

**SIXTIETH DAY****MORNING SESSION**

Senate Chamber, Olympia, Thursday, March 10, 2005

The Senate was called to order at 9:00 a.m. by President Owen. The Secretary called the roll and announced to the President that all Senators were present except Senators Brandland, Carrell, Rasmussen, Rockefeller and Stevens.

The Sergeant at Arms Color Guard consisting of Pages Jamie Catron and Laconia Randle, presented the Colors. Pastor Robert Christensen of the Olympia-Lacey Church of God offered the prayer.

**MOTION**

On motion of Senator Eide, the reading of the Journal of the previous day was dispensed with and it was approved.

**MOTION**

On motion of Senator Eide, the Senate advanced to the third order of business.

**SECOND READING****CONFIRMATION OF GUBERNATORIAL APPOINTMENTS****MOTION**

On motion of Senator Mulliken, Gubernatorial Appointment No. 9041, Cecilia Deluna-Gaeta, as a member of the Board of Trustees, Big Bend Community College District No. 18, be confirmed.

Senator Mulliken spoke in favor of the motion.

**MOTION**

On motion of Senator Hewitt, Senator Carrell was excused.

**MOTION**

On motion of Senator Regala, Senators Rockefeller, Brown and Rasmussen were excused.

**APPOINTMENT OF CECILIA DELUNA-GAETA**

The Secretary called the roll. The appointee was confirmed by the following vote: Yeas, 44; Nays, 0; Absent, 2; Excused, 3.

Voting yea: Senators Benson, Benton, Berkey, Brown, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Regala, Roach, Schmidt, Schoesler, Sheldon, Shin, Spanel, Swecker, Thibaudeau, Weinstein and Zarelli - 44

Absent: Senators Brandland and Stevens - 2

Excused: Senators Carrell, Rasmussen and Rockefeller - 3

**SECOND READING****CONFIRMATION OF GUBERNATORIAL APPOINTMENTS****MOTION**

On motion of Senator Swecker, Gubernatorial Appointment No. 9042, Franklin Day Devaul Jr., as a member of the Board of Trustees, Centralia Community College District No. 12, be confirmed.

Senator Swecker spoke in favor of the motion.

**MOTION**

On motion of Senator Hewitt, Senators Brandland, Mulliken, Pflug, Stevens were excused.

**APPOINTMENT OF FRANKLIN DAY DEVAUL, JR.**

The Secretary called the roll. The appointee was confirmed by the following vote: Yeas, 45; Nays, 0; Absent, 0; Excused, 4.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Schmidt, Schoesler, Sheldon, Shin, Spanel, Swecker, Thibaudeau, Weinstein and Zarelli - 45

Excused: Senators Carrell, Mulliken, Rockefeller and Stevens - 4

**SECOND READING****CONFIRMATION OF GUBERNATORIAL APPOINTMENTS****MOTION**

On motion of Senator Pridemore, Gubernatorial Appointment No. 9058, Joseph Fram, as a member of the Board of Trustees, State School for the Blind, be confirmed.

Senator Pridemore spoke in favor of the motion.

**APPOINTMENT OF JOSEPH FRAM**

The Secretary called the roll. The appointee was confirmed by the following vote: Yeas, 46; Nays, 0; Absent, 1; Excused, 2.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein and Zarelli - 46

Absent: Senator Finkbeiner - 1

Excused: Senators Mulliken and Rockefeller - 2

**SECOND READING****CONFIRMATION OF GUBERNATORIAL APPOINTMENTS****MOTION**

On motion of Senator Spanel, Gubernatorial Appointment No. 9084, Debra Jones, as a member of the Board of Trustees, Whatcom Community College District No. 21, be confirmed.

Senator Spanel spoke in favor of the motion.

**APPOINTMENT OF DEBRA JONES**

The Secretary called the roll. The appointee was confirmed by the following vote: Yeas, 45; Nays, 0; Absent, 2; Excused, 2.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Schmidt, Schoesler, Sheldon, Shin, Spanel, Swecker, Thibaudeau, Weinstein and Zarelli - 45

Absent: Senators Finkbeiner and Stevens - 2

Excused: Senators Mulliken and Rockefeller - 2

**REMARKS BY THE PRESIDENT**

President Owen: "The President would draw the members attention to the back of the chamber where we now have displayed the Washington State flag that was flown over the Washington National Guard Headquarters of the 81<sup>st</sup> Brigade Combat team at LSA Anaconda ??? of Iraq under the command of Brigadar General Oscar Hilman. Members of the 81<sup>st</sup> are now returning home. It looks very back there, they did a great job."

#### PERSONAL PRIVILEGE

Senator Schmidt: "Thank you Mr. President, just a note on that. General Hilman our 81<sup>st</sup> Brigade commander arrived home on Tuesday afternoon from Iraq. He's now out processing along with the other soldiers at Fort Lewis and I'm in the process, Mr. President I had not talked with you about this yet but I had with the leadership on the other side of the aisle that we're going to try to get in touch with General Hilman and maybe next week he can come down and address us for about five minutes here and just and then also visit both of our caucuses as he can tell us what happened there and also we can ask questions of him. Just wanted to let you know that. Thank you very much."

#### MOTION

At 9:28 a.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 10:58 a.m. by President Owen.

#### SECOND READING CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

#### MOTION

On motion of Senator Poulsen, Gubernatorial Appointment No. 9029, Nobie Chan, as a member of the Board of Trustees, Seattle, So. Seattle and No. Seattle Community Colleges District No. 6, be confirmed.

Senator Poulsen spoke in favor of the motion.

#### APPOINTMENT OF NOBIE CHAN

The Secretary called the roll. The appointee was confirmed by the following vote: Yeas, 46; Nays, 0; Absent, 2; Excused, 1.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Weinstein and Zarelli - 46

Absent: Senators McAuliffe and Thibaudeau - 2

Excused: Senator Rockefeller - 1

#### MOTION

On motion of Senator Eide, the Senate advanced to the sixth order of business.

#### SECOND READING

SENATE BILL NO. 5563, by Senators Franklin, Schmidt, Oke, Rasmussen, Thibaudeau, Kohl-Welles, Pflug, Regala, Parlette, Pridemore, Hargrove, Fraser, Hewitt, Doumit, Spanel, Prentice, Stevens, McAuliffe, Mulliken, Haugen, Berkey, Swecker, Carrell, Fairley, Kline, Keiser, Kastama, Shin, Delvin, Roach, Poulsen, Sheldon, Eide, Johnson and Rockefeller

Including women's contributions in the World War II oral

history project.

The measure was read the second time.

#### MOTION

On motion of Senator Franklin, the rules were suspended, Senate Bill No. 5563 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Franklin, McCaslin and Roach spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Senate Bill No. 5563.

#### ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5563 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 1; Excused, 1.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein and Zarelli - 47

Absent: Senator Hargrove - 1

Excused: Senator Rockefeller - 1

SENATE BILL NO. 5563, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SENATE BILL NO. 5707, by Senators Fraser, Eide, McAuliffe, Kohl-Welles, Keiser, Franklin, Kline, Haugen, Spanel and Rasmussen

Creating a women's history consortium.

The measure was read the second time.

#### MOTION

On motion of Senator Fraser, the rules were suspended, Senate Bill No. 5707 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Fraser and Schmidt spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Senate Bill No. 5707.

#### ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5707 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 1; Excused, 1.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Thibaudeau, Weinstein and Zarelli - 47

Absent: Senator Swecker - 1

Excused: Senator Rockefeller - 1

SENATE BILL NO. 5707, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

## MOTION

On motion of Senator Hewitt, Senator Swecker was excused.

## SECOND READING

SENATE BILL NO. 5625, by Senators Kohl-Welles, Schoesler, Hewitt, Poulsen, McAuliffe and Delvin

Regarding gender equity reporting.

The measure was read the second time.

## MOTION

On motion of Senator Kohl-Welles, the rules were suspended, Senate Bill No. 5625 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kohl-Welles and Schoesler spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Senate Bill No. 5625.

## ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5625 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein and Zarelli - 48

Excused: Senator Rockefeller - 1

SENATE BILL NO. 5625, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

## SECOND READING

SENATE BILL NO. 5426, by Senators Carrell, Hargrove, Benson and Sheldon

Providing procedures for decreasing truancy and dropouts. Revised for 1st Substitute: Creating a work group to review laws governing school attendance.

## MOTION

On motion of Senator Carrell, Substitute Senate Bill No. 5426 was substituted for Senate Bill No. 5426 and the substitute bill was placed on the second reading and read the second time.

## MOTION

Senator Hargrove moved that the following striking amendment by Senators Hargrove, McAuliffe and Carrell be adopted.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that there is a need to review current laws and rules that govern school attendance requirements. The legislature is concerned about the attendance of youth in the educational system and the impact truancy and students dropping out of school have on schools and communities.

**NEW SECTION. Sec. 2.** (1) To the extent funds are appropriated, the office of the superintendent of public instruction

in conjunction with the administrative office of the courts, shall convene a work group to evaluate the following:

(a) Review the implementation of the Becca bill and other school attendance measures to determine their consistent application across the state and their conformance with state law;

(b) The definition of excused and unexcused absences;

(c) Creating incentives for school districts to improve student attendance; and

(d) Related data collection requirements on graduation, dropouts, student transfer, and other issues related to student attendance.

(2) The work group shall include representatives of the following groups, agencies, and organizations:

(a) The office of the superintendent of public instruction;

(b) The state board of education;

(c) Teachers;

(d) School administrators;

(e) School counselors;

(f) Truancy officers and truancy board members;

(g) The administrator for the courts;

(h) Court judges;

(i) Prosecuting attorneys;

(j) The office of attorney general;

(k) Institutions of higher education;

(l) Members of the legislature; and

(m) Other interested education organizations and personnel.

(3) The office of the superintendent of public instruction shall report the findings of the work group to the governor, the state board of education, and the legislature no later than January 10, 2006.

**NEW SECTION. Sec. 3.** This act expires January 31, 2006."

Senator Hargrove spoke in favor of adoption of the striking amendment

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Hargrove, McAuliffe and Carrell to Substitute Senate Bill No. 5426.

The motion by Senator Hargrove carried and the striking amendment was adopted by voice vote.

## MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "dropouts;" strike the remainder of the title and insert "creating new sections; and providing an expiration date."

## MOTION

On motion of Senator Carrell, the rules were suspended, Engrossed Substitute Senate Bill No. 5426 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Carrell and McAuliffe spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5426.

## ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5426 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 1; Excused, 1.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein and Zarelli - 47

Absent: Senator Finkbeiner - 1  
Excused: Senator Rockefeller - 1

ENGROSSED SUBSTITUTE SENATE BILL NO. 5426, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was order to stand as the title of the act.

#### SECOND READING

SENATE BILL NO. 5643, by Senators Hargrove, Kline and Brandland

Exempting community notification and release of sex offender information from public disclosure.

#### MOTIONS

On motion of Senator Hargrove, Substitute Senate Bill No. 5643 was substituted for Senate Bill No. 5643 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Hargrove, the rules were suspended, Substitute Senate Bill No. 5643 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Hargrove and Brandland spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5643.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5643 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein and Zarelli - 48

Excused: Senator Rockefeller - 1

SUBSTITUTE SENATE BILL NO. 5643, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was order to stand as the title of the act.

#### MOTION

On motion of Senator Eide, the Senate advanced to the eighth order of business.

#### MOTION

Senator Fraser moved adoption of the following resolution:

#### SENATE RESOLUTION 8642

By Senator Fraser

WHEREAS, Theater programs allow young people to express themselves and develop their creativity, while promoting cultural enrichment in the community, and establishing a lifelong love of the arts; and

WHEREAS, Students of the Olympia High School theater program, with determination and perseverance, work tirelessly

each year to perform a worthy tribute to the American musical; and

WHEREAS, In June of 2004, rehearsing night and day under the direction of Kathy Dorgan, this outstanding theater ensemble presented a commendable exhibition of live musical theater; and

WHEREAS, For five nights the young actors thrilled audiences with their extraordinary rendition of the Tony Award-winning Broadway musical "Guys and Dolls"; and

WHEREAS, Seattle's 5th Avenue Theater seeks to preserve and maintain the institution of performing arts, and nurtures and promotes young talent by honoring both students and teachers at their annual awards show; and

WHEREAS, Amidst stiff competition from across Puget Sound, Olympia High School was nominated in eight categories at the 5th Avenue High School Musical Awards, including outstanding group ensemble, chorus, choreography, and costume design; and

WHEREAS, To the delight of more than 1,700 screaming parents, teachers, and friends, these budding thespians swept the competition, winning for most outstanding direction, orchestra, and set design; and

WHEREAS, Having been declared the winner over six other high schools, Olympia High School secured an unforgettable victory--the evening's highest honor--most outstanding overall production of a musical;

NOW, THEREFORE, BE IT RESOLVED, That the Washington State Senate would like to recognize the talent, hard work, and commitment of both students and teachers at Olympia High School who worked so hard to make their production of "Guys and Dolls" a smashing success; and

BE IT FURTHER RESOLVED, That copies of this resolution be immediately transmitted by the Secretary of the Senate to Olympia High School.

Senators Fraser and Esser spoke in favor of adoption of the resolution.

The President declared the question before the Senate to be the adoption of Senate Resolution No. 8642.

The motion by Senator Fraser carried and the resolution was adopted by voice vote.

#### MOTION

At 11:57 a.m., on motion of Senator Eide, the Senate was declared to be at recess until 1:30 p.m..

The Senate was called to order at 1:30 p.m. by President Pro Tempore.

#### MOTION

On motion of Senator Eide, the Senate reverted to the third order of business.

#### SECOND READING CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

#### MOTION

On motion of Senator Fairley, Gubernatorial Appointment No. 9068, Claire Grace, as a member of the Housing Finance Commission, be confirmed.

Senator Fairley spoke in favor of the motion.

#### MOTION

On motion of Senator Hewitt, Senators Zarelli, Delvin, Benton and Mulliken were excused.

#### APPOINTMENT OF CLAIRE GRACE

The Secretary called the roll. The appointee was confirmed by

the following vote: Yeas, 41; Nays, 0; Absent, 5; Excused, 3.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Carrell, Doumit, Eide, Esser, Fairley, Franklin, Fraser, Hargrove, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau and Weinstein - 41

Absent: Senators Deccio, Finkbeiner, Haugen, Oke and Parlette - 5

Excused: Senators Delvin, Mulliken and Zarelli - 3

SECOND READING  
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

On motion of Senator Berkey, Gubernatorial Appointment No. 9096, Dennis Kloida, as a member of the Housing Finance Commission, be confirmed.

Senator Berkey spoke in favor of the motion.

MOTION

On motion of Senator Regala, Senator Haugen was excused.

MOTION

On motion of Senator Hewitt, Senators Benton and Stevens were excused.

APPOINTMENT OF DENNIS KLOIDA

The Secretary called the roll. The appointee was confirmed by the following vote: Yeas, 45; Nays, 0; Absent, 0; Excused, 4.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Carrell, Deccio, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Swecker, Thibaudeau, Weinstein and Zarelli - 45

Excused: Senators Delvin, Haugen, Mulliken and Stevens - 4

SECOND READING  
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

On motion of Senator Regala, Gubernatorial Appointment No. 9128, Patrick McElligott, as a member of the Investment Board, be confirmed.

Senator Regala spoke in favor of the motion.

APPOINTMENT OF PATRICK MCELLIGOTT

The Secretary called the roll. The appointee was confirmed by the following vote: Yeas, 46; Nays, 0; Absent, 1; Excused, 2.

Voting yea: Senators Benson, Berkey, Brandland, Brown, Carrell, Deccio, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Swecker, Thibaudeau, Weinstein and Zarelli - 46

Absent: Senator Benton - 1

Excused: Senators Delvin and Stevens - 2

PERSONAL PRIVILEGE

Senator Rockefeller: "I simply wanted to say to all of the members and staff of the Senate who have been most thoughtful with there expressions of concern and kindness. I am very grateful for that and I'm most grateful to be back here where I have found so many friends and I have discovered that the Senate is a family and it's a pleasure to be part of it and I thank you very much, one and all."

PERSONAL PRIVILEGE

Senator Franklin: "Senator, I would like to say we are pleased to have you back and whenever any member of household is missing we all prayer for your return. We are glad to have you back."

MOTION

On motion of Senator Eide, the Senate advanced to the sixth order of business.

SECOND READING

SENATE BILL NO. 5680, by Senators Roach, Zarelli, Prentice, Fraser, Fairley and Rasmussen

Regarding capital facilities at the Rainier school.

MOTIONS

On motion of Senator Roach, Substitute Senate Bill No. 5680 was substituted for Senate Bill No. 5680 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Roach, the rules were suspended, Substitute Senate Bill No. 5680 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Roach spoke in favor of passage of the bill.

The President Pro Tempore declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5680.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5680 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Carrell, Deccio, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein and Zarelli - 48

Excused: Senator Delvin - 1

SUBSTITUTE SENATE BILL NO. 5680, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was order to stand as the title of the act.

SECOND READING

SENATE BILL NO. 5983, by Senators Pflug, Schmidt, Esser, Delvin and Benson

Regarding professional certification of teachers.

MOTION

On motion of Senator Benton, Substitute Senate Bill No. 5983 was substituted for Senate Bill No. 5983 and the substitute bill was placed on the second reading and read the second time.

MOTION

Senator Benton moved that the following amendment by Senators Benton, Schmidt, Hargrove, Kohl-Welles and McAuliffe be adopted.

On page 6, after line 14, insert the following:

"**Sec. 4.** RCW 28A.410.090 and 2004 c 134 s 2 are each amended to read as follows:

(1) Any certificate or permit authorized under the provisions of this chapter, chapter 28A.405 RCW, or rules promulgated thereunder may be revoked or suspended by the authority authorized to grant the same based upon a criminal records report authorized by law, or upon the complaint of any school district superintendent, educational service district superintendent, or private school administrator for immorality, violation of written contract, unprofessional conduct, intemperance, or crime against the law of the state.

If the superintendent of public instruction has reasonable cause to believe that an alleged violation of this chapter or rules adopted under it has occurred based on a written complaint alleging physical abuse or sexual misconduct by a certificated school employee filed by a parent or another person, but no complaint has been forwarded to the superintendent by a school district superintendent, educational service district superintendent, or private school administrator, and that a school district superintendent, educational service district superintendent, or private school administrator has sufficient notice of the alleged violation and opportunity to file a complaint, the superintendent of public instruction may cause an investigation to be made of the alleged violation, together with such other matters that may be disclosed in the course of the investigation related to certificated personnel.

(2) A parent or another person may file a written complaint with the superintendent of public instruction alleging physical abuse or sexual misconduct by a certificated school employee if:

(a) The parent or other person has already filed a written complaint with the educational service district superintendent concerning that employee;

(b) The educational service district superintendent has not caused an investigation of the allegations and has not forwarded the complaint to the superintendent of public instruction for investigation; and

(c) The written complaint states the grounds and factual basis upon which the parent or other person believes an investigation should be conducted.

(3) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be revoked by the authority authorized to grant the certificate upon a guilty plea or the conviction of any felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (excepting motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of

similar laws of another jurisdiction. The person whose certificate is in question shall be given an opportunity to be heard. Mandatory permanent revocation upon a guilty plea or the conviction of felony crimes specified under this subsection shall apply to such convictions or guilty pleas which occur after July 23, 1989. Revocation of any certificate or permit authorized under this chapter or chapter 28A.405 RCW for a guilty plea or criminal conviction occurring prior to July 23, 1989, shall be subject to the provisions of subsection (1) of this section.

(4)(a) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be suspended or revoked, according to the provisions of this subsection, by the authority authorized to grant the certificate upon a finding that an employee has engaged in an unauthorized use of school equipment to intentionally access material depicting sexually explicit conduct or has intentionally possessed on school grounds any material depicting sexually explicit conduct, except for material used in conjunction with established curriculum. A first time violation of this subsection shall result in either suspension or revocation of the employee's certificate or permit as determined by the office of the superintendent of public instruction. A second violation shall result in a mandatory revocation of the certificate or permit.

(b) In all cases under this subsection (4), the person whose certificate is in question shall be given an opportunity to be heard and has the right to appeal as established in RCW 28A.410.100. Certificates or permits shall be suspended or revoked under this subsection only if findings are made on or after the effective date of this section. For the purposes of this subsection, "sexually explicit conduct" has the same definition as provided in RCW 9.68A.011."

Senators Benton, McAuliffe and Kohl-Welles spoke in favor of adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of the amendment by Senators Benton, Schmidt, Hargrove, Kohl-Welles and McAuliffe on page 6, after line 14 to Substitute Senate Bill No. 5983.

The motion by Senator Benton carried and the amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted.

On page 1, line 2 of the title, after "28A.410.210" strike "and 28A.305.130" and insert ", 28A.305.130, and 28A.410.090"

MOTION

On motion of Senator Pflug, the rules were suspended, Engrossed Substitute Senate Bill No. 5983 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Pflug, and McAuliffe spoke in favor of passage of the bill.

The President Pro Tempore declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5983.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5983 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt,

Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein and Zarelli - 49

ENGROSSED SUBSTITUTE SENATE BILL NO. 5983, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was order to stand as the title of the act.

#### MOTIONS

On motion of Senator Regala, Senators Brown and Kohl-Welles were excused.

On motion of Senator Mulliken, Senator Hewitt was excused.

#### SECOND READING

SENATE BILL NO. 5232, by Senators Oke, Swecker and Jacobsen

Requiring a turkey tag to hunt for turkey.

The measure was read the second time.

#### MOTION

On motion of Senator Oke, the rules were suspended, Senate Bill No. 5232 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Oke spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Senate Bill No. 5232.

#### ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5232 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein and Zarelli - 46

Excused: Senators Brown, Hewitt and Kohl-Welles - 3

SENATE BILL NO. 5232, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SENATE BILL NO. 5621, by Senators McAuliffe, Weinstein, Pridemore, Rockefeller, Kohl-Welles and Rasmussen

Requiring the superintendent of public instruction to adopt standards for voluntary certification of preschools.

The measure was read the second time.

#### MOTION

On motion of Senator McAuliffe, the rules were suspended, Senate Bill No. 5621 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators McAuliffe and Schmidt spoke in favor of passage of the bill.

The President Pro Tempore declared the question before the Senate to be the final passage of Senate Bill No. 5621.

#### ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5621 and the bill passed the Senate by the following vote: Yeas, 27; Nays, 21; Absent, 0; Excused, 1.

Voting yea: Senators Berkey, Brown, Doumit, Eide, Fairley, Franklin, Fraser, Hargrove, Haugen, Jacobsen, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Rockefeller, Schmidt, Sheldon, Shin, Spanel, Thibaudeau and Weinstein - 27

Voting nay: Senators Benson, Benton, Brandland, Carrell, Deccio, Delvin, Esser, Finkbeiner, Honeyford, Johnson, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Roach, Schoesler, Stevens, Swecker and Zarelli - 21

Excused: Senator Hewitt - 1

SENATE BILL NO. 5621, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION

On motion of Senator Mulliken, Senator Honeyford was excused.

#### SECOND READING

SENATE BILL NO. 5672, by Senators Jacobsen, Esser, Poulsen, Benson and Swecker

Regulating commercial parking businesses.

#### MOTIONS

On motion of Senator Jacobsen, Substitute Senate Bill No. 5672 was substituted for Senate Bill No. 5672 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Jacobsen, the rules were suspended, Substitute Senate Bill No. 5672 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Jacobsen and Parlette spoke in favor of passage of the bill.

The President Pro Tempore declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5672.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5672 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 1; Excused, 1.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein and Zarelli - 47

Absent: Senator McAuliffe - 1

Excused: Senator Hewitt - 1

SUBSTITUTE SENATE BILL NO. 5672, having received the constitutional majority, was declared passed. There being no

objection, the title of the bill was order to stand as the title of the act.

#### MOTION

On motion of Senator Regala, Senators Fairley, Kohl-Welles, Brown and McAuliffe were excused.

#### SECOND READING

SENATE BILL NO. 5417, by Senators Weinstein, Esser, Jacobsen, Rasmussen, Kastama, Rockefeller, Shin, Carrell, Regala, Kohl-Welles, Pridemore, Franklin, Keiser, Kline, Sheldon and McAuliffe

Restricting access to motor vehicles for persons arrested for alcohol offenses (John's Law).

The measure was read the second time.

#### MOTION

Senator Weinstein moved that the following amendment by Senators Hargrove and Weinstein be adopted.

On page 2, line 1, after "redeemed" strike "after twelve hours have expired from the time of arrest and" and insert "by a registered owner of the vehicle other than the arrested driver, after all towing, removal, and storage fees are paid. After twelve hours have expired from the time of arrest, the impounded vehicle may be redeemed"

Senator Weinstein spoke in favor of adoption of the amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of the amendment by Senators Hargrove and Weinstein on page 2, line 1 to Senate Bill No. 5417.

The motion by Senator Weinstein carried and the amendment was adopted by voice vote.

#### MOTION

On motion of Kline the rules were suspended, Engrossed Senate Bill No. 5417 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Weinstein and Johnson spoke in favor of passage of the bill.

The President Pro Tempore declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 5417.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 5417 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein and Zarelli - 46

Excused: Senators Brown, Fairley and Kohl-Welles - 3

ENGROSSED SENATE BILL NO. 5417, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION FOR RECONSIDERATION

Having voted on the prevailing side, Senator Roach moved that the Senate immediately reconsider the vote by which Senate Bill No. 5232 passed the Senate earlier in the day.

The President Pro Tempore declared the question before the Senate to be the motion by Senator Roach that the Senate immediately reconsider the vote by which Senate Bill No. 5232 passed the Senate.

The motion for reconsideration carried.

The President Pro Tempore declared the question before the Senate to be the final passage of Senate Bill No. 5232 on reconsideration.

#### ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5232, on reconsideration, and the bill passed by the following vote: Yeas, 41; Nays, 6; Absent, 1; Excused, 1.

Voting yea: Senators Benson, Berkey, Brandland, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Oke, Parlette, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Swecker, Thibaudeau, Weinstein and Zarelli - 41

Voting nay: Senators Benton, Carrell, Honeyford, Mulliken, Roach and Stevens - 6

Absent: Senator Pflug - 1

Excused: Senator Brown - 1

SENATE BILL NO. 5232, on reconsideration, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SENATE BILL NO. 5752, by Senators Prentice, Honeyford and Kohl-Welles

Concerning funeral services.

#### MOTIONS

On motion of Senator Prentice, Substitute Senate Bill No. 5752 was substituted for Senate Bill No. 5752 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Prentice, the rules were suspended, Substitute Senate Bill No. 5752 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Prentice spoke in favor of passage of the bill.

The President Pro Tempore declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5752.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5752 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 1; Excused, 1.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler,

Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein and Zarelli - 47

Absent: Senator Kohl-Welles - 1

Excused: Senator Brown - 1

SUBSTITUTE SENATE BILL NO. 5752, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was order to stand as the title of the act.

#### MOTION

On motion of Senator Hewitt, Senator Swecker was excused.

#### SECOND READING

SENATE BILL NO. 5065, by Senators Thibaudeau, Deccio, Jacobsen, Parlette, Kohl-Welles and Keiser

Requiring notice of potential injuries resulting from health care.

#### MOTION

On motion of Senator Thibaudeau, Substitute Senate Bill No. 5065 was substituted for Senate Bill No. 5065 and the substitute bill was placed on the second reading and read the second time.

#### MOTION

Senator Thibaudeau moved that the following amendment by Senator Thibaudeau be adopted.

On page 1, line 6, before "Hospitals" insert "(1)".

On page 1, line 9, after "RCW 7.70.065." insert "Except as provided in subsection (2) of this section,".

On page 1, after line 13, insert "(2) Subject to an in-camera review of the court, a statement or statements of specific acts evidencing fault inadmissible under subsection (1) of this section may be used to impeach a fact witness in a civil or administrative proceeding if it contradicts subsequent testimony on issues of fact made by the witness in the civil or administrative hearing. The party wishing to use the previous statement must first show the court by clear and convincing evidence that the witness, in testimony provided in deposition or at trial in the present proceeding, has contradicted his or her previous statements on an issue of fact material to the present proceeding. In that case, the party may use only the excerpt or excerpts necessary to demonstrate the contradiction. This section shall not be interpreted as expanding the scope of material that may be used to impeach a witness."

#### WITHDRAWAL OF AMENDMENT

On motion of Senator Thibaudeau the amendment to Substitute Senate Bill No. 5065 was withdrawn.

#### MOTION

On motion of Senator Thibaudeau, the rules were suspended, Substitute Senate Bill No. 5065 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Thibaudeau, Keiser and Brandland spoke in favor of passage of the bill.

#### MOTION

On motion of Senator Regala, Senator Kohl-Welles was excused.

The President Pro Tempore declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5065.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5065 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 1; Absent, 0; Excused, 2.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Thibaudeau, Weinstein and Zarelli - 46

Voting nay: Senator Morton - 1

Excused: Senators Brown and Swecker - 2

SUBSTITUTE SENATE BILL NO. 5065, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was order to stand as the title of the act.

#### SECOND READING

SENATE BILL NO. 5914, by Senators Parlette and Jacobsen

Concerning the conditioning of grants and loans by the salmon recovery funding board.

#### MOTIONS

On motion of Senator Jacobsen, Substitute Senate Bill No. 5914 was substituted for Senate Bill No. 5914 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Parlette, the rules were suspended, Substitute Senate Bill No. 5914 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Parlette spoke in favor of passage of the bill.

The President Pro Tempore declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5914.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5914 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 1; Excused, 2.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Thibaudeau, Weinstein and Zarelli - 46

Absent: Senator Honeyford - 1

Excused: Senators Brown and Swecker - 2

SUBSTITUTE SENATE BILL NO. 5914, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was order to stand as the title of the act.

#### SECOND READING

SENATE BILL NO. 5488, by Senators Rasmussen and Schoesler

RICHARD NAFZIGER, Chief Clerk

March 9, 2005

Concerning the fruit and vegetable district fund.

MOTIONS

On motion of Senator Rasmussen, Substitute Senate Bill No. 5488 was substituted for Senate Bill No. 5488 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Rasmussen, the rules were suspended, Substitute Senate Bill No. 5488 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Rasmussen and Schoesler spoke in favor of passage of the bill.

The President Pro Tempore declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5488.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5488 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Thibaudeau, Weinstein and Zarelli - 48

Excused: Senator Swecker - 1

SUBSTITUTE SENATE BILL NO. 5488, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was order to stand as the title of the act.

MOTION

At 3:25 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 4:35 p.m. by President.

MOTION

On motion of Senator Eide, the Senate reverted to the fourth order of business.

MESSAGE FROM THE HOUSE

March 9, 2005

MR. PRESIDENT:

The House has passed the following bill{s}:  
 SUBSTITUTE HOUSE BILL NO. 1379,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1401,  
 SUBSTITUTE HOUSE BILL NO. 1495,  
 SECOND SUBSTITUTE HOUSE BILL NO. 1516,  
 SUBSTITUTE HOUSE BILL NO. 1569,  
 SUBSTITUTE HOUSE BILL NO. 1606,  
 SUBSTITUTE HOUSE BILL NO. 1687,  
 HOUSE BILL NO. 1721,  
 HOUSE BILL NO. 1739,  
 and the same are herewith transmitted.

MR. PRESIDENT:

The House has passed the following bill{s}:  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1150,  
 ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1152,  
 SUBSTITUTE HOUSE BILL NO. 1384,  
 SUBSTITUTE HOUSE BILL NO. 1393,  
 HOUSE BILL NO. 1428,  
 HOUSE BILL NO. 1432,  
 SUBSTITUTE HOUSE BILL NO. 1462,  
 SUBSTITUTE HOUSE BILL NO. 1478,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1494,  
 ENGROSSED HOUSE BILL NO. 1561,  
 and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

March 9, 2005

MR. PRESIDENT:

The House has passed the following bill{s}:  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1012,  
 HOUSE BILL NO. 1034,  
 SUBSTITUTE HOUSE BILL NO. 1035,  
 SUBSTITUTE HOUSE BILL NO. 1159,  
 HOUSE BILL NO. 1182,  
 SUBSTITUTE HOUSE BILL NO. 1185,  
 SUBSTITUTE HOUSE BILL NO. 1189,  
 HOUSE BILL NO. 1211,  
 SUBSTITUTE HOUSE BILL NO. 1345,  
 SUBSTITUTE HOUSE BILL NO. 1413,  
 ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1888,  
 and the same are herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

There being no objection, the Senate advanced to the fifth order of business.

INTRODUCTION AND FIRST READING

SB 6084 by Senators Honeyford, Mulliken and Hewitt

AN ACT Relating to extent and validity determinations of temporary water rights changes during drought conditions; and amending RCW 43.83B.410.

Referred to Committee on Water, Energy & Environment.

SCR 8409 by Senators Kohl-Welles and Parlette

Creating a joint select committee on workers' compensation.

Referred to Committee on Labor, Commerce, Research & Development.

FIRST READING OF HOUSE BILLS

ESHB 1012 by House Committee on Technology, Energy & Communications (originally sponsored by Representatives Morris,

Hudgins, Simpson, Nixon, Anderson, Morrell, Linville, B. Sullivan and Ormsby)

AN ACT Relating to computer spyware; adding a new chapter to Title 19 RCW; and prescribing penalties.

Referred to Committee on Financial Institutions, Housing & Consumer Protection.

HB 1034 by Representatives Kirby, Roach and Simpson

AN ACT Relating to the administrative supervision of financially distressed insurers; amending RCW 48.31.020 and 48.31.115; and adding new sections to chapter 48.31 RCW.

Referred to Committee on Financial Institutions, Housing & Consumer Protection.

SHB 1035 by House Committee on State Government Operations & Accountability (originally sponsored by Representatives Kirby, Roach, Simpson and Schual-Berke)

AN ACT Relating to providing confidentiality to certain insurance commissioner examinations; and amending RCW 48.02.065.

Referred to Committee on Financial Institutions, Housing & Consumer Protection.

ESHB 1150 by House Committee on Judiciary (originally sponsored by Representatives Kirby, Campbell, Simpson and Murray)

AN ACT Relating to dangerous or potentially dangerous dogs; and amending RCW 16.08.070 and 16.08.100.

Referred to Committee on Judiciary.

E2SHB 1152 by House Committee on Appropriations (originally sponsored by Representatives Kagi, Fromhold, Jarrett, Schual-Berke, Walsh, Quall, B. Sullivan, Grant, Ormsby, Kessler, Simpson, Moeller, Lovick, Roberts, Chase, Williams, P. Sullivan, Tom, Morrell, McIntire, Kenney, Haigh, McDermott, Dickerson, Santos and Linville)

AN ACT Relating to early learning; amending RCW 28B.135.030, 41.04.385, and 74.13.0903; reenacting and amending RCW 74.15.030; adding a new section to chapter 74.15 RCW; creating new sections; repealing RCW 74.13.090 and 74.13.0901; providing an expiration date; and declaring an emergency.

Referred to Committee on Early Learning, K-12 & Higher Education.

SHB 1159 by House Committee on Judiciary (originally sponsored by Representatives Kirby and Priest)

AN ACT Relating to limiting liability for persons who work with liquefied petroleum gas; and adding a new section to chapter 4.24 RCW.

Referred to Committee on Judiciary.

HB 1182 by Representatives Springer, Green and Ormsby

AN ACT Relating to making payments under certain bond authorization acts; and amending RCW 39.53.120, 43.99K.030, and 67.40.060.

Referred to Committee on Ways & Means.

SHB 1185 by House Committee on Technology, Energy & Communications (originally sponsored by Representatives Morrell, Haler, Morris, Tom, Green, Jarrett, Clibborn, Moeller, Upthegrove, Pettigrew, Chase, Flannigan, Cody, Newhouse, Wallace, Hasegawa, Quall, Linville, Simpson, B. Sullivan, Sells, Lantz, Schual-Berke, Appleton, Campbell, Darneille, Dickerson, Armstrong, Kenney, Condotta, Kagi, Ormsby, Hunt, McIntire, Haigh and Kilmer)

AN ACT Relating to use and disclosure of personal wireless numbers; adding a new section to Title 19 RCW; and prescribing penalties.

Referred to Committee on Financial Institutions, Housing & Consumer Protection.

SHB 1189 by House Committee on Local Government (originally sponsored by Representatives Moeller, Bailey, McCoy, Armstrong, Williams, Newhouse, Fromhold, Springer, Ericks, Flannigan, Curtis, Cody, Condotta, Appleton, Hinkle, Morrell, Campbell, Pearson, Chase, Dickerson, Linville, Woods, Kenney, O'Brien, Conway, Lantz, Sells, Kagi, Ormsby, Haigh, Upthegrove, Hasegawa and Kilmer)

AN ACT Relating to veterans' relief; amending RCW 73.08.010, 73.08.070, 73.08.080, and 41.04.007; adding new sections to chapter 73.08 RCW; creating a new section; and repealing RCW 73.08.030, 73.08.040, 73.08.050, and 73.08.060.

Referred to Committee on Government Operations & Elections.

HB 1211 by Representatives Blake, B. Sullivan, Buck, Kretz, Eickmeyer and Armstrong

AN ACT Relating to deer and elk hunting; and amending RCW 77.32.450.

Referred to Committee on Natural Resources, Ocean & Recreation.

SHB 1345 by House Committee on Appropriations (originally sponsored by Representatives Hasegawa, Kenney, Takko, Sells, Jarrett, Roberts, Ericks, Haler, Williams, Moeller, Appleton, Morrell, McCoy, Dunn, Kagi, McDermott, Santos and Chase)

AN ACT Relating to eligibility for state financial aid for part-time students; amending RCW 28B.92.080; and creating new sections.

Referred to Committee on Early Learning, K-12 & Higher Education.

SHB 1379 by House Committee on Appropriations (originally sponsored by Representatives Grant, Armstrong, Springer, Hinkle, Fromhold, Walsh, Upthegrove, Bailey, Clibborn, Chase and Simpson)

AN ACT Relating to the liquor control board fully implementing a retail business plan; amending RCW 66.08.060; adding new sections to chapter 66.08 RCW; adding a new section to chapter 66.16 RCW; and repealing RCW 66.16.080.

Referred to Committee on Labor, Commerce, Research & Development.

SHB 1384 by House Committee on Technology, Energy & Communications (originally sponsored by Representatives Haler, B. Sullivan, Morris, Crouse, P. Sullivan, Chase and Hudgins)

AN ACT Relating to construction and operation of renewable energy projects by joint operating agencies; and adding a new section to chapter 43.52 RCW.

Referred to Committee on Government Operations & Elections.

SHB 1393 by House Committee on Housing (originally sponsored by Representatives Buri, Grant, Cox, B. Sullivan, Condotta, Dunshee and Chase)

AN ACT Relating to movement of mobile homes; and amending RCW 46.44.170, 43.22.340, 43.22.432, and 46.12.290.

Referred to Committee on Financial Institutions, Housing & Consumer Protection.

ESHB 1401 by House Committee on Local Government (originally sponsored by Representatives Simpson, Hankins, O'Brien, Ormsby and Chase)

AN ACT Relating to fire safety; adding new sections to chapter 19.27 RCW; and adding a new section to chapter 84.36 RCW.

Referred to Committee on Labor, Commerce, Research & Development.

SHB 1413 by House Committee on Capital Budget (originally sponsored by Representatives Dunshee, Jarrett, Hunt, Nixon, Linville, Anderson, Sells, Tom, Appleton, Eickmeyer, B. Sullivan, Ericks, Chase, Lantz, Flannigan, Green, Ormsby, Upthegrove, Blake, O'Brien, Priest, Morrell, Clibborn, Kagi, Williams, Moeller, McCoy, Miloscia, Campbell and Simpson)

AN ACT Relating to expanding the criteria for habitat conservation programs; amending RCW 79A.15.010, 79A.15.030, 79A.15.040, 79A.15.050, 79A.15.060, 79A.15.070, 79A.15.080, 84.33.140, and 77.12.203; adding new sections to chapter 79A.15 RCW; adding a new section to chapter 79.70 RCW; adding a new section to chapter 79.71 RCW; creating a new section; providing effective dates; providing an expiration date; and declaring an emergency.

Referred to Committee on Natural Resources, Ocean & Recreation.

HB 1428 by Representatives Condotta, Pettigrew, Dunn, Linville and Chase

AN ACT Relating to the Washington economic development

finance authority; amending RCW 43.163.210; and reenacting and amending RCW 43.163.130.

Referred to Committee on International Trade & Economic Development.

HB 1432 by Representatives Fromhold, Conway, Cox, Haigh, Campbell, Strow, Hunt, Ormsby, Moeller, Morrell, O'Brien, Chase and Hasegawa

AN ACT Relating to avoiding fragmentation in bargaining units for classified school employees; and amending RCW 41.56.060.

Referred to Committee on Early Learning, K-12 & Higher Education.

SHB 1462 by House Committee on Economic Development, Agriculture & Trade (originally sponsored by Representatives Linville, Buri, Pettigrew and Chase)

AN ACT Relating to funding conservation districts; amending RCW 89.08.410; and declaring an emergency.

Referred to Committee on Agriculture & Rural Economic Development.

SHB 1478 by House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Kagi, O'Brien, Simpson, Morrell, Lovick, Kenney, P. Sullivan, Nixon and Chase)

AN ACT Relating to securing vehicle loads on public highways; amending RCW 46.61.655 and 46.63.020; and prescribing penalties.

Referred to Committee on Judiciary.

ESHB 1494 by House Committee on Health Care (originally sponsored by Representatives Morrell, Clibborn, Green, Kessler, Cody, Appleton, Darneille, Williams, Campbell, Lovick, Simpson, Hunt, Chase, Wood, Sells, Roberts, Kenney, McIntire, Hasegawa, Santos, Moeller and Schual-Berke)

AN ACT Relating to improving the delivery of health care services for school-aged children; creating new sections; and providing an expiration date.

Referred to Committee on Early Learning, K-12 & Higher Education.

SHB 1495 by House Committee on Education (originally sponsored by Representatives McCoy, Roach, Simpson, P. Sullivan, McDermott, Santos, Appleton, Darneille, Williams, Hunt, Haigh, Chase, Sells, Conway, Kenney, Kagi, Moeller, Ormsby and Blake)

AN ACT Relating to teaching Washington's tribal history, culture, and government in the common schools; amending RCW 28A.230.090; adding a new section to chapter 28A.345 RCW; adding a new section to chapter 28A.320 RCW; and creating a new section.

Referred to Committee on Early Learning, K-12 & Higher Education.

2SHB 1516 by House Committee on Appropriations (originally sponsored by Representatives Schual-Berke, Tom, Kagi, Hankins, Haler, Cody, Priest, Campbell, Kessler, Dunshee, Clibborn, Wallace, Dickerson, Linville, Fromhold, Hunter, Green, Morrell, Darneille, McDermott, Simpson, Chase, O'Brien, Sells, Roberts, Kilmer, Moeller and Ormsby)

AN ACT Relating to increasing access to health services for children through the "kids get care" service delivery model; adding a new section to chapter 43.70 RCW; and creating new sections.

Referred to Committee on Health & Long-Term Care.

EHB 1561 by Representatives Appleton, Roach, Santos, Kirby, Schual-Berke, Condotta, Williams and Chase

AN ACT Relating to prohibiting discrimination in life insurance based on lawful travel destinations; and adding a new section to chapter 48.18 RCW.

Referred to Committee on Financial Institutions, Housing & Consumer Protection.

SHB 1569 by House Committee on Health Care (originally sponsored by Representatives Morrell, Clibborn, Skinner, Schual-Berke, Green, Moeller, Cody, Curtis, Condotta, Chase, O'Brien and Kenney)

AN ACT Relating to quality assurance in boarding homes, nursing homes, hospitals, peer review organizations, and coordinated quality improvement plans; amending RCW 18.20.390, 4.24.250, 43.70.510, and 70.41.200; reenacting and amending RCW 42.17.310; adding a new section to chapter 74.42 RCW; and creating a new section.

Referred to Committee on Health & Long-Term Care.

SHB 1606 by House Committee on Health Care (originally sponsored by Representatives Green, Skinner, Cody, Bailey, Clibborn, Williams, Morrell and Schual-Berke)

AN ACT Relating to fairness in the informal dispute resolution process; amending RCW 18.20.195; and adding a new section to chapter 18.51 RCW.

Referred to Committee on Health & Long-Term Care.

SHB 1687 by House Committee on Judiciary (originally sponsored by Representatives Moeller, Talcott, O'Brien, Ericks, Lovick, Tom, Roberts, Appleton, Kagi, Hunter and Chase)

AN ACT Relating to firearms; amending RCW 9.41.040 and 9.41.047; creating a new section; and declaring an emergency.

Referred to Committee on Judiciary.

HB 1721 by Representatives Hunter, Orcutt and McIntire

AN ACT Relating to simplifying the concurrent taxing jurisdictions of the tribal municipalities and the state; amending RCW 82.14.030, 82.14.040, and 82.14.060; reenacting and amending RCW 82.14.050; adding a new section to chapter 82.14 RCW; creating a new section; providing an effective date; and declaring an emergency.

Referred to Committee on Ways & Means.

HB 1739 by Representative Ericksen

AN ACT Relating to registration of vintage snowmobiles; amending RCW 46.10.010, 46.10.020, and 46.10.040; and creating a new section.

Referred to Committee on Transportation.

E2SHB 1888 by House Committee on Appropriations (originally sponsored by Representatives Nixon, Morris, Hunter, B. Sullivan, Simpson, Ormsby, Morrell, Haler, Clibborn, Ericks, Williams, Darneille, Dunn, Dickerson, P. Sullivan, Green and Hudgins)

AN ACT Relating to electronic mail fraud; amending RCW 19.190.010; adding new sections to chapter 19.190 RCW; creating a new section; and prescribing penalties.

Referred to Committee on Financial Institutions, Housing & Consumer Protection.

#### MOTION

On motion of Senator Eide, all measures listed on the Introduction and First Reading report were referred to the committees as designated with the exception of Substitute House Bill No. 1384 which was referred to the Committee on Government Operations & Elections.

#### MOTION

On motion of Senator Eide, the Senate advanced to the sixth order of business.

#### SECOND READING

SENATE BILL NO. 5056, by Senators Haugen, Swecker, Prentice, Kastama, Fairley, Honeyford, Zarelli, Hewitt, Berkey, Fraser, Thibaudeau, Jacobsen, McAuliffe, Rasmussen, Kline and Rockefeller

Creating the department of archaeology and historic preservation.

#### MOTIONS

On motion of Senator Kastama, Second Substitute Senate Bill No. 5056 was substituted for Senate Bill No. 5056 and the second substitute bill was placed on the second reading and read the second time.

On motion of Senator Kastama, the rules were suspended, Second Substitute Senate Bill No. 5056 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Haugen spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute Senate Bill No. 5056.

#### ROLL CALL

The Secretary called the roll on the final passage of Second Substitute Senate Bill No. 5056 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 2; Absent, 0; Excused, 0.

Voting yea: Senators Benson, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner,

Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein and Zarelli - 47

Voting nay: Senators Benton and Morton - 2

SECOND SUBSTITUTE SENATE BILL NO. 5056, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was order to stand as the title of the act.

#### PERSONAL PRIVILEGE

Senator Zarelli: "Thank you Mr. President ladies and gentlemen of the Senate. If I could have your quick attention for a minute I would appreciate it. I wanted to share a couple of things. I have the privilege this week of having my daughter, the youngest of the Zarelli daughters paging with the Senate this week. I wanted to share a couple of things with you. You know the beauty of the job that we've been blessed with is a couple of things. First of all we get to come up here and debate things, talk about things and we do that because we've been blessed by enough people to have sent us here. The second thing we get to do is what I'm doing right now Mr. President and that's take the opportunity, the mike that all of Politicians love. In doing that taking our special privilege usually what we're able to do is share a little bit of us, share a little bit of our heart and that's why we do it and I think that's just as important to us being able to work together is to get to know each other. And so what I want to share with you and my daughter's probably not liking me much right now because she'd really prefer to be somewhere else and I'm going to talk about her a little bit. What I want to share with you, is a young lady who at very young age came to our home, at two months old and through a process went away and then came back as we adopted her several years ago. This young lady has been through a lot in her life. It's a lot of the things that we sit up here and debate regularly about children and what's in the best interest of children. Well, we've had that experience through foster parenting and as adoptive parents. The point I want to share with you is that these kids can overcome a lot because our daughter has had a lot put in front of her and has been able with a lot of hard work and gods blessing to overcome a whole lot in her life and that's why she's here with us today and so in front of all of you and in front of her I just wanted to tell her that her mother and I are extremely proud of her what she's overcome in her life and I wanted to that in front of you all here today. Thank you Mr. President."

#### SECOND READING

SENATE BILL NO. 5471, by Senators Thibaudeau, Keiser, Fraser, Berkey, Poulsen, Kline, Franklin, Brown, Haugen, McAuliffe, Rockefeller and Kohl-Welles

Authorizing a prescription drug purchasing consortium.

#### MOTIONS

On motion of Senator Thibaudeau, Substitute Senate Bill No. 5471 was substituted for Senate Bill No. 5471 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Thibaudeau, the rules were suspended, Substitute Senate Bill No. 5471 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Thibaudeau and Keiser spoke in favor of passage of the bill.

Senators Parlette and Pflug spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5471.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5471 and the bill passed the Senate by the following vote: Yeas, 25; Nays, 24; Absent, 0; Excused, 0.

Voting yea: Senators Berkey, Brown, Doumit, Eide, Fairley, Franklin, Fraser, Hargrove, Haugen, Jacobsen, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Rockefeller, Shin, Spanel, Thibaudeau and Weinstein - 25

Voting nay: Senators Benson, Benton, Brandland, Carrell, Deccio, Delvin, Esser, Finkbeiner, Hewitt, Honeyford, Johnson, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Roach, Schmidt, Schoesler, Sheldon, Stevens, Swecker and Zarelli - 24

SUBSTITUTE SENATE BILL NO. 5471, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was order to stand as the title of the act.

#### PERSONAL PRIVILEGE

Senator McCaslin: "I just wanted acknowledge the sneeze in the back. I felt the concussion here and the judges gave you a 9.5 rating."

#### SECOND READING

SENATE BILL NO. 5763, by Senators Hargrove, Stevens, Regala, Brandland, Thibaudeau, Carrell, Brown, Keiser, Fairley, McAuliffe, Rasmussen, Kline, Kohl-Welles and Franklin

Mental disorder treatment.

#### MOTION

On motion of Senator Hargrove, Second Substitute Senate Bill No. 5763 was substituted for Senate Bill No. 5763 and the second substitute bill was placed on the second reading and read the second time.

#### MOTION

Senator Hargrove moved that the following striking amendment by Senators Hargrove and Stevens be adopted:

Strike everything after the enacting clause and insert the following:

#### "PART I

#### GENERAL PROVISIONS

**NEW SECTION. Sec. 101.** The legislature finds that persons with mental disorders, chemical dependency disorders, or co-occurring mental and substance abuse disorders are disproportionately more likely to be confined in a correctional institution, become homeless, become involved with child protective services or involved in a dependency proceeding, or lose those state and federal benefits to which they may be entitled as a result of their disorders. The legislature finds that prior state policy of addressing mental health and chemical dependency in isolation from each other has not been cost-effective and has often resulted in longer-term, more costly treatment that may be less effective over time. The legislature finds that a substantial number of persons have co-occurring mental and substance abuse

disorders and that identification and integrated treatment of co-occurring disorders is critical to successful outcomes and recovery. Consequently, the legislature intends to:

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

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

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

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

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

(6) Improve access to inpatient treatment by creating expanded services facilities for persons needing intensive treatment in a secure setting who do not need inpatient care, but are unable to access treatment under current licensing restrictions in other settings;

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

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

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

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

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

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

(a) The optional clinic provisions;

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

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

(2) The department shall provide the appropriate committees of the legislature with a clear and concise explanation of the reasons for reducing state hospital capacity and the differences in costs and benefits of treatment in state and community hospital treatment.

(3) The department may not reduce the capacity of either state hospital until at least an equal number of skilled nursing,

residential, expanded services facility, or supported housing placements are available in the community to the persons displaced by the capacity reduction. The department shall retain sufficient capacity at the state hospital to address the cyclical need for hospitalization for persons moved to the community under a bed reduction program. For purposes of this section, "sufficient" means not less than one hospital bed for every ten beds created in the community unless the department can demonstrate conclusively to the legislature that a lesser ratio is sufficient.

### Mental Health Treatment

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

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

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

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

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

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

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

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

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

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

(6) "County designated mental health professional" means a mental health professional appointed by the county or the regional support network to perform the duties specified in this chapter;

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

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

(9) "Designated chemical dependency specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in chapter 70.96A RCW and sections 202 through 216 of this act or chapter 70.-- RCW (sections 302 through 374 of this act);

(10) "Designated crisis responder" means a mental health professional appointed by the county or the regional support network to perform the duties specified in this chapter or under chapter 70.-- RCW (sections 302 through 374 of this act);

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

~~((+0))~~ (12) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, psychologist, or social worker,

and such other developmental disabilities professionals as may be defined by rules adopted by the secretary;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A substantial risk that: (i) Physical harm will be inflicted by ~~((an individual))~~ a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by ~~((an individual))~~ a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by ~~((an individual))~~ a person upon

the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

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

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

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

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

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

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

~~((25))~~ (27) "Psychiatric nurse" means a registered nurse who has a bachelor's degree from an accredited college or university, and who has had, in addition, at least two years of experience in the direct treatment of mentally ill or emotionally disturbed persons under the supervision of a mental health professional. "Psychiatric nurse" also means any other registered nurse who has at least three years of such experience.

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

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

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

~~((28))~~ (31) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.

~~((32))~~ (32) "Release" means legal termination of the commitment under the provisions of this chapter;

~~((29))~~ (33) "Resource management services" has the meaning given in chapter 71.24 RCW;

~~((30))~~ (34) "Secretary" means the secretary of the department of social and health services, or his or her designee;

~~((31))~~ (35) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) "Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week, prescreening determinations for mentally ill persons being considered for placement in nursing homes as required by federal law, screening for patients being considered for admission to residential services, diagnosis and treatment for acutely mentally ill and severely emotionally disturbed children discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program, investigation, legal, and other nonresidential services under chapter 71.05 RCW, case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient information between service providers, and other services determined by regional support networks.

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

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

(10) "Licensed service provider" means an entity licensed according to this chapter or chapter 71.05 RCW or an entity

deemed to meet state minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department, that meets state minimum standards or ~~((individuals))~~ persons licensed under chapter 18.57, 18.71, 18.83, or 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners.

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

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

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

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

(15) "Residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for acutely mentally ill persons, chronically mentally ill adults, severely emotionally disturbed children, or seriously disturbed adults determined by the regional support network to be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported living services, and shall also include any residential services developed to service mentally ill persons in nursing homes. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of food and shelter, except for children's long-term residential facilities existing prior to January 1, 1991.

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

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

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

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

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

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

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in chapter 71.34 RCW, as experiencing a mental disorder which is clearly interfering with the child's functioning in family

or school or with peers or is clearly interfering with the child's personality development and learning.

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

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

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

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

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

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

(ii) Changes in custodial adult;

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

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

~~((19))~~ (20) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for: (a) Delivery of mental health services; (b) licensed service providers for the provision of mental health services; (c) residential services; and (d) community support services and resource management services.

~~((20))~~ (21) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

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

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

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) "Professional person" means:

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

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

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

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

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

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

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

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

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

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

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

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

(c) Any person who leaves a public or private agency following evaluation or treatment for mental disorder shall be given a written statement setting forth the substance of this section.

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

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

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

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

(a) A judicial hearing in a superior court, either by a judge or court commissioner thereof, shall be held not more than seventy-two hours after the initial detention to determine whether there is probable cause to detain the person after the seventy-two hours

have expired for up to an additional fourteen days without further automatic hearing for the reason that the person is a person whose mental disorder presents a likelihood of serious harm or that the person is gravely disabled;

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

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

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

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

(6) When proceedings are initiated under RCW 71.05.150 (2), (3), or (4)(b), no later than twelve hours after such person is admitted to the evaluation and treatment facility the personnel of the evaluation and treatment facility or the county designated mental health professional shall serve on such person a copy of the petition for initial detention and the name, business address, and phone number of the designated attorney and shall forthwith commence service of a copy of the petition for initial detention on the designated attorney.

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

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

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

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

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

(d) To remain silent;

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

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

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

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

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

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

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

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

(d) To have visitors at reasonable times;

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

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

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

(h) Not to consent to the administration of antipsychotic medications and not to thereafter be administered antipsychotic medications unless ordered by a court under RCW 71.05.370 (as recodified by this act) or pursuant to an administrative hearing under RCW 71.05.215;

(i) Not to consent to the performance of electroconvulsant therapy or surgery, except emergency life-saving surgery, unless ordered by a court under RCW 71.05.370 (as recodified by this act);

(j) Not to have psychosurgery performed on him or her under any circumstances;

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

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

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

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

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

(15) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or an active condition of supervision by the department of corrections.

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

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

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

(a) An attempt to obtain the informed consent of the person prior to administration of antipsychotic medication;

(b) For short-term treatment up to thirty days, the right to refuse antipsychotic medications unless there is an additional concurring medical opinion approving medication;

(c) For continued treatment beyond thirty days through the hearing on any petition filed under RCW 71.05.370(7), the right to periodic review of the decision to medicate by the medical director or designee;

(d) Administration of antipsychotic medication in an emergency and review of this decision within twenty-four hours. An emergency exists if the person presents an imminent

likelihood of serious harm, and medically acceptable alternatives to administration of antipsychotic medications are not available or are unlikely to be successful; and in the opinion of the physician, the person's condition constitutes an emergency requiring the treatment be instituted prior to obtaining a second medical opinion.

(c) Documentation in the medical record of the physician's attempt to obtain informed consent and the reasons why antipsychotic medication is being administered over the person's objection or lack of consent.) The physician must attempt to obtain the informed consent of an involuntary committed person prior to administration of antipsychotic medication and document the attempt to obtain consent in the person's medical record with the reasons that antipsychotic medication is necessary. If the physician determines that the patient is not able to provide informed consent, the physician may obtain informed consent from a person who is named as an agent in the patient's mental health advance directive executed pursuant to chapter 71.32 RCW, provided that the agent otherwise has authority under the directive to consent to the proposed medication.

(3) When a person is detained pursuant to RCW 71.05.150, or detained for involuntary treatment not to exceed fourteen days pursuant to RCW 71.05.240, the person may refuse antipsychotic medications unless there is an additional concurring medical opinion following an examination of the person that the medications are necessary pursuant to subsection (1) of this section. Medications administered under this subsection may not continue beyond the hearing conducted pursuant to RCW 71.05.320(1) and the petitioner shall notify the court of administration of involuntary medications under this subsection and provide the court with an opinion regarding whether continued involuntary administration of antipsychotic medication is medically necessary.

(4) If a person involuntarily committed under RCW 71.05.320(1) for up to ninety days, or for less restrictive alternative treatment not to exceed ninety days pursuant to RCW 71.05.240 refuses antipsychotic medications, the medications may not be administered unless the person has first had a hearing by a panel composed of a physician and two other persons. The two persons shall be selected from among the following: A physician, advanced registered nurse practitioner, psychologist, psychiatric nurse, physician's assistant, and the medical director of the facility. Recognizing that some facilities will not have three staff members of the required expertise who are not directly involved in the person's treatment, the panel shall be composed to the greatest extent possible of treatment providers who are not directly involved in the person's treatment at the time of the hearing.

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

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

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

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

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

(7) The committed person may appeal the panel's decision to the medical director within twenty-four hours, excluding weekends and holidays, and the medical director must decide the appeal within twenty-four hours of receipt.

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

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

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

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

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

(c) To attend the hearing;

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

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

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

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

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

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

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

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

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

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

(4) To have visitors at reasonable times;

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

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

(7) Not to consent to the administration of antipsychotic medications beyond the hearing conducted pursuant to RCW 71.05.320(2) or the performance of electroconvulsant therapy or surgery, except emergency life-saving surgery, unless ordered by a court of competent jurisdiction)) (1) A court of competent jurisdiction may order that a person involuntarily detained, or committed for inpatient treatment and evaluation or to treatment in a less restrictive alternative pursuant to this chapter be administered antipsychotic medications or the performance of electroconvulsant therapy or surgery pursuant to the following standards and procedures:

(a) The administration of antipsychotic medication or electroconvulsant therapy shall not be ordered by the court unless

the petitioning party proves by clear, cogent, and convincing evidence that ((there exists a compelling state interest that justifies overriding the patient's lack of consent to the administration of antipsychotic medications or electroconvulsant therapy, that the proposed treatment is necessary and effective, and that medically acceptable alternative forms of treatment are not available, have not been successful, or are not likely to be effective)) treatment with antipsychotic medications is medically appropriate, that failure to medicate may result in a likelihood of serious harm or substantial deterioration or substantially prolong the length of involuntary commitment, and that there is no less intrusive course of treatment than medication or electroconvulsive therapy in the best interest of the person.

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

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

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

(i) To be represented by an attorney;

(ii) To present evidence;

(iii) To cross-examine witnesses;

(iv) To have the rules of evidence enforced;

(v) To remain silent;

(vi) To view and copy all petitions and reports in the court file; and

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

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

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

((e)) (2) Any person detained for a period of greater than ninety days pursuant to RCW 71.05.320((2)), who subsequently refuses antipsychotic medication, shall be entitled to the procedures set forth in ((RCW 71.05.370(7))) subsection (1) of this section.

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

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

(b) Under the following circumstances:

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

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

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

If antipsychotic medications are administered over a person's lack of consent pursuant to (b) of this subsection, a petition for an

order authorizing the administration of antipsychotic medications shall be filed on the next judicial day. The hearing shall be held within two judicial days. If deemed necessary by the physician with responsibility for the treatment of the person, administration of antipsychotic medications may continue until the hearing is held;

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

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

~~(5) A petition for involuntary medication may be joined with a petition for involuntary treatment.~~

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

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

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

Information and records may be disclosed only:

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

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

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

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

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

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

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

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

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

(5)(a) For either program evaluation or research, or both: PROVIDED, That the secretary adopts rules for the conduct of the

evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

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

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

(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 under RCW 71.05.150, 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 chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

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

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

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

~~((d))~~ (iv) Information and records shall be disclosed to the department of corrections pursuant to and in compliance with the provisions of RCW 71.05.445 for the purposes of completing presentence investigations or risk assessment reports, supervision

of an incarcerated offender or offender under supervision in the community, planning for and provision of supervision of an offender, or assessment of an offender's risk to the community; and

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

(8) To the attorney of the detained person.

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

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

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

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

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

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

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

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

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

(17) When a patient would otherwise be subject to the provisions of RCW 71.05.390 and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of such disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the

department, and governmental law enforcement agencies designated by the physician in charge of the patient or the professional person in charge of the facility, or his or her professional designee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) To ~~((an individual))~~ a person, organization, or agency as necessary for management or financial audits, or program monitoring and evaluation. Information obtained under this subsection shall remain confidential and may not be used in a

manner that discloses the name or other identifying information about the ~~((individual))~~ person whose records are being released.

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

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

(d) Pursuant to lawful order of a court.

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

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

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

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

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

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

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

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

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

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

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

(l) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental ~~((illness))~~ disorders or developmental disabilities.

Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information.

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

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

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

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

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

(4) At the time of discharge all ~~((individuals))~~ persons shall be informed by resource management services of their rights as provided in RCW ~~((71.05.640))~~ 71.05.390 and 71.05.620 through 71.05.690.

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

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

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

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

## PART II

### PILOT PROGRAMS

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

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

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

(2) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness

associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

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

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

(5) "Chemical dependency" means:

(a) Alcoholism;

(b) Drug addiction; or

(c) Dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(25) "Likelihood of serious harm" means:

(a) A substantial risk that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The county-designated crisis responder shall then serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order to appear, together with a notice of rights and a petition for initial detention. After service on the person, the county-designated crisis responder shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility or secure detoxification facility and the designated attorney. The county-designated crisis responder shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility, secure detoxification facility, or other certified chemical dependency provider. The person shall be permitted to remain in his or her home or other place of his or her choosing before the time of evaluation and shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other person accompanying the person may be present during the admission evaluation. The facility may exclude the person if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The professional person in charge of the agency or facility or the person's designee providing evaluation and treatment services in a secure detoxification facility has assessed the person's

condition and finds that the condition is caused by chemical dependency and either results in a likelihood of serious harm or in the detained person being gravely disabled, and the professional person or his or her designee is prepared to testify those conditions are met;

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

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

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

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

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

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

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

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

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

**NEW SECTION. Sec. 213.** (1) Every person involuntarily detained or committed under this chapter as a result of a mental disorder is entitled to all the rights set forth in this chapter and in

chapter 71.05 RCW, and retains all rights not denied him or her under this chapter or chapter 71.05 RCW.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Is cost-effective;

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

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

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

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

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

The department of social and health services, in planning and providing funding to counties pursuant to chapter 71.24 RCW, shall recognize the financial necessities imposed upon counties by implementation of this chapter and chapter 70.-- RCW (sections 202 through 216 of this act), and shall consider needs, if any, for

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) This section expires June 30, 2008.

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

The department shall, in cooperation with the Washington state institute for public policy, develop a pilot program to evaluate the effectiveness of clubhouse psychiatric rehabilitation programs. A clubhouse program means a program in which consumers of

mental health services are involved in the design, development, and operation of the program and where a primary goal of the program is the employment of the members of the program. The pilot project shall provide support and evaluation of existing and established clubhouse programs. Clubhouse programs shall be evaluated on at least the following criteria:

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

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

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

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

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

### PART III

#### OMNIBUS INVOLUNTARY TREATMENT ACT

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

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

The provisions of this chapter are intended by the legislature:

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

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

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

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

(5) To safeguard individual rights;

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

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

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

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

(10) To protect the public safety.

## Definitions

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

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

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

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

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

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

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

(7) "Certified facility" means a facility certified by the department for detention or commitment under this chapter and includes, but is not limited to, an evaluation and treatment center, a psychiatric hospital, a secure detoxification facility, and an expanded services facility that has been certified for detention or commitment.

(8) "Chemical dependency" means:

(a) Alcoholism;

(b) Drug addiction; or

(c) Dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(30) "History of one or more violent acts" refers to the period of time ten years before the filing of a petition under this chapter, or

chapter 70.96A or 71.05 RCW, excluding any time spent, but not any violent acts committed, in a mental health facility or a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction.

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

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

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

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

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

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

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

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

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

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

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

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

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

(37) "Likelihood of serious harm" means:

(a) A substantial risk that:

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

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

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

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

(38) "Medical necessity" for inpatient care of a minor means a requested certified inpatient service that is reasonably calculated to: (a) Diagnose, arrest, or alleviate a chemical dependency; or (b) prevent the worsening of chemical dependency conditions that endanger life or cause suffering and pain, or result in illness or infirmity or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no adequate less restrictive alternative available.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### General Provisions

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

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

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

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

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

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

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

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

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

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

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

### Department Responsibilities

**NEW SECTION. Sec. 310.** The department shall have the responsibility to determine whether all rights of persons recognized and guaranteed by the provisions of this chapter and the Constitutions of the state of Washington and the United States are, in fact, protected and effectively secured. To this end, the department shall assign appropriate staff who shall from time to time as may be necessary have authority to examine records,

inspect facilities, attend proceedings, and do whatever is necessary to monitor, evaluate, and assure adherence to such rights. Such persons shall also recommend such additional safeguards or procedures as may be appropriate to secure individual rights set forth in this chapter and as guaranteed by the state and federal Constitutions.

**NEW SECTION. Sec. 311.** The department shall adopt such rules as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to evaluation of the quality of the program and facilities operating pursuant to this chapter, evaluation of the effectiveness and cost effectiveness of such programs and facilities, and procedures and standards for certification and other action relevant to facilities.

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

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

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

### Initial Detention

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

(i) Presents a likelihood of serious harm; or

(ii) Is gravely disabled;

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

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

(ii) The order shall state the address of the certified facility to which the person is to report and whether the required seventy-two hour evaluation and treatment services may be delivered on an outpatient or inpatient basis and that if the person named in the order fails to appear at the certified facility at or before the date and time stated in the order, such person may be involuntarily taken into custody for evaluation and treatment. The order shall

also designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(c) The designated responder shall then serve or cause to be served on such person, and his or her personal representative, guardian, or conservator, if any, a copy of the order to appear together with a notice of rights and a petition for initial detention. After service on the person, the designated responder shall file the return of service in court and provide copies of all papers in the court file to the certified facility and the designated attorney. The designated responder shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of outpatient evaluation or admission to the certified facility. The person shall be permitted to remain in his or her home or other place of his or her choosing prior to the time of evaluation and shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other person accompanying the person may be present during the admission evaluation. The facility may exclude the person if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

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

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

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

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

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

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

(5) Persons delivered to certified facilities by peace officers pursuant to subsection (4)(b) of this section may be held by the facility for a period of up to twelve hours: PROVIDED, That they are examined by a mental health professional or chemical

dependency professional within three hours of their arrival. Within twelve hours of their arrival, the designated responder must file a supplemental petition for detention, and commence service on the designated attorney for the detained person.

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

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

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

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

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

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

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

**NEW SECTION. Sec. 321.** The legislature intends that, when evaluating a person who is identified under RCW 72.09.370(7), the professional person at the evaluation and treatment facility shall, when appropriate after consideration of the person's mental condition and relevant public safety concerns, file a petition for a ninety-day less restrictive alternative in lieu of a petition for a fourteen-day commitment.

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

(2) When an offender is under court-ordered treatment in the community and the supervision of the department of corrections, and the treatment provider becomes aware that the person is in violation of the terms of the court order, the treatment provider

shall notify the designated responder and the department of corrections of the violation and request an evaluation for purposes of revocation of the less restrictive alternative.

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

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

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

**NEW SECTION. Sec. 323.** (1) If a person is referred to a designated responder under RCW 10.77.090(1)(d)(iii)(A), the designated responder shall examine the person within forty-eight hours. If the designated responder determines it is not appropriate to detain the person or petition for a ninety-day less restrictive alternative under section 324(4) of this act, that decision shall be immediately presented to the superior court for hearing. The court shall hold a hearing to consider the decision of the designated responder not later than the next judicial day. At the hearing the superior court shall review the determination of the designated responder and determine whether an order should be entered requiring the person to be evaluated at a certified facility. No person referred to a certified facility may be held at the facility longer than seventy-two hours.

(2) If a person is placed in an evaluation and treatment facility under RCW 10.77.090(1)(d)(iii)(B), a professional person shall evaluate the person for purposes of determining whether to file a ninety-day inpatient or outpatient petition under this chapter. Before expiration of the seventy-two hour evaluation period authorized under RCW 10.77.090(1)(d)(iii)(B), the professional person shall file a petition or, if the recommendation of the professional person is to release the person, present his or her recommendation to the superior court of the county in which the criminal charge was dismissed. The superior court shall review the recommendation not later than forty-eight hours, excluding Saturdays, Sundays, and holidays, after the recommendation is presented. If the court rejects the recommendation to unconditionally release the person, the court may order the person detained at a certified facility for not more than a seventy-two hour evaluation and treatment period and direct the person to appear at a surety hearing before that court within seventy-two hours, or the court may release the person but direct the person to appear at a surety hearing set before that court within eleven days, at which time the prosecutor may file a petition under this chapter for ninety-day inpatient or outpatient treatment. If a petition is filed by the prosecutor, the court may order that the person named in the petition be detained at the certified facility that performed the evaluation under this subsection or order the respondent to be in outpatient treatment. If a petition is filed but the person fails to appear in court for the surety hearing, the court shall order that a mental health professional, a chemical dependency professional, or peace officer shall take such person or cause such person to be taken into custody and placed in a certified facility to be brought before the court the next judicial day after detention. Upon the person's first appearance in court after a petition has been filed, proceedings under sections 330 and 331 of this act shall commence. For a person subject to this subsection, the prosecutor or professional person may directly file a petition for ninety-day inpatient or outpatient treatment and no petition for initial detention or fourteen-day detention is required before such a petition may be filed.

The court shall conduct the hearing on the petition filed under this subsection within five judicial days of the date the petition is filed. The court may continue the hearing upon the written request of the person named in the petition or the person's attorney, for good cause shown. Such a continuance shall not exceed five additional judicial days. If the person named in the petition requests a jury trial, the trial shall commence within ten judicial days of the date of the filing of the petition. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The person shall be present at such proceeding, which shall in all respects accord with the constitutional guarantees of due process of law and the rules of evidence pursuant to section 359 (8) and (9) of this act.

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

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

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

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

**NEW SECTION. Sec. 324.** A person detained for seventy-two hour evaluation and treatment may be detained for not more than fourteen additional days of involuntary intensive treatment or ninety additional days of a less restrictive alternative to involuntary intensive treatment if the following conditions are met:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Such person after having been taken into custody for evaluation and treatment has threatened, attempted, or inflicted: (a) Physical harm upon the person of another or himself or herself, or substantial damage upon the property of another, and (b) as a result of mental disorder, chemical dependency disorder, or both presents a likelihood of serious harm; or

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

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

(4) Such person is gravely disabled.

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

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

(3) If a person has been determined to be incompetent pursuant to RCW 10.77.090(4), then the professional person in charge of the treatment facility or his or her professional designee or the designated responder may directly file a petition for one hundred eighty day treatment under section 327(3) of this act. No petition for initial detention or fourteen day detention is required before such a petition may be filed.

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

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

detailed person to examine and testify on behalf of the detained person.

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

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

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

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

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

(b) If the committed person is developmentally disabled and has been determined incompetent pursuant to RCW 10.77.090(4), and the best interests of the person or others will not be served by a less-restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department or to a facility certified by the department to provide treatment to persons committed under this chapter. When appropriate and subject to available funds, treatment and training of such persons must be provided in a program specifically reserved for the treatment and training of developmentally disabled persons. A person so committed shall receive habilitation services pursuant to an individualized service plan specifically developed to treat the behavior which was the subject of the criminal proceedings. The treatment program shall be administered by developmental disabilities professionals and others trained specifically in the needs of developmentally disabled persons.

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

(d) The department may limit admissions to these specialized programs in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department. An order for treatment less restrictive than involuntary detention may include conditions, and if such conditions are not adhered to, the designated mental health professional, designated chemical

dependency specialist, or developmental disabilities professional may order the person apprehended under the terms and conditions of section 336 of this act.

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

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

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

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

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

(d) Continues to be gravely disabled.

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

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

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

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

(2) The secretary's placement authority shall be exercised through a designated placement committee appointed by the secretary and composed of children's mental health specialists,

including at least one child psychiatrist who represents the state-funded, long-term, evaluation and treatment facility for minors. The responsibility of the placement committee will be to:

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

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

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

(d) Receive and monitor reports of all discharges.

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

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

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

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

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

(2) History of one or more violent acts;

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

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

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

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

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

#### **Modifications and Reviews**

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

person were dismissed with written notice and copies of the initiating papers.

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

(b) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320(2)(c) is conditionally released under (a) of this subsection, the superintendent or professional person in charge of the hospital or facility providing involuntary treatment shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision to conditionally release the person. Notice and a copy of the terms of conditional release shall be provided at least thirty days before the person is released from inpatient care. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county that issued the commitment order to hold a hearing to determine whether the person may be conditionally released and the terms of the conditional release. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the committed person and, if the person is a minor, his or her parent, the attorney, if any, and personal representative, guardian, or conservator of the committed person, the department of corrections if the person is under its supervision, and the court of original commitment. If the county in which the committed person is to receive outpatient treatment is the same county in which the criminal charges against the committed person were dismissed, then the court shall, upon the motion of the prosecuting attorney, transfer the proceeding to the court in that county. The court shall conduct a hearing on the petition within ten days of the filing of the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be conditionally released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. If the court disapproves of the conditional release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the conditional release of the person shall be approved by the court on the same or modified conditions or the person shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

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

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

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

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

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

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

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

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

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

(d) The court that originally ordered commitment shall be notified within two judicial days of a person's detention under the provisions of this section, and the designated responder or the secretary shall file his or her petition and order of apprehension and detention with the court and serve them upon the person detained, and if the person is a minor, his or her parent, his or her attorney, personal representative, guardian, or conservator, if any, and the department of corrections, where the person is under its supervision, shall receive a copy of such papers as soon as possible. Such person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as specifically set forth in this section and except that there shall be no right to jury trial. The issues to be determined shall be: (i) Whether the conditionally released person did or did not adhere to the terms and conditions of his or her conditional release; (ii) that substantial deterioration in the person's functioning has occurred; (iii) there is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or (iv) there is a likelihood of serious harm; and, if any of the conditions listed in this subsection (3)(d) have occurred, whether the terms of conditional release should be modified or the person should be returned to the facility.

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

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

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

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

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

#### Treatment Provider Responsibilities

**NEW SECTION. Sec. 337.** Each person involuntarily detained and accepted or admitted at a certified facility shall, within twenty-four hours of his or her admission or acceptance at the facility, be examined and evaluated by a licensed physician who may be assisted by a physician assistant according to chapter 18.71A RCW or an advanced registered nurse practitioner according to chapter 18.79 RCW and a mental health professional or chemical dependency professional, as appropriate, and shall receive such treatment and care as his or her condition requires including treatment on an outpatient basis for the period that he or she is detained, except that, beginning twenty-four hours prior to a trial or hearing pursuant to section 325, 330, 331, 336, 360, or 361 of this act, the person may refuse psychiatric medications, but may not refuse: (1) Any other medication previously prescribed by a person licensed under Title 18 RCW; or (2) emergency lifesaving treatment, and the person shall be informed at an appropriate time of his or her right of such refusal. The person shall be detained up to seventy-two hours if, in the opinion of the professional person in charge of the facility, or his or her professional designee, the person presents a likelihood of serious harm or is gravely disabled. A person who has been detained for seventy-two hours shall, no later than the end of such period, be released unless referred for further care on a voluntary basis or detained pursuant to court order for further treatment as provided in this chapter.

If, after examination and evaluation, the licensed physician and mental health professional determine that the initial needs of the person would be better served by placement in an alternate facility, then the person shall be referred to that facility.

A certified facility admitting or accepting any person pursuant to this chapter whose physical condition reveals the need for hospitalization shall assure that such person is transferred to an appropriate hospital for evaluation or admission for treatment. Notice of such fact shall be given to the court, the designated attorney, and the designated responder and where the person is a minor, his or her parent, and the court shall order such continuance in proceedings under this chapter as may be necessary, but in no event may this continuance be more than fourteen days.

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

**NEW SECTION. Sec. 339.** (1) When a state hospital admits a person for evaluation or treatment under this chapter, the state hospital shall consult with the appropriate corrections and chemical dependency personnel and the appropriate forensic staff at the state hospital to conduct a discharge review to determine whether the person presents a likelihood of serious harm and

whether the person is appropriate for release to a less restrictive alternative, if the person has a history of one or more violent acts and:

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

(b) Is or has been under the authority of the department of corrections or the indeterminate sentence review board.

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

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

**NEW SECTION. Sec. 341.** No indigent patient shall be conditionally released or discharged from involuntary treatment without suitable clothing, and the superintendent of a state hospital shall furnish the same, together with such sum of money as he or she deems necessary for the immediate welfare of the patient. Such sum of money shall be the same as the amount required by RCW 72.02.100 to be provided to persons in need being released from correctional institutions. As funds are available, the secretary may provide payment to indigent persons conditionally released pursuant to this chapter consistent with the optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules and regulations to do so.

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

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

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

(b) The provisions of section 344(2) of this act apply to proposed leaves, and either or both prosecuting attorneys receiving notice under this subsection may petition the court under section 344(2) of this act.

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

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

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

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

**NEW SECTION. Sec. 344.** (1) Nothing in this chapter shall prohibit the superintendent or professional person in charge of the

hospital or facility in which the person is being involuntarily treated from releasing him or her prior to the expiration of the commitment period when, in the opinion of the superintendent or professional person in charge, the person being involuntarily treated no longer presents a likelihood of serious harm.

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

(2) Before a person committed under grounds set forth in section 327(3) or 331(2)(c) of this act is released under this section, the superintendent or professional person in charge shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the release date. Notice shall be provided at least thirty days before the release date. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county in which the person is being involuntarily treated for a hearing to determine whether the person is to be released. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the committed person and his or her attorney, personal representative, guardian, or conservator, if any, the department of corrections if the person is under its supervision, and where the person is a minor, his or her parent. The court shall conduct a hearing on the petition within ten days of filing the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. If the court disapproves of the release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the committed person shall be released or shall be returned for involuntary treatment subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

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

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

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

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

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

(i) The victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.090(4) preceding commitment under section 327(3) or 331(2)(c) of this act or the victim's next of kin if the crime was a homicide;

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

(iii) Any person specified in writing by the prosecuting attorney. Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in

writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

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

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

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

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

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

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

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

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

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

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

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

#### Attorneys and Courts

**NEW SECTION. Sec. 347.** Attorneys appointed for persons pursuant to this chapter shall be compensated for their services as follows: (1) The person for whom an attorney is appointed shall, if he or she is financially able pursuant to standards as to financial capability and indigency set by the superior court of the county in which the proceeding is held, bear the costs of such legal services; (2) if such person is indigent pursuant to such standards, the costs of such services shall be borne by the county in which the proceeding is held, subject however to the responsibility for costs provided in section 331(2) of this act.

**NEW SECTION. Sec. 348.** In any judicial proceeding for involuntary commitment or detention, or in any proceeding challenging such commitment or detention, the prosecuting attorney for the county in which the proceeding was initiated shall represent the persons or agencies petitioning for commitment or detention and shall defend all challenges to such commitment or detention: PROVIDED, That the attorney general shall represent and provide legal services and advice to state hospitals with regard to all provisions of and proceedings under this chapter

except in proceedings initiated by hospitals seeking fourteen day detention.

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

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

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

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

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

**NEW SECTION. Sec. 351.** The judges of the superior court of the county by majority vote may authorize involuntary treatment commissioners, appointed pursuant to RCW 71.05.135, to perform any or all of the following duties:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Individual Rights and Medications

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

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

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

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

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

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

(5) Whenever any person is detained for evaluation and treatment pursuant to this chapter, both the person and, if the person is a minor, his or her parent, or if possible, a responsible member of his or her immediate family, his or her personal representative, guardian, or conservator, if any, shall be advised as

soon as possible in writing or orally, by the officer or person taking him or her into custody or by personnel of the certified facility where the person is detained that unless the person is released or voluntarily admits himself or herself for treatment within seventy-two hours of the initial detention:

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

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

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

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

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

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

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

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

- (a) To present evidence on his or her behalf;
- (b) To cross-examine witnesses who testify against him or her;
- (c) To be proceeded against by the rules of evidence;
- (d) To remain silent;
- (e) To view and copy all petitions and reports in the court file.

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

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

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

(10) Insofar as danger to the person or others is not created, each person involuntarily detained, treated in a less restrictive alternative course of treatment, or committed for treatment and

evaluation pursuant to this chapter shall have, in addition to other rights not specifically withheld by law, the following rights:

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

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

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

(d) To have visitors at reasonable times;

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

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

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

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

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

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

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

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

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

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

(15) The court shall inform the person whose commitment or recommitment is sought and, if the person is a minor, his or her parent, of his or her right to contest the application, be represented by counsel at every stage of any proceedings relating to his or her commitment and recommitment, and have counsel appointed by the court or provided by the court, if he or she wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him or her regardless of his or her wishes. The person shall, if he or she is financially able, bear the costs of such legal service; otherwise such legal service shall be at public expense. The person whose commitment or recommitment is sought shall be informed of his or her right to be examined by a licensed physician of his or her choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

**NEW SECTION. Sec. 360.** (1) A person who is gravely disabled or presents a likelihood of serious harm as a result of a mental or chemical dependency disorder or co-occurring mental and chemical dependency disorders has a right to refuse antipsychotic medication unless it is determined that the failure to

medicate may result in a likelihood of serious harm or substantial deterioration or substantially prolong the length of involuntary commitment and there is no less intrusive course of treatment than medication in the best interest of that person.

(2) The physician must attempt to obtain the informed consent of an involuntary committed person prior to administration of antipsychotic medication and document the attempt to obtain consent in the person's medical record with the reasons that antipsychotic medication is necessary. If the physician determines that the patient is not able to provide informed consent, the physician may obtain informed consent from a person who is named as an agent in the patient's mental health advance directive executed pursuant to chapter 71.32 RCW, provided that the agent otherwise has authority under the directive to consent to the proposed medication.

(3) When a person is detained pursuant to section 315 of this act, or detained for involuntary treatment not to exceed fourteen days pursuant to section 324 of this act, the person may refuse antipsychotic medications unless there is an additional concurring medical opinion following an examination of the person that the medications are necessary pursuant to subsection (1) of this section. Medications administered under this subsection may not continue beyond the hearing conducted pursuant to section 331 of this act and the petitioner shall notify the court of administration of involuntary medications under this subsection and provide the court with an opinion regarding whether continued involuntary administration of antipsychotic medication is medically necessary.

(4) If a person involuntarily committed pursuant to section 331(1) of this act for up to ninety days, or for less restrictive alternative treatment not to exceed ninety days pursuant to section 324 of this act, refuses antipsychotic medications, the medications may not be administered unless the person has first had a hearing by a panel composed of a physician and two other persons. The two persons shall be selected from among the following: A physician, advanced registered nurse practitioner, psychologist, psychiatric nurse, physician's assistant, and the medical director of the facility. Recognizing that some facilities will not have three staff members of the required expertise who are not directly involved in the person's treatment, the panel shall be composed to the greatest extent possible of treatment providers who are not directly involved in the person's treatment at the time of the hearing.

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

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

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

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

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

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

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

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

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

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

(c) To attend the hearing;

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

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

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

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

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

**NEW SECTION. Sec. 361.** (1) A court of competent jurisdiction may order that a person involuntarily detained, or committed for inpatient treatment and evaluation or to treatment in a less restrictive alternative pursuant to this chapter be administered antipsychotic medications or the performance of electroconvulsant therapy or surgery pursuant to the following standards and procedures:

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

(b) The court shall make specific findings of fact concerning:

(i) The existence of the likelihood of serious harm or substantial deterioration or substantially prolonging the length of involuntary commitment; (ii) the necessity and effectiveness of the treatment; (iii) the person's desires regarding the proposed treatment; and (iv) the best interests of the person.

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

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

(i) To be represented by an attorney;

(ii) To present evidence;

(iii) To cross-examine witnesses;

(iv) To have the rules of evidence enforced;

(v) To remain silent;

(vi) To view and copy all petitions and reports in the court file; and

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

(e) The court may appoint a psychiatrist, psychologist within their scope of practice, or physician to examine and testify on

behalf of such person. The court shall appoint a psychiatrist, psychologist within their scope of practice, or physician designated by such person or the person's counsel to testify on behalf of the person in cases where an order for electroconvulsant therapy is sought.

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

(2) Any person detained for a period of greater than ninety days pursuant to section 331 of this act, who subsequently refuses antipsychotic medication, shall be entitled to the procedures set forth in subsection (1) of this section.

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

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

(b) Under the following circumstances:

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

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

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

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

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

(5) A petition for involuntary medication may be joined with a petition for involuntary treatment.

### Financial Responsibility

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

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

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

(i) Inability to pay in whole or in part;

(ii) A definition of substantial hardship; and

(iii) Appropriate payment schedules. Such standards shall be applicable to all county mental health administrative boards.

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

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

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

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

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

(4)(a) The department may limit admissions of such applicants or modify its programs in order to ensure that expenditures for services or programs do not exceed amounts appropriated by the legislature and are allocated by the department for such services or programs. The department may establish admission priorities in the event that the number of eligible applicants exceeds the limits set by the department.

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

### Confidentiality

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

Information and records may be disclosed only:

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

- (a) Employed by the facility;
- (b) Who has medical responsibility for the patient's care;
- (c) Who is a designated responder;
- (d) Who is providing services under chapter 71.24 RCW;
- (e) Who is employed by a state or local correctional facility where the person is confined or supervised; or
- (f) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

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

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

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

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

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

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

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

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

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

(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 of the department of social and health services.

(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 designated responder is requested by a representative of a law enforcement agency, including a police officer, sheriff, a municipal attorney, or prosecuting attorney to undertake an investigation under section 315 of this act, the designated responder 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 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 section 345 of this act and RCW 4.24.550, regarding persons committed under this chapter under sections 327(3) and 331(2)(c) of this act after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

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

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

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

(iv) Information and records shall be disclosed to the department of corrections pursuant to and in compliance with the provisions of RCW 71.05.445 for the purposes of completing presentence

investigations or risk assessment reports, supervision of an incarcerated offender or offender under supervision in the community, planning for and provision of supervision of an offender, or assessment of an offender's risk to the community; and

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

(8) To the attorney of the detained person.

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

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

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

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

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

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

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

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

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

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

(18) When a person would otherwise be subject to the provisions of this section and disclosure is necessary for the protection of the person or others due to his or her unauthorized

disappearance from the facility, and his or her whereabouts is unknown, notice of such disappearance, along with relevant information, may be made to relatives and governmental law enforcement agencies designated by the physician in charge of the person or the professional person in charge of the facility, or his or her professional designee.

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

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

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

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

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

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

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

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

(d) Pursuant to lawful order of a court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Liability

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

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

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

(1) One thousand dollars; or

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

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

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

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

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

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

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

#### PART IV

##### TREATMENT GAP

NEW SECTION. Sec. 401. A new section is added to chapter 70.96A RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The assessment shall include:

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

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

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

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

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

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

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

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

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

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

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

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

#### PART V

##### RESOURCES

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

NEW SECTION. Sec. 502. The legislature finds that there are persons with mental disorders, including organic or traumatic brain disorders, and combinations of mental disorders with other medical conditions or behavior histories that result in behavioral and security issues that make these persons ineligible for, or unsuccessful in, existing types of licensed facilities, including adult residential rehabilitation centers, boarding homes, adult family homes, group homes, and skilled nursing facilities. The legislature also finds that many of these persons have been treated on repeated occasions in inappropriate acute care facilities and released without an appropriate placement or have been treated or detained for extended periods in inappropriate settings including state hospitals and correctional facilities. The legislature further finds that some of these persons present complex safety and treatment issues that require security measures that cannot be instituted under most facility licenses or supported housing programs. These include the ability to detain persons under involuntary treatment orders or administer court ordered medications.

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

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

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

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

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

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

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

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

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

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

(9) "Designated responder" means a county designated mental health professional, a designated chemical dependency specialist, or a designated crisis responder as those terms are defined in chapter 70.96A, 71.05, 70.-- (sections 202 through 216 of this act), or 70.--(sections 302 through 374 of this act) RCW.

(10) "Detention" or "detain" means the lawful confinement of an individual under chapter 70.96A, 71.05, or 70.-- (sections 302 through 374 of this act) RCW.

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

(12) "Enhanced services facility" means a facility that provides treatment and services to persons for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues.

(13) "Expanded community services program" means a nonsecure program of enhanced behavioral and residential support provided to long-term and residential care providers serving specifically eligible clients who would otherwise be at risk for hospitalization at state hospital geriatric units.

(14) "Facility" means an enhanced services facility.

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

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

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

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

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

(18) "Likelihood of serious harm" means:

(a) A substantial risk that:

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

(ii) Physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused such harm or

that places another person or persons in reasonable fear of sustaining such harm; or

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

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

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

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

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

(22) "Psychiatric nurse" means:

(a) A registered nurse who has a bachelor's degree from an accredited college or university and who has had, in addition, at least two years of experience in the direct treatment of mentally ill or emotionally disturbed persons under the supervision of a mental health professional; or

(b) Any other registered nurse who has three years of such experience.

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

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

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

(26) "Release" means legal termination of the commitment under chapter 70.96A, 71.05, or 70.-- (sections 302 through 374 of this act) RCW.

(27) "Resident" means a person admitted to an enhanced services facility.

(28) "Secretary" means the secretary of the department or the secretary's designee.

(29) "Significant change" means:

(a) A deterioration in a resident's physical, mental, or psychosocial condition that has caused or is likely to cause clinical complications or life-threatening conditions; or

(b) An improvement in the resident's physical, mental, or psychosocial condition that may make the resident eligible for release or for treatment in a less intensive or less secure setting.

(30) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary.

(31) "Treatment" means the broad range of emergency, detoxification, residential, inpatient, and outpatient services and care, including diagnostic evaluation, mental health or chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, which may be extended to persons with mental disorders, chemical dependency disorders, or both, and their families.

(32) "Treatment records" include registration and all other records concerning individuals who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. "Treatment records" do not include notes or records maintained for personal use by an individual providing treatment services for the department,

regional support networks, or a treatment facility if the notes or records are not available to others.

(33) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property.

**NEW SECTION. Sec. 504.** A facility shall honor a mental health advance directive that was validly executed pursuant to chapter 71.32 RCW.

**NEW SECTION. Sec. 505.** (1) A person who is eligible for admission to or residence in an adult residential rehabilitation center, a boarding home, a group home, a skilled nursing facility, or a supported housing program, including an expanded community services program or a program for assertive community treatment is not eligible for residence in an enhanced services facility unless his or her treatment needs cannot adequately be addressed in the other facility or facilities for which he or she is eligible.

(2) A person, eighteen years old or older, may be admitted to an enhanced services facility if he or she meets the criteria in (a) through (c) of this subsection:

(a) The person requires: (i) Daily care by or under the supervision of a mental health professional, chemical dependency professional, or nurse; or (ii) assistance with three or more activities of daily living; and

(b) The person has: (i) A mental disorder, chemical dependency disorder, or both; (ii) an organic or traumatic brain injury; or (iii) a cognitive impairment that results in symptoms or behaviors requiring supervision and facility services;

(c) The person has two or more of the following:

(i) Self-endangering behaviors that are frequent or difficult to manage;

(ii) Aggressive, threatening, or assaultive behaviors that create a risk to the health or safety of other residents or staff, or a significant risk to property and these behaviors are frequent or difficult to manage;

(iii) Intrusive behaviors that put residents or staff at risk;

(iv) Complex medication needs and those needs include psychotropic medications;

(v) A history of or likelihood of unsuccessful placements in other licensed facilities or a history of rejected applications for admission to other licensed facilities based on the person's behaviors, history, or security needs;

(vi) A history of frequent or protracted mental health hospitalizations;

(vii) A history of offenses against a person or felony offenses that created substantial damage to property;

(viii) A history of other problematic placements, as defined in rules adopted by the department.

**NEW SECTION. Sec. 506.** (1)(a) Every person who is a resident of an enhanced services facility or is involuntarily detained or committed under the provisions of this chapter shall be entitled to all the rights set forth in this chapter, or chapter 71.05, 70.96A, or 70.--(sections 302 through 374 of this act) RCW and shall retain all rights not denied him or her under these chapters.

(b) No person shall be presumed incompetent as a consequence of receiving an evaluation or voluntary or involuntary treatment for a mental disorder, chemical dependency disorder, or both, under this chapter, chapter 71.05, 70.96A, or 70.-- (sections 302 through 374 of this act) RCW, or any prior laws of this state dealing with mental illness. Competency shall not be determined or withdrawn except under the provisions of chapter 10.77 or 11.88 RCW.

(c) Every resident of an enhanced services facility shall be given a written statement setting forth the substance of this section.

(2) Every resident of an enhanced services facility shall have the right to adequate care and individualized treatment.

(3) The provisions of this chapter shall not be construed to deny to any person treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

(4) Persons receiving evaluation or treatment under this chapter shall be given a reasonable choice of an available physician or other professional person qualified to provide such services.

(5) The physician-patient privilege or the psychologist-client privilege shall be deemed waived in proceedings under this chapter relating to the administration of antipsychotic medications. As to other proceedings under chapter 10.77, 70.96A, 71.05, or 70.--(sections 302 through 374 of this act) RCW, the privileges shall be waived when a court of competent jurisdiction in its discretion determines that such waiver is necessary to protect either the detained person or the public.

(6) Insofar as danger to the person or others is not created, each resident of an enhanced services facility shall have, in addition to other rights not specifically withheld by law, the following rights, a list of which shall be prominently posted in all facilities, institutions, and hospitals providing such services:

(a) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(b) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(c) To have access to individual storage space for his or her private use;

(d) To have visitors at reasonable times;

(e) To have reasonable access to a telephone, both to make and receive confidential calls, consistent with an effective treatment program;

(f) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(g) Not to consent to the administration of antipsychotic medications beyond the hearing conducted pursuant to section 108, 109, 360, or 361 of this act, or the performance of electroconvulsant therapy, or surgery, except emergency life-saving surgery, unless ordered by a court under section 109 or 361 of this act;

(h) To discuss treatment plans and decisions with professional persons;

(i) Not to have psychosurgery performed on him or her under any circumstances;

(j) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue.

(7) Nothing contained in this chapter shall prohibit a resident from petitioning by writ of habeas corpus for release.

(8) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or active supervision by the department of corrections.

**NEW SECTION. Sec. 507.** A person who is gravely disabled or presents a likelihood of serious harm as a result of a mental or chemical dependency disorder or co-occurring mental and chemical dependency disorders has a right to refuse antipsychotic medication. Antipsychotic medication may be administered over the person's objections only pursuant to RCW 71.05.215, 71.05.370 (as recodified by this act), or section 360 or 361 of this act.

**NEW SECTION. Sec. 508.** (1)(a) The department shall not license an enhanced services facility that serves any residents under sixty-five years of age for a capacity to exceed sixteen residents.

(b) The department may contract for services for the operation of enhanced services facilities only to the extent that funds are specifically provided for that purpose.

(2) The facility shall provide an appropriate level of security for the characteristics, behaviors, and legal status of the residents.

(3) An enhanced services facility may hold only one license but, to the extent permitted under state and federal law and medicaid requirements, a facility may be located in the same building as another licensed facility, provided that:

(a) The enhanced services facility is in a location that is totally separate and discrete from the other licensed facility; and

(b) The two facilities maintain separate staffing, unless an exception to this is permitted by the department in rule.

(4) Enhanced services facilities must meet all applicable state and local rules, regulations, permits, and code requirements. The secretary may, by rule, establish a list of currently licensed facilities that are deemed to meet the requirements of this subsection by virtue of their existing license.

**NEW SECTION. Sec. 509.** (1) The enhanced services facility shall complete a comprehensive assessment for each resident within fourteen days of admission, and the assessments shall be repeated upon a significant change in the resident's condition or, at a minimum, every one hundred eighty days if there is no significant change in condition.

(2) The enhanced services facility shall develop an individualized treatment plan for each resident based on the comprehensive assessment and any other information in the person's record. The plan shall be updated as necessary and shall include a plan for appropriate transfer or discharge. Where the person is under the supervision of the department of corrections, the facility shall collaborate with the department of corrections to maximize treatment outcomes and reduce the likelihood of reoffense.

(3) The plan shall maximize the opportunities for independence, recovery, employment, the resident's participation in treatment decisions, and collaboration with peer-supported services, and provide for care and treatment in the least restrictive manner appropriate to the individual resident, and, where relevant, to any court orders with which the resident must comply.

**NEW SECTION. Sec. 510.** (1) An enhanced services facility must have sufficient numbers of staff with the appropriate credentials and training to provide residents with the appropriate care and treatment:

- (a) Mental health and chemical dependency treatment;
- (b) Medication services;
- (c) Assistance with the activities of daily living;
- (d) Medical or rehabilitative treatment;
- (e) Dietary services; and
- (f) Security.

(2) Where an enhanced services facility specializes in medically fragile persons with mental disorders, the on-site staff must include at least one licensed nurse twenty-four hours per day. The nurse must be a registered nurse for at least sixteen hours per day. If the nurse is not a registered nurse, a registered nurse or a doctor must be on-call during the remaining eight hours.

**NEW SECTION. Sec. 511.** This chapter does not apply to the following residential facilities:

- (1) Nursing homes licensed under chapter 18.51 RCW;
- (2) Boarding homes licensed under chapter 18.20 RCW;
- (3) Adult family homes licensed under chapter 70.128 RCW;
- (4) Facilities approved and certified under chapter 71A.22 RCW;
- (5) Residential treatment facilities licensed under chapter 71.12 RCW; and
- (6) Hospitals licensed under chapter 70.41 RCW.

**NEW SECTION. Sec. 512.** (1) The department shall establish licensing provisions for enhanced services facilities to serve the populations defined in this chapter.

(2) No person or public or private agency may operate or maintain an enhanced services facility without a license, which must be renewed annually.

(3) A licensee shall have the following readily accessible and available for review by the department, residents, families of residents, and the public:

(a) Its license to operate and a copy of the department's most recent inspection report and any recent complaint investigation reports issued by the department;

(b) Its written policies and procedures for all treatment, care, and services provided directly or indirectly by the facility; and

(c) The department's toll-free complaint number, which shall also be posted in a clearly visible place and manner.

(4) No facility shall discriminate or retaliate in any manner against a resident or employee because the resident, employee, or any other person made a complaint or provided information to the department, the long-term care ombudsman, or a mental health ombuds person.

**NEW SECTION. Sec. 513.** (1) In any case in which the department finds that a licensee of a facility, or any partner, officer, director, owner of five percent or more of the assets of the facility, or managing employee failed or refused to comply with the requirements of this chapter or the rules established under them, the department may take any or all of the following actions:

- (a) Suspend, revoke, or refuse to issue or renew a license;
- (b) Order stop placement; or
- (c) Assess civil monetary penalties.

(2) The department may suspend, revoke, or refuse to renew a license, assess civil monetary penalties, or both, in any case in which it finds that the licensee of a facility, or any partner, officer, director, owner of five percent or more of the assets of the facility, or managing employee:

- (a) Operated a facility without a license or under a revoked or suspended license;
- (b) Knowingly or with reason to know made a false statement of a material fact in the license application or any data attached thereto, or in any matter under investigation by the department;
- (c) Refused to allow representatives or agents of the department to inspect all books, records, and files required to be maintained or any portion of the premises of the facility;

(d) Willfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter;

(e) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or of the rules adopted under it; or

(f) Failed to pay any civil monetary penalty assessed by the department under this chapter within ten days after the assessment becomes final.

(3)(a) Civil penalties collected under this chapter shall be deposited into a special fund administered by the department.

(b) Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day the facility is or was out of compliance. Civil monetary penalties shall not exceed three thousand dollars per day. Each day upon which the same or a substantially similar action occurs is a separate violation subject to the assessment of a separate penalty.

(4) The department, through the director of residential care services, may use the civil penalty monetary fund for the protection of the health or property of residents of facilities found to be deficient including:

- (a) Payment for the cost of relocation of residents to other facilities;
- (b) Payment to maintain operation of a facility pending correction of deficiencies or closure; and
- (c) Reimbursement of a resident for personal funds or property loss.

(5)(a) The department may issue a stop placement order on a facility, effective upon oral or written notice, when the department determines:

(i) The facility no longer substantially meets the requirements of this chapter; and

(ii) The deficiency or deficiencies in the facility:

(A) Jeopardizes the health and safety of the residents; or

(B) Seriously limits the facility's capacity to provide adequate care.

(b) When the department has ordered a stop placement, the department may approve a readmission to the facility from a hospital, residential treatment facility, or crisis intervention facility when the department determines the readmission would be in the best interest of the individual seeking readmission.

(6) If the department determines that an emergency exists and resident health and safety is immediately jeopardized as a result of

a facility's failure or refusal to comply with this chapter, the department may summarily suspend the facility's license and order the immediate closure of the facility, or the immediate transfer of residents, or both.

(7) If the department determines that the health or safety of the residents is immediately jeopardized as a result of a facility's failure or refusal to comply with requirements of this chapter, the department may appoint temporary management to:

- (a) Oversee the operation of the facility; and
- (b) Ensure the health and safety of the facility's residents while:
  - (i) Orderly closure of the facility occurs; or
  - (ii) The deficiencies necessitating temporary management are corrected.

**NEW SECTION. Sec. 514.** (1) All orders of the department denying, suspending, or revoking the license or assessing a monetary penalty shall become final twenty days after the same has been served upon the applicant or licensee unless a hearing is requested.

(2) All orders of the department imposing stop placement, temporary management, emergency closure, emergency transfer, or summary license suspension shall be effective immediately upon notice, pending any hearing.

(3) Subject to the requirements of subsection (2) of this section, all hearings under this chapter and judicial review of such determinations shall be in accordance with the administrative procedure act, chapter 34.05 RCW.

**NEW SECTION. Sec. 515.** Operation of a facility without a license in violation of this chapter and discrimination against medicaid recipients are unfair or deceptive acts in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

**NEW SECTION. Sec. 516.** A person operating or maintaining a facility without a license under this chapter is guilty of a misdemeanor and each day of a continuing violation after conviction shall be considered a separate offense.

**NEW SECTION. Sec. 517.** Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law, maintain an action in the name of the state for an injunction, civil penalty, or other process against a person to restrain or prevent the operation or maintenance of a facility without a license issued under this chapter.

**NEW SECTION. Sec. 518.** (1) The department shall make or cause to be made at least one inspection of each facility prior to licensure and an unannounced full inspection of facilities at least once every eighteen months. The statewide average interval between full facility inspections must be fifteen months.

(2) Any duly authorized officer, employee, or agent of the department may enter and inspect any facility at any time to determine that the facility is in compliance with this chapter and applicable rules, and to enforce any provision of this chapter. Complaint inspections shall be unannounced and conducted in such a manner as to ensure maximum effectiveness. No advance notice shall be given of any inspection unless authorized or required by federal law.

(3) During inspections, the facility must give the department access to areas, materials, and equipment used to provide care or support to residents, including resident and staff records, accounts, and the physical premises, including the buildings, grounds, and equipment. The department has the authority to privately interview the provider, staff, residents, and other individuals familiar with resident care and treatment.

(4) Any public employee giving advance notice of an inspection in violation of this section shall be suspended from all duties without pay for a period of not less than five nor more than fifteen days.

(5) The department shall prepare a written report describing the violations found during an inspection, and shall provide a copy of the inspection report to the facility.

(6) The facility shall develop a written plan of correction for any violations identified by the department and provide a plan of correction to the department within ten working days from the receipt of the inspection report.

**NEW SECTION. Sec. 519.** The facility shall only admit individuals:

- (1) Who are over the age of eighteen;
- (2) Who meet the resident eligibility requirements described in section 505 of this act; and
- (3) Whose needs the facility can safely and appropriately meet through qualified and trained staff, services, equipment, security, and building design.

**NEW SECTION. Sec. 520.** If the facility does not employ a qualified professional able to furnish needed services, the facility must have a written contract with a qualified professional or agency outside the facility to furnish the needed services.

**NEW SECTION. Sec. 521.** At least sixty days before the effective date of any change of ownership, or change of management of a facility, the current operating entity must provide written notification about the proposed change separately and in writing, to the department, each resident of the facility, or the resident's guardian or representative.

**NEW SECTION. Sec. 522.** The facility shall:

(1) Maintain adequate resident records to enable the provision of necessary treatment, care, and services and to respond appropriately in emergency situations;

(2) Comply with all state and federal requirements related to documentation, confidentiality, and information sharing, including chapters 10.77, 70.02, 70.24, 70.96A, 71.05, and 70.-- (sections 302 through 374 of this act) RCW; and

(3) Where possible, obtain signed releases of information designating the department, the facility, and the department of corrections where the person is under its supervision, as recipients of health care information.

**NEW SECTION. Sec. 523.** (1) Standards for fire protection and the enforcement thereof, with respect to all facilities licensed under this chapter, are the responsibility of the chief of the Washington state patrol, through the director of fire protection, who must adopt recognized standards as applicable to facilities for the protection of life against the cause and spread of fire and fire hazards. If the facility to be licensed meets with the approval of the chief of the Washington state patrol, through the director of fire protection, the director of fire protection must submit to the department a written report approving the facility with respect to fire protection before a full license can be issued. The chief of the Washington state patrol, through the director of fire protection, shall conduct an unannounced full inspection of facilities at least once every eighteen months. The statewide average interval between full facility inspections must be fifteen months.

(2) Inspections of facilities by local authorities must be consistent with the requirements adopted by the chief of the Washington state patrol, through the director of fire protection. Findings of a serious nature must be coordinated with the department and the chief of the Washington state patrol, through the director of fire protection, for determination of appropriate actions to ensure a safe environment for residents. The chief of the Washington state patrol, through the director of fire protection, has exclusive authority to determine appropriate corrective action under this section.

**NEW SECTION. Sec. 524.** No facility providing care and treatment for individuals placed in a facility, acting in the course of its duties, shall be civilly or criminally liable for performing its duties under this chapter, provided that such duties were performed in good faith and without gross negligence.

**NEW SECTION. Sec. 525.** The secretary shall adopt rules to implement this chapter.

## PART VI FORENSIC AND CORRECTIONAL Drug and Mental Health Courts

**NEW SECTION. Sec. 601.** A new section is added to chapter 2.28 RCW to read as follows:

- (1) Counties may establish and operate mental health courts.
- (2) For the purposes of this section, "mental health court" means a court that has special calendars or dockets designed to achieve a

reduction in recidivism and symptoms of mental illness among nonviolent, mentally ill felony and nonfelony offenders by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment including drug treatment for persons with co-occurring disorders; mandatory periodic reviews, including drug testing if indicated; and the use of appropriate sanctions and other rehabilitation services.

(3)(a) Any jurisdiction that seeks a state appropriation to fund a mental health court program must first:

(i) Exhaust all federal funding that is available to support the operations of its mental health court and associated services; and

(ii) Match, on a dollar-for-dollar basis, state moneys allocated for mental health court programs with local cash or in-kind resources. Moneys allocated by the state must be used to supplement, not supplant, other federal, state, and local funds for mental health court operations and associated services.

(b) Any county that establishes a mental health court pursuant to this section shall establish minimum requirements for the participation of offenders in the program. The mental health court may adopt local requirements that are more stringent than the minimum. The minimum requirements are:

(i) The offender would benefit from psychiatric treatment;

(ii) The offender has not previously been convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030; and

(iii) Without regard to whether proof of any of these elements is required to convict, the offender is not currently charged with or convicted of an offense:

(A) That is a sex offense;

(B) That is a serious violent offense;

(C) During which the defendant used a firearm; or

(D) During which the defendant caused substantial or great bodily harm or death to another person.

**NEW SECTION. Sec. 602.** A new section is added to chapter 2.28 RCW to read as follows:

Any county that has established a drug court and a mental health court under this chapter may combine the functions of both courts into a single therapeutic court.

**NEW SECTION. Sec. 603.** A new section is added to chapter 26.12 RCW to read as follows:

(1) Every county that authorizes the tax provided in section 904 of this act shall, and every county may, establish and operate a therapeutic court component for dependency proceedings designed to be effective for the court's size, location, and resources. A county with a drug court for criminal cases or with a mental health court may include a therapeutic court for dependency proceedings as a component of its existing program.

(2) For the purposes of this section, "therapeutic court" means a court that has special calendars or dockets designed for the intense judicial supervision, coordination, and oversight of treatment provided to parents and families who have substance abuse or mental health problems and who are involved in the dependency and is designed to achieve a reduction in:

(a) Child abuse and neglect;

(b) Out-of-home placement of children;

(c) Termination of parental rights; and

(d) Substance abuse or mental health symptoms among parents or guardians and their children.

(3) To the extent possible, the therapeutic court shall provide services for parents and families co-located with the court or as near to the court as practicable.

(4) The department of social and health services shall furnish services to the therapeutic court unless a court contracts with providers outside of the department.

(5) Any jurisdiction that receives a state appropriation to fund a therapeutic court must first exhaust all federal funding available for the development and operation of the therapeutic court and associated services.

(6) Moneys allocated by the state for a therapeutic court must be used to supplement, not supplant, other federal, state, local, and

private funding for court operations and associated services under this section.

(7) Any county that establishes a therapeutic court or receives funds for an existing court under this section shall:

(a) Establish minimum requirements for the participation in the program; and

(b) Develop an evaluation component of the court, including tracking the success rates in graduating from treatment, reunifying parents with their children, and the costs and benefits of the court.

**Sec. 604.** RCW 2.28.170 and 2002 c 290 s 13 are each amended to read as follows:

(1) Counties may establish and operate drug courts.

(2) For the purposes of this section, "drug court" means a court that has special calendars or dockets designed to achieve a reduction in recidivism and substance abuse among nonviolent, substance abusing felony and nonfelony offenders by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment; mandatory periodic drug testing; and the use of appropriate sanctions and other rehabilitation services.

(3)(a) Any jurisdiction that seeks a state appropriation to fund a drug court program must first:

(i) Exhaust all federal funding (~~(received from the office of national drug control policy)~~) that is available to support the operations of its drug court and associated services; and

(ii) Match, on a dollar-for-dollar basis, state moneys allocated for drug court programs with local cash or in-kind resources. Moneys allocated by the state must be used to supplement, not supplant, other federal, state, and local funds for drug court operations and associated services.

(b) Any county that establishes a drug court pursuant to this section shall establish minimum requirements for the participation of offenders in the program. The drug court may adopt local requirements that are more stringent than the minimum. The minimum requirements are:

(i) The offender would benefit from substance abuse treatment;

(ii) The offender has not previously been convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030; and

(iii) Without regard to whether proof of any of these elements is required to convict, the offender is not currently charged with or convicted of an offense:

(A) That is a sex offense;

(B) That is a serious violent offense;

(C) During which the defendant used a firearm; or

(D) During which the defendant caused substantial or great bodily harm or death to another person.

#### Medical Benefits

**Sec. 605.** RCW 74.09.010 and 1990 c 296 s 6 are each amended to read as follows:

As used in this chapter:

(1) "Children's health program" means the health care services program provided to children under eighteen years of age and in households with incomes at or below the federal poverty level as annually defined by the federal department of health and human services as adjusted for family size, and who are not otherwise eligible for medical assistance or the limited casualty program for the medically needy.

(2) (~~"Committee" means the children's health services committee created in section 3 of this act.~~

~~(3))~~ "Community services office" means the county or local office defined in RCW 74.04.005.

(3) "Confined" or "confinement" means incarcerated in a correctional institution or admitted to an institution for mental diseases.

(4) "Correctional institution" means a correctional institution defined in RCW 9.94.049.

(5) "County" means the board of county commissioners, county council, county executive, or tribal jurisdiction, or its designee. A combination of two or more county authorities or tribal

jurisdictions may enter into joint agreements to fulfill the requirements of RCW 74.09.415 through 74.09.435.

~~((4))~~ (6) "Department" means the department of social and health services.

~~((5))~~ (7) "Department of health" means the Washington state department of health created pursuant to RCW 43.70.020.

~~((6))~~ (8) "Institution for mental diseases" has the meaning defined in 42 C.F.R., part 435, Sec. 1009.

(9) "Internal management" means the administration of medical assistance, medical care services, the children's health program, and the limited casualty program.

~~((7))~~ (10) "Likely to be eligible" means that a person:

(a) Was enrolled in medicaid or supplemental security income or general assistance immediately before he or she was confined and his or her enrollment was terminated during his or her confinement; or

(b) Was enrolled in medicaid or supplemental security income or general assistance at any time during the five years before his or her confinement, and medical or psychiatric examinations during the person's confinement indicate that the person continues to be disabled and the disability is likely to last at least twelve months following release.

(11) "Limited casualty program" means the medical care program provided to medically needy persons as defined under Title XIX of the federal social security act, and to medically indigent persons who are without income or resources sufficient to secure necessary medical services.

~~((8))~~ (12) "Medicaid eligibility category" refers to all existing eligibility categories established in the state medicaid plan, including enrollment in medicaid by virtue of eligibility to receive cash payments under the supplemental security income program of the social security administration.

(13) "Medical assistance" means the federal aid medical care program provided to categorically needy persons as defined under Title XIX of the federal social security act.

~~((9))~~ (14) "Medical care services" means the limited scope of care financed by state funds and provided to general assistance recipients, and recipients of alcohol and drug addiction services provided under chapter 74.50 RCW.

~~((10))~~ (15) "Nursing home" means nursing home as defined in RCW 18.51.010.

~~((11))~~ (16) "Parent" means a parent, guardian, or legal custodian.

(17) "Poverty" means the federal poverty level determined annually by the United States department of health and human services, or successor agency.

~~((12))~~ (18) "Secretary" means the secretary of social and health services.

**NEW SECTION. Sec. 606.** A new section is added to chapter 74.09 RCW to read as follows:

(1) The economic services administration shall adopt standardized statewide screening and application practices and forms. These practices and forms shall be implemented in every local office not later than January 1, 2006.

(2) The forms shall be structured to facilitate completion by persons with disabilities, including those with mental disorders.

(3) Neither the department nor any local office may exclude a person from application or screen that person as ineligible for medicaid based solely on a determination that the person is using or addicted to alcohol or other psychoactive substances, as defined in chapter 70.96A RCW.

(4) Neither the department nor any local office may remove a confined person from an active medicaid caseload sooner than required by federal law.

(5) Subject to available funds, the department shall provide persons with assistance in preparing applications and maintaining eligibility for medicaid.

**NEW SECTION. Sec. 607.** A new section is added to chapter 74.09 RCW to read as follows:

The secretary shall negotiate with the social security administration in good faith to establish a prerelease agreement or agreements under which the department will work collaboratively

with the social security administration, correctional institutions, institutions for mental diseases, and the department of corrections to ensure that applications on behalf of confined persons who are likely to be eligible for supplemental security income or social security disability income are accepted, whenever possible, at the earliest possible date prior to release from confinement and are speedily handled by the social security administration to maximize the opportunity for confined persons to have an eligibility determination and enrollment in place on the day of release from confinement.

**NEW SECTION. Sec. 608.** A new section is added to chapter 74.09 RCW to read as follows:

(1) The department and each of its community services offices shall enter interlocal agreements with correctional institutions, the regional support networks, the department of corrections, and institutions for mental diseases to expedite medical assistance eligibility determinations for persons likely to be eligible for services under this chapter, upon release from confinement.

(2) The interlocal agreements shall establish procedures to facilitate eligibility determinations, and enrollment on the day of release from confinement whenever possible.

(3) The interlocal agreements shall define the responsibilities of each party, and the procedures through which those responsibilities will be fulfilled. At a minimum, the agreements shall provide that:

(a) If a person is likely to be eligible, as defined in this chapter, the correctional institution, department of corrections, or institution for mental diseases shall notify the designated community services office of the person's anticipated release date at the earliest practicable time prior to release from confinement. If a correctional institution does not know the anticipated release date, or a person is ordered to be immediately released, the correctional institution shall notify the community services office at the earliest opportunity;

(b) The community services office shall find the person presumptively eligible for medical assistance under this chapter, to the maximum extent allowable under federal law, and shall facilitate prompt completion of a final eligibility determination;

(c) Where medical or psychiatric examinations during a person's confinement indicate that the person is disabled, the correctional institution, department of corrections, or institution for mental diseases shall provide that information to the department and the department shall, to the maximum extent permitted by federal law, use the examination in making its determination whether the person is disabled and eligible for medical assistance.

**NEW SECTION. Sec. 609.** A new section is added to chapter 71.24 RCW to read as follows:

The secretary shall require the regional support networks to develop interlocal agreements pursuant to section 608 of this act. To this end, the regional support networks shall accept referrals for enrollment on behalf of a confined person, prior to the person's release.

**NEW SECTION. Sec. 610.** A new section is added to chapter 72.09 RCW to read as follows:

The secretary shall negotiate with the department of social and health services and the regional support networks to reach an agreement under section 608 of this act.

**NEW SECTION. Sec. 611.** A new section is added to chapter 71.05 RCW to read as follows:

The department shall report to the appropriate committees of the legislature by September 30, 2005, and annually thereafter:

(1) The number of agreements developed under sections 607 through 610 of this act;

(2) The number of persons with mental disorders and co-occurring mental and chemical dependency disorders leaving confinement with established or restored medical assistance enrollment;

(3) The number of persons enrolled in the regional support networks upon release; and

(4) The number of persons denied eligibility or enrollment.

## Regional Jails

**NEW SECTION. Sec. 612.** (1) The joint legislative audit and review committee shall investigate and assess whether there are existing facilities in the state that could be converted to use as a regional jail for offenders who have mental or chemical dependency disorders, or both, that need specialized housing and treatment arrangements.

(2) The joint legislative audit and review committee shall consider the feasibility of using at least the following facilities or types of facilities:

- (a) Green Hill School;
- (b) Existing or renovated facilities at the former Northern State Hospital;
- (c) Closed wards at Western State Hospital;
- (d) Fircrest School; and
- (e) Closed or abandoned nursing homes.

(3) The analysis shall include an assessment of when such facilities could be available for use as a regional jail and the potential costs, costs avoided, and benefits of at least the following considerations:

- (a) Any impact on existing offenders or residents;
- (b) The conversion of the facilities;
- (c) Infrastructure tied to the facilities;
- (d) Whether the facility is, or can be, sized proportionately to the available pool of offenders;
- (e) Changes in criminal justice costs, including transport, access to legal assistance, and access to courts;
- (f) Reductions in jail populations; and
- (g) Changes in treatment costs for these offenders.

(4) The joint legislative audit and review committee shall report its findings and recommendations to the appropriate committees of the legislature not later than December 15, 2005.

#### **Competency and Criminal Insanity**

**NEW SECTION. Sec. 613.** By January 1, 2006, the department of social and health services shall:

(1) Reduce the waiting times for competency evaluation and restoration to the maximum extent possible using funds appropriated for this purpose; and

(2) Report to the legislature with an analysis of several alternative strategies for addressing increases in forensic population and minimizing waiting periods for competency evaluation and restoration. The report shall discuss, at a minimum, the costs and advantages of, and barriers to co-locating professional persons in jails, performing restoration treatment in less restrictive alternatives than the state hospitals, and the use of regional jail facilities to accomplish competency evaluation and restoration.

#### **ESSB 6358 Implementation Issues**

**Sec. 614.** RCW 71.05.157 and 2004 c 166 s 16 are each amended to read as follows:

(1) When a county designated mental health professional is notified by a jail that a defendant or offender who was subject to a discharge review under RCW 71.05.232 is to be released to the community, the county designated mental health professional shall evaluate the person within seventy-two hours of release.

(2) When an offender is under court-ordered treatment in the community and the supervision of the department of corrections, and the treatment provider becomes aware that the person is in violation of the terms of the court order, the treatment provider shall notify the county designated mental health professional and the department of corrections of the violation and request an evaluation for purposes of revocation of the less restrictive alternative.

(3) When a county designated mental health professional becomes aware that an offender who is under court-ordered treatment in the community and the supervision of the department of corrections is in violation of a treatment order or a condition of supervision that relates to public safety, or the county designated mental health professional detains a person under this chapter, the

county designated mental health professional shall notify the person's treatment provider and the department of corrections.

(4) When an offender who is confined in a state correctional facility or is under supervision of the department of corrections in the community is subject to a petition for involuntary treatment under this chapter, the petitioner shall notify the department of corrections and the department of corrections shall provide documentation of its risk assessment or other concerns to the petitioner and the court if the department of corrections classified the offender as a high risk or high needs offender.

(5) Nothing in this section creates a duty on any treatment provider or county designated mental health professional to provide offender supervision.

**NEW SECTION. Sec. 615.** A new section is added to chapter 70.96A RCW to read as follows:

(1) Treatment providers shall inquire of each person seeking treatment, at intake, whether the person is subject to court ordered mental health or chemical dependency treatment, whether civil or criminal, and document the person's response in his or her record. If the person is in treatment on the effective date of this section, and the treatment provider has not inquired whether the person is subject to court ordered mental health or chemical dependency treatment, the treatment provider shall inquire on the person's next treatment session and document the person's response in his or her record.

(2) Treatment providers shall inquire of each person seeking treatment, at intake, whether the person is subject to supervision of any kind by the department of corrections and document the person's response in his or her record. If the person is in treatment on the effective date of this section, and the treatment provider has not inquired whether the person is subject to supervision of any kind by the department of corrections, the treatment provider shall inquire on the person's next treatment session and document the person's response in his or her record.

(3) For all persons who are subject to both court ordered mental health or chemical dependency treatment and supervision by the department of corrections, the treatment provider shall request an authorization to release records and notify the person that, unless expressly excluded by the court order the law requires treatment providers to share information with the department of corrections and the person's mental health treatment provider.

(4) If the treatment provider has reason to believe that a person is subject to supervision by the department of corrections but the person's record does not indicate that he or she is, the treatment provider may call any department of corrections office and provide the person's name and birth date. If the person is subject to supervision, the treatment provider shall request, and the department of corrections shall provide, the name and contact information for the person's community corrections officer.

#### **PART VII**

##### **BEST PRACTICES AND COLLABORATION**

**NEW SECTION. Sec. 701.** (1) The department of social and health services, in consultation with the members of the team charged with developing the state plan for co-occurring mental and substance abuse disorders, shall adopt, not later than January 1, 2006, an integrated and comprehensive screening and assessment process for chemical dependency and mental disorders and co-occurring chemical dependency and mental disorders.

(a) The process adopted shall include, at a minimum:

(i) An initial screening tool that can be used by intake personnel system-wide and which will identify the most common types of co-occurring disorders;

(ii) An assessment process for those cases in which assessment is indicated that provides an appropriate degree of assessment for most situations, which can be expanded for complex situations;

(iii) Identification of triggers in the screening that indicate the need to begin an assessment;

(iv) Identification of triggers after or outside the screening that indicate a need to begin or resume an assessment;

(v) The components of an assessment process and a protocol for determining whether part or all of the assessment is necessary, and at what point; and

(vi) Emphasis that the process adopted under this section is to replace and not to duplicate existing intake, screening, and assessment tools and processes.

(b) The department shall consider existing models, including those already adopted by other states, and to the extent possible, adopt an established, proven model.

(c) The integrated, comprehensive screening and assessment process shall be implemented statewide by all chemical dependency and mental health treatment providers as well as all county designated mental health professionals, county designated chemical dependency specialists, and county designated crisis responders not later than January 1, 2007.

(2) The department shall provide adequate training to effect statewide implementation by the dates designated in this section and shall report the rates of co-occurring disorders and the stage of screening or assessment at which the co-occurring disorder was identified to the caseload forecast council.

(3) The department shall establish contractual penalties to contracted treatment providers, the regional support networks, and their contracted providers for failure to implement the integrated screening and assessment process by July 1, 2007.

**NEW SECTION. Sec. 702.** The department of corrections shall, to the extent that resources are available for this purpose, utilize the integrated, comprehensive screening and assessment process for chemical dependency and mental disorders developed under section 701 of this act.

**NEW SECTION. Sec. 703.** A new section is added to chapter 71.02 RCW to read as follows:

(1) By June 30, 2006, the department shall develop and implement a matrix or set of matrices for providing services based on the following principles:

(a) Maximizing evidence-based practices where these practices exist; where no evidence-based practice exists, the use of research-based practices, including but not limited to, the adaptation of evidence-based practices to new situations; where no evidence-based or research-based practices exist the use of consensus-based practices; and, to the extent that funds are available, the use of promising practices;

(b) Maximizing the person's independence, recovery, and employment by consideration of the person's strengths and supports in the community;

(c) Maximizing the person's participation in treatment decisions including, where possible, the person's awareness of, and technical assistance in preparing, mental health advance directives; and

(d) Collaboration with consumer-based support programs.

(2) The matrix or set of matrices shall include both adults and children and persons with co-occurring mental and substance abuse disorders and shall build on the service intensity quadrant models that have been developed in this state.

(3)(a) The matrix or set of matrices shall be developed in collaboration with experts in evidence-based practices for mental disorders, chemical dependency disorders, and co-occurring mental and chemical dependency disorders at the University of Washington, and in consultation with representatives of the regional support networks, community mental health providers, county chemical dependency coordinators, chemical dependency providers, consumers, family advocates, and community inpatient providers.

(b) The matrix or set of matrices shall, to the extent possible, adopt or utilize materials already prepared by the department or by other states.

(4)(a) The department shall require, by contract with the regional support networks, that providers maximize the use of evidence-based, research-based, and consensus-based practices and document the percentage of clients enrolled in evidence-based, research-based, and consensus-based programs by program type.

(b) The department shall establish a schedule by which regional support networks and providers must adopt the matrix or set of matrices and a schedule of penalties for failure to adopt and implement the matrices. The department may act against the regional support networks or providers or both to enforce the provisions of this section and shall provide the appropriate committees of the legislature with the schedules adopted under this subsection by June 30, 2006.

(5) The following definitions apply to this section:

(a) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population.

(b) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(c) "Consensus-based" means a program or practice that has general support among treatment providers and experts, based on experience or professional literature, and may have anecdotal or case study support, or that is agreed but not possible to perform studies with random assignment and controlled groups.

(d) "Promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

**NEW SECTION. Sec. 704.** A new section is added to chapter 71.02 RCW to read as follows:

(1) The department of social and health services shall collaborate with community providers of mental health services, early learning and child care providers, child serving agencies, and child-placing agencies to identify and utilize federal, state, and local services and providers for children in out-of-home care and other populations of vulnerable children who are in need of an evaluation and treatment for mental health services and do not qualify for medicaid or treatment services through the regional support networks.

(2) If no appropriate mental health services are available through federal, state, or local services and providers for a child described in subsection (1) of this section, the regional support network must provide a child, at a minimum, with a mental health evaluation consistent with chapter 71.24 RCW.

(3) The department, in collaboration with the office of the superintendent of public instruction, local providers, local school districts, and the regional support networks, shall identify and review existing programs and services as well as the unmet need for programs and services serving birth to five and school-aged children who exhibit early signs of behavioral or mental health disorders and who are not otherwise eligible for services through the regional support networks. The review of programs and services shall include, but not be limited to, the utilization and effectiveness of early intervention or prevention services and the primary intervention programs.

The department of social and health services shall provide a briefing on the collaboration's findings and recommendations to the appropriate committee of the legislature by December 31, 2005.

**NEW SECTION. Sec. 705.** The Washington state institute for public policy shall assess the long-term and intergenerational cost-effectiveness of investing in the treatment of chemical dependency disorders, mental disorders, and co-occurring mental and substance abuse disorders. The assessment shall use, to the extent possible, existing governmental data bases and research and determine the net present value of costs avoided or minimized. These costs include, but are not limited to, primary care, jail or prison, competency evaluations and restorations, child protective services interventions, dependencies, foster care, emergency service interventions, and prosecutorial, defense, and court costs. If possible, the institute shall indicate whether prevention and early intervention programs differ from acute and chronic treatment programs in long-term cost-effectiveness.

## PART VIII REPEALERS AND CROSS-REFERENCE CORRECTIONS

**NEW SECTION. Sec. 801.** The following acts or parts of acts are each repealed on the effective date of section 107 of this act:

(1) RCW 71.05.060 (Rights of persons complained against) and 1973 1st ex.s. c 142 s 11;

(2) RCW 71.05.070 (Prayer treatment) and 1973 1st ex.s. c 142 s 12;

(3) RCW 71.05.090 (Choice of physicians) and 1973 2nd ex.s. c 24 s 3 & 1973 1st ex.s. c 142 s 14;

(4) RCW 71.05.200 (Notice and statement of rights--Probable cause hearing) and 1998 c 297 s 11, 1997 c 112 s 14, 1989 c 120 s 5, 1974 ex.s. c 145 s 13, & 1973 1st ex.s. c 142 s 25;

(5) RCW 71.05.250 (Probable cause hearing--Detained person's rights--Waiver of privilege--Limitation--Records as evidence) and 1989 c 120 s 7, 1987 c 439 s 6, 1974 ex.s. c 145 s 17, & 1973 1st ex.s. c 142 s 30;

(6) RCW 71.05.450 (Competency--Effect--Statement of Washington law) and 1994 sp.s. c 7 s 440 & 1973 1st ex.s. c 142 s 50;

(7) RCW 71.05.460 (Right to counsel) and 1997 c 112 s 33 & 1973 1st ex.s. c 142 s 51;

(8) RCW 71.05.470 (Right to examination) and 1997 c 112 s 34 & 1973 1st ex.s. c 142 s 52;

(9) RCW 71.05.480 (Petitioning for release--Writ of habeas corpus) and 1974 ex.s. c 145 s 29 & 1973 1st ex.s. c 142 s 53; and

(10) RCW 71.05.490 (Rights of persons committed before January 1, 1974) and 1997 c 112 s 35 & 1973 1st ex.s. c 142 s 54.

**NEW SECTION. Sec. 802.** The following acts or parts of acts are each repealed on the effective date of section 111 of this act:

(1) RCW 71.05.155 (Request to mental health professional by law enforcement agency for investigation under RCW 71.05.150--Advisory report of results) and 1997 c 112 s 9 & 1979 ex.s. c 215 s 10;

(2) RCW 71.05.395 (Application of uniform health care information act, chapter 70.02 RCW) and 1993 c 448 s 8;

(3) RCW 71.05.400 (Release of information to patient's next of kin, attorney, guardian, conservator--Notification of patient's death) and 1993 c 448 s 7, 1974 ex.s. c 115 s 1, 1973 2nd ex.s. c 24 s 6, & 1973 1st ex.s. c 142 s 45;

(4) RCW 71.05.410 (Notice of disappearance of patient) and 1997 c 112 s 32, 1973 2nd ex.s. c 24 s 7, & 1973 1st ex.s. c 142 s 46; and

(5) RCW 71.05.430 (Statistical data) and 1973 1st ex.s. c 142 s 48.

**NEW SECTION. Sec. 803.** RCW 71.05.610 (Treatment records--Definitions) and 1989 c 205 s 11 are each repealed on the effective date of sections 104 through 106 of this act.

**NEW SECTION. Sec. 804.** The following acts or parts of acts are each repealed:

(1) RCW 71.05.650 (Treatment records--Notation of and access to released data) and 1989 c 205 s 15; and

(2) RCW 71.05.670 (Treatment records--Violations--Civil action) and 1999 c 13 s 10.

**Sec. 805.** RCW 5.60.060 and 2001 c 286 s 2 are each amended to read as follows:

(1) A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either during marriage or afterward, be without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse if the marriage occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian, nor to a proceeding under chapter 70.96A, 70.-- (sections 202 through 216 of this act), 70.-- (sections 302 through 374 of this act), 71.05, or 71.09 RCW: PROVIDED, That the spouse of a person sought to be detained under chapter 70.96A, 70.-- (sections 202 through 216 of this act), 70.-- (sections 302 through 374 of this act), 71.05, or

71.09 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2)(a) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

(b) A parent or guardian of a minor child arrested on a criminal charge may not be examined as to a communication between the child and his or her attorney if the communication was made in the presence of the parent or guardian. This privilege does not extend to communications made prior to the arrest.

(3) A member of the clergy or a priest shall not, without the consent of a person making the confession, be examined as to any confession made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

(4) Subject to the limitations under RCW 70.96A.140 or ~~((71.05.250))~~ 71.05.360 (8) and (9), a physician or surgeon or osteopathic physician or surgeon or podiatric physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure.

(6)(a) A peer support group counselor shall not, without consent of the law enforcement officer making the communication, be compelled to testify about any communication made to the counselor by the officer while receiving counseling. The counselor must be designated as such by the sheriff, police chief, or chief of the Washington state patrol, prior to the incident that results in counseling. The privilege only applies when the communication was made to the counselor while acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was an initial responding officer, a witness, or a party to the incident which prompted the delivery of peer support group counseling services to the law enforcement officer.

(b) For purposes of this section, "peer support group counselor" means a:

(i) Law enforcement officer, or civilian employee of a law enforcement agency, who has received training to provide emotional and moral support and counseling to an officer who needs those services as a result of an incident in which the officer was involved while acting in his or her official capacity; or

(ii) Nonemployee counselor who has been designated by the sheriff, police chief, or chief of the Washington state patrol to provide emotional and moral support and counseling to an officer who needs those services as a result of an incident in which the officer was involved while acting in his or her official capacity.

(7) A sexual assault advocate may not, without the consent of the victim, be examined as to any communication made by the victim to the sexual assault advocate.

(a) For purposes of this section, "sexual assault advocate" means the employee or volunteer from a rape crisis center, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, who is designated by the victim to accompany the victim to the hospital or other health care facility and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.

(b) A sexual assault advocate may disclose a confidential communication without the consent of the victim if failure to

disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. Any sexual assault advocate participating in good faith in the disclosing of records and communications under this section shall have immunity from any liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this section, the good faith of the sexual assault advocate who disclosed the confidential communication shall be presumed.

**Sec. 806.** RCW 18.83.110 and 1989 c 271 s 303 are each amended to read as follows:

Confidential communications between a client and a psychologist shall be privileged against compulsory disclosure to the same extent and subject to the same conditions as confidential communications between attorney and client, but this exception is subject to the limitations under RCW 70.96A.140 and ~~((71.05.250))~~ 71.05.360 (8) and (9).

**Sec. 807.** RCW 18.225.105 and 2003 c 204 s 1 are each amended to read as follows:

A person licensed under this chapter shall not disclose the written acknowledgment of the disclosure statement pursuant to RCW 18.225.100, nor any information acquired from persons consulting the individual in a professional capacity when the information was necessary to enable the individual to render professional services to those persons except:

(1) With the written authorization of that person or, in the case of death or disability, the person's personal representative;

(2) If the person waives the privilege by bringing charges against the person licensed under this chapter;

(3) In response to a subpoena from the secretary. The secretary may subpoena only records related to a complaint or report under RCW 18.130.050;

(4) As required under chapter 26.44 or 74.34 RCW or RCW ~~((71.05.250))~~ 71.05.360 (8) and (9); or

(5) To any individual if the person licensed under this chapter reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the individual or any other individual; however, there is no obligation on the part of the provider to so disclose.

**Sec. 808.** RCW 71.05.235 and 2000 c 74 s 6 are each amended to read as follows:

(1) If an individual is referred to a county designated mental health professional under RCW 10.77.090(1)(d)(iii)(A), the county designated mental health professional shall examine the individual within forty-eight hours. If the county designated mental health professional determines it is not appropriate to detain the individual or petition for a ninety-day less restrictive alternative under RCW 71.05.230(4), that decision shall be immediately presented to the superior court for hearing. The court shall hold a hearing to consider the decision of the county designated mental health professional not later than the next judicial day. At the hearing the superior court shall review the determination of the county designated mental health professional and determine whether an order should be entered requiring the person to be evaluated at an evaluation and treatment facility. No person referred to an evaluation and treatment facility may be held at the facility longer than seventy-two hours.

(2) If an individual is placed in an evaluation and treatment facility under RCW 10.77.090(1)(d)(iii)(B), a professional person shall evaluate the individual for purposes of determining whether to file a ninety-day inpatient or outpatient petition under chapter 71.05 RCW. Before expiration of the seventy-two hour evaluation period authorized under RCW 10.77.090(1)(d)(iii)(B), the professional person shall file a petition or, if the recommendation of the professional person is to release the individual, present his or her recommendation to the superior court of the county in which the criminal charge was dismissed. The superior court shall review the recommendation not later than forty-eight hours, excluding Saturdays, Sundays, and holidays, after the recommendation is presented. If the court rejects the recommendation to unconditionally release the individual, the court may order the individual detained at a designated evaluation

and treatment facility for not more than a seventy-two hour evaluation and treatment period and direct the individual to appear at a surety hearing before that court within seventy-two hours, or the court may release the individual but direct the individual to appear at a surety hearing set before that court within eleven days, at which time the prosecutor may file a petition under this chapter for ninety-day inpatient or outpatient treatment. If a petition is filed by the prosecutor, the court may order that the person named in the petition be detained at the evaluation and treatment facility that performed the evaluation under this subsection or order the respondent to be in outpatient treatment. If a petition is filed but the individual fails to appear in court for the surety hearing, the court shall order that a mental health professional or peace officer shall take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility to be brought before the court the next judicial day after detention. Upon the individual's first appearance in court after a petition has been filed, proceedings under RCW 71.05.310 and 71.05.320 shall commence. For an individual subject to this subsection, the prosecutor or professional person may directly file a petition for ninety-day inpatient or outpatient treatment and no petition for initial detention or fourteen-day detention is required before such a petition may be filed.

The court shall conduct the hearing on the petition filed under this subsection within five judicial days of the date the petition is filed. The court may continue the hearing upon the written request of the person named in the petition or the person's attorney, for good cause shown, which continuance shall not exceed five additional judicial days. If the person named in the petition requests a jury trial, the trial shall commence within ten judicial days of the date of the filing of the petition. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The person shall be present at such proceeding, which shall in all respects accord with the constitutional guarantees of due process of law and the rules of evidence pursuant to RCW ~~((71.05.250))~~ 71.05.360 (8) and (9).

During the proceeding the person named in the petition shall continue to be detained and treated until released by order of the court. If no order has been made within thirty days after the filing of the petition, not including any extensions of time requested by the detained person or his or her attorney, the detained person shall be released.

(3) If a county designated mental health professional or the professional person and prosecuting attorney for the county in which the criminal charge was dismissed or attorney general, as appropriate, stipulate that the individual does not present a likelihood of serious harm or is not gravely disabled, the hearing under this section is not required and the individual, if in custody, shall be released.

(4) The individual shall have the rights specified in RCW ~~((71.05.250))~~ 71.05.360 (8) and (9).

**Sec. 809.** RCW 71.05.310 and 1987 c 439 s 9 are each amended to read as follows:

The court shall conduct a hearing on the petition for ninety day treatment within five judicial days of the first court appearance after the probable cause hearing. The court may continue the hearing upon the written request of the person named in the petition or the person's attorney, for good cause shown, which continuance shall not exceed five additional judicial days. If the person named in the petition requests a jury trial, the trial shall commence within ten judicial days of the first court appearance after the probable cause hearing. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The person shall be present at such proceeding, which shall in all respects accord with the constitutional guarantees of due process of law and the rules of evidence pursuant to RCW ~~((71.05.250))~~ 71.05.360 (8) and (9).

During the proceeding, the person named in the petition shall continue to be treated until released by order of the superior court. If no order has been made within thirty days after the filing of the petition, not including extensions of time requested by the

detained person or his or her attorney, the detained person shall be released.

**Sec. 810.** RCW 71.05.425 and 2000 c 94 s 10 are each amended to read as follows:

(1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than thirty days before conditional release, final release, authorized leave under RCW 71.05.325(2), or transfer to a facility other than a state mental hospital, the superintendent shall send written notice of conditional release, release, authorized leave, or transfer of a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(4) to the following:

(i) The chief of police of the city, if any, in which the person will reside; and

(ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(4):

(i) The victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.090(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(2)(c) or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings; and

(iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(c) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical transfers.

(d) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2) If a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(4) escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.090(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(2) or the victim's next of kin if the crime was a homicide. In addition, the secretary shall also notify appropriate parties pursuant to RCW ((71.05.410)) 71.05.390(18). If the person is recaptured, the superintendent shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parent or legal guardian of the child.

(4) The superintendent shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, parents, siblings, and children;

(d) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony.

**Sec. 811.** RCW 71.05.445 and 2004 c 166 s 4 are each amended to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.34 or 10.77 RCW, or somatic health care information.

(b) "Mental health service provider" means a public or private agency that provides services to persons with mental disorders as defined under RCW 71.05.020 and receives funding from public sources. This includes evaluation and treatment facilities as defined in RCW 71.05.020, community mental health service delivery systems, or community mental health programs as defined in RCW 71.24.025, and facilities conducting competency evaluations and restoration under chapter 10.77 RCW.

(2)(a) Information related to mental health services delivered to a person subject to chapter 9.94A or 9.95 RCW shall be released, upon request, by a mental health service provider to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purposes of completing presentence investigations or risk assessment reports, supervision of an incarcerated offender or offender under supervision in the community, planning for and provision of supervision of an offender, or assessment of an offender's risk to the community. The request shall be in writing and shall not require the consent of the subject of the records.

(b) If an offender subject to chapter 9.94A or 9.95 RCW has failed to report for department of corrections supervision or in the event of an emergent situation that poses a significant risk to the public or the offender, information related to mental health services delivered to the offender and, if known, information regarding where the offender is likely to be found shall be released by the mental health services provider to the department of corrections upon request. The initial request may be written or oral. All oral requests must be subsequently confirmed in writing. Information released in response to an oral request is limited to a statement as to whether the offender is or is not being treated by the mental health services provider and the address or information about the location or whereabouts of the offender. Information released in response to a written request may include information identified by rule as provided in subsections (4) and (5) of this section. For purposes of this subsection a written request includes requests made by e-mail or facsimile so long as the requesting person at the department of corrections is clearly identified. The request must specify the information being requested. Disclosure of the information requested does not require the consent of the subject of the records unless the offender has received relief from disclosure under RCW 9.94A.562, 70.96A.155, or 71.05.132.

(3)(a) When a mental health service provider conducts its initial assessment for a person receiving court-ordered treatment, the service provider shall inquire and shall be told by the offender whether he or she is subject to supervision by the department of corrections.

(b) When a person receiving court-ordered treatment or treatment ordered by the department of corrections discloses to his or her mental health service provider that he or she is subject to supervision by the department of corrections, the mental health services provider shall notify the department of corrections that he or she is treating the offender and shall notify the offender that his or her community corrections officer will be notified of the treatment, provided that if the offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the mental health services provider with a copy of the order granting relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the mental health services provider is not required to notify the department of

corrections that the mental health services provider is treating the offender. The notification may be written or oral and shall not require the consent of the offender. If an oral notification is made, it must be confirmed by a written notification. For purposes of this section, a written notification includes notification by e-mail or facsimile, so long as the notifying mental health service provider is clearly identified.

(4) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties, including those records and reports identified in subsection (2) of this section.

(5) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in subsection (1) of this section, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(6) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.

(7) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section except under RCW ~~((71.05.670 and))~~ 71.05.440.

(8) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(9) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

(10) The department shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific regional support networks and mental health service providers that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the departments.

**Sec. 812.** RCW 71.05.640 and 2000 c 94 s 11 are each amended to read as follows:

(1) Procedures shall be established by resource management services to provide reasonable and timely access to individual treatment records. However, access may not be denied at any time to records of all medications and somatic treatments received by the individual.

(2) Following discharge, the individual shall have a right to a complete record of all medications and somatic treatments prescribed during evaluation, admission, or commitment and to a copy of the discharge summary prepared at the time of his or her discharge. A reasonable and uniform charge for reproduction may be assessed.

(3) Treatment records may be modified prior to inspection to protect the confidentiality of other patients or the names of any other persons referred to in the record who gave information on the condition that his or her identity remain confidential. Entire documents may not be withheld to protect such confidentiality.

(4) At the time of discharge all individuals shall be informed by resource management services of their rights as provided in RCW ~~((71.05.610))~~ 71.05.620 through 71.05.690.

**Sec. 813.** RCW 71.05.680 and 1999 c 13 s 11 are each amended to read as follows:

Any person who requests or obtains confidential information pursuant to RCW ~~((71.05.610))~~ 71.05.620 through 71.05.690 under false pretenses shall be guilty of a gross misdemeanor.

**Sec. 814.** RCW 71.05.690 and 1999 c 13 s 12 are each amended to read as follows:

The department shall adopt rules to implement RCW ~~((71.05.610))~~ 71.05.620 through 71.05.680.

**Sec. 815.** RCW 71.24.035 and 2001 c 334 s 7 and 2001 c 323 s 10 are each reenacted and amended to read as follows:

(1) The department is designated as the state mental health authority.

(2) The secretary shall provide for public, client, and licensed service provider participation in developing the state mental health program, developing contracts with regional support networks, and any waiver request to the federal government under medicaid.

(3) The secretary shall provide for participation in developing the state mental health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state mental health program.

(4) The secretary shall be designated as the county authority if a county fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045.

(5) The secretary shall:

(a) Develop a biennial state mental health program that incorporates county biennial needs assessments and county mental health service plans and state services for mentally ill adults and children. The secretary may also develop a six-year state mental health plan;

(b) Assure that any regional or county community mental health program provides access to treatment for the county's residents in the following order of priority: (i) The acutely mentally ill; (ii) chronically mentally ill adults and severely emotionally disturbed children; and (iii) the seriously disturbed. Such programs shall provide:

(A) Outpatient services;

(B) Emergency care services for twenty-four hours per day;

(C) Day treatment for mentally ill persons which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;

(D) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission;

(E) Employment services, which may include supported employment, transitional work, placement in competitive employment, and other work-related services, that result in mentally ill persons becoming engaged in meaningful and gainful full or part-time work. Other sources of funding such as the division of vocational rehabilitation may be utilized by the secretary to maximize federal funding and provide for integration of services;

(F) Consultation and education services; and

(G) Community support services;

(c) Develop and adopt rules establishing state minimum standards for the delivery of mental health services pursuant to RCW 71.24.037 including, but not limited to:

(i) Licensed service providers. The secretary shall provide for deeming of compliance with state minimum standards for those entities accredited by recognized behavioral health accrediting bodies recognized and having a current agreement with the department;

(ii) Regional support networks; and

(iii) Inpatient services, evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;

(d) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this section;

(e) Establish a standard contract or contracts, consistent with state minimum standards, which shall be used in contracting with regional support networks or counties. The standard contract shall include a maximum fund balance, which shall not exceed ten percent;

(f) Establish, to the extent possible, a standardized auditing procedure which minimizes paperwork requirements of county authorities and licensed service providers. The audit procedure shall focus on the outcomes of service and not the processes for accomplishing them;

(g) Develop and maintain an information system to be used by the state, counties, and regional support networks that includes a tracking method which allows the department and regional support networks to identify mental health clients' participation in any mental health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and in RCW 71.05.390, ~~((71.05.400, 71.05.410,))~~ 71.05.420, ~~((71.05.430,))~~ and 71.05.440. The design of the system and the data elements to be collected shall be reviewed by the work group appointed by the secretary under section 5(1) of this act and representing the department, regional support networks, service providers, consumers, and advocates. The data elements shall be designed to provide information that is needed to measure performance and achieve the service outcomes ~~((identified in section 5 of this act))~~;

(h) License service providers who meet state minimum standards;

(i) Certify regional support networks that meet state minimum standards;

(j) Periodically monitor the compliance of certified regional support networks and their network of licensed service providers for compliance with the contract between the department, the regional support network, and federal and state rules at reasonable times and in a reasonable manner;

(k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;

(l) Monitor and audit counties, regional support networks, and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter; and

(m) Adopt such rules as are necessary to implement the department's responsibilities under this chapter.

(6) The secretary shall use available resources only for regional support networks.

(7) Each certified regional support network and licensed service provider shall file with the secretary, on request, such data, statistics, schedules, and information as the secretary reasonably requires. A certified regional support network or licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may have its certification or license revoked or suspended.

(8) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to: (a) The law; (b) applicable rules and regulations; (c) applicable standards; or (d) state minimum standards.

(9) The superior court may restrain any regional support network or service provider from operating without certification or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(10) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any regional support network or service provider refusing to consent to inspection or examination by the authority.

(11) Notwithstanding the existence or pursuit of any other remedy, the secretary may file an action for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a regional support network or service provider without certification or a license under this chapter.

(12) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter and chapters 71.05 and 71.34 RCW, and shall otherwise assure the effectuation of the purposes of these chapters.

(13)(a) The department, in consultation with affected parties, shall establish a distribution formula that reflects county needs assessments based on the number of persons who are acutely mentally ill, chronically mentally ill, severely emotionally disturbed children, and seriously disturbed. The formula shall take into consideration the impact on counties of demographic factors in counties which result in concentrations of priority populations as set forth in subsection (5)(b) of this section. These factors shall include the population concentrations resulting from commitments under chapters 71.05 and 71.34 RCW to state psychiatric hospitals, as well as concentration in urban areas, at border crossings at state boundaries, and other significant demographic and workload factors.

(b) The formula shall also include a projection of the funding allocations that will result for each county, which specifies allocations according to priority populations, including the allocation for services to children and other underserved populations.

(c) After July 1, 2003, the department may allocate up to two percent of total funds to be distributed to the regional support networks for incentive payments to reward the achievement of superior outcomes, or significantly improved outcomes, as measured by a statewide performance measurement system consistent with the framework recommended in the joint legislative audit and review committee's performance audit of the mental health system. The department shall annually report to the legislature on its criteria and allocation of the incentives provided under this subsection.

(14) The secretary shall assume all duties assigned to the nonparticipating counties under chapters 71.05, 71.34, and 71.24 RCW. Such responsibilities shall include those which would have been assigned to the nonparticipating counties under regional support networks.

The regional support networks, or the secretary's assumption of all responsibilities under chapters 71.05, 71.34, and 71.24 RCW, shall be included in all state and federal plans affecting the state mental health program including at least those required by this chapter, the medicaid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

(15) The secretary shall:

(a) Disburse funds for the regional support networks within sixty days of approval of the biennial contract. The department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with regional support networks. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of this chapter by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) Allocate one hundred percent of available resources to the regional support networks in accordance with subsection (13) of

this section. Incentive payments authorized under subsection (13) of this section may be allocated separately from other available resources.

(d) Notify regional support networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(e) Deny funding allocations to regional support networks based solely upon formal findings of noncompliance with the terms of the regional support network's contract with the department. Written notice and at least thirty days for corrective action must precede any such action. In such cases, regional support networks shall have full rights to appeal under chapter 34.05 RCW.

(16) The department, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by free-standing evaluation and treatment facilities certified under chapter 71.05 RCW. The department shall periodically report its efforts to the appropriate committees of the senate and the house of representatives.

## PART IX

### MISCELLANEOUS PROVISIONS

**NEW SECTION. Sec. 901.** RCW 71.05.035 is recodified as a new section in chapter 71A.12 RCW.

**NEW SECTION. Sec. 902.** A new section is added to chapter 43.20A RCW to read as follows:

Beginning July 1, 2007, the secretary shall require, in the contracts the department negotiates pursuant to chapters 71.24 and 70.96A RCW, that any vendor rate increases provided for mental health and chemical dependency treatment providers or programs who are parties to the contract or subcontractors of any party to the contract shall be prioritized to those providers and programs that maximize the use of evidence-based and research-based practices, as those terms are defined in section 703 of this act, unless otherwise designated by the legislature.

**NEW SECTION. Sec. 903.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 904.** A new section is added to chapter 82.14 RCW to read as follows:

(1) A county legislative authority may authorize, fix, and impose a sales and use tax in accordance with the terms of this chapter.

(2) The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall equal one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(3) Moneys collected under this section shall be used solely for the purpose of providing new or expanded chemical dependency or mental health treatment services and for the operation of new or expanded therapeutic court programs. Moneys collected under this section shall not be used to supplant existing funding for these purposes.

**NEW SECTION. Sec. 905.** This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

**NEW SECTION. Sec. 906.** Captions and part headings used in this act are not part of the law.

**NEW SECTION. Sec. 907.** (1) If specific funding for the purposes of sections 203, 217, 220, 221, 401, 406, 612, 701, and 705 of this act, referencing the section by section number and by bill or chapter number, is not provided by June 30, 2005, each section not referenced is null and void.

(2) If specific funding for the purposes of sections 302 through 374 of this act, referencing these sections by section numbers and by bill or chapter number, or by RCW citation, is not provided by June 30, 2009, sections 302 through 374 of this act are null and void.

**NEW SECTION. Sec. 908.** The code reviser shall alphabetize and renumber the definitions, and correct any internal references affected by this act.

**NEW SECTION. Sec. 909.** The code reviser shall, not later than January 1, 2009, report to the appropriate policy committees of the legislature which sections, or portions thereof, should be repealed on the effective date of sections 302 through 374 of this act. The report shall include draft legislation.

**NEW SECTION. Sec. 910.** (1) The secretary of the department of social and health services may adopt rules as necessary to implement the provisions of this act.

(2) The secretary of corrections may adopt rules as necessary to implement the provisions of this act.

**NEW SECTION. Sec. 911.** (1) Except for sections 302 through 374 and 603 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

(2) Section 603 of this act takes effect July 1, 2006.

(3) Sections 302 through 374 of this act take effect July 1, 2009."

Senator Hargrove spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Hargrove and Stevens to Second Substitute Senate Bill No. 5763.

The motion by Senator Hargrove carried and the striking amendment was adopted by voice vote.

### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "2005;" strike the remainder of the title and insert "amending RCW 71.05.020, 71.24.025, 10.77.010, 71.05.360, 71.05.215, 71.05.370, 71.05.420, 71.05.620, 71.05.630, 71.05.640, 71.05.660, 71.05.550, 2.28.170, 74.09.010, 71.05.157, 5.60.060, 18.83.110, 18.225.105, 71.05.235, 71.05.310, 71.05.425, 71.05.445, 71.05.640, 71.05.680, and 71.05.690; reenacting and amending RCW 71.05.390 and 71.24.035; adding new sections to chapter 71.05 RCW; adding new sections to chapter 70.96A RCW; adding a new section to chapter 13.34 RCW; adding new sections to chapter 2.28 RCW; adding a new section to chapter 26.12 RCW; adding new sections to chapter 74.09 RCW; adding a new section to chapter 71.24 RCW; adding a new section to chapter 72.09 RCW; adding new sections to chapter 71.02 RCW; adding a new section to chapter 71A.12 RCW; adding a new section to chapter 43.20A RCW; adding a new section to chapter 82.14 RCW; adding new chapters to Title 70 RCW; creating new sections; recodifying RCW 71.05.370 and 71.05.035; repealing RCW 71.05.060, 71.05.070, 71.05.090, 71.05.200, 71.05.250, 71.05.450, 71.05.460, 71.05.470, 71.05.480, 71.05.490, 71.05.155, 71.05.395, 71.05.400, 71.05.410, 71.05.430, 71.05.610, 71.05.650, and 71.05.670; prescribing penalties; providing effective dates; providing expiration dates; and declaring an emergency."

### MOTION

On motion of Senator Hargrove, the rules were suspended, Engrossed Second Substitute Senate Bill No. 5763 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Hargrove, Hewitt, Thibaudeau, Stevens, Brown, Rockefeller, Johnson, Parlette and Franklin spoke in favor of passage of the bill.

Senators Finkbeiner, Deccio and Honeyford spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute Senate Bill No. 5763.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute Senate Bill No. 5763 and the bill passed the Senate by the following vote: Yeas, 37; Nays, 12; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Delvin, Doumit, Eide, Fairley, Franklin, Fraser, Hargrove, Haugen, Hewitt, Jacobsen, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, Morton, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau and Weinstein - 37

Voting nay: Senators Benson, Carrell, Deccio, Esser, Finkbeiner, Honeyford, Johnson, McCaslin, Mulliken, Schmidt, Schoesler and Zarelli - 12

ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5763, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was order to stand as the title of the act.

#### SECOND READING

SENATE BILL NO. 5962, by Senators Haugen, Schoesler, Rasmussen, Morton, Shin and Delvin

Protecting customary agricultural practices against nuisance actions.

The measure was read the second time.

#### MOTION

Senator Haugen moved that the following striking amendment by Senators Haugen, Jacobsen, Schoesler and Kline be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 7.48 RCW to read as follows:

(1)(a) If a farmer prevails in any action, claim, or counterclaim that alleges agricultural activity on a farm to be a nuisance, or that is based on an unverified complaint, the farmer may recover the full amount of costs and expenses determined by the court to have been reasonably incurred by the farmer in defending against the action, claim, or counterclaim. Such costs and expenses may include:

(i) Actual damages, including lost revenue and the replacement value of crops or livestock damaged or unable to be harvested or sold as a result of the action, claim, or counterclaim; and

(ii) Reasonable attorneys' fees and costs.

(b) If the court finds that the action, claim, or counterclaim was initiated maliciously and without probable cause, the farmer may also recover exemplary damages.

(2) A court may order the person making an unverified complaint to pay the investigating agency its full investigative costs.

(3) As used in this section, "unverified complaint" means a complaint filed by a person in which agricultural activity on a farm is alleged to have violated specified laws, rules, or ordinances and upon investigation the investigating agency or a

court determines that the farm is in conformity with the specified laws, rules, or ordinances allegedly violated and the complaint was unfounded at the time it was initiated.

NEW SECTION. Sec. 2. A new section is added to chapter 64.06 RCW to read as follows:

A seller of real property located within one mile of the property boundary of a farm or farm operation shall make available to the buyer the following statement: "This notice is to inform prospective residents that the real property they are about to acquire lies within one mile of the property boundary of a farm. The farm may generate usual and ordinary noise, dust, odors, and other associated conditions, and these practices are protected by the Washington right to farm act."

Sec. 3. RCW 70.94.640 and 1981 c 297 s 30 are each amended to read as follows:

(1) Odors or fugitive dust caused by agricultural activity consistent with good agricultural practices on agricultural land are exempt from the requirements of this chapter unless they have a substantial adverse effect on public health. In determining whether agricultural activity is consistent with good agricultural practices, the department of ecology or board of any authority shall consult with a recognized third-party expert in the activity prior to issuing any notice of violation.

(2) Any notice of violation issued under this chapter pertaining to odors or fugitive dust caused by agricultural activity shall include a statement as to why the activity is inconsistent with good agricultural practices, or a statement that the odors or fugitive dust have substantial adverse effect on public health.

(3) In any appeal to the pollution control hearings board or any judicial appeal, the agency issuing a final order pertaining to odors or fugitive dust caused by agricultural activity shall prove the activity is inconsistent with good agricultural practices or that the odors or fugitive dust have a substantial adverse impact on public health.

(4) If a person engaged in agricultural activity on a contiguous piece of agricultural land sells or has sold a portion of that land for residential purposes, the exemption of this section shall not apply.

(5) As used in this section:

(a) "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, grain, mint, hay, and dairy products.

(b) "Good agricultural practices" means economically feasible practices which are customary among or appropriate to farms and ranches of a similar nature in the local area.

(c) "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock or agricultural commodities.

(d) "Fugitive dust" means a particulate emission made airborne by human activity, forces of wind, or both, and which do not pass through a stack, chimney, vent, or other functionally equivalent opening.

(6) The exemption for fugitive dust provided in subsection (1) of this section does not apply to facilities subject to RCW 70.94.151 as specified in WAC 173-400-100 as of the effective date of this act, 70.94.152, or 70.94.161."

--- END ---

Senators Haugen and Schoesler spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Haugen, Jacobsen, Schoesler and Kline to Senate Bill No. 5962.

The motion by Senator Haugen carried and the striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted.

On page 1, line 1 of the title, after "practices;" strike the remainder of the title and insert "amending RCW 70.94.640; adding a new section to chapter 7.48 RCW; and adding a new section to chapter 64.06 RCW."

#### MOTION

On motion of Senator Haugen, the rules were suspended, Engrossed Senate Bill No. 5962 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Haugen, Schoesler and Rasmussen spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 5962.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 5962 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 2; Absent, 0; Excused, 0.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau and Zarelli - 47

Voting nay: Senators Kline and Weinstein - 2

ENGROSSED SENATE BILL NO. 5962, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### RULING BY THE PRESIDENT

President Owen: In ruling upon the point of inquiry raised by Senator Schoesler that Senate Bill 5794 takes a two-thirds vote on final passage under statutes enacted by Initiative Number 601 because it increases revenue, the President finds and rules as follows:

The President begins by examining the language of I-601, codified at RCW 43.135.035, which states:

[A]ny action or combination of actions by the legislature that raises state revenue...may be taken only if approved by a two-thirds vote of each house...

There is no doubt that enactment of this measure could eventually result in additional revenue to the state. Application of I-601 is more, however, than a simple function of arithmetic. The question for our purposes is not simply whether or not additional money is expected by the state; rather, it is whether the legislature has taken actions which are raising new revenue or collecting revenue that is due.

The application of state cigarette taxes to tribes has been the subject of much debate and litigation. While a final disposition of this litigation is properly a matter for the courts, the President notes that this body is faced with a unique interplay between the legislative, executive, and judicial branches of government. At some level, litigation in the courts has established that state cigarette tax may be collected on non-tribal member purchases of tobacco products from tribal facilities or members. What has been lacking is a mechanism to collect this tax.

The bill before us provides a mechanism by which a

settlement of this litigation may be implemented, allowing the Governor to negotiate with the Puyallup Tribe of Indians to collect a tax on tobacco products, some portion of which will then be sent by the Tribe to the state. The state will realize estimated income of about \$17 million per biennium that it had previously not collected, but this is not a new tax. Instead, this is simply a mechanism by which the state will settle with the Tribe on a debt that is owed, as has been determined at least in part by the courts.

This is similar to the state employing additional tax agents at the Department of Revenue to look into back taxes owed: such an action could definitely result in increased revenue to the state, but it is a matter of enforcement and collection, not authorization of new revenues. Likewise, this bill essentially empowers the Governor to try and collect on a debt that is owed, it is not an action of the Legislature to raise state revenue. The 2002 ruling to which Senator Schoesler referred, by contrast, expanded a tax to a new class of taxpayers. The measure before us neither creates a new tax nor expands the class of taxpayers to which it applies. For these reasons, I-601's supermajority provisions are not triggered, and Senator Schoesler's point is not well-taken. Only a simple majority vote of this body is needed for final passage of this measure.

There being no objection, the Senate resumed consideration of Senate Bill No. 5794

Senator Prentice spoke in favor of passage of the bill.

#### ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5794 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 2; Absent, 0; Excused, 0.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein and Zarelli - 47

Voting nay: Senators Mulliken and Schoesler - 2

SENATE BILL NO. 5794, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SENATE BILL NO. 5352, by Senators Esser, Kline, Weinstein, McCaslin, Thibaudeau, Regala, Schmidt, Kohl-Welles, Stevens, Franklin, Finkbeiner, Jacobsen, Rockefeller and Rasmussen

Revising provisions relating to animal cruelty.

The measure was read the second time.

#### MOTION

Senator Schoesler moved that the following amendment by Senators Schoesler and Hargrove be adopted.

On page 1, line 12, after "except" insert "for accepted animal husbandry and euthanization practices or"

Senator Schoesler spoke in favor of adoption of the amendment.

Senator Esser spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Schoesler and Hargrove on page 1, line 12 to Senate Bill No. 5352.

The motion by Senator Schoesler failed and the amendment was not adopted by voice vote.

#### MOTION

On motion of Senator Esser, the rules were suspended, Senate Bill No. 5352 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Esser and Kline spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Senate Bill No. 5352.

#### ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5352 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 2; Absent, 0; Excused, 0.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein and Zarelli - 47

Voting nay: Senators Hargrove and Morton - 2

SENATE BILL NO. 5352, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SENATE BILL NO. 5445, by Senators Kline, Pridemore, Esser, Brown, Finkbeiner, Jacobsen, Benson, Swecker, Spanel, Regala, Poulsen, Rockefeller, Rasmussen, Kohl-Welles, Weinstein and McCaslin

Clarifying Initiative 297.

#### MOTION

On motion of Senator Poulsen, Substitute Senate Bill No. 5445 was substituted for Senate Bill No. 5445 and the substitute bill was placed on the second reading and read the second time.

#### MOTION

Senator Kline moved that the following striking amendment by Senators Kline and Esser be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The people of Washington state adopted the cleanup priority act as Initiative 297 in November 2004. The legislature finds that the intent of Initiative 297 is clearly stated in the intent and policy sections of the cleanup priority act as passed by the voters. The cleanup priority act makes the cleanup of contamination the top priority at sites with hazardous or mixed waste contamination. The cleanup priority act should be interpreted by the courts consistent with the clear intent of the voters, and the findings and clarifications in this act.

The legislature further finds that nothing in the cleanup priority act is intended to, or has the effect of, preventing the movement of waste from one facility or unit within a site to another as part of an approved cleanup order, agreement, or plan, or pursuant to permits. Because the term facility is used in different ways in different statutes, rules, and regulations, the

legislature finds that it is desirable to clarify that the cleanup priority act does not prevent the movement or transfer of waste within a site to accomplish cleanup of the site. The legislature finds that the cleanup priority act does not increase the universe of substances that are subject to regulation by the state as hazardous or mixed wastes. The legislature finds that the cleanup priority act does not regulate radioactive materials, medical isotopes, other radioactive substances, or facilities exclusively regulated by the United States pursuant to the federal atomic energy act 42 U.S.C. Sec. 2011 et seq.

The legislature further finds that this chapter is not intended, nor may it be interpreted, to adversely affect the transportation, manufacturing, storage, or use of any hazardous substance or radioactive materials necessary for medical research, medical treatment, or manufacturing or industrial processes.

The legislature further finds that the cleanup priority act does not regulate the materials or facilities used in the processing of radioactive substances, including those with nonradioactive components, to produce radioactive isotopes for beneficial use, such as calibrations, research, and medical use. In accordance with this finding, the cleanup priority act is not intended to, and shall not be interpreted to, regulate those radioactive or otherwise hazardous materials that may be imported to Washington state, or generated within the state, to be processed for the production of beneficial products, such as medical isotopes.

It is in the interest of the state to clarify as quickly as possible that the cleanup priority act does not impact any business operation, or federal or private facility, that was not intended to be impacted by the cleanup priority act. Consistent with the intent of the voters, the legislature finds that the universe of regulated hazardous or dangerous wastes was not expanded by the passage of the cleanup priority act. Because court action has prevented the normal role of the department of ecology from issuing defining or interpretive rules, the legislature finds that adoption of the amendments to the cleanup priority act will ensure that the intent of the cleanup priority act is understood and clarified for the courts as well as for businesses or cleanup operations without delay.

**Sec. 2.** RCW 70.105E.030 and 2005 c 1 s 3 (Initiative Measure No. 297) are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Dangerous waste" has the same meaning as the term is defined in RCW 70.105.010.

(2) "Department" means the department of ecology.

(3) "Dispose" or "disposal" have the same meanings as the terms are defined in RCW 70.105.010.

(4) "Facility" has the same meaning as the term is defined in RCW 70.105.010.

(5) "Hanford" means the geographic area comprising the Hanford nuclear reservation, owned and operated by the United States department of energy, or any successor federal agency.

(6) "Hazardous substance" has the same meaning as the term is defined in RCW 70.105D.020.

(7) "Hazardous waste" means and includes all dangerous and extremely hazardous waste, as those terms are defined in RCW 70.105.010.

(8) "Local government" means a city, town, or county.

(9)(a) "Mixed waste" or "mixed radioactive and hazardous waste" means:

(i) Any (~~hazardous substance or~~) dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component (~~(, including)~~); or

(ii) Any (~~such~~) hazardous substances, as defined by RCW 70.105D.020 that contain both a nonradioactive and radioactive hazardous component, that (A) have been released to the environment, or (B) are discarded solid wastes found by the department to pose a threat of future release, in a manner that may expose persons or the environment to (~~either the nonradioactive or radioactive hazardous substances~~) the release.

(b) Materials, useful products, or substances, including medical isotopes and materials used to produce medical or

industrial isotopes, that are not otherwise regulated as hazardous or mixed waste under chapter 70.105 RCW or the federal hazardous waste law (RCRA 42 U.S.C. Sec. 6901, et seq.) are not hazardous, dangerous, or mixed waste under this chapter. Mixed wastes or mixed waste facility does not include radioactive materials or facilities regulated exclusively by the federal government under the federal atomic energy act, 42 U.S.C. Sec. 2011 et seq.

(10) "Mixed waste surcharge" means an additional charge for the purposes of local government and public participation in decisions relating to mixed waste facilities(+) to be added to the service charge assessed under RCW 70.105.280 against those facilities that store, treat, incinerate, or dispose of mixed wastes(+), or against facilities at which mixed wastes have been released(+) or which are undergoing closure pursuant to chapter 70.105 RCW or remedial action pursuant to chapter 70.105D RCW.

(11) "Person" has the same meaning as the term is defined in RCW 70.105D.020.

(12) "Release" has the same meaning as the term is defined in RCW 70.105D.020.

(13) "Remedy or remedial action" have the same meanings as the terms are defined in RCW 70.105D.020.

(14) "Site" means the contiguous geographic area under the same ownership, lease, or operation where a facility is located, or where there has been a release of hazardous substances. In the event of a release of hazardous substances, "site" includes any area, or body of surface or ground water, where a hazardous substance has been deposited, stored, disposed of, placed, migrated to, or otherwise come to be located.

(15) Unless otherwise defined, or the context indicates otherwise, terms not defined in this section have the same meaning as defined in chapter 70.105 RCW, when used in this chapter.

**NEW SECTION. Sec. 3.** A new section is added to chapter 70.105E RCW to read as follows:

Nothing in this chapter prohibits mixed wastes generated on-site as part of a remedial or corrective action from being transferred to, stored, treated, recycled, or disposed of at a facility or unit within the site subject to applicable permits, plans, agreements, consent orders, or conditions of an approved remedy or corrective action under the federal superfund law, 42 U.S.C. Sec. 9601 et seq., chapter 70.105D RCW, chapter 70.105 RCW, or the federal resource conservation and recovery act, 42 U.S.C. Sec. 6921 et seq.

**NEW SECTION. Sec. 4.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

Senators Kline, Esser and Swecker spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Kline and Esser to Substitute Senate Bill No. 5445.

The motion by Senator Kline carried and the striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted.

On page 1, line 5 of the title, after "2004;" strike the remainder of the title and insert "amending RCW 70.105E.030; adding a new section to chapter 70.105E RCW; creating a new section; and declaring an emergency."

#### MOTION

On motion of Senator Poulsen, the rules were suspended, Engrossed Substitute Senate Bill No. 5445 was advanced to third

reading, the second reading considered the third and the bill was placed on final passage.

Senator Kline spoke in favor of passage of the bill.

Senators Sheldon and Morton spoke against passage of the bill.

Senator Jacobsen spoke on passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5445.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5445 and the bill passed the Senate by the following vote: Yeas, 34; Nays, 15; Absent, 0; Excused, 0.

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Shin, Spanel, Swecker, Thibaudeau and Weinstein - 34

Voting nay: Senators Carrell, Deccio, Delvin, Hargrove, Haugen, Hewitt, Honeyford, Morton, Mulliken, Oke, Parlette, Schoesler, Sheldon, Stevens and Zarelli - 15

ENGROSSED SUBSTITUTE SENATE BILL NO. 5445, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was order to stand as the title of the act.

#### SECOND READING

SENATE BILL NO. 5732, by Senators McAuliffe, Weinstein, Schmidt, Berkey, Rockefeller, Shin, Prentice, Thibaudeau, Pridemore, Carrell, Kohl-Welles, Regala, Spanel, Fairley, Delvin and Rasmussen

Revising the powers, duties, and membership of the state board of education and the Washington professional educator standards board and eliminating the academic achievement and accountability commission.

#### MOTION

On motion of Senator McAuliffe, Substitute Senate Bill No. 5732 was substituted for Senate Bill No. 5732 and the substitute bill was placed on the second reading and read the second time.

#### MOTION

Senator Roach moved that the following amendment by Senators Roach, Stevens Benson, Johnson, Esser, Carrell and Mulliken be adopted.

Beginning on page 2, strike all of section 101 and insert the following:

"**Sec. 101.** RCW 28A.305.010 and 1992 c 56 s 1 are each amended to read as follows:

The state board of education shall be comprised of ~~((one))~~ :  
~~(1)Two nonpartisan members~~ from each congressional district of the state, not including any congressional district at large, elected by the ~~((members of the boards of directors of school districts thereof, as hereinafter in this chapter provided, the superintendent of public instruction and one member elected at large, as provided in this chapter, by the members of the boards of directors of all private schools in the state meeting the requirements of RCW 28A.195.010. The member representing private schools shall not vote on matters affecting public schools. If there is a dispute about whether or not an issue directly affects public schools, the dispute shall be settled by a majority vote of~~

~~the other members of the board)) voters of each congressional district in the state; and~~

(2) One member elected at large by the members of the boards of directors of all private schools in the state meeting the requirements of RCW 28A.195.010. The member representing private schools shall not vote on matters affecting public schools. If there is a dispute about whether or not an issue directly affects public schools, the dispute shall be settled by a majority vote of the other members of the board. Not later than the twenty-fifth day of August of each year, the superintendent of public instruction shall call for an election of the member of the state board of education representing private schools if the term of membership will end on the second Monday of the following January. The superintendent of public instruction shall give written notice thereof to the chair of the board of directors of each private school who shall distribute the notice to each member of the private school board. The notice shall include the election calendar and rules established by the superintendent of public instruction for the conduct of the election.

**Sec. 102.** RCW 28A.305.030 and 1992 c 56 s 3 are each amended to read as follows:

(1) Whenever any new and additional congressional district is created, except a congressional district at large, ~~((the superintendent of public instruction shall call an election in such district at the time of making the call provided for in RCW 28A.305.020. Such election shall be conducted as other elections provided for in this chapter))~~ two persons shall be elected at the next general election at which state board of education members are elected to serve as members of the state board of education. At the first such election one member of the state board of education shall be elected for a term of four years.

(2) The terms of office of members of the state board of education who are elected from the various congressional districts shall not be affected by the creation of either new or new and additional districts. In such an event, each board member may continue to serve in office for the balance of the term for which he or she was elected or appointed: PROVIDED, That the board member continues to reside within the boundaries of the congressional district as they existed at the time of his or her election or appointment. Vacancies ~~((which))~~ that occur in a board member position during the balance of any such term shall be filled ~~((pursuant to RCW 28A.305.090))~~ under section 103 of this act by a successor who resides within the boundaries of the congressional district from which the member whose office was vacated was elected as they existed at the time of his or her election. At the election immediately preceding expiration of the term of office of each board member provided for in this subsection following the creation of either new or new and additional congressional districts, and thereafter, a successor shall be elected from the congressional district ~~((which))~~ that corresponds in number with the congressional district from which the incumbent was appointed or elected.

~~((3) Notwithstanding any other provision of this section or chapter, in order to reduce the number of state board of education members elected from each congressional district from two members to one member the following transitional measures shall govern board member terms, elections, and voting:~~

~~—(a) The terms of office for each of the sixteen state board of education members and positions representing the first through the eighth congressional districts shall terminate in a sequence commencing with the terms of the four members and positions representing the third and sixth congressional districts as of the second Monday of January 1993, followed by the terms of the six members and positions representing the first, fourth, and seventh congressional districts as of the second Monday of January 1994,~~

~~and ending with the termination of the terms of the six members and positions representing the second, fifth, and eighth congressional districts as of the second Monday of January 1995;~~

~~—(b) An election shall be conducted under RCW 28A.305.040 through 28A.305.060 each year preceding the termination of one or more terms under (a) of this subsection for the purpose of electing one state board of education member from each correspondingly numbered congressional district for a term of four years;~~

~~—(c) If for any reason a vacancy occurs in one of two positions representing a congressional district before the termination of the term for the position under (a) of this subsection, no replacement may be appointed or elected and the position shall be deemed eliminated; and~~

~~—(d) During the transition period from the second Monday of January 1993, to the second Monday of January 1995, a vote on any matter before the state board of education by any one of two members representing the same congressional district shall be equal to one-half [of] a vote and a vote by any other member shall be equal to one full vote. Thereafter, the vote of each member shall be equal to one full vote.)~~

**Sec. 103.** RCW 28A.305.090 and 1990 c 33 s 264 are each amended to read as follows:

Whenever there shall be a vacancy upon the state board of education, from any cause whatever, it shall be the duty of the remaining members of the board to fill such vacancy by appointment, and the person so appointed shall continue in office until his or her successor has been ~~((specially))~~ elected ~~((as hereinafter in this section provided,))~~ and has qualified. ~~((Whenever a vacancy occurs, the superintendent of public instruction shall call, in the month of August))~~ At the next general election following the date of the occurrence of ((such)) the vacancy, ~~((a special election to be held in the same manner as other elections provided for in this chapter, at which election))~~ a successor shall be elected to hold office for the unexpired term of the member whose office was vacated.

**NEW SECTION. Sec. 104.** A new section is added to chapter 28A.305 RCW to read as follows:

An election shall be held at the general election after the effective date of this section to elect members to the state board of education. Members shall take office on the second Monday of January following the election, on which date the terms of all members of the state board of education holding office on the effective date of this section shall expire. Of the initial members elected under this section, members elected from even-numbered congressional districts shall serve four-year terms and members elected from odd-numbered congressional districts shall serve two-year terms. Newly elected members of the state board of education shall serve until their successors are elected and qualified. Members who are elected subsequently shall be elected to four-year terms of office and shall serve until their successors are elected and qualified and assume office in accordance with RCW 29A.20.040.

Renumber the sections consecutively and correct any internal references accordingly.

On page 35, line 20, strike all of subsection (1).

Renumber the subsections consecutively and correct any internal references accordingly.

On page 35, line 25, strike all of subsection (3).

Renumber the subsections consecutively and correct any internal references accordingly.

On page 36, line 8, strike all of subsection (9).

Renumber the subsections consecutively and correct any internal references accordingly.

On page 1, on line 4 of the title, after "RCW" insert "28A.305.010, 28A.305.030, 28A.305.090,"

On page 1, on line 11 of the title, strike "28A.305.010,"

On page 1, on line 11 of the title, strike "28A.305.030,"

On page 1, on line 12 of the title, strike "28A.305.090"

Senator Roach spoke in favor of adoption of the amendment.

Senator McAuliffe spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Roach, Stevens, Benson, Johnson, Esser, Carrell and Mulliken on page 2 to Substitute Senate Bill No. 5732.

The motion by Senator Roach failed and the amendment was not adopted by voice vote.

#### MOTION

Senator McAuliffe moved that the following amendment by Senators McAuliffe and Schmidt be adopted.

On page 2, line 4, after "and" strike "eight" and insert "nine"

On page 2, line 9, after "education;" strike "and"

On page 2, line 15, after "large" insert "; and

(c) One member elected at large by the members of the boards of directors of all private schools in the state meeting the requirements of RCW 28A.195.010. The member representing private schools shall not vote on matters affecting public schools. If there is a dispute about whether or not an issue directly affects public schools, the dispute shall be settled by a majority vote of the other members of the board. Not later than the twenty-fifth day of August of each year, the superintendent of public instruction shall call for an election of the member of the state board of education representing private schools if the term of membership will end on the second Monday of the following January. The superintendent of public instruction shall give written notice thereof to the chair of the board of directors of each private school who shall distribute the notice to each member of the private school board. The notice shall include the election calendar and rules established by the superintendent of public instruction for the conduct of the election"

Senator McAuliffe spoke in favor of adoption of the amendment.

#### MOTION

Senator Benton moved that the following amendment to the amendment by Senators Benton and Swecker be adopted.

On page 1, line 6 of the amendment, after "RCW 28A.195.010." strike all material through "board." on line 9.

Re-number the sections consecutively and correct any internal references accordingly.

Senators Benton and Swecker spoke in favor of adoption of the amendment to the amendment.

Senators McAuliffe and Weinstein spoke against adoption of the amendment to the amendment.

Senator Esser demanded a division.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

The President declared the question before the Senate to be the adoption of the amendment to the amendment by Senators Benton and Swecker on page 1, line 6 to Substitute Senate Bill No. 5732.

The motion by Senator Benton failed and the amendment to the amendment was not adopted by rising voice vote.

The President declared the question before the Senate to be the adoption of the amendment by Senator McAuliffe on page 2, line 4 to Substitute Senate Bill No. 5732.

The motion by Senator McAuliffe carried and the amendment was adopted by voice vote.

#### MOTION

Senator McAuliffe moved that the following amendment by Senators McAuliffe and Schmidt be adopted.

On page 2, line 7, after "28A.345.020" insert "who represent various regions of the state, particularly the eastern and western regions"

Senators McAuliffe and Schmidt spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators McAuliffe and Schmidt on page 2, line 7 to Substitute Senate Bill No. 5732.

The motion by Senator McAuliffe carried and the amendment was adopted by voice vote.

#### MOTION

Senator McAuliffe moved that the following amendment by Senator McAuliffe be adopted.

On page 2, line 7, after "28A.345.020" insert "who represent various regions of the state, particularly the eastern and western regions, and who represent small, medium, and large districts"

#### WITHDRAWAL OF AMENDMENT

On motion of Senator McAuliffe the amendment to Substitute Senate Bill No. 5732 was withdrawn.

#### MOTION

Senator McAuliffe moved that the following amendment by Senators McAuliffe and Schmidt be adopted.

On page 2, line 7, after "28A.345.020." insert "Of the members elected under this subsection (1)(a), at least one member shall be from a first class district and at least one member shall be from a second class district."

Senator McAuliffe spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators McAuliffe and Schmidt on page 2, line 7 to Substitute Senate Bill No. 5732.

The motion by Senator McAuliffe carried and the amendment was adopted by voice vote.

#### MOTION

Senator Johnson moved that the following amendment by Senators Johnson and Schmidt be adopted.

On page 2, line 10 after "follows:" strike all material through "(d)" on line 33 and insert the following:

"Each major caucus of the house of representatives and the senate shall submit a list of three names. The lists may not include the names of members of the legislature. The governor shall select a member from each list provided by each caucus. All members appointed by the governor shall be subject to confirmation by the senate.

(c)"

Re-number the subsections consecutively and correct any internal references accordingly.

Senator Johnson spoke in favor of adoption of the amendment. Senator McAuliffe spoke against adoption of the amendment.

A division was demanded.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

The President declared the question before the Senate to be the adoption of the amendment by Senators Johnson and Schmidt on page 2, line 10 to Substitute Senate Bill No. 5732.

The motion by Senator Johnson failed and the amendment was not adopted by a rising voice vote.

#### MOTION

Senator Schmidt moved that the following amendment by Senator Schmidt be adopted.

On page 3, line 8, after "board." insert "The superintendent of public instruction may not serve as chair of the board."

Senator Schmidt spoke in favor of adoption of the amendment.

Senator Rockefeller spoke against adoption of the amendment.

A division was demanded.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

The President declared the question before the Senate to be the adoption of the amendment by Senator Schmidt on page 3, line 10 to Substitute Senate Bill No. 5732.

The motion by Senator Schmidt carried and the amendment was adopted by a rising voice vote.

#### MOTION

Senator McAuliffe moved that the following amendment by Senator McAuliffe be adopted.

On page 3, beginning on line 9, after "may" strike all material through "board" on line 10, and insert "not serve more than two consecutive terms"

#### WITHDRAWAL OF AMENDMENT

On motion of Senator McAuliffe the amendment to Substitute Senate Bill No. 5732 was withdrawn.

#### MOTION

On motion of Senator McAuliffe, the rules were suspended, Engrossed Substitute Senate Bill No. 5732 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators McAuliffe and Schmidt spoke in favor of passage of the bill.

Senator Zarelli spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5732.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5732 and the bill passed the Senate by the following vote: Yeas, 30; Nays, 19; Absent, 0; Excused, 0.

Voting yea: Senators Berkey, Brandland, Brown, Delvin, Doumit, Eide, Fairley, Franklin, Fraser, Hargrove, Haugen, Jacobsen, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Rockefeller, Schmidt, Schoesler, Shin, Spanel, Thibaudeau and Weinstein - 30

Voting nay: Senators Benson, Benton, Carrell, Deccio, Esser, Finkbeiner, Hewitt, Honeyford, Johnson, McCaslin, Morton, Mulliken, Oke, Parlette, Roach, Sheldon, Stevens, Swecker and

Zarelli - 19

ENGROSSED SUBSTITUTE SENATE BILL NO. 5732, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was order to stand as the title of the act.

#### MOTION

At 7:04 p.m., on motion of Senator Eide, the Senate adjourned until 9:00 a.m. Friday, March 11, 2005.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate