculum for a general understanding of
31 ethnic and cultural diversity and its implications for working with
32 youth of color and their families. The curriculum shall be available
33 to all superior court judges and court commissioners assigned to
34 juvenile court, and other court personnel. Ethnic and cultural
35 diversity training shall be provided annually so as to incorporate
36 cultural sensitivity and awareness into the daily operation of juvenile
37 courts statewide;

1 (18) Authorize the use of closed circuit television and other
2 electronic equipment in judicial proceedings. The administrator shall
3 promulgate necessary standards and procedures and shall provide
4 technical assistance to courts as required;

5 (19) Develop a Washington family law handbook in accordance with
6 RCW 2.56.180;

7 (20) Administer state funds for improving the operation of the
8 courts and provide support for court coordinating councils, under the
9 direction of the board for judicial administration;

10 (21) Administer the family and juvenile court improvement grant
11 program;

12 (22)(a) Administer and distribute amounts appropriated under RCW
13 43.08.250(2) for district court judges' and qualifying elected
14 municipal court judges' salary contributions. The administrator for
15 the courts shall develop a distribution formula for these amounts that
16 does not differentiate between district and elected municipal court
17 judges.

18 (b) A city qualifies for state contribution of elected municipal
19 court judges' salaries under (a) of this subsection if:

20 (i) The judge is serving in an elected position;

21 (ii) The city has established by ordinance that a full-time judge
22 is compensated at a rate equivalent to at least ninety-five percent,
23 but not more than one hundred percent, of a district court judge salary
24 or for a part-time judge on a pro rata basis the same equivalent; and

25 (iii) The city has certified to the office of the administrator for
26 the courts that the conditions in (b)(i) and (ii) of this subsection
27 have been met;

28 (23) Subject to the availability of funds specifically appropriated
29 therefor, assist courts in the development and implementation of
30 language assistance plans required under RCW 2.43.090;

31 (24) Subject to the availability of funds, provide superior courts
32 and courts of limited jurisdiction access to the risk assessment tool
33 developed by the Washington state institute for public policy and used
34 by the department of corrections to assist judges in the pretrial
35 release and detention process.

36 NEW SECTION. Sec. 2. A new section is added to chapter 2.56 RCW
37 to read as follows:

1 (1) Subject to the availability of funds, the Washington state
2 center for court research shall research, evaluate, monitor, and report
3 on the validity of the risk assessment tool developed by the Washington
4 state institute for public policy to ensure the predictive value of the
5 tool. Specifically, it shall:

6 (a) Monitor and report on the implementation of the risk assessment
7 tool to assess the extent to which bail setting practices are
8 responsive to risk for recidivism levels derived from the risk
9 assessment tool;

10 (b) Monitor and report on the accuracy of the risk assessment tool
11 in predicting recidivism; and

12 (c) Provide quality assurance and technical assistance to the
13 courts for the implementation and use of the risk assessment tool.

14 (2) By December 1, 2012, and every two years thereafter, the
15 Washington center for court research shall submit a report and
16 recommendations regarding the validity of the risk assessment tool to
17 the governor, the supreme court, and the legislature.

18 NEW SECTION. **Sec. 3.** A new section is added to chapter 10.16 RCW
19 to read as follows:

20 (1) At the preliminary appearance or a subsequent hearing to
21 reconsider conditions of pretrial release or detention, the court may
22 issue an order requesting information related to mental health
23 services, as defined in RCW 71.05.020, that have been provided to the
24 defendant. The request shall be limited to information related to
25 violent acts, as defined in RCW 71.05.020. The court may delay the
26 setting of bail pending receipt of this information for a reasonable
27 period, not to exceed forty-eight hours.

28 (2) On motion of the defendant or on the court's own motion, the
29 court may exclude the public from the hearing, seal portions of the
30 hearing record or court files, or grant other relief as may be
31 necessary to prevent disclosure to the public of information related to
32 mental health services, as defined in RCW 71.05.020.

33 NEW SECTION. **Sec. 4.** A new section is added to chapter 10.19 RCW
34 to read as follows:

35 Subject to the availability of funds, the Washington state
36 institute for public policy shall develop and validate a pretrial risk

1 assessment tool to measure the likelihood that a defendant will fail to
2 appear in court as required. The Washington state institute for public
3 policy shall complete the development and validation of the pretrial
4 risk assessment tool by December 1, 2011. The institute shall submit
5 a final report to the governor, the supreme court, and the legislature
6 by December 1, 2011. The report shall describe the methodology for
7 developing and validating the pretrial risk assessment tool and the
8 predictive value of the tool.

9 **Sec. 5.** RCW 10.19.090 and 1986 c 322 s 2 are each amended to read
10 as follows:

11 In criminal cases where a recognizance for the appearance of any
12 person, either as a witness or to appear and answer, shall have been
13 taken and a default entered, the recognizance shall be declared
14 forfeited by the court, and at the time of adjudging such forfeiture
15 said court shall enter judgment against the principal and sureties
16 named in such recognizance for the sum therein mentioned, and execution
17 may issue thereon the same as upon other judgments. If the surety is
18 not notified by the court in writing of the unexplained failure of the
19 defendant to appear within (~~thirty~~) fourteen calendar days of the
20 date for appearance, then the forfeiture shall be null and void and the
21 recognizance exonerated.

22 **Sec. 6.** RCW 10.19.100 and 1891 c 28 s 86 are each amended to read
23 as follows:

24 The parties, or either of them, against whom such judgment may be
25 entered in the superior or supreme courts, may stay said execution for
26 sixty days from the date of the notification by the court by giving a
27 bond with two or more sureties, to be approved by the clerk,
28 conditioned for the payment of such judgment at the expiration of sixty
29 days, unless the same shall be vacated before the expiration of that
30 time.

31 **Sec. 7.** RCW 10.19.160 and 1986 c 322 s 5 are each amended to read
32 as follows:

33 (1) The surety on the bond may return a person to custody (~~a~~
34 ~~person~~) for good cause in a criminal case under the surety's bond if
35 the surrender is accompanied by a notice of forfeiture or a notarized

1 affidavit specifying the reasons for the surrender. If, upon motion by
2 a party to the bail transaction, a court determines that good cause
3 does not exist for the surety to surrender a person, the surety shall
4 return the premium paid by, or on behalf of, the person, as well as any
5 recovery fee. Good cause for surrender includes, but is not limited
6 to, a substantial increase in the likelihood of the risk of flight,
7 violation of a court order, failure to appear, or the concealment or
8 intentional misrepresentation of information by the person, provided
9 that good cause does not include failure to make timely payments to the
10 surety for the bond premium. The surrender shall be made to the
11 (~~facility in which the person was originally held in custody or the~~)
12 county or city jail affiliated with the court issuing the warrant
13 resulting in bail.

14 (2) A violation of this section amounts to unprofessional conduct
15 under RCW 18.185.110.

16 NEW SECTION. Sec. 8. A new section is added to chapter 10.19 RCW
17 to read as follows:

18 The presiding judge of a court shall notify the administrative
19 office of the courts when the court revokes or reinstates the
20 justification or certification of a bail bond agent to post bonds in
21 the court. The notice to the administrative office of the courts must
22 include the reasons for the revocation or reinstatement. Upon
23 receiving the notification, the administrative office of the courts
24 shall notify superior courts and courts of limited jurisdiction
25 statewide. No civil liability may be imposed by any court on the
26 administrative office of the courts or its employees under this section
27 except upon proof of bad faith or willful or wanton misconduct or gross
28 negligence.

29 NEW SECTION. Sec. 9. In order to provide courts with more
30 information for the purposes of determining bail, the administrative
31 office of the courts shall develop a model form that can be used by
32 local law enforcement and jails to collect the following information
33 for a person arrested or held in custody in a jail as defined in RCW
34 70.48.020: (1) Any criminal history of domestic violence or history of
35 protection orders known to law enforcement or the facility that has
36 custody of the person prior to a pretrial bail hearing; and (2) any

1 input regarding pretrial bail determinations that are provided to law
2 enforcement or the facility prior to a pretrial bail hearing by an
3 individual reasonably believed to be a victim of the person in custody.

4 **Sec. 10.** RCW 18.185.010 and 2004 c 186 s 2 are each amended to
5 read as follows:

6 Unless the context clearly requires otherwise, the definitions in
7 this section apply throughout this chapter.

8 (1) "Department" means the department of licensing.

9 (2) "Director" means the director of licensing.

10 (3) "Commission" means the criminal justice training commission.

11 (4) "Collateral or security" means property of any kind given as
12 security to obtain a bail bond.

13 (5) "Bail bond agency" means a business that sells and issues
14 corporate surety bail bonds or that provides security in the form of
15 personal or real property to ensure the appearance of a criminal
16 defendant before the courts of this state or the United States.

17 (6) "Qualified agent" means an owner, sole proprietor, partner,
18 manager, officer, or chief operating officer of a corporation who meets
19 the requirements set forth in this chapter for obtaining a bail bond
20 agency license.

21 (7) "Bail bond agent" means a person who is employed by a bail bond
22 agency and engages in the sale or issuance of bail bonds, but does not
23 mean a clerical, secretarial, or other support person who does not
24 participate in the sale or issuance of bail bonds.

25 (8) "Licensee" means a bail bond agency, a bail bond agent, a
26 qualified agent, or a bail bond recovery agent.

27 (9) "Branch office" means any office physically separated from the
28 principal place of business of the licensee from which the licensee or
29 an employee or agent of the licensee conducts any activity meeting the
30 criteria of a bail bond agency.

31 (10) "Bail bond recovery agent" means a person who is under
32 contract with a bail bond agent to receive compensation, reward, or any
33 other form of lawful consideration for locating, apprehending, and
34 surrendering a fugitive criminal defendant for whom a bail bond has
35 been posted. "Bail bond recovery agent" does not include a general
36 authority Washington peace officer or a limited authority Washington
37 peace officer.

1 (11) (~~"Contract" means a written agreement between a bail bond~~
2 ~~agent or qualified agent and a bail bond recovery agent for the purpose~~
3 ~~of locating, apprehending, and surrendering a fugitive criminal~~
4 ~~defendant in exchange for lawful consideration.~~

5 (12)) "Planned forced entry" means a premeditated forcible entry
6 into a dwelling, building, or other structure without the occupant's
7 knowledge or consent for the purpose of apprehending a fugitive
8 criminal defendant subject to a bail bond. "Planned forced entry" does
9 not include situations where, during an imminent or actual chase or
10 pursuit of a fleeing fugitive criminal defendant, or during a casual or
11 unintended encounter with the fugitive, the bail bond recovery agent
12 forcibly enters into a dwelling, building, or other structure without
13 advanced planning.

14 (12) "Property bond" means a bail bond executed for compensation
15 the security for which is real property, tangible personal property, or
16 other assets.

17 (13) "Surety bond" means a bail bond that is guaranteed by an
18 insurance company that has been qualified to transact surety insurance
19 business in Washington state by the insurance commissioner.

20 **Sec. 11.** RCW 18.185.020 and 1993 c 260 s 3 are each amended to
21 read as follows:

22 An applicant must meet the following minimum requirements to obtain
23 or renew a bail bond agent license:

- 24 (1) Be at least eighteen years of age;
- 25 (2) Be a citizen or resident alien of the United States;
- 26 (3) Not have been convicted of a crime in any jurisdiction in the
27 preceding ten years, if the director determines that the applicant's
28 particular crime directly relates to a capacity to perform the duties
29 of a bail bond agent and the director determines that the license
30 should be withheld to protect the citizens of Washington state. If the
31 director shall make a determination to withhold a license because of
32 previous convictions, the determination shall be consistent with the
33 restoration of employment rights act, chapter 9.96A RCW;
- 34 (4) Be employed by a bail bond agency or be licensed as a bail bond
35 agency; and
- 36 (5) Pay the required fee.

1 **Sec. 12.** RCW 18.185.070 and 1993 c 260 s 8 are each amended to
2 read as follows:

3 (1) No bail bond agency license may be issued under the provisions
4 of this chapter unless the qualified agent files with the director a
5 bond, executed by a surety company authorized to do business in this
6 state, in the sum of ten thousand dollars for a surety agency and one
7 hundred thousand dollars for a property bond agency conditioned to
8 recover against the agency and its servants, officers, agents, and
9 employees by reason of its violation of the provisions of RCW
10 18.185.100. The bond shall be made payable to the state of Washington,
11 and anyone so injured by the agency or its servants, officers, agents,
12 or employees may bring suit upon the bond in any county in which
13 jurisdiction over the licensee may be obtained. The suit must be
14 brought not later than two years after the failure to return property
15 in accordance with RCW 18.185.100. If valid claims against the bond
16 exceed the amount of the bond or deposit, each claimant shall be
17 entitled only to a pro rata amount, based on the amount of the claim as
18 it is valid against the bond, without regard to the date of filing of
19 any claim or action.

20 (2) Every licensed bail bond agency must at all times maintain on
21 file with the director the bond required by this section in full force
22 and effect. Upon failure by a licensee to do so, the director shall
23 suspend the licensee's license and shall not reinstate the license
24 until this requirement is met.

25 (3) In lieu of posting a bond, a qualified surety agent may deposit
26 ten thousand dollars in an interest-bearing account(~~(,—ten))~~ and a
27 qualified property bond agent may deposit one hundred thousand dollars
28 in an interest-bearing account.

29 (4) The director may waive the bond requirements of this section,
30 in his or her discretion, pursuant to adopted rules.

31 **Sec. 13.** RCW 18.185.100 and 2004 c 186 s 8 are each amended to
32 read as follows:

33 (1)(a) Every qualified agent shall keep adequate records for three
34 years of all collateral and security received, all trust accounts
35 required by this section, and all bail bond transactions handled by the
36 bail bond agency, as specified by rule. The records shall be open to

1 inspection without notice by the director or authorized representatives
2 of the director.

3 (b) The department may audit licensee trust accounts every two
4 years unless the licensee submits a financial report prepared by a
5 certified public accountant to the department on an annual basis.

6 (2) Every qualified agent who receives collateral or security is a
7 fiduciary of the property and shall keep adequate records for three
8 years of the receipt, safekeeping, and disposition of the collateral or
9 security. Every qualified agent shall maintain a trust account in a
10 federally insured financial institution located in this state. All
11 moneys, including cash, checks, money orders, wire transfers, and
12 credit card sales drafts, received as collateral or security or
13 otherwise held for a bail bond agency's client shall be deposited in
14 the trust account not later than the third banking day following
15 receipt of the funds or money. A qualified agent shall not in any way
16 encumber the corpus of the trust account or commingle any other moneys
17 with moneys properly maintained in the trust account. Each qualified
18 agent required to maintain a trust account shall report annually under
19 oath to the director the account number and balance of the trust
20 account, and the name and address of the institution that holds the
21 trust account, and shall report to the director within ten business
22 days whenever the trust account is changed or relocated or a new trust
23 account is opened.

24 (3) Whenever a bail bond is exonerated by the court, the qualified
25 agent shall, within five business days after written notification of
26 exonerated, return all collateral or security to the person entitled
27 thereto.

28 (4) Records of contracts for fugitive apprehension must be retained
29 by the bail bond agent and by the bail bond recovery agent for a period
30 of three years.

31 **Sec. 14.** RCW 18.185.110 and 2008 c 105 s 4 are each amended to
32 read as follows:

33 In addition to the unprofessional conduct described in RCW
34 18.235.130, the following conduct, acts, or conditions constitute
35 unprofessional conduct:

36 (1) Violating any of the provisions of this chapter or the rules
37 adopted under this chapter;

- 1 (2) Failing to meet the qualifications set forth in RCW 18.185.020,
2 18.185.030, and 18.185.250;
- 3 (3) Knowingly committing, or being a party to, any material fraud,
4 misrepresentation, concealment, conspiracy, collusion, trick, scheme,
5 or device whereby any other person lawfully relies upon the word,
6 representation, or conduct of the licensee. However, this subsection
7 (3) does not prevent a bail bond recovery agent from using any pretext
8 to locate or apprehend a fugitive criminal defendant or gain any
9 information regarding the fugitive;
- 10 (4) Assigning or transferring any license issued pursuant to the
11 provisions of this chapter, except as provided in RCW 18.185.030 or
12 18.185.250;
- 13 (5) Conversion of any money or contract, deed, note, mortgage, or
14 other evidence of title, to his or her own use or to the use of his or
15 her principal or of any other person, when delivered to him or her in
16 trust or on condition, in violation of the trust or before the
17 happening of the condition; and failure to return any money or
18 contract, deed, note, mortgage, or other evidence of title within
19 thirty days after the owner is entitled to possession, and makes demand
20 for possession, shall be prima facie evidence of conversion;
- 21 (6) Entering into a contract, including a general power of
22 attorney, with a person that gives the bail bond agent full authority
23 over the person's finances, assets, real property, or personal
24 property;
- 25 (7) Failing to keep records, maintain a trust account, or return
26 collateral or security, as required by RCW 18.185.100;
- 27 ~~((+7))~~ (8) Any conduct in a bail bond transaction which
28 demonstrates bad faith, dishonesty, or untrustworthiness;
- 29 ~~((+8))~~ (9) Violation of an order to cease and desist that is
30 issued by the director under chapter 18.235 RCW;
- 31 ~~((+9))~~ (10) Wearing, displaying, holding, or using badges not
32 approved by the department;
- 33 ~~((+10))~~ (11) Making any statement that would reasonably cause
34 another person to believe that the bail bond recovery agent is a sworn
35 peace officer;
- 36 ~~((+11))~~ (12) Failing to carry a copy of the contract or to present
37 a copy of the contract as required under RCW 18.185.270(1);

1 ~~((12))~~ (13) Using the services of an unlicensed bail bond
2 recovery agent or using the services of a bail bond recovery agent
3 without issuing the proper contract;

4 ~~((13))~~ (14) Misrepresenting or knowingly making a material
5 misstatement or omission in the application for a license;

6 ~~((14))~~ (15) Using the services of a person performing the
7 functions of a bail bond recovery agent who has not been licensed by
8 the department as required by this chapter;

9 ~~((15))~~ (16) Performing the functions of a bail bond recovery
10 agent without being both (a) licensed under this chapter or supervised
11 by a licensed bail bond recovery agent under RCW 18.185.290; and (b)
12 under contract with a bail bond agent;

13 ~~((16))~~ (17) Performing the functions of a bail bond recovery
14 agent without exercising due care to protect the safety of persons
15 other than the defendant and the property of persons other than the
16 defendant; ~~((or~~

17 ~~(+17))~~ (18) Using a dog in the apprehension of a fugitive criminal
18 defendant;

19 (19) Surrendering a person without good cause under the surety's
20 bond pursuant to RCW 10.19.160; or

21 (20) Failing to reasonably disclose, when requested by law
22 enforcement, information within the bail agent's possession concerning
23 the location of a fugitive criminal defendant.

24 NEW SECTION. Sec. 15. A new section is added to chapter 18.185
25 RCW to read as follows:

26 Bail bond insurance is surety insurance as defined in RCW
27 48.11.080.

28 NEW SECTION. Sec. 16. The legislature intends, in response to
29 *Koenig v. Thurston County*, 155 Wn. App. 398 (2010), to clarify that
30 public inspection of or access to information related to mental health
31 is subject to chapter 71.05 RCW and not the public records act, chapter
32 42.56 RCW.

33 **Sec. 17.** RCW 42.56.360 and 2010 c 128 s 3 and 2010 c 52 s 6 are
34 each reenacted and amended to read as follows:

1 (1) The following health care information is exempt from disclosure
2 under this chapter:

3 (a) Information obtained by the board of pharmacy as provided in
4 RCW 69.45.090;

5 (b) Information obtained by the board of pharmacy or the department
6 of health and its representatives as provided in RCW 69.41.044,
7 69.41.280, and 18.64.420;

8 (c) Information and documents created specifically for, and
9 collected and maintained by a quality improvement committee under RCW
10 43.70.510, 70.230.080, or 70.41.200, or by a peer review committee
11 under RCW 4.24.250, or by a quality assurance committee pursuant to RCW
12 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056,
13 for reporting of health care-associated infections under RCW 43.70.056,
14 a notification of an incident under RCW 70.56.040(5), and reports
15 regarding adverse events under RCW 70.56.020(2)(b), regardless of which
16 agency is in possession of the information and documents;

17 (d)(i) Proprietary financial and commercial information that the
18 submitting entity, with review by the department of health,
19 specifically identifies at the time it is submitted and that is
20 provided to or obtained by the department of health in connection with
21 an application for, or the supervision of, an antitrust exemption
22 sought by the submitting entity under RCW 43.72.310;

23 (ii) If a request for such information is received, the submitting
24 entity must be notified of the request. Within ten business days of
25 receipt of the notice, the submitting entity shall provide a written
26 statement of the continuing need for confidentiality, which shall be
27 provided to the requester. Upon receipt of such notice, the department
28 of health shall continue to treat information designated under this
29 subsection (1)(d) as exempt from disclosure;

30 (iii) If the requester initiates an action to compel disclosure
31 under this chapter, the submitting entity must be joined as a party to
32 demonstrate the continuing need for confidentiality;

33 (e) Records of the entity obtained in an action under RCW 18.71.300
34 through 18.71.340;

35 (f) Complaints filed under chapter 18.130 RCW after July 27, 1997,
36 to the extent provided in RCW 18.130.095(1);

37 (g) Information obtained by the department of health under chapter
38 70.225 RCW;

1 (h) Information collected by the department of health under chapter
2 70.245 RCW except as provided in RCW 70.245.150;

3 (i) Cardiac and stroke system performance data submitted to
4 national, state, or local data collection systems under RCW
5 70.168.150(2)(b); and

6 (j) All documents, including completed forms, received pursuant to
7 a wellness program under RCW 41.04.362, but not statistical reports
8 that do not identify an individual.

9 (2) Chapters 70.02 and 71.05 RCW (~~(applies)~~) apply to public
10 inspection and copying of health care information (~~(of patients)~~) and
11 information related to mental health services.

12 (3)(a) Documents related to infant mortality reviews conducted
13 pursuant to RCW 70.05.170 are exempt from disclosure as provided for in
14 RCW 70.05.170(3).

15 (b)(i) If an agency provides copies of public records to another
16 agency that are exempt from public disclosure under this subsection
17 (3), those records remain exempt to the same extent the records were
18 exempt in the possession of the originating entity.

19 (ii) For notice purposes only, agencies providing exempt records
20 under this subsection (3) to other agencies may mark any exempt records
21 as "exempt" so that the receiving agency is aware of the exemption,
22 however whether or not a record is marked exempt does not affect
23 whether the record is actually exempt from disclosure.

24 **Sec. 18.** RCW 71.05.385 and 2009 c 320 s 2 are each amended to read
25 as follows:

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

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

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

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

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

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

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

10 (2) The information subject to release under subsection (1) of this
11 section shall be released to law enforcement officers, personnel of a
12 county or city jail, prosecuting attorneys, designated mental health
13 professionals, public health officers, (~~therapeutic~~) court personnel,
14 personnel of the department of corrections, or personnel of the
15 indeterminate sentence review board, when such information is requested
16 during the course of business and for the purpose of carrying out the
17 responsibilities of the requesting person's office. No mental health
18 service provider or person employed by a mental health service
19 provider, or its legal counsel, shall be liable for information
20 released to or used under the provisions of this section or rules
21 adopted under this section except under RCW 71.05.440.

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

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

28 (i) Completing presentence investigations or risk assessment
29 reports;

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

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

33 (iv) Planning for and provision of supervision of an offender,
34 including decisions related to sanctions for violations of conditions
35 of community supervision; and

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

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

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

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

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

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

19 (ii) Such information may be shared with a prosecuting attorney
20 acting in an advisory capacity for a person who receives information
21 under this section. A prosecuting attorney under this subsection shall
22 be subject to the same restrictions and confidentiality limitations as
23 the person who requested the information; and

24 (iii) As provided in RCW 72.09.585.

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

32 (5) In the event of an emergency situation that poses a significant
33 risk to the public or the offender, a mental health service provider,
34 or its legal counsel, shall release information related to mental
35 health services delivered to the offender and, if known, information
36 regarding where the offender is likely to be found to the department of
37 corrections or law enforcement upon request. The initial request may
38 be written or oral. All oral requests must be subsequently confirmed

1 in writing. Information released in response to an oral request is
2 limited to a statement as to whether the offender is or is not being
3 treated by the mental health service provider and the address or
4 information about the location or whereabouts of the offender.

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

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

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

16 (9) In collaboration with interested organizations, the department
17 shall develop a standard form for requests for information related to
18 mental health services made under this section and a standard format
19 for information provided in response to such requests. Consistent with
20 the goals of the health information privacy provisions of the federal
21 health insurance portability and accountability act, in developing the
22 standard form for responsive information, the department shall design
23 the form in such a way that the information disclosed is limited to the
24 minimum necessary to serve the purpose for which the information is
25 requested.

26 NEW SECTION. **Sec. 19.** A new section is added to chapter 48.19 RCW
27 to read as follows:

28 Surety insurance, as defined in RCW 48.11.080, shall be subject to
29 the rate standard set forth in RCW 48.19.020.

30 NEW SECTION. **Sec. 20.** If specific funding for the purposes of
31 sections 1, 2, and 4 of this act, referencing sections 1, 2, and 4 of
32 this act by bill or chapter number and section number, is not provided
33 by June 30, 2011, in the omnibus appropriations act, sections 1, 2, and
34 4 of this act are null and void.

1 NEW SECTION. **Sec. 21.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 22.** If any part of this act is found to be in
6 conflict with federal requirements that are a prescribed condition to
7 the allocation of federal funds to the state, the conflicting part of
8 this act is inoperative solely to the extent of the conflict and with
9 respect to the agencies directly affected, and this finding does not
10 affect the operation of the remainder of this act in its application to
11 the agencies concerned. Rules adopted under this act must meet federal
12 requirements that are a necessary condition to the receipt of federal
13 funds by the state.

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