
HOUSE BILL 2750

State of Washington

66th Legislature

2020 Regular Session

By Representatives
Leavitt, and Ramel

Lekanoff, Tharinger,

Robinson, Cody, Chopp,

1 AN ACT Relating to improving the Indian behavioral health system
2 in this state; amending RCW 71.24.035, 71.24.155, 71.05.150,
3 71.05.150, 71.05.201, 71.05.212, 71.05.435, and 70.02.010; reenacting
4 and amending RCW 71.24.025, 71.05.020, and 70.02.230; providing
5 effective dates; and providing an expiration date.

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

7 **PART I**

8 **Sec. 101.** RCW 71.24.025 and 2019 c 325 s 1004 and 2019 c 324 s 2
9 are each reenacted and amended to read as follows:

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

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

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

16 (b) Being gravely disabled as defined in RCW 71.05.020 or, in the
17 case of a child, a gravely disabled minor as defined in RCW
18 71.34.020; or

19 (c) Presenting a likelihood of serious harm as defined in RCW
20 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

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

7 (3) "Approved substance use disorder treatment program" means a
8 program for persons with a substance use disorder provided by a
9 treatment program licensed or certified by the department as meeting
10 standards adopted under this chapter.

11 (4) "Authority" means the Washington state health care authority.

12 (5) "Available resources" means funds appropriated for the
13 purpose of providing community behavioral health programs, federal
14 funds, except those provided according to Title XIX of the Social
15 Security Act, and state funds appropriated under this chapter or
16 chapter 71.05 RCW by the legislature during any biennium for the
17 purpose of providing residential services, resource management
18 services, community support services, and other behavioral health
19 services. This does not include funds appropriated for the purpose of
20 operating and administering the state psychiatric hospitals.

21 (6) "Behavioral health administrative services organization"
22 means an entity contracted with the authority to administer
23 behavioral health services and programs under RCW 71.24.381,
24 including crisis services and administration of chapter 71.05 RCW,
25 the involuntary treatment act, for all individuals in a defined
26 regional service area.

27 (7) "Behavioral health provider" means a person licensed under
28 chapter 18.57, 18.57A, 18.71, 18.71A, 18.83, 18.205, 18.225, or 18.79
29 RCW, as it applies to registered nurses and advanced registered nurse
30 practitioners.

31 (8) "Behavioral health services" means mental health services as
32 described in this chapter and chapter 71.36 RCW and substance use
33 disorder treatment services as described in this chapter that,
34 depending on the type of service, are provided by licensed or
35 certified behavioral health agencies, behavioral health providers, or
36 integrated into other health care providers.

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

38 (10) "Chronically mentally ill adult" or "adult who is
39 chronically mentally ill" means an adult who has a mental disorder
40 and meets at least one of the following criteria:

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

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

6 (c) Has been unable to engage in any substantial gainful activity
7 by reason of any mental disorder which has lasted for a continuous
8 period of not less than twelve months. "Substantial gainful activity"
9 shall be defined by the authority by rule consistent with Public Law
10 92-603, as amended.

11 (11) "Clubhouse" means a community-based program that provides
12 rehabilitation services and is licensed or certified by the
13 department.

14 (12) "Community behavioral health program" means all
15 expenditures, services, activities, or programs, including reasonable
16 administration and overhead, designed and conducted to prevent or
17 treat substance use disorder, mental illness, or both in the
18 community behavioral health system.

19 (13) "Community behavioral health service delivery system" means
20 public, private, or tribal agencies that provide services
21 specifically to persons with mental disorders, substance use
22 disorders, or both, as defined under RCW 71.05.020 and receive
23 funding from public sources.

24 (14) "Community support services" means services authorized,
25 planned, and coordinated through resource management services
26 including, at a minimum, assessment, diagnosis, emergency crisis
27 intervention available twenty-four hours, seven days a week,
28 prescreening determinations for persons who are mentally ill being
29 considered for placement in nursing homes as required by federal law,
30 screening for patients being considered for admission to residential
31 services, diagnosis and treatment for children who are acutely
32 mentally ill or severely emotionally or behaviorally disturbed
33 discovered under screening through the federal Title XIX early and
34 periodic screening, diagnosis, and treatment program, investigation,
35 legal, and other nonresidential services under chapter 71.05 RCW,
36 case management services, psychiatric treatment including medication
37 supervision, counseling, psychotherapy, assuring transfer of relevant
38 patient information between service providers, recovery services, and
39 other services determined by behavioral health administrative
40 services organizations.

1 (15) "Consensus-based" means a program or practice that has
2 general support among treatment providers and experts, based on
3 experience or professional literature, and may have anecdotal or case
4 study support, or that is agreed but not possible to perform studies
5 with random assignment and controlled groups.

6 (16) "County authority" means the board of county commissioners,
7 county council, or county executive having authority to establish a
8 behavioral health administrative services organization, or two or
9 more of the county authorities specified in this subsection which
10 have entered into an agreement to establish a behavioral health
11 administrative services organization.

12 (17) "Department" means the department of health.

13 (18) "Designated crisis responder" has the same meaning as in RCW
14 71.05.020.

15 (19) "Director" means the director of the authority.

16 (20) "Drug addiction" means a disease characterized by a
17 dependency on psychoactive chemicals, loss of control over the amount
18 and circumstances of use, symptoms of tolerance, physiological or
19 psychological withdrawal, or both, if use is reduced or discontinued,
20 and impairment of health or disruption of social or economic
21 functioning.

22 (21) "Early adopter" means a regional service area for which all
23 of the county authorities have requested that the authority purchase
24 medical and behavioral health services through a managed care health
25 system as defined under RCW 71.24.380(6).

26 (22) "Emerging best practice" or "promising practice" means a
27 program or practice that, based on statistical analyses or a well
28 established theory of change, shows potential for meeting the
29 evidence-based or research-based criteria, which may include the use
30 of a program that is evidence-based for outcomes other than those
31 listed in subsection (23) of this section.

32 (23) "Evidence-based" means a program or practice that has been
33 tested in heterogeneous or intended populations with multiple
34 randomized, or statistically controlled evaluations, or both; or one
35 large multiple site randomized, or statistically controlled
36 evaluation, or both, where the weight of the evidence from a systemic
37 review demonstrates sustained improvements in at least one outcome.
38 "Evidence-based" also means a program or practice that can be
39 implemented with a set of procedures to allow successful replication

1 in Washington and, when possible, is determined to be cost-
2 beneficial.

3 (24) "Indian health care provider" means a health care program
4 operated by the Indian health service or by a tribe, tribal
5 organization, or urban Indian organization as those terms are defined
6 in the Indian health care improvement act (25 U.S.C. Sec. 1603).

7 (25) "Intensive behavioral health treatment facility" means a
8 community-based specialized residential treatment facility for
9 individuals with behavioral health conditions, including individuals
10 discharging from or being diverted from state and local hospitals,
11 whose impairment or behaviors do not meet, or no longer meet,
12 criteria for involuntary inpatient commitment under chapter 71.05
13 RCW, but whose care needs cannot be met in other community-based
14 placement settings.

15 (26) "Licensed or certified behavioral health agency" means:

16 (a) An entity licensed or certified according to this chapter or
17 chapter 71.05 RCW;

18 (b) An entity deemed to meet state minimum standards as a result
19 of accreditation by a recognized behavioral health accrediting body
20 recognized and having a current agreement with the department; or

21 (c) An entity with a tribal attestation that it meets state
22 minimum standards for a licensed or certified behavioral health
23 agency.

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

27 (28) "Long-term inpatient care" means inpatient services for
28 persons committed for, or voluntarily receiving intensive treatment
29 for, periods of ninety days or greater under chapter 71.05 RCW.

30 "Long-term inpatient care" as used in this chapter does not include:

31 (a) Services for individuals committed under chapter 71.05 RCW who
32 are receiving services pursuant to a conditional release or a court-
33 ordered less restrictive alternative to detention; or (b) services
34 for individuals voluntarily receiving less restrictive alternative
35 treatment on the grounds of the state hospital.

36 (29) "Managed care organization" means an organization, having a
37 certificate of authority or certificate of registration from the
38 office of the insurance commissioner, that contracts with the
39 authority under a comprehensive risk contract to provide prepaid

1 health care services to enrollees under the authority's managed care
2 programs under chapter 74.09 RCW.

3 (30) "Mental health peer respite center" means a peer-run program
4 to serve individuals in need of voluntary, short-term, noncrisis
5 services that focus on recovery and wellness.

6 (31) Mental health "treatment records" include registration and
7 all other records concerning persons who are receiving or who at any
8 time have received services for mental illness, which are maintained
9 by the department of social and health services or the authority, by
10 behavioral health administrative services organizations and their
11 staffs, by managed care organizations and their staffs, or by
12 treatment facilities. "Treatment records" do not include notes or
13 records maintained for personal use by a person providing treatment
14 services for the entities listed in this subsection, or a treatment
15 facility if the notes or records are not available to others.

16 (32) "Mentally ill persons," "persons who are mentally ill," and
17 "the mentally ill" mean persons and conditions defined in subsections
18 (1), (10), (39), and (40) of this section.

19 (33) "Recovery" means a process of change through which
20 individuals improve their health and wellness, live a self-directed
21 life, and strive to reach their full potential.

22 (34) "Research-based" means a program or practice that has been
23 tested with a single randomized, or statistically controlled
24 evaluation, or both, demonstrating sustained desirable outcomes; or
25 where the weight of the evidence from a systemic review supports
26 sustained outcomes as described in subsection (23) of this section
27 but does not meet the full criteria for evidence-based.

28 (35) "Residential services" means a complete range of residences
29 and supports authorized by resource management services and which may
30 involve a facility, a distinct part thereof, or services which
31 support community living, for persons who are acutely mentally ill,
32 adults who are chronically mentally ill, children who are severely
33 emotionally disturbed, or adults who are seriously disturbed and
34 determined by the behavioral health administrative services
35 organization or managed care organization to be at risk of becoming
36 acutely or chronically mentally ill. The services shall include at
37 least evaluation and treatment services as defined in chapter 71.05
38 RCW, acute crisis respite care, long-term adaptive and rehabilitative
39 care, and supervised and supported living services, and shall also
40 include any residential services developed to service persons who are

1 mentally ill in nursing homes, residential treatment facilities,
2 assisted living facilities, and adult family homes, and may include
3 outpatient services provided as an element in a package of services
4 in a supported housing model. Residential services for children in
5 out-of-home placements related to their mental disorder shall not
6 include the costs of food and shelter, except for children's long-
7 term residential facilities existing prior to January 1, 1991.

8 (36) "Resilience" means the personal and community qualities that
9 enable individuals to rebound from adversity, trauma, tragedy,
10 threats, or other stresses, and to live productive lives.

11 (37) "Resource management services" mean the planning,
12 coordination, and authorization of residential services and community
13 support services administered pursuant to an individual service plan
14 for: (a) Adults and children who are acutely mentally ill; (b) adults
15 who are chronically mentally ill; (c) children who are severely
16 emotionally disturbed; or (d) adults who are seriously disturbed and
17 determined by a behavioral health administrative services
18 organization or managed care organization to be at risk of becoming
19 acutely or chronically mentally ill. Such planning, coordination, and
20 authorization shall include mental health screening for children
21 eligible under the federal Title XIX early and periodic screening,
22 diagnosis, and treatment program. Resource management services
23 include seven day a week, twenty-four hour a day availability of
24 information regarding enrollment of adults and children who are
25 mentally ill in services and their individual service plan to
26 designated crisis responders, evaluation and treatment facilities,
27 and others as determined by the behavioral health administrative
28 services organization or managed care organization, as applicable.

29 (38) "Secretary" means the secretary of the department of health.

30 (39) "Seriously disturbed person" means a person who:

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

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

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

40 (d) Exhibits suicidal preoccupation or attempts; or

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

6 (40) "Severely emotionally disturbed child" or "child who is
7 severely emotionally disturbed" means a child who has been determined
8 by the behavioral health administrative services organization or
9 managed care organization, if applicable, to be experiencing a mental
10 disorder as defined in chapter 71.34 RCW, including those mental
11 disorders that result in a behavioral or conduct disorder, that is
12 clearly interfering with the child's functioning in family or school
13 or with peers and who meets at least one of the following criteria:

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

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

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

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

22 (i) Chronic family dysfunction involving a caretaker who is
23 mentally ill or inadequate;

24 (ii) Changes in custodial adult;

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

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

30 (v) Drug or alcohol abuse; or

31 (vi) Homelessness.

32 (41) "State minimum standards" means minimum requirements
33 established by rules adopted and necessary to implement this chapter
34 by:

35 (a) The authority for:

36 (i) Delivery of mental health and substance use disorder
37 services; and

38 (ii) Community support services and resource management services;

39 (b) The department of health for:

1 (i) Licensed or certified behavioral health agencies for the
2 purpose of providing mental health or substance use disorder programs
3 and services, or both;

4 (ii) Licensed behavioral health providers for the provision of
5 mental health or substance use disorder services, or both; and

6 (iii) Residential services.

7 (42) "Substance use disorder" means a cluster of cognitive,
8 behavioral, and physiological symptoms indicating that an individual
9 continues using the substance despite significant substance-related
10 problems. The diagnosis of a substance use disorder is based on a
11 pathological pattern of behaviors related to the use of the
12 substances.

13 (43) "Tribe," for the purposes of this section, means a federally
14 recognized Indian tribe.

15 (44) "Behavioral health aide" means a counselor, health educator,
16 and advocate who helps address individual and community-based
17 behavioral health needs, including those related to alcohol, drug,
18 and tobacco abuse as well as mental health problems such as grief,
19 depression, suicide, and related issues and is certified by a
20 community health aide program of the Indian health service or one or
21 more tribes or tribal organizations consistent with the provisions of
22 25 U.S.C. Sec. 16161 and RCW 43.71B.010 (7) and (8).

23 **Sec. 102.** RCW 71.24.035 and 2019 c 325 s 1006 are each amended
24 to read as follows:

25 (1) The authority is designated as the state behavioral health
26 authority which includes recognition as the single state authority
27 for substance use disorders and state mental health authority.

28 (2) The director shall provide for public, client, tribal, and
29 licensed or certified behavioral health agency participation in
30 developing the state behavioral health program, developing related
31 contracts, and any waiver request to the federal government under
32 medicaid.

33 (3) The director shall provide for participation in developing
34 the state behavioral health program for children and other
35 underserved populations, by including representatives on any
36 committee established to provide oversight to the state behavioral
37 health program.

38 (4) The authority shall be designated as the behavioral health
39 administrative services organization for a regional service area if a

1 behavioral health administrative services organization fails to meet
2 the authority's contracting requirements or refuses to exercise the
3 responsibilities under its contract or state law, until such time as
4 a new behavioral health administrative services organization is
5 designated.

6 (5) The director shall:

7 (a) Assure that any behavioral health administrative services
8 organization, managed care organization, or community behavioral
9 health program provides medically necessary services to medicaid
10 recipients consistent with the state's medicaid state plan or federal
11 waiver authorities, and nonmedicaid services consistent with
12 priorities established by the authority;

13 (b) Develop contracts in a manner to ensure an adequate network
14 of inpatient services, evaluation and treatment services, and
15 facilities under chapter 71.05 RCW to ensure access to treatment,
16 resource management services, and community support services;

17 (c) Make contracts necessary or incidental to the performance of
18 its duties and the execution of its powers, including managed care
19 contracts for behavioral health services, contracts entered into
20 under RCW 74.09.522, and contracts with public and private agencies,
21 organizations, and individuals to pay them for behavioral health
22 services;

23 (d) Define administrative costs and ensure that the behavioral
24 health administrative services organization does not exceed an
25 administrative cost of ten percent of available funds;

26 (e) Establish, to the extent possible, a standardized auditing
27 procedure which is designed to assure compliance with contractual
28 agreements authorized by this chapter and minimizes paperwork
29 requirements. The audit procedure shall focus on the outcomes of
30 service as provided in RCW 71.24.435, 70.320.020, and 71.36.025;

31 (f) Develop and maintain an information system to be used by the
32 state and behavioral health administrative services organizations and
33 managed care organizations that includes a tracking method which
34 allows the authority to identify behavioral health clients'
35 participation in any behavioral health service or public program on
36 an immediate basis. The information system shall not include
37 individual patient's case history files. Confidentiality of client
38 information and records shall be maintained as provided in this
39 chapter and chapter 70.02 RCW;

1 (g) Monitor and audit behavioral health administrative services
2 organizations as needed to assure compliance with contractual
3 agreements authorized by this chapter;

4 (h) Monitor and audit access to behavioral health services for
5 individuals eligible for medicaid who are not enrolled in a managed
6 care organization;

7 (i) Adopt such rules as are necessary to implement the
8 authority's responsibilities under this chapter;

9 (j) Administer or supervise the administration of the provisions
10 relating to persons with substance use disorders and intoxicated
11 persons of any state plan submitted for federal funding pursuant to
12 federal health, welfare, or treatment legislation;

13 (k) Require the behavioral health administrative services
14 organizations and the managed care organizations to develop
15 agreements with tribal, city, and county jails and the department of
16 corrections to accept referrals for enrollment on behalf of a
17 confined person, prior to the person's release; ~~((and))~~

18 (l) Require behavioral health administrative services
19 organizations and managed care organizations, as applicable, to
20 provide services as identified in RCW 71.05.585 to individuals
21 committed for involuntary commitment under less restrictive
22 alternative court orders when:

23 (i) The individual is enrolled in the medicaid program; or

24 (ii) The individual is not enrolled in medicaid, does not have
25 other insurance which can pay for the services, and the behavioral
26 health administrative services organization has adequate available
27 resources to provide the services; and

28 (m) Coordinate with the centers for medicare and medicaid
29 services to provide that behavioral health aide services are eligible
30 for federal funding of up to one hundred percent.

31 (6) The director shall use available resources only for
32 behavioral health administrative services organizations and managed
33 care organizations, except:

34 (a) To the extent authorized, and in accordance with any
35 priorities or conditions specified, in the biennial appropriations
36 act; or

37 (b) To incentivize improved performance with respect to the
38 client outcomes established in RCW 71.24.435, 70.320.020, and
39 71.36.025, integration of behavioral health and medical services at

1 the clinical level, and improved care coordination for individuals
2 with complex care needs.

3 (7) Each behavioral health administrative services organization,
4 managed care organization, and licensed or certified behavioral
5 health agency shall file with the secretary of the department of
6 health or the director, on request, such data, statistics, schedules,
7 and information as the secretary of the department of health or the
8 director reasonably requires. A behavioral health administrative
9 services organization, managed care organization, or licensed or
10 certified behavioral health agency which, without good cause, fails
11 to furnish any data, statistics, schedules, or information as
12 requested, or files fraudulent reports thereof, may be subject to the
13 contractual remedies in RCW 74.09.871 or may have its service
14 provider certification or license revoked or suspended.

15 (8) The superior court may restrain any behavioral health
16 administrative services organization, managed care organization, or
17 service provider from operating without a contract, certification, or
18 a license or any other violation of this section. The court may also
19 review, pursuant to procedures contained in chapter 34.05 RCW, any
20 denial, suspension, limitation, restriction, or revocation of
21 certification or license, and grant other relief required to enforce
22 the provisions of this chapter.

23 (9) Upon petition by the secretary of the department of health or
24 the director, and after hearing held upon reasonable notice to the
25 facility, the superior court may issue a warrant to an officer or
26 employee of the secretary of the department of health or the director
27 authorizing him or her to enter at reasonable times, and examine the
28 records, books, and accounts of any behavioral health administrative
29 services organization, managed care organization, or service provider
30 refusing to consent to inspection or examination by the authority.

31 (10) Notwithstanding the existence or pursuit of any other
32 remedy, the secretary of the department of health or the director may
33 file an action for an injunction or other process against any person
34 or governmental unit to restrain or prevent the establishment,
35 conduct, or operation of a behavioral health administrative services
36 organization, managed care organization, or service provider without
37 a contract, certification, or a license under this chapter.

38 (11) The authority shall distribute appropriated state and
39 federal funds in accordance with any priorities, terms, or conditions
40 specified in the appropriations act.

1 (12) The authority, in cooperation with the state congressional
2 delegation, shall actively seek waivers of federal requirements and
3 such modifications of federal regulations as are necessary to allow
4 federal medicaid reimbursement for services provided by freestanding
5 evaluation and treatment facilities licensed under chapter 71.12 RCW
6 or certified under chapter 71.05 RCW. The authority shall
7 periodically share the results of its efforts with the appropriate
8 committees of the senate and the house of representatives.

9 (13) The authority may:

10 (a) Plan, establish, and maintain substance use disorder
11 prevention and substance use disorder treatment programs as necessary
12 or desirable;

13 (b) Coordinate its activities and cooperate with behavioral
14 programs in this and other states, and make contracts and other joint
15 or cooperative arrangements with state, tribal, local, or private
16 agencies in this and other states for behavioral health services and
17 for the common advancement of substance use disorder programs;

18 (c) Solicit and accept for use any gift of money or property made
19 by will or otherwise, and any grant of money, services, or property
20 from the federal government, the state, or any political subdivision
21 thereof or any private source, and do all things necessary to
22 cooperate with the federal government or any of its agencies in
23 making an application for any grant;

24 (d) Keep records and engage in research and the gathering of
25 relevant statistics; and

26 (e) Acquire, hold, or dispose of real property or any interest
27 therein, and construct, lease, or otherwise provide substance use
28 disorder treatment programs.

29 **Sec. 103.** RCW 71.24.155 and 2019 c 325 s 1011 are each amended
30 to read as follows:

31 Grants shall be made by the authority to behavioral health
32 administrative services organizations ~~((and))~~, managed care
33 organizations for community behavioral health programs, and Indian
34 health care providers who have community behavioral health programs
35 totaling not less than ninety-five percent of available resources.
36 The authority may use up to forty percent of the remaining five
37 percent to provide community demonstration projects, including early
38 intervention or primary prevention programs for children, and the

1 remainder shall be for emergency needs and technical assistance under
2 this chapter.

3 **PART II**

4 **Sec. 201.** RCW 71.05.020 and 2019 c 446 s 2, 2019 c 444 s 16, and
5 2019 c 325 s 3001 are each reenacted and amended to read as follows:

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

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

12 (2) "Alcoholism" means a disease, characterized by a dependency
13 on alcoholic beverages, loss of control over the amount and
14 circumstances of use, symptoms of tolerance, physiological or
15 psychological withdrawal, or both, if use is reduced or discontinued,
16 and impairment of health or disruption of social or economic
17 functioning;

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

22 (4) "Approved substance use disorder treatment program" means a
23 program for persons with a substance use disorder provided by a
24 treatment program certified by the department as meeting standards
25 adopted under chapter 71.24 RCW;

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

29 (6) "Authority" means the Washington state health care authority;

30 (7) "Co-occurring disorder specialist" means an individual
31 possessing an enhancement granted by the department of health under
32 chapter 18.205 RCW that certifies the individual to provide substance
33 use disorder counseling subject to the practice limitations under RCW
34 18.205.105;

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

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

3 (10) "Crisis stabilization unit" means a short-term facility or a
4 portion of a facility licensed or certified by the department, such
5 as an evaluation and treatment facility or a hospital, which has been
6 designed to assess, diagnose, and treat individuals experiencing an
7 acute crisis without the use of long-term hospitalization;

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

12 (12) "Department" means the department of health;

13 (13) "Designated crisis responder" means a mental health
14 professional appointed by the county (~~(or)~~), an entity appointed by
15 the county, or by the authority in consultation with a federally
16 recognized Indian tribe or after meeting and conferring with an
17 Indian health care provider, to perform the duties specified in this
18 chapter;

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

21 (15) "Developmental disabilities professional" means a person who
22 has specialized training and three years of experience in directly
23 treating or working with persons with developmental disabilities and
24 is a psychiatrist, physician assistant working with a supervising
25 psychiatrist, psychologist, psychiatric advanced registered nurse
26 practitioner, or social worker, and such other developmental
27 disabilities professionals as may be defined by rules adopted by the
28 secretary of the department of social and health services;

29 (16) "Developmental disability" means that condition defined in
30 RCW 71A.10.020(5);

31 (17) "Director" means the director of the authority;

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

35 (19) "Drug addiction" means a disease, characterized by a
36 dependency on psychoactive chemicals, loss of control over the amount
37 and circumstances of use, symptoms of tolerance, physiological or
38 psychological withdrawal, or both, if use is reduced or discontinued,
39 and impairment of health or disruption of social or economic
40 functioning;

1 (20) "Evaluation and treatment facility" means any facility which
2 can provide directly, or by direct arrangement with other public or
3 private agencies, emergency evaluation and treatment, outpatient
4 care, and timely and appropriate inpatient care to persons suffering
5 from a mental disorder, and which is licensed or certified as such by
6 the department. The authority may certify single beds as temporary
7 evaluation and treatment beds under RCW 71.05.745. A physically
8 separate and separately operated portion of a state hospital may be
9 designated as an evaluation and treatment facility. A facility which
10 is part of, or operated by, the department of social and health
11 services or any federal agency will not require certification. No
12 correctional institution or facility, or jail, shall be an evaluation
13 and treatment facility within the meaning of this chapter;

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

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

31 (23) "Hearing" means any proceeding conducted in open court. For
32 purposes of this chapter, at any hearing the petitioner, the
33 respondent, the witnesses, and the presiding judicial officer may be
34 present and participate either in person or by video, as determined
35 by the court. The term "video" as used herein shall include any
36 functional equivalent. At any hearing conducted by video, the
37 technology used must permit the judicial officer, counsel, all
38 parties, and the witnesses to be able to see, hear, and speak, when
39 authorized, during the hearing; to allow attorneys to use exhibits or
40 other materials during the hearing; and to allow respondent's counsel

1 to be in the same location as the respondent unless otherwise
2 requested by the respondent or the respondent's counsel. Witnesses in
3 a proceeding may also appear in court through other means, including
4 telephonically, pursuant to the requirements of superior court civil
5 rule 43. Notwithstanding the foregoing, the court, upon its own
6 motion or upon a motion for good cause by any party, may require all
7 parties and witnesses to participate in the hearing in person rather
8 than by video. In ruling on any such motion, the court may allow in-
9 person or video testimony; and the court may consider, among other
10 things, whether the respondent's alleged mental illness affects the
11 respondent's ability to perceive or participate in the proceeding by
12 video;

13 (24) "History of one or more violent acts" refers to the period
14 of time ten years prior to the filing of a petition under this
15 chapter, excluding any time spent, but not any violent acts
16 committed, in a mental health facility, a long-term alcoholism or
17 drug treatment facility, or in confinement as a result of a criminal
18 conviction;

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

21 (26) "In need of assisted outpatient behavioral health treatment"
22 means that a person, as a result of a mental disorder or substance
23 use disorder: (a) Has been committed by a court to detention for
24 involuntary behavioral health treatment during the preceding thirty-
25 six months; (b) is unlikely to voluntarily participate in outpatient
26 treatment without an order for less restrictive alternative
27 treatment, based on a history of nonadherence with treatment or in
28 view of the person's current behavior; (c) is likely to benefit from
29 less restrictive alternative treatment; and (d) requires less
30 restrictive alternative treatment to prevent a relapse,
31 decompensation, or deterioration that is likely to result in the
32 person presenting a likelihood of serious harm or the person becoming
33 gravely disabled within a reasonably short period of time;

34 (27) "Individualized service plan" means a plan prepared by a
35 developmental disabilities professional with other professionals as a
36 team, for a person with developmental disabilities, which shall
37 state:

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

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

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

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

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

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

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

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

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

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

26 (31) "Legal counsel" means attorneys and staff employed by county
27 prosecutor offices or the state attorney general acting in their
28 capacity as legal representatives of public mental health and
29 substance use disorder service providers under RCW 71.05.130;

30 (32) "Less restrictive alternative treatment" means a program of
31 individualized treatment in a less restrictive setting than inpatient
32 treatment that includes the services described in RCW 71.05.585;

33 (33) "Licensed physician" means a person licensed to practice
34 medicine or osteopathic medicine and surgery in the state of
35 Washington;

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

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

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

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

8 (35) "Medical clearance" means a physician or other health care
9 provider has determined that a person is medically stable and ready
10 for referral to the designated crisis responder;

11 (36) "Mental disorder" means any organic, mental, or emotional
12 impairment which has substantial adverse effects on a person's
13 cognitive or volitional functions;

14 (37) "Mental health professional" means a psychiatrist,
15 psychologist, physician assistant working with a supervising
16 psychiatrist, psychiatric advanced registered nurse practitioner,
17 psychiatric nurse, or social worker, and such other mental health
18 professionals as may be defined by rules adopted by the secretary
19 pursuant to the provisions of this chapter;

20 (38) "Mental health service provider" means a public or private
21 agency that provides mental health services to persons with mental
22 disorders or substance use disorders as defined under this section
23 and receives funding from public sources. This includes, but is not
24 limited to, hospitals licensed under chapter 70.41 RCW, evaluation
25 and treatment facilities as defined in this section, community mental
26 health service delivery systems or community behavioral health
27 programs as defined in RCW 71.24.025, facilities conducting
28 competency evaluations and restoration under chapter 10.77 RCW,
29 approved substance use disorder treatment programs as defined in this
30 section, secure withdrawal management and stabilization facilities as
31 defined in this section, and correctional facilities operated by
32 state and local governments;

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

37 (40) "Physician assistant" means a person licensed as a physician
38 assistant under chapter 18.57A or 18.71A RCW;

39 (41) "Private agency" means any person, partnership, corporation,
40 or association that is not a public agency, whether or not financed

1 in whole or in part by public funds, which constitutes an evaluation
2 and treatment facility or private institution, or hospital, or
3 approved substance use disorder treatment program, which is conducted
4 for, or includes a department or ward conducted for, the care and
5 treatment of persons with mental illness, substance use disorders, or
6 both mental illness and substance use disorders;

7 (42) "Professional person" means a mental health professional,
8 substance use disorder professional, or designated crisis responder
9 and shall also mean a physician, physician assistant, psychiatric
10 advanced registered nurse practitioner, registered nurse, and such
11 others as may be defined by rules adopted by the secretary pursuant
12 to the provisions of this chapter;

13 (43) "Psychiatric advanced registered nurse practitioner" means a
14 person who is licensed as an advanced registered nurse practitioner
15 pursuant to chapter 18.79 RCW; and who is board certified in advanced
16 practice psychiatric and mental health nursing;

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

23 (45) "Psychologist" means a person who has been licensed as a
24 psychologist pursuant to chapter 18.83 RCW;

25 (46) "Public agency" means any evaluation and treatment facility
26 or institution, secure withdrawal management and stabilization
27 facility, approved substance use disorder treatment program, or
28 hospital which is conducted for, or includes a department or ward
29 conducted for, the care and treatment of persons with mental illness,
30 substance use disorders, or both mental illness and substance use
31 disorders, if the agency is operated directly by federal, state,
32 county, or municipal government, or a combination of such
33 governments;

34 (47) "Release" means legal termination of the commitment under
35 the provisions of this chapter;

36 (48) "Resource management services" has the meaning given in
37 chapter 71.24 RCW;

38 (49) "Secretary" means the secretary of the department of health,
39 or his or her designee;

1 (50) "Secure withdrawal management and stabilization facility"
2 means a facility operated by either a public or private agency or by
3 the program of an agency which provides care to voluntary individuals
4 and individuals involuntarily detained and committed under this
5 chapter for whom there is a likelihood of serious harm or who are
6 gravely disabled due to the presence of a substance use disorder.
7 Secure withdrawal management and stabilization facilities must:

8 (a) Provide the following services:

9 (i) Assessment and treatment, provided by certified substance use
10 disorder professionals or co-occurring disorder specialists;

11 (ii) Clinical stabilization services;

12 (iii) Acute or subacute detoxification services for intoxicated
13 individuals; and

14 (iv) Discharge assistance provided by certified substance use
15 disorder professionals or co-occurring disorder specialists, including
16 facilitating transitions to appropriate voluntary or involuntary
17 inpatient services or to less restrictive alternatives as appropriate
18 for the individual;

19 (b) Include security measures sufficient to protect the patients,
20 staff, and community; and

21 (c) Be licensed or certified as such by the department of health;

22 (51) "Serious violent offense" has the same meaning as provided
23 in RCW 9.94A.030;

24 (52) "Social worker" means a person with a master's or further
25 advanced degree from a social work educational program accredited and
26 approved as provided in RCW 18.320.010;

27 (53) "Substance use disorder" means a cluster of cognitive,
28 behavioral, and physiological symptoms indicating that an individual
29 continues using the substance despite significant substance-related
30 problems. The diagnosis of a substance use disorder is based on a
31 pathological pattern of behaviors related to the use of the
32 substances;

33 (54) "Substance use disorder professional" means a person
34 certified as a substance use disorder professional by the department
35 of health under chapter 18.205 RCW;

36 (55) "Therapeutic court personnel" means the staff of a mental
37 health court or other therapeutic court which has jurisdiction over
38 defendants who are dually diagnosed with mental disorders, including
39 court personnel, probation officers, a court monitor, prosecuting

1 attorney, or defense counsel acting within the scope of therapeutic
2 court duties;

3 (56) "Treatment records" include registration and all other
4 records concerning persons who are receiving or who at any time have
5 received services for mental illness, which are maintained by the
6 department of social and health services, the department, the
7 authority, behavioral health administrative services organizations
8 and their staffs, managed care organizations and their staffs, and by
9 treatment facilities. Treatment records include mental health
10 information contained in a medical bill including but not limited to
11 mental health drugs, a mental health diagnosis, provider name, and
12 dates of service stemming from a medical service. Treatment records
13 do not include notes or records maintained for personal use by a
14 person providing treatment services for the department of social and
15 health services, the department, the authority, behavioral health
16 administrative services organizations, managed care organizations, or
17 a treatment facility if the notes or records are not available to
18 others;

19 (57) "Triage facility" means a short-term facility or a portion
20 of a facility licensed or certified by the department, which is
21 designed as a facility to assess and stabilize an individual or
22 determine the need for involuntary commitment of an individual, and
23 must meet department residential treatment facility standards. A
24 triage facility may be structured as a voluntary or involuntary
25 placement facility;

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

29 **Sec. 202.** RCW 71.05.150 and 2019 c 446 s 4 are each amended to
30 read as follows:

31 (1) When a designated crisis responder receives information
32 alleging that a person, as a result of a mental disorder, substance
33 use disorder, or both presents a likelihood of serious harm or is
34 gravely disabled, or that a person is in need of assisted outpatient
35 behavioral health treatment; the designated crisis responder may,
36 after investigation and evaluation of the specific facts alleged and
37 of the reliability and credibility of any person providing
38 information to initiate detention or involuntary outpatient
39 treatment, if satisfied that the allegations are true and that the

1 person will not voluntarily seek appropriate treatment, file a
2 petition for initial detention under this section or a petition for
3 involuntary outpatient behavioral health treatment under RCW
4 71.05.148. Before filing the petition, the designated crisis
5 responder must personally interview the person, unless the person
6 refuses an interview, and determine whether the person will
7 voluntarily receive appropriate evaluation and treatment at an
8 evaluation and treatment facility, crisis stabilization unit, triage
9 facility, or approved substance use disorder treatment program.

10 (2) (a) An order to detain a person with a mental disorder to a
11 designated evaluation and treatment facility, or to detain a person
12 with a substance use disorder to a secure withdrawal management and
13 stabilization facility or approved substance use disorder treatment
14 program, for not more than a seventy-two-hour evaluation and
15 treatment period may be issued by a judge of the superior court upon
16 request of a designated crisis responder, subject to (d) of this
17 subsection, whenever it appears to the satisfaction of a judge of the
18 superior court:

19 (i) That there is probable cause to support the petition; and

20 (ii) That the person has refused or failed to accept appropriate
21 evaluation and treatment voluntarily.

22 (b) The petition for initial detention, signed under penalty of
23 perjury, or sworn telephonic testimony may be considered by the court
24 in determining whether there are sufficient grounds for issuing the
25 order.

26 (c) The order shall designate retained counsel or, if counsel is
27 appointed from a list provided by the court, the name, business
28 address, and telephone number of the attorney appointed to represent
29 the person.

30 (d) A court may not issue an order to detain a person to a secure
31 withdrawal management and stabilization facility or approved
32 substance use disorder treatment program unless there is an available
33 secure withdrawal management and stabilization facility or approved
34 substance use disorder treatment program that has adequate space for
35 the person.

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

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

19 (4) The designated crisis responder may notify a peace officer to
20 take such person or cause such person to be taken into custody and
21 placed in an evaluation and treatment facility, secure withdrawal
22 management and stabilization facility, or approved substance use
23 disorder treatment program. At the time such person is taken into
24 custody there shall commence to be served on such person, his or her
25 guardian, and conservator, if any, a copy of the original order
26 together with a notice of rights and a petition for initial
27 detention.

28 (5) An Indian tribe shall have jurisdiction exclusive to the
29 state as to any involuntary commitment of an American Indian or
30 Alaska Native to an evaluation and treatment facility located within
31 the boundaries of that tribe, unless the tribe has consented to the
32 state's concurrent jurisdiction, or the tribe has expressly declined
33 to exercise its exclusive jurisdiction.

34 (6) Tribal court orders for involuntary commitment shall be
35 recognized and enforced in accordance with superior court civil rule
36 82.5.

37 (7) In any investigation and evaluation of an individual under
38 RCW 71.05.150(1) in which the designated crisis responder knows, or
39 has reason to know, that the individual is an American Indian or
40 Alaska Native who receives medical or behavioral health services from

1 a tribe within this state, the designated crisis responder shall
2 notify the tribe or Indian health care provider regarding whether or
3 not a petition for initial detention or involuntary outpatient
4 treatment will be filed. Notification shall be made in person or by
5 telephonic or electronic communication to the tribal contact listed
6 in the authority's tribal crisis coordination plan as soon as
7 possible but no later than three hours subject to the requirements in
8 RCW 70.02.230 (2)(dd) and (3). A designated crisis responder may
9 restrict the release of information as necessary to comply with 42
10 C.F.R. Part 2.

11 (8) The authority shall provide a report on psychiatric treatment
12 and evaluation and bed utilization for American Indians and Alaska
13 Natives. The report shall be available for review by the tribes,
14 urban Indian health programs, and the American Indian health
15 commission for Washington state.

16 (9) Indian health care providers shall be included in any bed
17 tracking system created by the authority.

18 **Sec. 203.** RCW 71.05.150 and 2019 c 446 s 5 are each amended to
19 read as follows:

20 (1) When a designated crisis responder receives information
21 alleging that a person, as a result of a mental disorder, substance
22 use disorder, or both presents a likelihood of serious harm or is
23 gravely disabled, or that a person is in need of assisted outpatient
24 behavioral health treatment; the designated crisis responder may,
25 after investigation and evaluation of the specific facts alleged and
26 of the reliability and credibility of any person providing
27 information to initiate detention or involuntary outpatient
28 treatment, if satisfied that the allegations are true and that the
29 person will not voluntarily seek appropriate treatment, file a
30 petition for initial detention under this section or a petition for
31 involuntary outpatient behavioral health treatment under RCW
32 71.05.148. Before filing the petition, the designated crisis
33 responder must personally interview the person, unless the person
34 refuses an interview, and determine whether the person will
35 voluntarily receive appropriate evaluation and treatment at an
36 evaluation and treatment facility, crisis stabilization unit, triage
37 facility, or approved substance use disorder treatment program.

38 (2)(a) An order to detain a person with a mental disorder to a
39 designated evaluation and treatment facility, or to detain a person

1 with a substance use disorder to a secure withdrawal management and
2 stabilization facility or approved substance use disorder treatment
3 program, for not more than a seventy-two-hour evaluation and
4 treatment period may be issued by a judge of the superior court upon
5 request of a designated crisis responder whenever it appears to the
6 satisfaction of a judge of the superior court:

7 (i) That there is probable cause to support the petition; and

8 (ii) That the person has refused or failed to accept appropriate
9 evaluation and treatment voluntarily.

10 (b) The petition for initial detention, signed under penalty of
11 perjury, or sworn telephonic testimony may be considered by the court
12 in determining whether there are sufficient grounds for issuing the
13 order.

14 (c) The order shall designate retained counsel or, if counsel is
15 appointed from a list provided by the court, the name, business
16 address, and telephone number of the attorney appointed to represent
17 the person.

18 (3) The designated crisis responder shall then serve or cause to
19 be served on such person, his or her guardian, and conservator, if
20 any, a copy of the order together with a notice of rights, and a
21 petition for initial detention. After service on such person the
22 designated crisis responder shall file the return of service in court
23 and provide copies of all papers in the court file to the evaluation
24 and treatment facility, secure withdrawal management and
25 stabilization facility, or approved substance use disorder treatment
26 program, and the designated attorney. The designated crisis responder
27 shall notify the court and the prosecuting attorney that a probable
28 cause hearing will be held within seventy-two hours of the date and
29 time of outpatient evaluation or admission to the evaluation and
30 treatment facility, secure withdrawal management and stabilization
31 facility, or approved substance use disorder treatment program. The
32 person shall be permitted to be accompanied by one or more of his or
33 her relatives, friends, an attorney, a personal physician, or other
34 professional or religious advisor to the place of evaluation. An
35 attorney accompanying the person to the place of evaluation shall be
36 permitted to be present during the admission evaluation. Any other
37 individual accompanying the person may be present during the
38 admission evaluation. The facility may exclude the individual if his
39 or her presence would present a safety risk, delay the proceedings,
40 or otherwise interfere with the evaluation.

1 (4) The designated crisis responder may notify a peace officer to
2 take such person or cause such person to be taken into custody and
3 placed in an evaluation and treatment facility, secure withdrawal
4 management and stabilization facility, or approved substance use
5 disorder treatment program. At the time such person is taken into
6 custody there shall commence to be served on such person, his or her
7 guardian, and conservator, if any, a copy of the original order
8 together with a notice of rights and a petition for initial
9 detention.

10 (5) An Indian tribe shall have jurisdiction exclusive to the
11 state as to any involuntary commitment of an American Indian or
12 Alaska Native to an evaluation and treatment facility located within
13 the boundaries of that tribe, unless the tribe has consented to the
14 state's concurrent jurisdiction, or the tribe has expressly declined
15 to exercise its exclusive jurisdiction.

16 (6) Tribal court orders for involuntary commitment shall be
17 recognized and enforced in accordance with superior court civil rule
18 82.5.

19 (7) In any investigation and evaluation of an individual under
20 RCW 71.05.150(1) in which the designated crisis responder knows, or
21 has reason to know, that the individual is an American Indian or
22 Alaska Native who receives medical or behavioral health services from
23 a tribe within this state, the designated crisis responder shall
24 notify the tribe or Indian health care provider regarding whether or
25 not a petition for initial detention or involuntary outpatient
26 treatment will be filed. Notification shall be made in person or by
27 telephonic or electronic communication to the tribal contact listed
28 in the authority's tribal crisis coordination plan as soon as
29 possible but no later than three hours subject to the requirements in
30 RCW 70.02.230 (2)(dd) and (3). A designated crisis responder may
31 restrict the release of information as necessary to comply with 42
32 C.F.R. Part 2.

33 (8) The authority shall provide a report on psychiatric treatment
34 and evaluation and bed utilization for American Indians and Alaska
35 Natives. The report shall be available for review by the tribes,
36 urban Indian health programs, and the American Indian health
37 commission for Washington state.

38 (9) Indian health care providers shall be included in any bed
39 tracking system created by the authority.

1 **Sec. 204.** RCW 71.05.201 and 2018 c 291 s 11 are each amended to
2 read as follows:

3 (1) If a designated crisis responder decides not to detain a
4 person for evaluation and treatment under RCW 71.05.150 or 71.05.153
5 or forty-eight hours have elapsed since a designated crisis responder
6 received a request for investigation and the designated crisis
7 responder has not taken action to have the person detained, an
8 immediate family member or guardian or conservator of the person, or
9 a federally recognized Indian tribe if the person is a member of such
10 tribe, may petition the superior court for the person's initial
11 detention.

12 (2) A petition under this section must be filed within ten
13 calendar days following the designated crisis responder investigation
14 or the request for a designated crisis responder investigation. If
15 more than ten days have elapsed, the immediate family member,
16 guardian, or conservator may request a new designated crisis
17 responder investigation.

18 (3)(a) The petition must be filed in the county in which the
19 designated crisis responder investigation occurred or was requested
20 to occur and must be submitted on forms developed by the
21 administrative office of the courts for this purpose. The petition
22 must be accompanied by a sworn declaration from the petitioner, and
23 other witnesses if desired, describing why the person should be
24 detained for evaluation and treatment. The description of why the
25 person should be detained may contain, but is not limited to, the
26 information identified in RCW 71.05.212.

27 (b) The petition must contain:

28 (i) A description of the relationship between the petitioner and
29 the person; and

30 (ii) The date on which an investigation was requested from the
31 designated crisis responder.

32 (4) The court shall, within one judicial day, review the petition
33 to determine whether the petition raises sufficient evidence to
34 support the allegation. If the court so finds, it shall provide a
35 copy of the petition to the designated crisis responder agency with
36 an order for the agency to provide the court, within one judicial
37 day, with a written sworn statement describing the basis for the
38 decision not to seek initial detention and a copy of all information
39 material to the designated crisis responder's current decision.

1 (5) Following the filing of the petition and before the court
2 reaches a decision, any person, including a mental health
3 professional, may submit a sworn declaration to the court in support
4 of or in opposition to initial detention.

5 (6) The court shall dismiss the petition at any time if it finds
6 that a designated crisis responder has filed a petition for the
7 person's initial detention under RCW 71.05.150 or 71.05.153 or that
8 the person has voluntarily accepted appropriate treatment.

9 (7) The court must issue a final ruling on the petition within
10 five judicial days after it is filed. After reviewing all of the
11 information provided to the court, the court may enter an order for
12 initial detention or an order instructing the designated crisis
13 responder to file a petition for assisted outpatient behavioral
14 health treatment if the court finds that: (a) There is probable cause
15 to support a petition for detention or assisted outpatient behavioral
16 health treatment; and (b) the person has refused or failed to accept
17 appropriate evaluation and treatment voluntarily. The court shall
18 transmit its final decision to the petitioner.

19 (8) In any investigation and evaluation of an individual under
20 RCW 71.05.150(1) in which the designated crisis responder knows, or
21 has reason to know, that the individual is an American Indian or
22 Alaska Native who receives medical or behavioral health services from
23 a tribe within this state, the designated crisis responder shall
24 notify the tribe or Indian health care provider regarding whether or
25 not a petition for initial detention or involuntary outpatient
26 treatment will be filed. Notification shall be made in person or by
27 telephonic or electronic communication to the tribal contact listed
28 in the authority's tribal crisis coordination plan as soon as
29 possible but no later than three hours subject to the requirements in
30 RCW 70.02.230 (2)(dd) and (3). A designated crisis responder may
31 restrict the release of information under this subsection as
32 necessary to comply with 42 C.F.R. Part 2.

33 ~~((+8))~~ (9) If the court enters an order for initial detention,
34 it shall provide the order to the designated crisis responder agency
35 and issue a written order for apprehension of the person by a peace
36 officer for delivery of the person to a facility or emergency room
37 determined by the designated crisis responder. The designated crisis
38 responder agency serving the jurisdiction of the court must
39 collaborate and coordinate with law enforcement regarding
40 apprehensions and detentions under this subsection, including sharing

1 of information relating to risk and which would assist in locating
2 the person. A person may not be detained to jail pursuant to a
3 written order issued under this subsection. An order for detention
4 under this section should contain the advisement of rights which the
5 person would receive if the person were detained by a designated
6 crisis responder. An order for initial detention under this section
7 expires one hundred eighty days from issuance.

8 ~~((9))~~ (10) Except as otherwise expressly stated in this
9 chapter, all procedures must be followed as if the order had been
10 entered under RCW 71.05.150. RCW 71.05.160 does not apply if
11 detention was initiated under the process set forth in this section.

12 ~~((10))~~ (11) For purposes of this section, "immediate family
13 member" means a spouse, domestic partner, child, stepchild, parent,
14 stepparent, grandparent, or sibling.

15 **Sec. 205.** RCW 71.05.212 and 2018 c 291 s 13 are each amended to
16 read as follows:

17 (1) Whenever a designated crisis responder or professional person
18 is conducting an evaluation under this chapter, consideration shall
19 include all reasonably available information from credible witnesses
20 and records regarding:

21 (a) Prior recommendations for evaluation of the need for civil
22 commitments when the recommendation is made pursuant to an evaluation
23 conducted under chapter 10.77 RCW;

24 (b) Historical behavior, including history of one or more violent
25 acts;

26 (c) Prior determinations of incompetency or insanity under
27 chapter 10.77 RCW; and

28 (d) Prior commitments under this chapter.

29 (2) Credible witnesses may include family members, landlords,
30 neighbors, or others with significant contact and history of
31 involvement with the person. If the designated crisis responder
32 relies upon information from a credible witness in reaching his or
33 her decision to detain the individual, then he or she must provide
34 contact information for any such witness to the prosecutor. The
35 designated crisis responder or prosecutor shall provide notice of the
36 date, time, and location of the probable cause hearing to such a
37 witness.

38 (3) Symptoms and behavior of the respondent which standing alone
39 would not justify civil commitment may support a finding of grave

1 disability or likelihood of serious harm, or a finding that the
2 person is in need of assisted outpatient behavioral health treatment,
3 when:

4 (a) Such symptoms or behavior are closely associated with
5 symptoms or behavior which preceded and led to a past incident of
6 involuntary hospitalization, severe deterioration, or one or more
7 violent acts;

8 (b) These symptoms or behavior represent a marked and concerning
9 change in the baseline behavior of the respondent; and

10 (c) Without treatment, the continued deterioration of the
11 respondent is probable.

12 (4) When conducting an evaluation for offenders identified under
13 RCW 72.09.370, the designated crisis responder or professional person
14 shall consider an offender's history of judicially required or
15 administratively ordered antipsychotic medication while in
16 confinement.

17 (5) The authority, in consultation with tribes and coordination
18 with Indian health care providers and the American Indian health
19 commission for Washington state, shall establish written guidelines
20 for conducting culturally appropriate evaluations of American Indians
21 or Alaska Natives.

22 **Sec. 206.** RCW 71.05.435 and 2019 c 446 s 26 are each amended to
23 read as follows:

24 (1) Whenever a person who is the subject of an involuntary
25 commitment order under this chapter is discharged from an evaluation
26 and treatment facility, state hospital, secure withdrawal management
27 and stabilization facility, or approved substance use disorder
28 treatment program providing involuntary treatment services, the
29 entity discharging the person shall provide notice of the person's
30 discharge to the designated crisis responder office responsible for
31 the initial commitment, which may be a federally recognized Indian
32 tribe or other Indian health care provider if the designated crisis
33 responder is appointed by the authority, and the designated crisis
34 responder office that serves the county in which the person is
35 expected to reside. The entity discharging the person must also
36 provide these offices with a copy of any less restrictive order or
37 conditional release order entered in conjunction with the discharge
38 of the person, unless the entity discharging the person has entered

1 into a memorandum of understanding obligating another entity to
2 provide these documents.

3 (2) The notice and documents referred to in subsection (1) of
4 this section shall be provided as soon as possible and no later than
5 one business day following the discharge of the person. Notice is not
6 required under this section if the discharge is for the purpose of
7 transferring the person for continued detention and treatment under
8 this chapter at another treatment facility.

9 (3) The authority shall maintain and make available an updated
10 list of contact information for designated crisis responder offices
11 around the state.

12 **PART III**

13 **Sec. 301.** RCW 70.02.010 and 2019 c 325 s 5019 are each amended
14 to read as follows:

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

17 (1) "Admission" has the same meaning as in RCW 71.05.020.

18 (2) "Audit" means an assessment, evaluation, determination, or
19 investigation of a health care provider by a person not employed by
20 or affiliated with the provider to determine compliance with:

21 (a) Statutory, regulatory, fiscal, medical, or scientific
22 standards;

23 (b) A private or public program of payments to a health care
24 provider; or

25 (c) Requirements for licensing, accreditation, or certification.

26 (3) "Authority" means the Washington state health care authority.

27 (4) "Commitment" has the same meaning as in RCW 71.05.020.

28 (5) "Custody" has the same meaning as in RCW 71.05.020.

29 (6) "Deidentified" means health information that does not
30 identify an individual and with respect to which there is no
31 reasonable basis to believe that the information can be used to
32 identify an individual.

33 (7) "Department" means the department of social and health
34 services.

35 (8) "Designated crisis responder" has the same meaning as in RCW
36 71.05.020 or 71.34.020, as applicable.

37 (9) "Detention" or "detain" has the same meaning as in RCW
38 71.05.020.

1 (10) "Directory information" means information disclosing the
2 presence, and for the purpose of identification, the name, location
3 within a health care facility, and the general health condition of a
4 particular patient who is a patient in a health care facility or who
5 is currently receiving emergency health care in a health care
6 facility.

7 (11) "Discharge" has the same meaning as in RCW 71.05.020.

8 (12) "Evaluation and treatment facility" has the same meaning as
9 in RCW 71.05.020 or 71.34.020, as applicable.

10 (13) "Federal, state, or local law enforcement authorities" means
11 an officer of any agency or authority in the United States, a state,
12 a tribe, a territory, or a political subdivision of a state, a tribe,
13 or a territory who is empowered by law to: (a) Investigate or conduct
14 an official inquiry into a potential criminal violation of law; or
15 (b) prosecute or otherwise conduct a criminal proceeding arising from
16 an alleged violation of law.

17 (14) "General health condition" means the patient's health status
18 described in terms of "critical," "poor," "fair," "good,"
19 "excellent," or terms denoting similar conditions.

20 (15) "Health care" means any care, service, or procedure provided
21 by a health care provider:

22 (a) To diagnose, treat, or maintain a patient's physical or
23 mental condition; or

24 (b) That affects the structure or any function of the human body.

25 (16) "Health care facility" means a hospital, clinic, nursing
26 home, laboratory, office, or similar place where a health care
27 provider provides health care to patients.

28 (17) "Health care information" means any information, whether
29 oral or recorded in any form or medium, that identifies or can
30 readily be associated with the identity of a patient and directly
31 relates to the patient's health care, including a patient's
32 deoxyribonucleic acid and identified sequence of chemical base pairs.
33 The term includes any required accounting of disclosures of health
34 care information.

35 (18) "Health care operations" means any of the following
36 activities of a health care provider, health care facility, or third-
37 party payor to the extent that the activities are related to
38 functions that make an entity a health care provider, a health care
39 facility, or a third-party payor:

1 (a) Conducting: Quality assessment and improvement activities,
2 including outcomes evaluation and development of clinical guidelines,
3 if the obtaining of generalizable knowledge is not the primary
4 purpose of any studies resulting from such activities; population-
5 based activities relating to improving health or reducing health care
6 costs, protocol development, case management and care coordination,
7 contacting of health care providers and patients with information
8 about treatment alternatives; and related functions that do not
9 include treatment;

10 (b) Reviewing the competence or qualifications of health care
11 professionals, evaluating practitioner and provider performance and
12 third-party payor performance, conducting training programs in which
13 students, trainees, or practitioners in areas of health care learn
14 under supervision to practice or improve their skills as health care
15 providers, training of nonhealth care professionals, accreditation,
16 certification, licensing, or credentialing activities;

17 (c) Underwriting, premium rating, and other activities relating
18 to the creation, renewal, or replacement of a contract of health
19 insurance or health benefits, and ceding, securing, or placing a
20 contract for reinsurance of risk relating to claims for health care,
21 including stop-loss insurance and excess of loss insurance, if any
22 applicable legal requirements are met;

23 (d) Conducting or arranging for medical review, legal services,
24 and auditing functions, including fraud and abuse detection and
25 compliance programs;

26 (e) Business planning and development, such as conducting cost-
27 management and planning-related analyses related to managing and
28 operating the health care facility or third-party payor, including
29 formulary development and administration, development, or improvement
30 of methods of payment or coverage policies; and

31 (f) Business management and general administrative activities of
32 the health care facility, health care provider, or third-party payor
33 including, but not limited to:

34 (i) Management activities relating to implementation of and
35 compliance with the requirements of this chapter;

36 (ii) Customer service, including the provision of data analyses
37 for policy holders, plan sponsors, or other customers, provided that
38 health care information is not disclosed to such policy holder, plan
39 sponsor, or customer;

40 (iii) Resolution of internal grievances;

1 (iv) The sale, transfer, merger, or consolidation of all or part
2 of a health care provider, health care facility, or third-party payor
3 with another health care provider, health care facility, or third-
4 party payor or an entity that following such activity will become a
5 health care provider, health care facility, or third-party payor, and
6 due diligence related to such activity; and

7 (v) Consistent with applicable legal requirements, creating
8 deidentified health care information or a limited dataset for the
9 benefit of the health care provider, health care facility, or third-
10 party payor.

11 (19) "Health care provider" means a person who is licensed,
12 certified, registered, or otherwise authorized by the law of this
13 state to provide health care in the ordinary course of business or
14 practice of a profession.

15 (20) "Human immunodeficiency virus" or "HIV" has the same meaning
16 as in RCW 70.24.017.

17 (21) "Imminent" has the same meaning as in RCW 71.05.020.

18 (22) "Information and records related to mental health services"
19 means a type of health care information that relates to all
20 information and records compiled, obtained, or maintained in the
21 course of providing services by a mental health service agency or
22 mental health professional to persons who are receiving or have
23 received services for mental illness. The term includes mental health
24 information contained in a medical bill, registration records, as
25 defined in RCW 70.97.010, and all other records regarding the person
26 maintained by the department, by the authority, by behavioral health
27 administrative services organizations and their staff, managed care
28 organizations contracted with the authority under chapter 74.09 RCW
29 and their staff, and by treatment facilities. The term further
30 includes documents of legal proceedings under chapter 71.05, 71.34,
31 or 10.77 RCW, or somatic health care information. For health care
32 information maintained by a hospital as defined in RCW 70.41.020 or a
33 health care facility or health care provider that participates with a
34 hospital in an organized health care arrangement defined under
35 federal law, "information and records related to mental health
36 services" is limited to information and records of services provided
37 by a mental health professional or information and records of
38 services created by a hospital-operated community behavioral health
39 program as defined in RCW 71.24.025. The term does not include
40 psychotherapy notes.

1 (23) "Information and records related to sexually transmitted
2 diseases" means a type of health care information that relates to the
3 identity of any person upon whom an HIV antibody test or other
4 sexually transmitted infection test is performed, the results of such
5 tests, and any information relating to diagnosis of or treatment for
6 any confirmed sexually transmitted infections.

7 (24) "Institutional review board" means any board, committee, or
8 other group formally designated by an institution, or authorized
9 under federal or state law, to review, approve the initiation of, or
10 conduct periodic review of research programs to assure the protection
11 of the rights and welfare of human research subjects.

12 (25) "Legal counsel" has the same meaning as in RCW 71.05.020.

13 (26) "Local public health officer" has the same meaning as in RCW
14 70.24.017.

15 (27) "Maintain," as related to health care information, means to
16 hold, possess, preserve, retain, store, or control that information.

17 (28) "Mental health professional" means a psychiatrist,
18 psychologist, psychiatric advanced registered nurse practitioner,
19 psychiatric nurse, or social worker, and such other mental health
20 professionals as may be defined by rules adopted by the secretary of
21 health under chapter 71.05 RCW, whether that person works in a
22 private or public setting.

23 (29) "Mental health service agency" means a public or private
24 agency that provides services to persons with mental disorders as
25 defined under RCW 71.05.020 or 71.34.020 and receives funding from
26 public sources. This includes evaluation and treatment facilities as
27 defined in RCW 71.34.020, community mental health service delivery
28 systems, or community behavioral health programs, as defined in RCW
29 71.24.025, and facilities conducting competency evaluations and
30 restoration under chapter 10.77 RCW.

31 (30) "Minor" has the same meaning as in RCW 71.34.020.

32 (31) "Parent" has the same meaning as in RCW 71.34.020.

33 (32) "Patient" means an individual who receives or has received
34 health care. The term includes a deceased individual who has received
35 health care.

36 (33) "Payment" means:

37 (a) The activities undertaken by:

38 (i) A third-party payor to obtain premiums or to determine or
39 fulfill its responsibility for coverage and provision of benefits by
40 the third-party payor; or

1 (ii) A health care provider, health care facility, or third-party
2 payor, to obtain or provide reimbursement for the provision of health
3 care; and

4 (b) The activities in (a) of this subsection that relate to the
5 patient to whom health care is provided and that include, but are not
6 limited to:

7 (i) Determinations of eligibility or coverage, including
8 coordination of benefits or the determination of cost-sharing
9 amounts, and adjudication or subrogation of health benefit claims;

10 (ii) Risk adjusting amounts due based on enrollee health status
11 and demographic characteristics;

12 (iii) Billing, claims management, collection activities,
13 obtaining payment under a contract for reinsurance, including stop-
14 loss insurance and excess of loss insurance, and related health care
15 data processing;

16 (iv) Review of health care services with respect to medical
17 necessity, coverage under a health plan, appropriateness of care, or
18 justification of charges;

19 (v) Utilization review activities, including precertification and
20 preauthorization of services, and concurrent and retrospective review
21 of services; and

22 (vi) Disclosure to consumer reporting agencies of any of the
23 following health care information relating to collection of premiums
24 or reimbursement:

25 (A) Name and address;

26 (B) Date of birth;

27 (C) Social security number;

28 (D) Payment history;

29 (E) Account number; and

30 (F) Name and address of the health care provider, health care
31 facility, and/or third-party payor.

32 (34) "Person" means an individual, corporation, business trust,
33 estate, trust, partnership, association, joint venture, government,
34 governmental subdivision or agency, or any other legal or commercial
35 entity.

36 (35) "Professional person" has the same meaning as in RCW
37 71.05.020.

38 (36) "Psychiatric advanced registered nurse practitioner" has the
39 same meaning as in RCW 71.05.020.

1 (37) "Psychotherapy notes" means notes recorded, in any medium,
2 by a mental health professional documenting or analyzing the contents
3 of conversations during a private counseling session or group, joint,
4 or family counseling session, and that are separated from the rest of
5 the individual's medical record. The term excludes mediation
6 prescription and monitoring, counseling session start and stop times,
7 the modalities and frequencies of treatment furnished, results of
8 clinical tests, and any summary of the following items: Diagnosis,
9 functional status, the treatment plan, symptoms, prognosis, and
10 progress to date.

11 (38) "Reasonable fee" means the charges for duplicating or
12 searching the record, but shall not exceed sixty-five cents per page
13 for the first thirty pages and fifty cents per page for all other
14 pages. In addition, a clerical fee for searching and handling may be
15 charged not to exceed fifteen dollars. These amounts shall be
16 adjusted biennially in accordance with changes in the consumer price
17 index, all consumers, for Seattle-Tacoma metropolitan statistical
18 area as determined by the secretary of health. However, where editing
19 of records by a health care provider is required by statute and is
20 done by the provider personally, the fee may be the usual and
21 customary charge for a basic office visit.

22 (39) "Release" has the same meaning as in RCW 71.05.020.

23 (40) "Resource management services" has the same meaning as in
24 RCW 71.05.020.

25 (41) "Serious violent offense" has the same meaning as in RCW
26 71.05.020.

27 (42) "Sexually transmitted infection" or "sexually transmitted
28 disease" has the same meaning as "sexually transmitted disease" in
29 RCW 70.24.017.

30 (43) "Test for a sexually transmitted disease" has the same
31 meaning as in RCW 70.24.017.

32 (44) "Third-party payor" means an insurer regulated under Title
33 48 RCW authorized to transact business in this state or other
34 jurisdiction, including a health care service contractor, and health
35 maintenance organization; or an employee welfare benefit plan,
36 excluding fitness or wellness plans; or a state or federal health
37 benefit program.

38 (45) "Treatment" means the provision, coordination, or management
39 of health care and related services by one or more health care
40 providers or health care facilities, including the coordination or

1 management of health care by a health care provider or health care
2 facility with a third party; consultation between health care
3 providers or health care facilities relating to a patient; or the
4 referral of a patient for health care from one health care provider
5 or health care facility to another.

6 (46) "Managed care organization" has the same meaning as provided
7 in RCW 71.24.025.

8 (47) "Indian health care provider" has the same meaning as in RCW
9 43.71B.010(10).

10 **Sec. 302.** RCW 70.02.230 and 2019 c 381 s 19, 2019 c 325 s 5020,
11 and 2019 c 317 s 2 are each reenacted and amended to read as follows:

12 (1) Except as provided in this section, RCW 70.02.050, 71.05.445,
13 74.09.295, 70.02.210, 70.02.240, 70.02.250, 70.02.260, and 70.02.265,
14 or pursuant to a valid authorization under RCW 70.02.030, the fact of
15 admission to a provider for mental health services and all
16 information and records compiled, obtained, or maintained in the
17 course of providing mental health services to either voluntary or
18 involuntary recipients of services at public or private agencies must
19 be confidential.

20 (2) Information and records related to mental health services,
21 other than those obtained through treatment under chapter 71.34 RCW,
22 may be disclosed only:

23 (a) In communications between qualified professional persons to
24 meet the requirements of chapter 71.05 RCW and Indian health care
25 providers, in the provision of services or appropriate referrals, or
26 in the course of guardianship proceedings if provided to a
27 professional person:

- 28 (i) Employed by the facility;
- 29 (ii) Who has medical responsibility for the patient's care;
- 30 (iii) Who is a designated crisis responder;
- 31 (iv) Who is providing services under chapter 71.24 RCW;
- 32 (v) Who is employed by a state or local correctional facility
33 where the person is confined or supervised; or
- 34 (vi) Who is providing evaluation, treatment, or follow-up
35 services under chapter 10.77 RCW;

36 (b) When the communications regard the special needs of a patient
37 and the necessary circumstances giving rise to such needs and the
38 disclosure is made by a facility providing services to the operator
39 of a facility in which the patient resides or will reside;

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

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

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

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

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

18 (d)(i) To the courts, including tribal courts, as necessary to
19 the administration of chapter 71.05 RCW or to a court ordering an
20 evaluation or treatment under chapter 10.77 RCW solely for the
21 purpose of preventing the entry of any evaluation or treatment order
22 that is inconsistent with any order entered under chapter 71.05 RCW.

23 (ii) To a court or its designee in which a motion under chapter
24 10.77 RCW has been made for involuntary medication of a defendant for
25 the purpose of competency restoration.

26 (iii) Disclosure under this subsection is mandatory for the
27 purpose of the federal health insurance portability and
28 accountability act;

29 (e)(i) When a mental health professional or designated crisis
30 responder is requested by a representative of a law enforcement or
31 corrections agency, including a police officer, sheriff, community
32 corrections officer, a municipal attorney, or prosecuting attorney to
33 undertake an investigation or provide treatment under RCW 71.05.150,
34 10.31.110, or 71.05.153, the mental health professional or designated
35 crisis responder shall, if requested to do so, advise the
36 representative in writing of the results of the investigation
37 including a statement of reasons for the decision to detain or
38 release the person investigated. The written report must be submitted
39 within seventy-two hours of the completion of the investigation or

1 the request from the law enforcement or corrections representative,
2 whichever occurs later.

3 (ii) Disclosure under this subsection is mandatory for the
4 purposes of the federal health insurance portability and
5 accountability act;

6 (f) To the attorney of the detained person;

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

16 (h)(i) To appropriate law enforcement agencies and to a person,
17 when the identity of the person is known to the public or private
18 agency, whose health and safety has been threatened, or who is known
19 to have been repeatedly harassed, by the patient. The person may
20 designate a representative to receive the disclosure. The disclosure
21 must be made by the professional person in charge of the public or
22 private agency or his or her designee and must include the dates of
23 commitment, admission, discharge, or release, authorized or
24 unauthorized absence from the agency's facility, and only any other
25 information that is pertinent to the threat or harassment. The agency
26 or its employees are not civilly liable for the decision to disclose
27 or not, so long as the decision was reached in good faith and without
28 gross negligence.

29 (ii) Disclosure under this subsection is mandatory for the
30 purposes of the federal health insurance portability and
31 accountability act;

32 (i)(i) To appropriate corrections and law enforcement agencies
33 all necessary and relevant information in the event of a crisis or
34 emergent situation that poses a significant and imminent risk to the
35 public. The mental health service agency or its employees are not
36 civilly liable for the decision to disclose or not so long as the
37 decision was reached in good faith and without gross negligence.

38 (ii) Disclosure under this subsection is mandatory for the
39 purposes of the health insurance portability and accountability act;

1 (j) To the persons designated in RCW 71.05.425 for the purposes
2 described in those sections;

3 (k) Upon the death of a person. The person's next of kin,
4 personal representative, guardian, or conservator, if any, must be
5 notified. Next of kin who are of legal age and competent must be
6 notified under this section in the following order: Spouse, parents,
7 children, brothers and sisters, and other relatives according to the
8 degree of relation. Access to all records and information compiled,
9 obtained, or maintained in the course of providing services to a
10 deceased patient are governed by RCW 70.02.140;

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

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

19 (i) Only the fact, place, and date of involuntary commitment, an
20 official copy of any order or orders of commitment, and an official
21 copy of any written or oral notice of ineligibility to possess a
22 firearm that was provided to the person pursuant to RCW 9.41.047(1),
23 must be disclosed upon request;

24 (ii) The law enforcement and prosecuting attorneys may only
25 release the information obtained to the person's attorney as required
26 by court rule and to a jury or judge, if a jury is waived, that
27 presides over any trial at which the person is charged with violating
28 RCW 9.41.040(2)(a)(iv);

29 (iii) Disclosure under this subsection is mandatory for the
30 purposes of the federal health insurance portability and
31 accountability act;

32 (n) When a patient would otherwise be subject to the provisions
33 of this section and disclosure is necessary for the protection of the
34 patient or others due to his or her unauthorized disappearance from
35 the facility, and his or her whereabouts is unknown, notice of the
36 disappearance, along with relevant information, may be made to
37 relatives, the department of corrections when the person is under the
38 supervision of the department, and governmental law enforcement
39 agencies designated by the physician or psychiatric advanced
40 registered nurse practitioner in charge of the patient or the

1 professional person in charge of the facility, or his or her
2 professional designee;

3 (o) Pursuant to lawful order of a court, including a tribal
4 court;

5 (p) To qualified staff members of the department, to the
6 authority, to behavioral health administrative services
7 organizations, to managed care organizations, to resource management
8 services responsible for serving a patient, or to service providers
9 designated by resource management services as necessary to determine
10 the progress and adequacy of treatment and to determine whether the
11 person should be transferred to a less restrictive or more
12 appropriate treatment modality or facility;

13 (q) Within the mental health service agency or Indian health care
14 provider facility where the patient is receiving treatment,
15 confidential information may be disclosed to persons employed,
16 serving in bona fide training programs, or participating in
17 supervised volunteer programs, at the facility when it is necessary
18 to perform their duties;

19 (r) Within the department and the authority as necessary to
20 coordinate treatment for mental illness, developmental disabilities,
21 alcoholism, or substance use disorder of persons who are under the
22 supervision of the department;

23 (s) Between the department of social and health services, the
24 department of children, youth, and families, and the health care
25 authority as necessary to coordinate treatment for mental illness,
26 developmental disabilities, alcoholism, or drug abuse of persons who
27 are under the supervision of the department of social and health
28 services or the department of children, youth, and families;

29 (t) To a licensed physician or psychiatric advanced registered
30 nurse practitioner who has determined that the life or health of the
31 person is in danger and that treatment without the information and
32 records related to mental health services could be injurious to the
33 patient's health. Disclosure must be limited to the portions of the
34 records necessary to meet the medical emergency;

35 (u) (i) Consistent with the requirements of the federal health
36 insurance portability and accountability act, to:

37 (A) A health care provider, including an Indian health care
38 provider, who is providing care to a patient, or to whom a patient
39 has been referred for evaluation or treatment; or

1 (B) Any other person who is working in a care coordinator role
2 for a health care facility (~~(or)~~), health care provider, or Indian
3 health care provider, or is under an agreement pursuant to the
4 federal health insurance portability and accountability act with a
5 health care facility or a health care provider and requires the
6 information and records to assure coordinated care and treatment of
7 that patient.

8 (ii) A person authorized to use or disclose information and
9 records related to mental health services under this subsection
10 (2)(u) must take appropriate steps to protect the information and
11 records relating to mental health services.

12 (iii) Psychotherapy notes may not be released without
13 authorization of the patient who is the subject of the request for
14 release of information;

15 (v) To administrative and office support staff designated to
16 obtain medical records for those licensed professionals listed in (u)
17 of this subsection;

18 (w) To a facility that is to receive a person who is
19 involuntarily committed under chapter 71.05 RCW, or upon transfer of
20 the person from one evaluation and treatment facility to another. The
21 release of records under this subsection is limited to the
22 information and records related to mental health services required by
23 law, a record or summary of all somatic treatments, and a discharge
24 summary. The discharge summary may include a statement of the
25 patient's problem, the treatment goals, the type of treatment which
26 has been provided, and recommendation for future treatment, but may
27 not include the patient's complete treatment record;

28 (x) To the person's counsel or guardian ad litem, without
29 modification, at any time in order to prepare for involuntary
30 commitment or recommitment proceedings, reexaminations, appeals, or
31 other actions relating to detention, admission, commitment, or
32 patient's rights under chapter 71.05 RCW;

33 (y) To staff members of the protection and advocacy agency or to
34 staff members of a private, nonprofit corporation for the purpose of
35 protecting and advocating the rights of persons with mental disorders
36 or developmental disabilities. Resource management services may limit
37 the release of information to the name, birthdate, and county of
38 residence of the patient, information regarding whether the patient
39 was voluntarily admitted, or involuntarily committed, the date and
40 place of admission, placement, or commitment, the name and address of

1 a guardian of the patient, and the date and place of the guardian's
2 appointment. Any staff member who wishes to obtain additional
3 information must notify the patient's resource management services in
4 writing of the request and of the resource management services' right
5 to object. The staff member shall send the notice by mail to the
6 guardian's address. If the guardian does not object in writing within
7 fifteen days after the notice is mailed, the staff member may obtain
8 the additional information. If the guardian objects in writing within
9 fifteen days after the notice is mailed, the staff member may not
10 obtain the additional information;

11 (z) To all current treating providers, including Indian health
12 care providers, of the patient with prescriptive authority who have
13 written a prescription for the patient within the last twelve months.
14 For purposes of coordinating health care, the department or the
15 authority may release without written authorization of the patient,
16 information acquired for billing and collection purposes as described
17 in RCW 70.02.050(1)(d). The department, or the authority, if
18 applicable, shall notify the patient that billing and collection
19 information has been released to named providers, and provide the
20 substance of the information released and the dates of such release.
21 Neither the department nor the authority may release counseling,
22 inpatient psychiatric hospitalization, or drug and alcohol treatment
23 information without a signed written release from the client;

24 (aa)(i) To the secretary of social and health services and the
25 director of the health care authority for either program evaluation
26 or research, or both so long as the secretary or director, where
27 applicable, adopts rules for the conduct of the evaluation or
28 research, or both. Such rules must include, but need not be limited
29 to, the requirement that all evaluators and researchers sign an oath
30 of confidentiality substantially as follows:

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

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

(ii) Nothing in this chapter may 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, or director, where applicable;

(bb) To any person if the conditions in RCW 70.02.205 are met;

(cc) To the secretary of health for the purposes of the maternal mortality review panel established in RCW 70.54.450;

(dd) To a tribe or Indian health care provider to carry out the requirements of RCW 71.05.150(7).

(3) Whenever federal law or federal regulations restrict the release of information contained in the information and records related to mental health services of any patient who receives treatment for a substance use disorder, the department or the authority may restrict the release of the information as necessary to comply with federal law and regulations.

(4) Civil liability and immunity for the release of information about a particular person who is committed to the department of social and health services or the authority under RCW 71.05.280(3) and 71.05.320(4)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(5) The fact of admission to a provider of mental health services, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to chapter 71.05 RCW are not admissible as evidence in any legal proceeding outside that chapter without the written authorization of the person who was the subject of the proceeding except as provided in RCW 70.02.260, in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(4)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, 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 chapter 71.05 RCW must 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

1 upon good cause shown if the court finds that appropriate safeguards
2 for strict confidentiality are and will be maintained.

3 (6) (a) Except as provided in RCW 4.24.550, any person may bring
4 an action against an individual who has willfully released
5 confidential information or records concerning him or her in
6 violation of the provisions of this section, for the greater of the
7 following amounts:

8 (i) One thousand dollars; or

9 (ii) Three times the amount of actual damages sustained, if any.

10 (b) It is not a prerequisite to recovery under this subsection
11 that the plaintiff suffered or was threatened with special, as
12 contrasted with general, damages.

13 (c) Any person may bring an action to enjoin the release of
14 confidential information or records concerning him or her or his or
15 her ward, in violation of the provisions of this section, and may in
16 the same action seek damages as provided in this subsection.

17 (d) The court may award to the plaintiff, should he or she
18 prevail in any action authorized by this subsection, reasonable
19 attorney fees in addition to those otherwise provided by law.

20 (e) If an action is brought under this subsection, no action may
21 be brought under RCW 70.02.170.

22

PART IV

23 NEW SECTION. **Sec. 401.** Section 202 of this act expires July 1,
24 2026.

25 NEW SECTION. **Sec. 402.** Section 203 of this act takes effect
26 July 1, 2026.

27 NEW SECTION. **Sec. 403.** Section 103 of this act takes effect
28 July 1, 2021.

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